

Mayor

Marni L. Sawicki

Council Members

District 1: James D. Burch

District 2: John M. Carioscia Sr.

District 3: Marilyn Stout

District 4: Richard Leon

District 5: Rana M. Erbrick

District 6: Richard Williams

District 7: Jessica Cosden



1015 Cultural Park Blvd.
Cape Coral, FL

City Manager

John Szerlag

City Attorney

Dolores Menendez

City Auditor

Margaret Krym

City Clerk

Rebecca van Deutekom

**AGENDA FOR THE REGULAR MEETING OF THE
CAPE CORAL CITY COUNCIL**

January 23, 2017

4:30 PM

Council Chambers

PLEDGE OF CIVILITY

We will be respectful of each other even when we disagree.
We will direct all comments to the issues. We will avoid personal attacks.

1. MEETING CALLED TO ORDER

A. MAYOR SAWICKI

2. INVOCATION/MOMENT OF SILENCE

A. COUNCILMEMBER CARIOSCIA

3. PLEDGE OF ALLEGIANCE

A. FRANK "TRES" CORNELISON, III - DIPLOMAT ELEMENTARY

4. ROLL CALL

A. MAYOR SAWICKI, COUNCIL MEMBERS BURCH, CARIOSCIA,
COSDEN, ERBRICK, LEON, STOUT, WILLIAMS

5. CHANGES TO AGENDA/ADOPTION OF AGENDA

6. RECOGNITIONS/ACHIEVEMENTS

A. Service Awards: 5 Years - Lisa Depatie/HR; 10 Years - Steven
Hernden/Fire, Timothy Lester/Fire

7. APPROVAL OF MINUTES

A. Regular Meeting - January 9, 2017

8. BUSINESS

A. PUBLIC COMMENT - CONSENT AGENDA

A maximum of 45 minutes is set for input of citizens on matters concerning the Consent Agenda; 3 minutes per individual.

B. CONSENT AGENDA

- (1) Resolution 7-17 Award ITB-UT17-02/KR Southwest Reverse Osmosis Water Treatment Plant Wellfield Communication and Controls Upgrade to Commerce Controls, (FLA), LLC. to furnish, deliver and install all materials, equipment, labor and incidentals required to upgrade the communication and controls for thirty three (33) remote raw water production wells associated with the Southwest Reverse Osmosis WTP as outlined in the bid documents, as the lowest responsive, responsible bidder, in the amount of \$691,224 with a 7.5% City controlled contingency of \$51,842 for a total of \$743,066 and authorize the City Manager or designee to execute the contract; Department: Utilities; Dollar Value: \$743,066; (Water and Sewer Fund)
- (2) Resolution 10-17 Award Proposal RFP-DCD16-73/GM for Bimini Basin Redevelopment Project Management, to Redevelopment Management Associates, LLC for a not to exceed contract amount of \$120,000 plus any City required additional services up to 15% (\$18,000) of the contract, and authorize the City Manager or Designee to execute the contract and any amendments; Department: Department of Community Development (DCD); Dollar Value: \$138,000; (General Fund)
- (3) Resolution 12-17 Award ITB-PD17-19/CH for the purchase of ammunition for the Police Department to Florida Bullet, Inc. (Bid Items 1, 2, 4, 5, 6, and 7); Dana Safety Supply, Inc. (Bid items 8, 9, and 11); GT Distributors, Inc. (Bid item 3), at the unit prices bid not to exceed budgetary limits, and authorize the City Manager, or designee, to sign the purchase orders; Department: Police Department; Dollar Value \$99,120; (General Fund)
- (4) Resolution 17-17 Approval of Contract for Purchase of Lots 36, 37 and 38, Block 573, Unit 12, Cape Coral Subdivision, 3607 Del Prado Boulevard South, for future access to Master Pump Station 200 for maintenance and repairs, for a purchase price of \$229,500 plus closing costs not to exceed \$500; Department: Financial Services / Real Estate; Dollar Value: \$230,000; (Water and Sewer Fund)
- (5) Resolution 18-17 Utilities Agreement - On Site and Off Site Improvements for Water, Wastewater and Irrigation Facilities, Sandoval Phase IV

C. CITIZENS INPUT TIME

A maximum of 45 minutes is set for input of citizens on matters concerning the City Government to include Resolutions appearing in sections other than Consent Agenda or Public Hearing; 3 minutes

per individual.

D. PERSONNEL ACTIONS

(1) NONE

E. PETITIONS TO COUNCIL

(1) NONE

F. APPOINTMENTS TO BOARDS / COMMITTEES / COMMISSIONS

(1) Municipal General Employees' Pension Trust Fund Board of Trustees - 1 Vacancy

9. ORDINANCES/RESOLUTIONS

A. Public Hearings

(1) Ordinance 4-17 Public Hearing [This item was advanced by Councilmember Cosden]

WHAT THE ORDINANCE ACCOMPLISHES:

The ordinance amends the Code of Ordinances, Chapter 2, Administration, Article III, Personnel Rules and Regulations, to prohibit discrimination on the basis of sexual orientation, gender identity, and gender expression.

(2) Ordinance 5-17 (PDP 16-0001)*

Final Public Hearing

*Quasi-Judicial, All Persons Testifying Must be Sworn In

WHAT THE ORDINANCE ACCOMPLISHES:

An ordinance approving a Planned Development Project entitled "Circle K", approving rezoning the subject property from Professional Office (P-1) to Pedestrian Commercial (C-1); approving a special exception to allow an Automotive Service Station, Limited use in a Pedestrian Commercial (C-1) zone; granting a deviation for relief from a setback requirement; granting a deviation for relief from the minimum required separation distance for a driveway on a minor arterial street; property is located at 819 SE 26th Street.

Hearing Examiner Recommendation: The Hearing Examiner recommended approval with all staff conditions following a public hearing held on November 1, 2016

City Management Recommendation: Recommends approval of this project.

(3) Ordinance 6-17 Public Hearing

WHAT THE ORDINANCE ACCOMPLISHES:

An ordinance approving a Lease Agreement between the City of Cape Coral and SalusCare, Inc., for the lease of property owned by the City of Cape Coral located at 1105 Cultural Park Boulevard for the continuing operation of a substance abuse treatment facility and counseling center.

B. Introductions

- (1) Ordinance 2-17 Set Public Hearing date for February 6, 2017
WHAT THE ORDINANCE ACCOMPLISHES:
An ordinance amending Article VIII, Administration, of the City of Cape Coral Land Use and Development Regulations, creating Section 8.14, Reasonable Accommodation Procedures, to implement a procedure for reasonable accommodation with respect to Zoning and Land Use Regulations, Ordinances, rules and policies for persons with disabilities; providing severability and an effective date.
P&Z recommendation: At the January 4, 2017 meeting, the Planning and Zoning Commission/Local Planning Agency voted (7-0) to recommend approval of Ordinance 2-17. There was one speaker during public hearing.
City Management Recommendation: Recommends approval of the requested amendment.
- (2) Ordinance 3-17 Set Public Hearing date for February 6, 2017
WHAT THE ORDINANCE ACCOMPLISHES:
An ordinance amending the Future Land Use Element of the City of Cape Coral Comprehensive Plan to provide for greater development flexibility within the Commercial Activity Center (CAC) Future Land Use Classification. (See attached memorandum from DCD to CM for additional explanation.)
P&Z recommendation: At the January 4, 2017 meeting, the Planning and Zoning Commission/Local Planning Agency voted (5-1 with 1 abstention) to recommend approval of Ordinance 3-17. There were no speakers during public hearing.
City Management Recommendation: Recommends approval of the requested amendment.
- (3) Ordinance 7-17 Set Public Hearing date for February 6, 2017
WHAT THE ORDINANCE ACCOMPLISHES:
An ordinance declaring a 1,175 square foot triangular shaped parcel of property being a part of Highlander Canal right-of-way as unusable municipal surplus real property and deeding it to the property owner, subject to public utility, drainage, roadway, and bridge maintenance easements, and subject to the grantee constructing a seawall upon said property within 12 months of deed conveyance; property is located at 1935 SW 8th Court.
- (4) ADDENDUM: Ordinance 8-17 Set Public Hearing Date for February 6, 2017
WHAT THE ORDINANCE ACCOMPLISHES:
An ordinance authorizing and directing the City Manager to enter into an Animal Shelter Ground Lease and Purchase Agreement with Cape Coral Animal Shelter Corporation, a not-for-profit corporation, for the lease of property owned by the City of Cape Coral located at 325 SW 2nd Avenue for the

operation of an animal shelter and adoption facility.

10. UNFINISHED BUSINESS

- A. Water Quality
- B. Legislative Issues - Update
- C. Discussion and selection of finalists for the City Auditor position

11. NEW BUSINESS

- A. ADDENDUM: Resolution 19-17 Trust for Public Lands; Department: Parks and Recreation; Dollar Value: \$11,000; (Fund: TBD)
- B. ADDENDUM: Bryant Miller and Olive Invoices - Mayor Pro Tem Williams

12. REPORTS OF THE MAYOR AND COUNCIL MEMBERS

13. REPORTS OF THE CITY ATTORNEY AND CITY MANAGER

14. TIME AND PLACE OF FUTURE MEETINGS

- A. A Committee of the Whole Meeting is Scheduled for Monday, January 30, 2017 at 4:30 p.m. in Council Chambers

15. MOTION TO ADJOURN

**GENERAL RULES AND PROCEDURES REGARDING
THE CAPE CORAL CITY COUNCIL AGENDA**

In accordance with the Americans with Disabilities Act and Section of 286.26, Florida Statutes, persons with disabilities needing special accommodation to participate in this meeting should contact the Office of the City Clerk at least forty-eight (48) hours prior to the meeting. If hearing impaired, telephone the Florida Relay Service Numbers, 1-800-955-8771 (TDD) or 1-800-955-8770 (v) for assistance.

Persons wishing to address Council under Citizens Input or the Consent Agenda may do so during the designated times at each meeting. No prior scheduling is necessary. All speakers must have their presentations approved by the City Clerk's office no later than 3:00 PM the day of the meeting.

Any citizen may appear before the City Council at the scheduled PUBLIC HEARING/INPUT to comment on the specific agenda item being considered. No prior scheduling is necessary.

When recognized by the presiding officer, a speaker shall address the City Council from the designated speaker's lectern, and shall state his or her name and whom, if anyone, he or she represents. An address shall only be required if necessary to comply with a federal, state or local law.

Copies of the agenda are available in the main lobby of Cape Coral City Hall and in the City Council Office, 1015 Cultural Park Boulevard. Copies of all back-up documentation are also available for review in the lobby of Council Chambers. You are asked to refrain from removing any documentation. If you desire copies, please request they be made for you. Copies are 15 cents per page. Agendas and back-up documentation are also available on-line on the City website (capecoral.net) after 4:00 PM on the Thursday prior to the Council Meeting.

***PUBLIC HEARINGS**
DEPARTMENT OF COMMUNITY DEVELOPMENT CASES

In all public hearings for which an applicant or applicants exist and which would affect a relatively limited land area, including but not limited to PDPs, appeals concerning variances or special exceptions, and small-scale rezonings, the following procedures shall be utilized in order to afford all parties or their representatives a full opportunity to be heard on matters relevant to the application:

1. The applicant, as well as witnesses offering testimony or presenting evidence, will be required to swear or affirm that the testimony they provide is the truth.
2. The order of presentation will begin with the City staff report, the presentation by the applicant and/or the applicant's representative; witnesses called by the applicant, and then members of the public.
3. Members of the City Council may question any witness on relevant issues, by the applicant and/or the applicant's representative, City staff, or by any member of the public.
4. The Mayor may impose reasonable limitations on the offer of testimony or evidence and refuse to hear testimony or evidence that is not relevant to the issue being heard. The Mayor may also impose reasonable limitations on the number of witnesses heard when such witnesses become repetitive or are introducing duplicate testimony or evidence. The Mayor may also call witnesses and introduce evidence on behalf of the City Council if it is felt that such witnesses and/or evidence are necessary for a thorough consideration of the subject.
5. After the introduction of all-relevant testimony and evidence, the applicant shall have the opportunity to present a closing statement.
6. If a person decides to appeal any decision made by the City Council with respect to any matter considered at such meeting or hearing, he or she will need a record of the proceedings, and that, for such purpose, he or she may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.

Meeting Date:	1/23/2017
Item Type:	APPROVAL OF MINUTES

Regular Meeting - January 9, 2017

Approve or Deny

1. Will this action result in a Budget Amendment?	No
2. Is this a Strategic Decision?	No
If Yes, Priority Goals Supported are listed below.	
If No, will it harm the intent or success of the Strategic Plan?	No

SUMMARY EXPLANATION AND BACKGROUND:

Regular Meeting - January 9, 2017

Kimberly
Bruns

Division- Managerial

Department- City Clerk's
Department

Kimberly Bruns
Assistant City Clerk
1-239-242-3243

Description

Type

**MINUTES FOR THE REGULAR MEETING OF THE
CAPE CORAL CITY COUNCIL**

January 9, 2017

Council Chambers

4:30 p.m.

Meeting called to order by Mayor Sawicki at 4:30 p.m.

Moment of Silence – Councilmember Burch

Pledge of Allegiance – Gabriella Rieder – Oasis Elementary

Roll Call: Mayor Sawicki, Council Members Burch, Carioscia, Cosden, Erbrick, Leon, Stout, and Williams were present.

CHANGES TO AGENDA/ADOPTION OF AGENDA

Councilmember Stout moved, seconded by Councilmember Burch to approve the agenda, as presented.

Council polled as follows: Burch, Carioscia, Cosden, Erbrick, Leon, Sawicki, Stout, and Williams voted "aye." Eight "ayes." Motion carried 8-0.

RECOGNITIONS/ACHIEVEMENTS

Police Athletic League (PAL) Program - Police Department

Chief of Police Newlan discussed the PAL Program and acknowledged Captain Sizemore on the current plan. Captain Sizemore provided a history of the program back to 1994 with former Chief of Police Gibbs. He described a three-legged stool approach to include referral, mentorship/representation, and scholarship for at-risk children in the community. There is a current student participating in the program in a soccer program, and he has seen already an improvement in the student's grades. Current sponsors include Spiro and Associates, Cape Coral Community Foundation, Jim Chouinard Accounting, Control Room Martial Arts Center, and Apple Corporation. Contact Captain Sizemore or visit www.capecops.com/PAL for additional details.

Councilmember Stout requested the Chief of Police discuss results from the Fill the Boat Program and Shop with a Cop.

Chief of Police Newlan stated that there were 70 families that participated in Shop with a Cop, and the amount of toys donated was overwhelming that came in from the Fill the Boat.

APPROVAL OF MINUTES

Regular Meeting – December 5, 2016

Councilmember Burch moved, seconded by Councilmember Cosden to approve the minutes for the December 5, 2016 regular meeting as presented. Voice Poll: All "ayes." Motion carried.

Regular Meeting – December 12, 2016

Councilmember Cosden moved, seconded by Councilmember Burch to approve the minutes for the December 12, 2016 regular meeting as presented. Voice Poll: All "ayes." Motion carried.

BUSINESS

PUBLIC COMMENT - CONSENT AGENDA

No speakers.

CONSENT AGENDA

Mayor Sawicki stated the City Manager requested that item 8(B)(3) be pulled for discussion from the Consent Agenda.

- (1) Resolution 227-16 Approval of Contract for Purchase for two parcels being a portion of the future Stonewater Development along Tropicana Parkway for Lift Station 617 (a portion of Strap 10-44-23-C1-00002.0000) and along Nelson Road for Master Pump Station 618 (a portion of Strap 10-44-23-C2-00003.0000), for the North 2 Utilities Extension Project, for a purchase price of \$96,150 plus closing costs not to exceed \$2,500; Department: Financial Services / Real Estate; Dollar Value: \$98,650; (Water and Sewer Fund)
- (2) Resolution 1-17 Award ITB-PR16-75-GM, Coral Oaks Golf Course Greens Renovation, to Detailed Sports Turf Construction, Inc., as the lowest responsive responsible bidder, for the renovations of the Golf Course greens and construction of an on-site sod farm, at the total bid amount of \$224,000, with a 5% city controlled contingency of \$11,200 for a total of \$235,200 and to utilize the remaining available budgeted amount of \$71,800 for renovations of three (3) tees and one (1) fairway purchases in accordance with the City of Cape Coral Procurement Ordinance for a total of \$307,000 and authorize the City Manager or his designee to execute the contract; Department: Parks & Recreation; Dollar Value: \$307,000; (Enterprise Fund-Golf Course)
- (3) Resolution 2-17 Award Proposal RFP-DCD16-61/GM for Inspection and Plan Examination Services, to Calvin, Giordano & Associates, Inc. as primary, Nova Engineering & Environmental, LLC as secondary, and GFA International, Inc. as tertiary, to be utilized on an hourly as needed basis for an estimated annual contract amount of \$50,000, not to exceed budgetary limits and authorize the City Manager or his designee to execute the contracts; Department: Department of Community Development; Annual Dollar Value: \$50,000 {three year contract total of \$150,000}; (Building Fund)
- (4) Resolution 3-17 Award Bid ITB-PW16-93-GM for Median Landscape & Irrigation Improvements – Coronado Parkway to Tony's Lawn & Landscaping, LLC, for Median Landscape & Irrigation Improvements on Coronado Parkway as the lowest responsive responsible bidder for a total contract amount of \$139,987 with a 20% city controlled contingency of \$28,000 for a total project cost of \$167,987 and authorize the City Manager or his designee to execute the contract; Department: Public Works; Dollar Value: \$167,987; (General Fund)
- (5) Resolution 8-17 SFWMD Cooperative Funding Program - Agreement 4600003494 - Proj LWC-2007 - Water N2 UEP - Irrigation Transmission; Department: Utilities; SFWMD Grant: \$200,000; City Match: \$200,000; (Water/Sewer Fund)
- (6) Resolution 9-17 SFWMD Cooperative Funding Program - Agreement 3495 - Proj LWC-2005 - Water N2 UEP - Irrigation Canal Pump Station East #10. Department: Utilities; SFWMD Grant: \$200,000; City Match: \$200,000; (Water/Sewer Fund)

Councilmember Stout moved, seconded by Councilmember Cosden to approve items 8(B)(1), 8(B)(2), 8(B)4, 8(B)5 and 8(B)(6) as presented.

Council polled as follows: Burch, Carioscia, Cosden, Erbrick, Leon, Stout, Williams, and Sawicki voted "aye." Eight "ayes." Motion carried 8-0.

- (3) Resolution 2-17 Award Proposal RFP-DCD16-61/GM for Inspection and Plan Examination Services, to Calvin, Giordano & Associates, Inc. as primary, Nova

Engineering & Environmental, LLC. as secondary, and GFA International, Inc. as tertiary, to be utilized on an hourly as needed basis for an estimated annual contract amount of \$50,000, not to exceed budgetary limits and authorize the City Manager or his designee to execute the contracts; Department: Department of Community Development; Annual Dollar Value: \$50,000 {three year contract total of \$150,000}; (Building Fund)

City Manager Szerlag discussed the process to make the Building Department more efficient and mentioned three members of the committee that assisted in the process: Marty McClain, Bill Johnson, and Matt Sinclair. Bill Johnson discussed the great progress made for levels of services. This resolution will allow the City to go out to outside services based on building spikes. Marty McClain discussed the smooth process he encountered in the building permit process for a major project.

Councilmember Burch moved, seconded by Councilmember Williams to approve items 8(B)(3) as presented.

Council polled as follows: Burch, Carioscia, Cosden, Erbrick, Leon, Stout, Williams, and Sawicki voted "aye." Eight "ayes." Motion carried 8-0.

CITIZENS INPUT TIME

Doug Salanda discussed the quality of irrigation water in his neighborhood. The water has given a chemical burnt look to the grass and plants. He requested that Council look into this. After visiting City Hall and speaking with the Utility Department, he was not satisfied with the materials supplied. He discussed canal dredging on Cape Coral Parkway near Santa Barbara where the Bimini Canal becomes San Carlos; there is a lot of water volume going under that bridge. He met with City staff who agreed the canal needs dredging which is not currently in the budget and requested they restart the dredging program.

Jerry Owens discussed the generosity he witnessed from the community that included bikes, small children's items, gift cards, cash, etc. He mentioned the volunteers that worked so hard on this as well as staff. He encouraged that parents sign up if they are in need for next year.

Brandon Pearson discussed concerns from last month with the Charter School System. He questioned policy, conduct, and procedure, not the educational component. He thanked Council for the motion passed on 12/12/2016 regarding the best practices for the Charter School System.

Mayor Sawicki expressed her thanks for the outpouring of support from the community.

Councilmember Cosden requested that the City Manager address the irrigation water comments this evening or in the coming week.

City Manager Szerlag requested that the Utilities Director address what he can this evening, then follow up if needed. He also mentioned that Public Works Director Clinghan would look into the dredging topic and get back to Council.

Utilities Director Pearson spoke in reference to chlorine added into the water to prevent bio-film buildup in the lines and sprinklers. He requested the address to run water quality samples and get down to the root of the dying grass.

Councilmember Burch addressed the issue of the dying lawns. He discussed the dredging program that was in place in the past.

Public Works Director Clinghan stated there is about \$1.5 million per year for canal dredging. We have our own crews that do the maintenance. He noted they were

evaluating whether or not to continue with Gator Dredging or another company or basically do it internally. He will look at the resident's specific area.

Councilmember Leon requested that the neighborhoods are canvassed to see if anyone else file complaints.

Councilmember Carioscia inquired if there is an ongoing dredging schedule on the website. If not, let's add it so that residents can anticipate when they will be in line.

Public Works Design and Construction Manager Smith discussed an evaluation of canals that were not dredged the first time around; she is putting together a program based on the budget of \$1.5 million to identify which canals need to be dredged, including looking at that one. She will have that plan placed on the City's website.

PERSONNEL ACTIONS

None.

PETITIONS TO COUNCIL

None.

APPOINTMENTS TO BOARDS/COMMITTEES/COMMISSIONS

South Cape Community Redevelopment Advisory Board Alternate - 1 Vacancy

Interviews

Thomas Alan Phillips – present

City Clerk van Deutekom stated there was one vacancy on the board due to a term expiration. The term expires 1/17/17. One application was received from Thomas Phillips for reappointment, and he needs 2/3 majority vote since he is already a member on another board.

Councilmember Stout moved, seconded by Councilmember Williams to appoint Thomas Alan Phillips to the South Cape Community Redevelopment Advisory Board as an alternate.

Council polled as follows: Burch, Carioscia, Cosden, Erbrick, Leon, Stout, Williams, and Sawicki voted "aye." Eight "ayes." Motion carried 8-0.

Construction Regulation Board - 4 Vacancies

Interviews

Isaac Burgos – not present

Donald Herzing - present

City Clerk van Deutekom stated there was four vacancies on the board. Two applications were received from Isaac Burgos and Donald Herzing. The roofing contractor seat expired December 31, 2015. The term for the licensed contractor B certificate or higher expires December 31, 2017.

Councilmember Burch moved, seconded by Councilmember Stout to appoint Isaac Burgos for Category B and Donald Herzing for the Roofing Contractor position to the Construction Regulation Board.

Council polled as follows: Burch, Carioscia, Cosden, Erbrick, Leon, Stout, Williams, and Sawicki voted "aye." Eight "ayes." Motion carried 8-0.

ORDINANCES/RESOLUTIONS

PUBLIC HEARINGS

Ordinance 59-16 Public Hearing

WHAT THE ORDINANCE ACCOMPLISHES:

The ordinance authorizes the issuance of not to exceed \$130,000,000 in aggregate principal amount of Utility Improvement Refunding Assessment Bonds (various areas), Series 2017 for the purpose of refunding various outstanding assessment bonds of the City in order to achieve debt service savings for the City; pledges special assessment proceeds to secure payment of the principal of, redemption premium, if any, and interest on the bonds; allows for the use of net revenues of the City's water and sewer utility system to pay debt service on the bonds or make up deficiencies in the reserve account in the event such special assessment proceeds are insufficient for such purpose; and repeals Ordinance 50-15.

City Clerk van Deutekom read the title of the Ordinance.

Financial Services Director Bateman explained what this Ordinance would accomplish. She discussed the power point titled Special Obligation Refunding Bonds and Special Assessment Refunding Bonds that included the following slides:

- Bond Refundings
- Preliminary Timing

Public Hearing opened.

No speakers.

Public Hearing closed.

Councilmember Stout moved, seconded by Councilmember Williams to adopt Ordinance 59-16.

Councilmember Williams expressed to the public that this Ordinance and the next Resolution do not represent borrowing of any money.

Council polled as follows: Burch, Carioscia, Cosden, Erbrick, Leon, Stout, Williams, and Sawicki voted "aye." Eight "ayes." Motion carried 8-0.

Resolution 11-17 Public Input

WHAT THE RESOLUTION ACCOMPLISHES:

A resolution of the City Council authorizing the issuance by the City of not exceeding \$120,000,000 in aggregate principal amount of Utility Improvement Refunding Assessment Bonds (various areas), Series 2017, in order to refund various outstanding assessment bonds of the City in order to achieve debt service savings; pledging the moneys received by the City from special assessments upon real property benefited by the improvements that were financed with such assessment bonds to secure payment of the principal of and interest on said bonds; providing for the use of net revenues of the City's water and sewer utility system to pay debt service on the bonds or to make up any deficiencies in the reserve account in the event the special assessments are insufficient for such purpose; providing for the rights of the holders of said bonds; making certain other covenants and agreements in connection with such bonds; authorizing a negotiated sale of said bonds; delegating certain authority to the City Manager for the authorization, execution and delivery of a Bond Purchase Agreement with respect thereto, and the approval of the terms and details of said bonds; appointing the paying agent and registrar for said bonds; authorizing the distribution of a Preliminary Official Statement and the execution and delivery of an Official Statement with respect to such bonds; authorizing the execution and delivery of an Escrow Deposit Agreement and the appointment of an escrow agent thereto; authorizing the execution and delivery of a Continuing Disclosure Certificate; delegating certain authority to the City Manager to determine whether to utilize municipal bond insurance for the bonds, the reserve account requirement, if any, and certain other matters.

City Clerk van Deutekom read the title of the Resolution.

Public Input opened.

No speakers.

Public Input closed.

Councilmember Williams moved, seconded by Councilmember Leon to approve Resolution 11-17.

Councilmember Burch requested the City Manager address the terms of length and questioned if we were extending the term.

Director Bateman responded that we are not. We are going into the market on Wednesday for the first trade on Thursday. The first bond payments are 7/1/2017; we are only refinancing years 18 and out.

Councilmember Burch discussed the authority given to the City Manager in this Resolution.

Director Bateman responded that in the Resolution, the decisions for the authority we are escrowing, paying in cash, and purchasing the cash, have to be made on that day.

Council polled as follows: Burch, Carioscia, Cosden, Erbrick, Leon, Stout, Williams, and Sawicki voted "aye." Eight "ayes." Motion carried 8-0.

Resolution 6-17 Public Input

WHAT THE RESOLUTION ACCOMPLISHES:

The resolution approves early voting for a period of one week prior to the primary and general elections to be held in 2017, and sets forth the dates for holding early voting.

City Clerk van Deutekom read the title of the Resolution.

Public Input opened.

No speakers.

Public Input closed.

Councilmember Burch moved, seconded by Councilmember Williams to approve Resolution 6-17.

Council polled as follows: Burch, Carioscia, Cosden, Erbrick, Leon, Stout, Williams, and Sawicki voted "aye." Eight "ayes." Motion carried 8-0.

Introductions

Ordinance 4-17 Set Public Hearing Date for January 23, 2017 [This Ordinance was advanced by Councilmember Cosden]

WHAT THE ORDINANCE ACCOMPLISHES:

The ordinance amends the Code of Ordinances, Chapter 2, Administration, Article III, Personnel Rules and Regulations, to prohibit discrimination on the basis of sexual orientation, gender identity, and gender expression.

City Clerk van Deutekom read the title of the Ordinance.

The public hearing was scheduled for January 23, 2017 in Council Chambers.

City Attorney Menendez stated this amends our current personnel ordinance in three areas. Recent Federal case law has been expanding the definition. This is more of a

clarification than an amendment. Case law has changed this on a Federal level; this aids staff when working on a personnel level.

Ordinance 5-17 (PDP 16-0001)* Set Public Hearing Date for January 23, 2017

*Quasi-Judicial, All Persons Testifying Must be Sworn In

WHAT THE ORDINANCE ACCOMPLISHES:

An ordinance approving a Planned Development Project entitled "Circle K", approving rezoning the subject property from Professional Office (P-1) to Pedestrian Commercial (C-1); approving a special exception to allow an Automotive Service Station, Limited use in a Pedestrian Commercial (C-1) zone; granting a deviation for relief from a setback requirement; granting a deviation for relief from the minimum required separation distance for a driveway on a minor arterial street; property is located at 819 SE 26th Street.

Hearing Examiner Recommendation: The Hearing Examiner recommended approval with all staff conditions following a public hearing held on November 1, 2016.

City Management Recommendation: Recommends approval of this project.

City Clerk van Deutekom read the title of the Ordinance.

The public hearing was scheduled for January 23, 2017 in Council Chambers.

Planning Team Coordinator Struve stated he was available for questions; the presentation would be done at the Public Hearing.

Councilmember Burch requested that Planning have a traffic study and traffic counts and that there are no issues with ingress/egress. We should have all of the information from the moment it starts on Country Club until we approve this Circle K.

City Manager Szerlag has requested that DCD include in their presentation a map of Cape Coral with all convenience stores, those with and without gas stations, as well as their hours of operation.

Ordinance 6-17 Set Public Hearing Date for January 23, 2017

WHAT THE ORDINANCE ACCOMPLISHES:

An ordinance approving a Lease Agreement between the City of Cape Coral and SalusCare, Inc., for the lease of property owned by the City of Cape Coral located at 1105 Cultural Park Boulevard for the continuing operation of a substance abuse treatment facility and counseling center.

City Clerk van Deutekom read the title of the Ordinance.

The public hearing was scheduled for January 23, 2017 in Council Chambers.

Business Manager Fernandez stated the presentation would be done at the Public Hearing. Questions received today by Council will be answered prior to the Public Hearing.

Councilmember Burch informed the public that this facility is for substance abuse to help the community. He stated he wanted the presenters on January 23rd to allay any fears that this will turn from a substance abuse facility into simply a counseling place.

Business Manager Fernandez stated that the 10-year lease extension is for renovations to offer double the current patient services.

UNFINISHED BUSINESS

Water Quality

Mayor Sawicki stated that a Water Quality back-up memo was provided to all of Council today with the discharges and flow.

Legislative Issues

Proposed Bill by Caldwell/Lee County Fire Control District

Resolution 15-17 A Resolution of the City of Cape Coral, urging the Lee County Delegation to remove the City of Cape Coral from the Draft Fire district Consolidation bill proposed by Representative Caldwell

City Manager Szerlag explained that Representative Caldwell is going to advance legislation to consolidate the Fire Service Districts into a County-wide district. If Cape Coral is included and becomes part of an entire County District, we would lose our home rule authority in that regard. We would economically be a donor city. Our level of service would be diluted, and our cost of service would suffer.

Fire Chief Cochran mentioned that we would be the biggest donor with one seat. We became a city to establish our own level of service. We elect our Council who review and approve the budget and have oversight of the Fire Chief's authority. We did not have one call from the City of Cape Coral residents to Representative Caldwell that we be involved. You would give up that authority. The top 10 cities have their own Fire Department. Consolidation works in some areas, but it would not be wise for the City of Cape Coral with its level of service. He stated it would be appropriate for Representative Caldwell to contact the Lee County Fire Chiefs Association.

Councilmember Stout mentioned that we should not fix what is not broken.

City Attorney Menendez explained that Council could approve a motion with striking reference to the last whereas clause in the resolution.

Councilmember Leon discussed the filing of the bill; it has not happened yet. The City should sit down with the Representative and discuss this with the coalition before deciding. We do not have all of the information. He has been in touch with Representative Caldwell through email. He would like an open conversation.

City Manager Szerlag stated we are up against a time constraint of January 19, 2017. He is advising Council that a bill will be advanced that will have an adverse effect on the level of service, as well as the taxpayers' cost for our fire service department. He is asking for Cape Coral to be carved out, not asking for a resolution to kill the bill.

Councilmember Burch was in favor of fire district reform. He mentioned an extreme spike in insurance too.

Councilmember Williams addressed Council and his support for the Resolution; he would like full Council support when he goes to address the delegation on January 19th with his presentation.

Councilmember Stout stated she was in support of the Resolution and believed it could represent taxation without representation. It is a disservice to our citizens. If it makes it to Tallahassee as a local bill, no one will stand against it. We need this carved out.

Councilmember Carioscia stated his support of this Resolution. He expressed concerns about the spread of our tax dollars that we have no benefit from. He would like the decision to be united.

Mayor Sawicki discussed that our Representative is looking at other decisions. She questioned why add a fire station if we are being consolidated.

Fire Chief Cochran mentioned the Council-approved construction of two more fire stations over the next 3-4 years to reduce response times. He stated it was important

that the media or anyone else asking about this contact the President of Lee County Fire Chiefs Association to determine their position.

Mayor Sawicki recalled that Council has put in a lot of money over the years based on our City's size for an increased level of service.

Councilmember Williams moved, seconded by Councilmember Carioscia to approve Resolution 15-17 with the revision to the last whereas clause.

Council polled as follows: Burch, Carioscia, Cosden, Erbrick, Leon, Stout, Williams, and Sawicki "aye." Eight "ayes." Motion carried 8-0.

NEW BUSINESS

Youth Council Discussion - Mayor Pro Tem Williams

Mayor Pro Tem Williams discussed the selection process for the Youth Council. He mentioned the timing setbacks based on midterms and winter break. He wanted to discuss with Council any suggestions to ease the selection processes and questioned if Council wanted to interview these candidates. He noted it would not be efficient during a meeting. He suggested using Speed Politics before a COW meeting, possibly January 30th, where we could interview them and their parents. It would be a rotation and a lot more personal than having them in front of the camera. He discussed the possibility of alternates. He asked Council if they were good with this interview process and after the process how to handle the actual selection.

Councilmember Burch discussed a basis of judgment. He would like it kept far away from Council.

Mayor Pro Tem Williams reviewed the extensive application, looking for students who were interested in government and in working for their peers, have the time, and the enthusiasm.

Mayor Sawicki inquired as to how the other cities make the selections. She expressed her concern of bringing them to a Council meeting. She was in favor of the Speed Politics idea.

Councilmember Cosden would be interested in selecting the two candidates that the school recommends and the Speed Politics for the at-large members.

City Attorney Menendez reviewed that the junior and senior member concept was already decided, but it can be modified in the future. Council would make the appointments; you can give great deference to recommendations. If you only receive two, then those are your choices. If you receive more, you could give great deference to the recommendation. The process to reach a final decision is the challenge.

Discussion held in reference to getting all applications to Council with school recommendations made apparent. There will be a Speed Politics event for Council to meet the candidates on January 30th prior to the Committee of the Whole meeting at 4:30 p.m., and the presence of a matrix so that the decisions are based on the matrix.

REPORTS OF THE MAYOR AND COUNCIL MEMBERS

Councilmember Burch – Topics: Attended MPO and RPC meetings over the hiatus, Florida Regional Council Association (FRCA) in Tallahassee coming up, and RPC regional representation in economic opportunities and economic overlay map and growth plan.

Councilmember Carioscia – Topic: No report.

Councilmember Cosden – Topic: No Report.

Councilmember Erbrick – Topics: Rotary Club Arts Festival this weekend; Builder's Showcase last two weekends of January and first weekend in February.

Councilmember Leon – Topic: Will be attending the Presidential Inauguration.

Councilmember Stout – Topic: No report.

Councilmember Williams – Topics: Attended Phoenix Awards on 12/16; Regional Planning Council Chairman is Councilmember Burch; voted in as Chairman of the Lee County MPO this year.

Mayor Sawicki – Topics: Congratulations to the Chairman appointments for Councilmembers Burch and Williams; next week attending the U.S. Conference of Mayors in Washington, D.C., setting up appointments with Lobbyists and reached out to Council and the City Manager for any issues that you would like a Federal name for and to meet with regarding environmental and pre-platted topics, and attended Phoenix Awards.

REPORTS OF THE CITY ATTORNEY AND CITY MANAGER

City Attorney – Topic: No report.

City Manager – Topics: 2017 legislative priorities updated to include the electric utility company and pre-platted communities.

Mayor Sawicki requested from Councilmember Burch a compilation on the pre-platted community and put the information on a thumb drive with a small sheet to take around. Councilmember Burch requested that the City Manager provide that information. Mayor Sawicki would like it in bullet points. City Manager Szerlag stated a term sheet will be provided with the history and what we are looking for.

Mayor Sawicki questioned looking at the Yacht Club being a historical area and whether funding was available at the Federal level.

TIME AND PLACE OF FUTURE MEETINGS

A regular meeting of the Cape Coral City Council was scheduled for Monday, January 23, 2017 at 4:30 p.m. in Council Chambers.

MOTION TO ADJOURN

There being no further business, the meeting adjourned at 6:33 p.m.

Submitted by,

Rebecca van Deutekom, MMC
City Clerk

Item Number: B.(1)
Meeting Date: 1/23/2017
Item Type: CONSENT AGENDA

AGENDA REQUEST FORM
CITY OF CAPE CORAL



TITLE:

Resolution 7-17 Award ITB-UT17-02/KR Southwest Reverse Osmosis Water Treatment Plant Wellfield Communication and Controls Upgrade to Commerce Controls, (FLA), LLC. to furnish, deliver and install all materials, equipment, labor and incidentals required to upgrade the communication and controls for thirty three (33) remote raw water production wells associated with the Southwest Reverse Osmosis WTP as outlined in the bid documents, as the lowest responsive, responsible bidder, in the amount of \$691,224 with a 7.5% City controlled contingency of \$51,842 for a total of \$743,066 and authorize the City Manager or designee to execute the contract; Department: Utilities; Dollar Value: \$743,066; (Water and Sewer Fund)

REQUESTED ACTION:

Approve or Deny

STRATEGIC PLAN INFO:

1. Will this action result in a Budget Amendment? No
 2. Is this a Strategic Decision? Yes
- If Yes, Priority Goals Supported are listed below.
- If No, will it harm the intent or success of the Strategic Plan?

ELEMENT C: INVEST IN COMMUNITY INFRASTRUCTURE INCLUDING UTILITIES EXPANSION IMPROVEMENTS TO ENHANCE THE CITY'S ABILITY TO MEET THE NEEDS OF ITS CURRENT AND FUTURE RESIDENTS AND BUSINESSES

PLANNING & ZONING/HEARING EXAMINER/STAFF RECOMMENDATIONS:

SUMMARY EXPLANATION AND BACKGROUND:

1. On October 19, 2016, an Invitation to Bid was issued, ITB-UT17-02 /KR for the Southwest Reverse Osmosis Water Treatment Plant (SW RO WTP) Wellfield Communication and Controls Upgrade.
2. The bid, ITB-UT17-02/KR, was issued for work required to upgrade the communication and controls for thirty three (33) remote raw water production wells associated with the Southwest Reverse Osmosis Water Treatment Plant. The overview of work to be provided includes the panel construction, installation, programming for the individual well sites, as well as related communications improvements at the SW RO WTP.
3. The City accepted sealed bids from the pre-qualified instrumentation and control systems professional services providers prequalified in April 2016. The top three ranked firms and an alternate were pre-qualified. The top three ranked firms were: Commerce Controls, Inc; McKim

& Creed, Inc. and Revere Control Systems, Inc. The fourth firm, BCI Technologies, is to serve as an alternate should any of the firms stated above no longer remain eligible.

4. On November 22 2016, two (2) bids were received from the prequalified vendors, shown in alphabetical order; Commerce Controls, Inc. and Revere Controls Systems, Inc.

5. After review of the bids, Staff recommends awarding to Commerce Controls, (FLA), LLC for the total price of \$691,224, as the lowest responsible, responsive bidder, with a 7.5% City controlled contingency of \$51,841.80 for a total project cost of \$743,065.80.

6. The Project Manager is requesting 7.5% City Controlled Contingency. The Expenditure of contingency, if any, will be subject to approval of specific change orders by City's Project Manager, if justified upon identified needs with an appropriate scope and cost to address specific needs.

7. The contract includes a substantial completion of 180 calendar days from when Notice to Proceed is issued.

8. This Item is a budgeted item.

9. Funding: Account No: 40500774.662601 Water and Sewer Fund

LEGAL REVIEW:

Contract was reviewed by Legal

EXHIBITS:

Department Memo

Resolution 7-17

Bid Matrix - ITB-UT17-02/KR

PREPARED BY:

Wanda
Roop

Division- Procurement

Department- Finance

SOURCE OF ADDITIONAL INFORMATION:



Jeff Pearson, Utilities Director

ATTACHMENTS:

Description	Type
▣ Department Memo	Backup Material
▣ Resolution 7-17	Resolution
▣ Bid Matrix - ITB-UT17-02/KR	Backup Material



TO: John Szerlag, City Manager
Victoria Bateman, Financial Services Director
Wanda Roop, Procurement Manager
Kathy Rose, Procurement Specialist

FROM: Jeff Pearson, Utilities Director 
William H. Sperry, PE, Principal Engineer PE, Utilities 

DATE: December 07, 2016

SUBJECT: Utilities Department's Recommendation of Award for the
Southwest Reverse Osmosis Water Treatment Plant Wellfield
Communication and Control Upgrades, ITB-UT17-02/KR

Project Scope:

The Project is generally comprised of the Work required to upgrade the communication and controls for 33 remote raw water production wells associated with the Southwest Reverse Osmosis Water Treatment Plant. The Work shall include the panel construction, installation, programming for the subject well sites as well as related communication improvements at the Southwest Reverse Osmosis Water Treatment Plant. More specifically, this Work shall include, but is not limited to the field wiring and termination, panel start up, integration into the existing Citect SCADA System and the establishment of communication for Wellsite #220. The removal of the existing control panel back plane, installation and wiring of a new back panel, start up, integration in the existing Citect SCADA system and establishment of communication for Wellsite #230. Furnish complete radio PLC control panels for twenty-six (26) wellsites. Furnish radio based PLC backplane replacement for seven (7) wellsites. Install and wire a Master Radio Transceiver and establish communication with the City's existing Citect SCADA system.

Project Bids:

On Tuesday, November 22, 2016, the City of Cape Coral received two (2) Bids from previously pre-qualified contractors for the construction of the Southwest Reverse Osmosis Water Treatment Plant Wellfield Communication and Control Upgrades, ITB-UT17-02/KR. Bids were received from Commerce Controls, Inc. from Tampa, Florida and Revere Control Systems out of Birmingham, Alabama. The bid item extensions and the summation of the bid items was checked for accuracy for each bidder. The Total Estimated Construction Cost was as follows:

Commerce Controls, Inc.	\$696,115.00
Revere Control Systems	\$916,781.00

In addition Commerce Controls, Inc. offered several Value Engineering Options for the City to consider. A price deduct in the amount of \$1,280.00 was offered to remove the spare master radio as one is being provided as a part of the Van Loon Pumping Station Electrical Upgrades and Control Upgrades on which Commerce Controls, Inc. is the subcontractor providing the integration services. Commerce Controls, Inc. also offered an additional deduct of \$3,611.00 for the removal of the RSLogix 5000 PLC Programming Software which is also included in the Van Loon Pumping Station project. The City has reviewed and accepts the Value Engineering Options proposed by Commerce Controls, Inc. for a total deduct in their bid price of \$4,891.00. Therefore Commerce Controls revised total estimated construction cost including acceptance of the Value Engineering Options is as follows:

Commerce Controls, Inc.	\$691,224.00
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A copy of the Bid Tabulation is included as an attachment.

Utilities Department Recommendation:

The Utilities Department concurs with the Procurement Department's determination that Commerce Controls, Inc. is a responsible, responsive bidder and subsequently recommends award of the project to Commerce Controls, Inc. for the Revised Total Estimated Construction Cost, including acceptance of the Value Engineering Option deducts, of \$691,224.00. References were checked by the Utilities Department as a part of the contractor pre-qualification process.

Contingency Funds:

In conjunction with recommending the award of the Southwest Reverse Osmosis Water Treatment Plant Wellfield Communication and Control Upgrades project, the Utilities Department requests a contingency amount of seven and one-half percent (7½%) of the Total Estimated Construction Cost be allocated for this project. The work will generally consist of improvements to and/or replacement of existing electrical and controls systems and with this type of work the Department is likely to encounter unforeseen obstacles or conflicts requiring extra attention on behalf of the contractor. The Utilities Department must be prepared to deal with these situations in a timely manner to ensure the project is completed in an expeditious manner thereby minimizing disruption to the Southwest Reverse Osmosis Water Treatment Plant remote water production well operation. Additional costs requested by the contractor will be reviewed by the Engineer of Record and approved by the Utilities Department prior to the work being performed.

Fund Availability:

Funding for this project (\$850,000.00) has been included in the Water and Sewer Capital Projects Fund, Business Unit 4050071.662601, SRO-5 Retrofit Well Field Com, and is presented as a line item in the FY2014 budget. Additional funding to cover the City controlled contingency amount of 7½% (\$51,841.80) when added to the bid amount totals \$743,065.80. The \$743,065.80 project total amount is \$9,965.24 below the amount of the FY2014 unencumbered balance remaining for this project of \$753,031.04 and represents a potential savings on this project.

Thank you for your attention to this important matter. Should you have any questions or if we can be of further assistance please give William H. (Bill) Sperry, PE a call at 574-0729.

Attachment: Bid Tabulation
Southwest Reverse Osmosis Water Treatment Plant Wellfield
Communication and Control Upgrades
ITB-UT17-02KR



RESOLUTION 7 – 17

A RESOLUTION OF THE CITY OF CAPE CORAL AWARDING A BID FOR SOUTHWEST REVERSE OSMOSIS WATER TREATMENT PLANT WELLFIELD COMMUNICATION AND CONTROL UPGRADES TO COMMERCE CONTROLS (FLA.), L.L.C.; PROVIDING FOR SUBSEQUENT EXECUTION OF THE CONTRACT DOCUMENTS BY THE CITY MANAGER OR HIS DESIGNEE; PROVIDING FOR APPROVAL OF A CONTINGENCY AMOUNT; PROVIDING AN EFFECTIVE DATE.

WHEREAS, on October 19, 2016, INVITATION TO BID (ITB) #UT17-02/KR was issued for Southwest Reverse Osmosis Water Treatment Plant Wellfield Communication and Control Upgrades for 33 remote raw water production wells; and

WHEREAS, on November 22, 2016, two (2) bids were submitted from pre-qualified instrumentation and control systems professional services providers; and

WHEREAS, the City Manager recommends the award of the bid to Commerce Controls (FLA.), L.L.C., as the lowest qualified responsible and responsive bidder meeting the requirements and criteria set forth in the invitation to bid, in the amount of \$691,224, subject to a City-controlled contingency amount not to exceed seven and one-half (7.5) percent of the total amount of the contract.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF CAPE CORAL, FLORIDA, AS FOLLOWS:

Section 1. The City Council hereby awards the bid for Southwest Reverse Osmosis Water Treatment Plant Wellfield Communication and Control Upgrades for 33 remote raw water production wells to Commerce Controls (FLA.), L.L.C., in the total amount of \$691,224, subject to a City-controlled contingency amount not to exceed seven and one-half (7.5) percent of the total amount of the contract.

Section 2. The City Council hereby approves the contract between the City of Cape Coral and Commerce Controls (FLA.), L.L.C., for Southwest Reverse Osmosis Water Treatment Plant Wellfield Communication and Control Upgrades for 33 remote raw water production wells, and authorizes the City Manager or his designee to execute the Contract. A copy of the Contract is attached hereto as Exhibit A.

Section 3. The City Council hereby authorizes the City Manager or the City Manager's designee to enter into change orders for work required other than as contemplated in the contract documents with an appropriate scope and cost to address those needs, subject to payment of a City-controlled contingency amount not to exceed seven and one-half (7.5) percent of the total amount of the contract.

Section 4. This Resolution shall take effect immediately upon its adoption.

ADOPTED BY THE CITY COUNCIL OF THE CITY OF CAPE CORAL AT ITS REGULAR COUNCIL SESSION THIS _____ DAY OF _____, 2017.

MARNI L. SAWICKI, MAYOR

VOTE OF MAYOR AND COUNCILMEMBERS:

SAWICKI _____
BURCH _____
CARIOSCLA _____
STOUT _____

LEON _____
ERBRICK _____
WILLIAMS _____
COSDEN _____

ATTESTED TO AND FILED IN MY OFFICE THIS _____ DAY OF _____,
2017.

REBECCA VAN DEUTEKOM,
CITY CLERK

APPROVED AS TO FORM:



DOLORES D. MENENDEZ
CITY ATTORNEY
res/Bid Award-Commerce Controls

SECTION 00500
AGREEMENT
CON-UT17-02/KR
BETWEEN OWNER AND CONTRACTOR
FOR CONSTRUCTION CONTRACT (STIPULATED PRICE)

THIS AGREEMENT is by and between City of Cape Coral, Florida ("Owner") and
Commerce Controls, (FLA), L.L.C. ("Contractor").

Owner and Contractor hereby agree as follows:

ARTICLE 1 – WORK

- 1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

ARTICLE 2 – THE PROJECT

- 2.01 The Project, of which the Work under the Contract Documents is a part, is generally described as follows:
- A. The Contractor shall furnish all labor, materials, coordination of services, supervision of staff, permits, bonds, insurance, equipment, power, water, tools, supplies, goods, freight and incidentals that are required for the Contractor to provide OWNER with complete Construction Services which are generally comprised of the Work required to upgrade the communication and controls for 33 remote raw water production wells associated with the Southwest Reverse Osmosis Water Treatment Plant. The work shall include the panel construction, installation, programming for the subject well sites as well as related communication improvements at the Southwest Reverse Osmosis Water Treatment Plant.

ARTICLE 3 – ENGINEER

- 3.01 The Contract Documents; Division 00 – Bidding and Contract Requirements and Division 01 General Requirements have been prepared by the City of Cape Coral, Florida. The Technical Specifications Divisions 2 through 17 and the Contract Drawings have been prepared by Tetra Tech, Inc.

The Owner has retained Tetra Tech, Inc. ("Engineer") to assist the Owner and act in limited capacity as the Owner's representative, assume all duties and responsibilities, and have the rights and authority assigned to Engineer in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.

ARTICLE 4 – CONTRACT TIMES

4.01 *Time of the Essence*

- A. All time limits for Milestones, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

4.02 *Contract Times: Days*

- A. The Work will be substantially completed within 180 calendar days after the date when the Contract Times commence to run as provided in Paragraph 4.01 of the General Conditions, and completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions within 210 days after the date when the Contract Times commence to run.

4.03 *Liquidated Damages*

- A. Contractor and Owner recognize that time is of the essence as stated in Paragraph 4.01 above and that Owner will suffer financial and other losses if the Work is not completed and Milestones not achieved within the times specified in Paragraph 4.02.A above, plus any extensions thereof allowed in accordance with the Contract. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty):
 - 1. Substantial Completion: Contractor shall pay Owner \$350.00 for each day that expires after the time (as duly adjusted pursuant to the Contract) specified in Paragraph 4.02.A above for Substantial Completion until the Work is substantially complete.
 - 2. Completion of Remaining Work: After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Time (as duly adjusted pursuant to the Contract) for completion and readiness for final payment, Contractor shall pay Owner \$350.00 for each day that expires after such time until the Work is completed and ready for final payment.
 - 3. Liquidated damages for failing to timely attain Substantial Completion and final completion are not additive and will not be imposed concurrently.

4.04 *Special Damages*

In addition to the amount provided for liquidated damages, Contractor shall reimburse Owner (1) for any fines or penalties imposed on Owner as a direct result of the Contractor's failure to attain Substantial Completion according to the Contract Times, and (2) for the actual costs reasonably incurred by Owner for engineering, construction observation, inspection, and administrative services needed after the time specified in Paragraph 4.02.A for Substantial Completion (as duly adjusted pursuant to the Contract), until the Work is substantially complete.

- A. After Contractor achieves Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Times, Contractor shall reimburse Owner for the actual costs reasonably incurred by Owner for engineering, construction observation, inspection, and administrative services needed after the time specified in Paragraph 4.02.A for Work to be completed and ready for final payment (as duly adjusted pursuant to the Contract), until the Work is completed and ready for final payment.

ARTICLE 5 – CONTRACT PRICE

- 5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents the amounts that follow, subject to adjustment under the Contract:
- A. For all Unit Price Work, a total bid cost of: \$691,224 – “Not to Exceed” (price deduct for removal of Value Engineering Options –removal spare master radio and RSLOGIX 5000 PLC Programming Software).

All specific cash allowances are included in the above price in accordance with Paragraph 13.02 of the General Conditions.
 - B. For all Work, at the prices stated in Contractor’s Bid, attached hereto as an exhibit.

ARTICLE 6 – PAYMENT PROCEDURES

6.01 *Submittal and Processing of Payments*

- A. Contractor shall submit Applications for Payment in accordance with Article 15 of the General Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions.

6.02 *Progress Payments; Retainage*

- A. Owner shall make progress payments on account of the Contract Price on the basis of Contractor’s Applications for Payment on or about 25 business days after the date on which the payment request or invoice is stamped as received by the Engineer. Payment for the Work shall be as provided in Paragraph 6.02.A.1 below, provided that such Applications for Payment have been submitted in a timely manner and otherwise meet the requirements of the Contract. All such payments will be measured by the Schedule of Values established as provided in the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no Schedule of Values, as provided elsewhere in the Contract.
 - 1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Owner may withhold, including but not limited to liquidated damages, in accordance with the Contract.
 - a. 90 percent of Work completed (with the balance being retainage). If the Work has been completed as determined by Engineer, and if the character and progress of the Work have been satisfactory to Owner and Engineer, then as long as the character and progress of the Work remain satisfactory to Owner and Engineer, there will be no additional retainage; and
 - b. 90 percent of cost of materials and equipment not incorporated in the Work (with the balance being retainage).
- B. Upon 50 percent Completion, Owner shall pay an amount sufficient to increase total payments to Contractor to 95 percent of the Work completed, less such amounts set off by Owner pursuant to Paragraph 15.01.E of the General Conditions, and less 5 percent of Engineer’s estimate of the value of Work to be completed or corrected as shown on the punch list of items to be completed or corrected prior to final payment.

6.03 *Final Payment*

- A. Upon final completion and acceptance of the Work in accordance with Paragraph 15.06 of the General Conditions, Owner shall pay the remainder of the Contract Price as recommended by Engineer as provided in said Paragraph 15.06.

ARTICLE 7 – INTEREST

- 7.01 All amounts not paid when due shall bear interest at the rate of one-percent (1.0%) per month.

ARTICLE 8 – CONTRACTOR’S REPRESENTATIONS

- 8.01 In order to induce Owner to enter into this Contract, Contractor makes the following representations:
 - A. Contractor has examined and carefully studied the Contract Documents, and any data and reference items identified in the Contract Documents.
 - B. Contractor has visited the Site, conducted a thorough, alert visual examination of the Site and adjacent areas, and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
 - C. Contractor is familiar with and is satisfied as to all Laws and Regulations that may affect cost, progress, and performance of the Work.
 - D. Contractor has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or adjacent to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings, and (2) reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings.
 - E. Contractor has considered the information known to Contractor itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Site-related reports and drawings identified in the Contract Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor; and (3) Contractor’s safety precautions and programs.
 - F. Based on the information and observations referred to in the preceding paragraph, Contractor agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract.
 - G. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
 - H. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.

- I. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
- J. Contractor's entry into this Contract constitutes an incontrovertible representation by Contractor that without exception all prices in the Agreement are premised upon performing and furnishing the Work required by the Contract Documents.

ARTICLE 9 – CONTRACT DOCUMENTS

9.01 Contents

A. The Contract Documents consist of the following:

1. This Agreement (pages 1 to 8, inclusive):

**Must Be Completed and Signed - City requires 3 signed SETS
Please attach Corporate Resolution (Section 00420) with the agreement.**

2. Performance Bond (pages 1 to 3, inclusive) (Section 00610):

**Original Bond - Must Be Completed, Contractor will Record BOND at
Lee County Clerk's Office and return original with recording receipt.
Recording follows firm receiving fully executed agreement.**

**Provide Certificate of Authority that shows that the Surety Firm is
authorized to transact in the State of Florida.**

3. Payment Bond (pages 1 to 3, inclusive) (Section 00620):

**Original Bond - Must Be Completed, Contractor will Record BOND at
Lee County Clerk's Office and return original with recording receipt.
Recording follows firm receiving fully executed agreement.**

4. Warranty and Bonds (Section 1740):

Post Contract Assemblage of Warranty, Service and Maintenance Bonds

5. Insurance Requirements:

**Insurance: Unless otherwise specified, Contractor shall, at its own expense, carry
and maintain the coverages as outlined in the Supplementary Conditions (Section
800), as well as any insurance coverage required by law:**

**As Shown in ITB-UT17-02/KR – Specification Section 800 - Supplementary
Conditions and Provide Certificate of Insurance including all required
insurance coverage(s) with The City of Cape Coral named as an additional
insured.**

6. General Conditions (pages 1 to 65, inclusive) (Section 00700):

**As Shown in ITB-UT17-02/KR - Reference Only (November 2016)
Supplementary Conditions (pages 1 to 26, inclusive) (Section 00800)**

**Including Exhibit A – Pricing of Construction Contract Change Orders
Including Exhibit B – Right of Audit – Examination of Records
Including Exhibit C – Record Keeping**

7. Specifications as listed in the table of contents of the Project Manual [Division 00, Division 01 and Divisions 02 through 17 as prepared by the City of Cape Coral].

As Shown in ITB-UT17-02/KR - Reference Only (November 2016)

8. Drawings with each sheet bearing the following general title: The City of Cape Coral, SW RO WTP Wellfield Control Upgrades.:

As Shown in ITB-UT17-02/KR - Reference Only (November 2016)

9. Addenda (numbers 1 to 2 , inclusive):

**Signed Acceptance of Addendum - Attachment Included
with Submitted Bid Form 300**

10. Exhibits to this Agreement (enumerated as follows):

- a. Contractor's Bid (Division 0, Section 00300).

Completed Signed Bid Form 300 - Original Submitted Form Attached

- b. Business Ethics Requirements (Division 0, Section 00481).

**Signed Acceptance of Form 00481 - Attachment Included
with Submitted Bid Form 300**

11. The following which may be delivered or issued on or after the Effective Date of the Fully Executed Contract and are not attached hereto:

- a. Notice to Proceed.
- b. Work Change Directives.
- c. Change Orders.
- d. Field Orders.

The documents listed in Paragraph 9.01.A are attached to this Agreement (except as expressly noted otherwise above). There are no Contract Documents other than those listed above in this Article 9. The Contract Documents may only be amended, modified, or supplemented as provided in the General Conditions.

ARTICLE 10 – MISCELLANEOUS

10.01 Terms

- A. Terms used in this Agreement will have the meanings stated in the General Conditions and the Supplementary Conditions.

10.02 Assignment of Contract

- A. Unless expressly agreed to elsewhere in the Contract, no assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, money that may become due and money that is due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no

assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

10.03 *Successors and Assigns*

- A. Owner and Contractor each binds itself, its successors, assigns, and legal representatives to the other party hereto, its successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

10.04 *Severability*

Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

10.05 *Contractor's Certifications*

- A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 10.05:
 - 1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the bidding process or in the Contract execution;
 - 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
 - 3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
 - 4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

10.06 *Other Provisions*

- A. Owner stipulates that if the General Conditions that are made a part of this Contract are based on EJCDC® C-700, Standard General Conditions for the Construction Contract, published by the Engineers Joint Contract Documents Committee®, and if Owner is the party that has furnished said General Conditions, then Owner has plainly shown all modifications to the standard wording of such published document to the Contractor, through a process such as highlighting or "track changes" (redline/strikeout), or in the Supplementary Conditions.

IN WITNESS WHEREOF, OWNER AND CONTRACTOR HAVE SIGNED THIS AGREEMENT. THIS AGREEMENT WILL BE EFFECTIVE ON _____ (WHICH IS THE EFFECTIVE DATE OF THE CONTRACT).

OWNER:

City of Cape Coral, Florida

Signature: _____

Typed Name: **A. John Szerlag**

Title: **City Manager**

Date: _____

Signature

Attest: _____

Title: **City Clerk**

Typed Name: **Rebecca van Deutekom, MMC**

Date: _____

Address for giving notices:

City of Cape Coral (Attn: Procurement)

1015 Cultural Park Blvd.

2nd Floor

Cape Coral, FL 33990

CONTRACTOR:

Commerce Controls (FLA.), L.L.C.,

Signature: _____

Typed

Name: _____

Title: _____

Date: _____

(If Contractor is a corporation, a partnership, or a joint venture, attach evidence of authority to sign with corporate resolution.)

Signature

Attest: _____

Title: _____

Typed

Name: _____

Date: _____

Address for giving notices:

41069 Vincent Court

Novi, MI 48375

State of Florida

Contractor License No.:

Bus # L0000012822

(as applicable)

LEGAL REVIEW:

Signature: _____

Typed Name: **Dolores Menendez, ESQ.**

Title: **City Attorney**

Date: **12/27/16**

Bid Tabulation

For

ITB-UT17-02/KR**Southwest Reverse Osmosis Water Treatment Plant
Wellfield Communication and Control Upgrades**BIDS DUE: November 22, 2016 - 1:30 PM OPEN: 2:00 PM
BID OPEINING ROOM - CONFERENCE ROOM 252

PAGE NO. 1 of 1

				Commerce Controls, Inc. Tampa, Florida		Revere Control Systems Birmingham, Alabama	
ITEM NO.	DESCRIPTION	ESTIMATED QUANTITY	UNIT	UNIT PRICE	TOTAL ITEM COST	UNIT PRICE	TOTAL ITEM COST
1	Mobilization / Demobilization	1	LS	\$15,646.00	\$15,646.00	\$39,781.00	\$39,781.00
2	General Requirements	1	LS	\$57,631.00	\$57,631.00	\$21,000.00	\$21,000.00
3	Southwest RO WTP Improvements	1	LS	\$46,940.00	\$46,940.00	\$100,000.00	\$100,000.00
4	Wellsite 220 Improvements	1	LS	\$37,033.00	\$37,033.00	\$23,000.00	\$23,000.00
5	Wellsite 230 Improvements	1	SY	\$30,824.00	\$30,824.00	\$22,000.00	\$22,000.00
6	Complete Wellsite Improvements	25	EA	\$16,735.00	\$418,375.00	\$23,000.00	\$575,000.00
7	Backplane Wellsite Improvements	6	EA	\$14,222.00	\$85,332.00	\$22,000.00	\$132,000.00
8	Wellsite Assistance Allowance	1	LS	\$4,334.00	\$4,334.00	\$4,000.00	\$4,000.00
TOTAL ESTIMATED CONSTRUCTION COST				\$696,115.00		\$916,781.00	
VALUE ENGINEERING OPTIONS:							
1	Price Deduct to Remove Spare Master Radio			(\$1,280.00)		N/A	
2	Price Deduct to remove RSLogix 5000 PLC Programming Software			(\$3,611.00)		N/A	
TOTAL ESTIMATED CONSTRUCTION COST ACCEPTING VALUE ENGINEERING OPTIONS				\$691,224.00		\$916,781.00	



City of Cape Coral
P.O. Box 150027
Cape Coral, Florida 33915-0027

Item Number: B.(2)
Meeting Date: 1/23/2017
Item Type: CONSENT AGENDA

AGENDA REQUEST FORM
CITY OF CAPE CORAL



TITLE:

Resolution 10-17 Award Proposal RFP-DCD16-73/GM for Bimini Basin Redevelopment Project Management, to Redevelopment Management Associates, LLC for a not to exceed contract amount of \$120,000 plus any City required additional services up to 15% (\$18,000) of the contract, and authorize the City Manager or Designee to execute the contract and any amendments; Department: Department of Community Development (DCD); Dollar Value: \$138,000; (General Fund)

REQUESTED ACTION:

Approve or Deny

STRATEGIC PLAN INFO:

1. Will this action result in a Budget Amendment? No
2. Is this a Strategic Decision? Yes
If Yes, Priority Goals Supported are listed below.
If No, will it harm the intent or success of the Strategic Plan? No

ELEMENT A: INCREASE ECONOMIC DEVELOPMENT AND REDEVELOPMENT IN THE CITY

PLANNING & ZONING/HEARING EXAMINER/STAFF RECOMMENDATIONS:

SUMMARY EXPLANATION AND BACKGROUND:

1. On August 22, 2016, Staff received authorization from Council to issue a Request for Proposals to engage a Project Manager for the future development of the Bimini Basin area.
2. A Request for Proposal, RFP-DCD16-7361/GM, Bimini Basin Redevelopment Project Management, was issued on September 7, 2016.
3. The primary role of the Project Manager is to develop public and private partnerships and to implement specific design concepts and construction projects in the Bimini Basin area.
4. On September 30, 2016, two (2) responses were received. The proposers were as follows, in alphabetical order: Redevelopment Management Associates, LLC of Pompano Beach, FL, and VCF Florida P3 Solutions, LLC of Ft Myers, FL.
5. On November 18, 2016, presentations were given by both firms.
6. Based on the evaluations and presentations, staff recommends awarding a contract to Redevelopment Management Associates, LLC.
7. If approved, the term of the contract is until the completion and acceptance of the deliverables.
8. The Project Manager is requesting a 15% City Controlled Contingency for any additional

services required by the City. The Expenditure of contingency, if any, will be subject to approval of specific change orders by City's Project Manager, if justified upon identified needs with an appropriate scope and cost to address specific needs.

9. Funding Information: Account #184006.631399 General Fund/Other Professional Services.

LEGAL REVIEW:

Contract was reviewed by Legal

EXHIBITS:

Memo - Bimini Basin Redevelopment Project Manager Selection
Recommendation Memo (includes the Evaluation Matrix)
Resolution 10-17

PREPARED BY:

Wanda Division- Procurement Department- Finance
Roop

SOURCE OF ADDITIONAL INFORMATION:

Vince Cautionero, Department of Community (DCD) Director

ATTACHMENTS:

Description	Type
□ Memo - Bimini Basin Redevelopment Project Manager Selection	Backup Material
□ Recommendation Memo (includes Evaluation Matrix)	Backup Material
□ Resolution 10-17	Resolution

MEMORANDUM

CITY OF CAPE CORAL

TO: John Szerlag, City Manager 

FROM: Michael Ilczyszyn, Assistant City Manager 
Vince Cautero, Community Development Director 
Connie Barron, Public Affairs Manager 
Paul Clinghan, Public Works Director 
Dana Brunett, Economic Development Manager 
Gary Manning, Contract Specialist 

DATE: January 17, 2017

SUBJECT: Bimini Basin Redevelopment Project Manager Selection

The Internal Evaluation Committee was used to analyze two submittals from firms for the Bimini Basin Redevelopment Project. The committee was composed of the Assistant City Manager, Public Affairs Manager, Community Development Director, Public Works Director, Economic Development Manager, and a Procurement Specialist. After hearing both presentations and reviewing the responsiveness of both submittals, a unanimous ranking and subsequent vote selected the number one firm. Most importantly, the number one firm was responsive to three major components of a project such as this.

The number one firm had identified a project manager who was in attendance during the presentations and met with the evaluation committee, they had a firm project timeline meeting our intended timeframe and they had a firm price proposal broken out by each subcomponent requested in the Request for Proposal. If you have any questions about this selection please contact the Procurement Manager, Wanda Roop.

MI:rm

C: Victoria Bateman, Finance Director
Terri Hall, Legislative Coordinator
Wanda Roop, Procurement Manager
Bill Boyd, Customer and Field Services Manager

CITY OF CAPE CORAL
FINANCIAL SERVICES DEPARTMENT

TO: John Szerlag, City Manager

FROM: Wanda Roop, Procurement Manager *WR*

DATE: December 5, 2016

SUBJECT: Bimini Basin Redevelopment Project Management (RFP-DCD16-73-GM)

BACKGROUND: On August 22, 2016, Staff received authorization, from Council, to issue a Request for Proposals (RFP) to engage a Project Manager for the future development of the Bimini Basin area. The primary role of the Project Manager is to develop public and private partnerships and to secure development partners to implement specific design concepts and construction projects.

RECOMMENDATION:

As stated on the attached letter from the evaluation committee, the RFP was issued and two responses were received. The two responses were from, in alphabetical order, Redevelopment Management Associates, LLC (RMA) and VCF Florida P3 Solutions, LLC.

An evaluation committee comprised of Assistant City Manager, Department of Community Development Director, Deputy Public Works Director, Public Information Manager, and the Economic Development Manager reviewed the proposals and requested both firms to make a presentation and be available to answer questions. After said presentation, the evaluation committee is recommending award to Redevelopment Management Associates, LLC.

After review of the matrix and having been present for the presentations and deliberations, Procurement is in accord with the recommendation. As such, a proposed contract will be negotiated with RMA and submitted to you for placement on a Council meeting in January 2017.

Attachment

cc: Evaluation Committee

Approved: _____

John Szerlag, City Manager

Date: _____

12/5/2016

CITY OF CAPE CORAL
FINANCIAL SERVICES DEPARTMENT

TO: Wanda Roop, Procurement Manager

FROM: Vince Cautero, Department of Community Development Director 
Gary Manning, Procurement Specialist 

DATE: December 2, 2016

SUBJECT: Bimini Basin Redevelopment Project Management (RFP-DCD16-73-GM)
Evaluation Panel Recommendation

BACKGROUND: On August 1, 2016 the City Council approved an amendment to the Future Land Use Map of the Comprehensive Plan by expanding the amount of acreage in the Downtown Mixed land use classification. The area impacted has been commonly referred to as Bimini Basin. On August 22, 2016, Staff requested authorization to issue a Request for Proposals to engage a Project Manager for the future development of the Bimini Basin area. The primary role of the Project Manager is to develop public and private partnerships and to secure development partners to implement specific design concepts and construction projects.

RECOMMENDATION

On September 7, 2016, a Request for Proposals (RFP-DCD16-73/GM) was issued to engage a firm for the Bimini Basin Redevelopment Project Management. On September 30, 2016, two (2) responses were received. The two responses were from, in alphabetical order, Redevelopment Management Associates, LLC (RMA) and VCF Florida P3 Solutions, LLC.

An evaluation committee comprised of the Assistant City Manager, Department of Community Development Director, Deputy Public Works Director, Public Information Manager, and the Economic Development Manager reviewed the proposals and heard presentations from both firms.

The proposals were scored on a 100 point basis. The evaluation was based on their Adherence to Preparation and Presentation Requirements; Project Understanding and Approach; Qualifications and Experience; References; Project Schedule; and Cost Proposal. (See Attachment)

Based on their evaluation and presentations, the recommendation is to award the contract to Redevelopment Management Associates, LLC.

FUND AVAILABILITY: Business unit 184006.631399 (Other Professional Services)
Attachment

cc: Evaluation Committee

City of Cape Coral

RFP-DCD16-73-GM Bimini Basin Redevelopment Project Management

Average of all totals (five committee members)

Evaluation Committee Total (Five Members)	Adherence to Preparation & Presentations	Project Understanding & Approach	Qualifications & Experience	References 10	Projected Time to Accomplish Tasks	Cost Proposal	Total 100	Local Vendor Preference	Grand Total
Max Possible Points	5	30	30	10	10	15	100	10	110
VCF Florida P3 Solutions, LLC 2534-A Edison Avenue Fort Myers, FL 33901	5.0	28.0	26.2	9.4	8.2	5.4	82.2	7	89.2
Redevelopment Management Associates (RMA) 2302 E. Atlantic Blvd Pompano Beach, FL 33062	5.0	28.8	29.4	10.0	9.6	14.6	97.4	0	97.4

RESOLUTION 10 - 17

A RESOLUTION OF THE CITY OF CAPE CORAL, FLORIDA, AWARDING THE CONTRACT FOR BIMINI BASIN REDEVELOPMENT PROJECT MANAGEMENT TO REDEVELOPMENT MANAGEMENT ASSOCIATES, LLC; PROVIDING FOR APPROVAL OF A CONTINGENCY AMOUNT; PROVIDING FOR SUBSEQUENT EXECUTION OF THE CONTRACT AND ANY FUTURE AMENDMENTS BY THE CITY MANAGER OR HIS DESIGNEE; PROVIDING AN EFFECTIVE DATE.

WHEREAS, on September 7, 2016, REQUEST FOR PROPOSAL (RFP) #DCD16-73/GM was issued for Bimini Basin Redevelopment Project Management; and

WHEREAS, on September 30, 2016, the City received two (2) proposals; and

WHEREAS, on November 18, 2016, presentations were given by both firms; and

WHEREAS, after evaluating the proposals and presentations, based on the criteria set forth in the City of Cape Coral Code of Ordinances, Section 2-144(i) and the RFP, the evaluation team ranked the firms and recommends awarding the contract to Redevelopment Management Associates, LLC; and

WHEREAS, based on the recommendation of the evaluation team, the City Manager recommends awarding the contract for Bimini Basin Redevelopment Project Management to Redevelopment Management Associates, LLC; and

WHEREAS, the term of the contract is until completion and acceptance of the deliverables; and

WHEREAS, the City Council desires to authorize the City Manager to enter into a contract between the City of Cape Coral and Redevelopment Management Associates, LLC, for Bimini Basin Redevelopment Project Management in an amount not to exceed \$120,000; and to authorize the City Manager to approve additional required services pursuant to the contract in an amount not to exceed \$18,000 and to execute any associated required contract amendments.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF CAPE CORAL, FLORIDA, AS FOLLOWS:

Section 1. The City Council hereby awards the contract for Bimini Basin Redevelopment Project Management to Redevelopment Management Associates, LLC.

Section 2. The City Council hereby authorizes the City Manager to enter into a Contract between the City of Cape Coral and Redevelopment Management Associates, LLC, for Bimini Basin Redevelopment Project Management and authorizes the City Manager or his designee to execute the Contract. A copy of the Contract is attached hereto as Exhibit 1.

Section 3. The City Council hereby authorizes the City Manager to approve additional required services pursuant to the contract in an amount not to exceed \$18,000 and to execute any associated required contract amendments.

Section 4. This Resolution shall take effect immediately upon its adoption.

ADOPTED BY THE CITY COUNCIL OF THE CITY OF CAPE CORAL AT ITS REGULAR COUNCIL SESSION THIS _____ DAY OF _____, 2017.

MARNI L. SAWICKI, MAYOR

VOTE OF MAYOR AND COUNCILMEMBERS:

SAWICKI	_____	LEON	_____
BURCH	_____	ERBRICK	_____
CARIOSCIA	_____	WILLIAMS	_____
STOUT	_____	CODEN	_____

ATTESTED TO AND FILED IN MY OFFICE THIS _____ DAY OF _____, 2017.

REBECCA VAN DEUTEKOM,
CITY CLERK

APPROVED AS TO FORM:



DOLORES D. MENENDEZ
CITY ATTORNEY
res/Award RFP-Redevelopment Management Associates

Bimini Basin Redevelopment Project Management

Contract # CON-DCD16-73/GM

THIS CONTRACT is made this _____ day of _____, 2017 by and between the **CITY OF CAPE CORAL, FLORIDA**, hereinafter called "**CITY**", and **Redevelopment Management Associates, LLC**, doing business as a limited liability corporation, hereinafter called "**FIRM**".

WITNESSETH: For and in **consideration of the payments** and agreements mentioned hereinafter:

1. The FIRM **will provide** Bimini Basin Redevelopment Project Management services in accordance with the Contract Documents.
2. The FIRM **will furnish** all of the material, supplies, tools, equipment, labor and other services necessary for the completion of the services described in the Contract Documents. Time is of the essence in the performance of this Contract.
3. The FIRM **will commence** work as required by the CONTRACT DOCUMENTS within 10 calendar days after the receipt of the written Notice to Proceed.
4. The FIRM **agrees** to perform all of the WORK described in the CONTRACT DOCUMENTS for the following **not to exceed** amount of One Hundred Twenty Thousand Dollars (\$120,000) plus any City required additional services at the hourly rate as listed on the FIRM'S Scope of Services (Exhibit A) during the term of the contract.
5. The term of the contract will expire at the conclusion of the project's agreed upon final completion.
6. This Contract **may be terminated** by the CITY for its convenience upon thirty (30) days prior written notice to the FIRM. In the event of termination, the FIRM shall be paid as compensation in full for work performed to the day of such termination, an amount prorated in accordance with the work substantially performed under this Contract. Such amount shall be paid by the CITY after inspection of the work to determine the extent of performance under this Contract, whether completed or in progress.
7. The Term "**Contract Documents**" shall include this Contract, clarifications, addendums, Firm's Bid/Scope of Services except when it conflicts with any other contractual provision, the Notice to Proceed, Certificates, and the Bid Package prepared and issued by the City. In the event of conflict between any provision of any other document referenced herein as part of the contract and this Contract, the terms of this Contract shall control.
8. **Assignment:** This Contract may not be assigned except with the written consent of the CITY, and if so assigned, shall extend and be binding upon the successors and assigns of the FIRM.
9. **Disclosure:** The FIRM warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the FIRM to solicit or secure this Contract and that it has not paid or agreed to pay any person, company, corporation,

BIMINI BASIN REDEVELOPMENT PROJECT MANAGEMENT CONTRACT # CON-DCD16-73/GM

individual or firm, other than a bona fide employee working solely for the FIRM, any fee, commission, percentage, gift, or other compensation contingent upon or resulting from the award or making of the Contract.

10. **Administration of Contract:** The Community Development Director, or his representative, shall administer this Contract for the CITY.
11. **Governing Law:** The validity, construction and effect of this Contract shall be governed by the laws of the State of Florida. All claim and/or dispute resolution under this Agreement, whether by mediation, arbitration, litigation, or other method of dispute resolution, shall take place in Lee County, Florida. More specifically, any litigation between the parties to this Agreement shall be conducted in the Twentieth Judicial Circuit, in and for Lee County, Florida. In the event of any litigation arising out of this Contract, each party shall be responsible to pay for its own reasonable costs and attorney's fees.
12. **Amendments:** No Amendments or variation of the terms or conditions of this Contract shall be valid unless in writing and signed by the parties.
13. **Payments:** Firm shall invoice the City monthly. City shall make payment and Firm shall be in receipt of all sums properly invoiced within thirty (30) days of the City's receipt of such invoice unless, within a fifteen (15) day period, City notifies Firm in writing of its objection to the amount of such invoice, together with City's determination of the proper amount of such invoice. City shall pay any undisputed portion of such invoice within such thirty (30) day period.

If City shall give such notice to the Firm within such fifteen (15) day period, such dispute over the proper amount of such invoice shall be resolved, and after final resolution of such dispute, City shall promptly pay the Firm the amount so determined, less any amounts previously paid by City with respect to such invoice. In the event it is determined that City has overpaid such invoice, the Firm shall promptly refund to the City the amount of such overpayment.

14. **Firm's Representations:** In order to induce CITY to enter into the Contract FIRM makes the following representations:

FIRM has been familiarized with the Contract Documents and the nature and extent of the work required to be performed, locality, local conditions, and Federal, State, and Local laws, ordinances, rules and regulations that in any manner may affect costs, progress or performance of the work.

FIRM has made or caused to be made examinations, investigations and tests and studies as deemed necessary for the performance of the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents; and no additional examinations, investigations, tests, reports or similar data are or will be required by FIRM for such purposes.

FIRM has correlated the results of all such observations, examinations, investigations, tests, reports and data with the terms and conditions of the Contract Documents. FIRM has given CITY written notice of all conflicts, errors or discrepancies that have been

BIMINI BASIN REDEVELOPMENT PROJECT MANAGEMENT CONTRACT # CON-DCD16-73/GM

discovered in the CONTRACT DOCUMENTS and the written resolution thereof by CITY is acceptable to FIRM.

15. **Indemnity:** To the extent permitted by law (F.S. 768.28), the FIRM shall indemnify and hold harmless the CITY, its officers and employees, from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the FIRM and any persons employed or utilized by FIRM in the performance of this Contract.
16. **Damage Liability:** The awarded FIRM shall be responsible for all claims filed for damage to private property, windows, screen enclosures, real estate signs, etc. Additionally, the FIRM shall be responsible for damage to all public property or utility property, fire hydrants, catch basins, guy wires telephone pedestals, etc. Copies of all damage claims shall be submitted to the Procurement Division.
17. **Invalid Provision:** The invalidity or unenforceability of any particular provision of this Contract shall not affect the other provisions hereof, and the Contract shall be construed in all respects as if such invalid or unenforceable provisions were omitted.
18. **Record Keeping:** The awarded bidder shall maintain auditable records concerning the procurement adequate to account for all receipts and expenditures, and to document compliance with the specifications. These records shall be kept in accordance with generally accepted accounting principles, and the City of Cape Coral reserves the right to determine the record-keeping method in the event of non-conformity. If a Public Construction Bond is required records shall be maintained for ten (10) years, after final payment has been made, and shall be readily available to City personnel with reasonable notice, and to other persons in accordance with the Florida Public Disclosure Statutes.

Records of the Firm's personnel, sub-contractors, and the costs pertaining to the Project shall be kept in accordance with generally accepted accounting practices.

Firm shall keep full and detailed accounts and financial records pertaining to the provision of services for the City. Prior to commencing work, Firm shall review with and obtain the City's approval of the accounting procedures and records to be utilized by the Firm on the Project. Firm shall preserve the aforementioned Project records for a period of ten (10) years after final payment, or for such longer period as may be required by law.

19. **Public Record:** The City is a public agency subject to Chapter 119, Florida Statutes. **IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICABILITY OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT , CONTACT THE CUSTODIAN OF PUBLIC RECORDS, AT (239) 574-0411, ctyclk@capecoral.net, City of Cape Coral, 1015 Cultural Park Boulevard, Cape Coral, FL 33990.** The Contractor shall comply with Florida's Public Records Law. Specifically, the Contractor shall:
 - Keep and maintain public records required by the public agency to perform the service;
 - Upon request from the City's custodian of public records, at no cost to the City, provide the City with a copy of the records in paper or electronic form as requested

BIMINI BASIN REDEVELOPMENT PROJECT MANAGEMENT CONTRACT # CON-DCD16-73/GM

by the City or allow the City, its employees, or agents to inspect or copy the records at no cost within a reasonable time.

- Ensure that public records that are exempt or confidential and exempt from public record disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the contractor does not transfer the records to the public agency;
- Upon completion of the contract, transfer, at no cost, to the public agency all public records in possession of the contractor or keep and maintain public records required by the public agency to perform the service. If the contractor transfers all public records to the public agency upon completion of the contract, the contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the contractor keeps and maintains public records upon completion of the contract, the contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the public agency's custodian of public records, in a format that is compatible with the information technology systems of the public agency.

The failure of Contractor to comply with the provisions set forth in this Section shall constitute a Default and Breach of this Contract.

20. **Insurance:** Unless otherwise specified, FIRM shall, at its own expense, carry and maintain the following minimum insurance coverage, as well as any insurance coverage required by law:

- A. Worker's Compensation Insurance with limits that comply with statutory requirements and Employer's Liability Insurance with a lower limit of \$1,000,000 per occurrence, including, without limitation, coverage for Occupational Diseases, to provide for the payment of benefits to its employees employed on or in connection with the Work covered by this Agreement and/or to their dependents.
- B. Commercial General Liability Insurance (on an occurrence basis), with a minimum combined single limit for Bodily Injury, including Death of \$1,000,000 per occurrence and for Property Damage of at least \$1,000,000 per occurrence.
- C. Business Auto Liability Insurance with minimum Bodily Injury and Death Limit per accident of \$1,000,000 and a minimum Property Damage Limit per accident of \$1,000,000.
- D. Professional Liability (Errors and Omissions) with minimum limits of \$1,000,000.00 per occurrence with respect to negligent acts, errors or omissions in connection with the professional services to be provided and any deductible not to exceed \$50,000.00 each claim.
- E. Firm shall require its subfirms to provide for such benefits and carry and maintain the foregoing types of insurance at no expense to CITY. CITY shall be named as

**BIMINI BASIN REDEVELOPMENT PROJECT MANAGEMENT
CONTRACT # CON-DCD16-73/GM**

an "Additional Insured" under the Firm's General Liability Insurance Policy with OWNER.

- F. Prior to commencing any Work under this Agreement, FIRM shall submit to CITY a certificate or certificates of insurance evidencing that such benefits have been provided, and that such insurance is being carried and maintained. Such certificates shall stipulate that the insurance will not be cancelled or materially changed without thirty (30) days prior written notice by certified mail to CITY, and shall also specify the date such benefits and insurance expire.

FIRM agrees that such benefits shall be provided and such insurance carried and maintained until the Work has been completed and accepted by CITY.

- G. Such benefits and such coverage as are required herein, or in any other document to be considered a part hereof, shall not be deemed to limit Firm's liability under this agreement.

21. **Unauthorized Aliens:** The employment of unauthorized aliens by any Firm is considered a violation of Section 274A (e) of the Immigration and Nationality Act. If the Firm knowingly employs unauthorized aliens, such violation shall be cause for unilateral cancellation of any contract resulting from this solicitation. This applies to any sub-Firms as well as the Firm as well.
22. **Entire Agreement:** This Contract constitutes the entire an exclusive agreement between the parties and supersedes any and all prior communications, discussions, negotiations, understandings, or agreements, whether written or verbal.

(balance of page blank)

**BIMINI BASIN REDEVELOPMENT PROJECT MANAGEMENT
CONTRACT # CON-DCD16-73/GM**

IN WITNESS WHEREOF, the parties hereto have executed, or caused to be executed by their duly authorized officials this Agreement in two (2) counterparts which shall be deemed an original on the date last signed as below written.

(CITY SEAL)

ATTEST:

OWNER:

Rebecca van Deutekom, MMC

City Clerk

CITY OF CAPE CORAL

City Manager:

A John Szerlag

Date

WITNESS CONTRACTOR:

CONTRACTOR:

ATTEST:

Company: Redevelopment Management
Associates, LLC

State of _____

Signature: _____

County of _____

Typed Name: _____

The foregoing instrument was
acknowledged before me this _____
day of _____, 2017 by

Title: _____

Date: _____

_____, who is
Personally known to be or produced
_____ as identification.

Signature of Notary

(Notary Seal)

CITY LEGAL REVIEW:

Dolores Menendez
City Attorney

01/17/17

**BIMINI BASIN REDEVELOPMENT PROJECT MANAGEMENT
CONTRACT # CON-DCD16-73/GM**

**EXHIBIT A
SCOPE OF SERVICES**

Bimini Basin Redevelopment Project Management

SCOPE OF SERVICES

Task 1.0 Background Review

Our first step is to understand the goals and objectives of the City for both redevelopment and new development. This process entails careful analysis of the City's prior planning efforts, vision, and other relevant material.

1.1 Identify any missing data or materials necessary for feasibility analysis.

1.2 Review Land Use Development Regulations and the CRA regulations pertaining to the project site.

1.3 Conduct a site visit and tour, and review the work conducted by USF graduate students.

1.4 A meeting with City staff to review goals, necessary and missing data, and approach and outcomes including telephone conferences as necessary (possibly weekly). (Section 1 of RFP Scope)

Deliverable: Summary of previous plans, entitlements, and site visit/meeting.

Meeting Included in Task 1:

- *Client Kick-off Meeting with City Staff*

City's Responsibility:

- Provide existing maps, GIS layers and other related material for existing infrastructure and right-of-way

Task 2.0 Market Assessment and Situational Analysis

The economic development team conducts a general market assessment to understand the market demand and/or potential for the study areas where development, revitalization, and growth is desired. This analysis will review the real estate and housing markets, consumer supply and demand, and existing conditions. The economic development assessment will evaluate all sectors of the local economy in the study area and surrounding marketplace, including commercial (retail, restaurant, office), industrial, and residential (including housing affordability and housing programs). The assessment will identify opportunities to attract investment to the area, while also increasing household wealth and resisting gentrification. RMA will provide one draft and one set of revisions of the assessment based on staff comments of the Market Assessment.

2.1 Trade Area Review - This is a review of the various trade areas in which the Bimini Basin competes for investment and customers. It is the precursor to the Market Assessment and sets

the framework for that assessment's approach. It identifies the realistic markets for success during the rest of the project and implementation.

2.2 Investment Driver Analysis (Land, Labor, Capital, Markets, Regulation) - This analysis includes the following items:

Land - Identify opportunities for land assemblage. (Section 4 of RFP Scope)

Markets – Identify primary, secondary, and tertiary consumer markets, including retail, wholesale, and visitor and workforce markets. Additionally, identify market conditions and trends for consumer spending for each identified market segment. This analysis will include:

1. Demographic, psychographic, and consumer behavior of the target markets,
2. Purchasing power for the target markets,
3. Estimates of retail capacity and surplus/leakage for each retail sector,
4. Market trend history and 3-5, 5-7 and 7-10 market trend projections.

Capital & Regulation - Identify City Resources to support future development. (Section 3 of RFP Scope)

This includes a review of the capital sources that are available for private and public investment and economic growth in the project area and in some cases the larger trade areas. It evaluates things like bank deposits, credit availability, retail sales and business income, public investments, etc. The main purpose of the capital piece is to identify how money impacts (or doesn't impact) economic growth, and what the public sector partners can do to improve the role of capital in Bimini Basin growth. Regulation is the same – it is to understand how regulation encourages or impedes economic growth in the area, to identify reputational and perception issues associated with the regulatory environment from an investment perspective, and to start to identify what the public sector can realistically do to improve the regulatory environment to encourage investment.

Capital & Regulation - Infrastructure review. (Section 3 of RFP Scope)

2.3 Develop Market Demand and Market Potential Estimates for commercial and residential investment.

Deliverable: Market Assessment

RMA will prepare a market assessment report that will include a market summary and an analysis of opportunities and barriers to attracting and retaining businesses and residents in the area.

This will be provided in word and pdf format. It includes demographics, psychographics, spending estimates, gap analysis, development demand and potential estimates. It is the evaluation of the conditions of the real estate market (Land), the workforce and job market (Labor), finance (Capital), the trade area Markets, and regulations. This assessment will identify factors that impact each driver of investment and identify if said factor:

1. Can be directly influenced by the City to benefit economic growth;
2. Can be positively influenced by the City through indirect actions; or
3. Cannot be influenced by the City.

Task 3.0 Public Input

Public input is critical to redevelopment success. RMA will develop and implement a public engagement strategy with staff, attend and lead community workshops, and conduct an open house with formal and informal public input opportunities. As a way to collect public input through a digital platform, RMA will prepare both a community and business survey and analyze the results. Public input that is collected will be incorporated in the Bimini Basin Redevelopment Plan along with professional recommendations.

3.1 All day open house, with three formal presentations and public input sessions, and additional time for one-on-one conversation between stakeholders and the team.

3.2 Community Survey

These will be questions that provide additional insight into the area, its needs, challenges and assets.

3.3 Business Survey

3.4 One-on-One City meetings with elected officials and staff (up to 12 meetings plus telephone conferences as needed) (Section 3 of RFP Scope)

3.5 Coordinate One-on-One meetings with major Property Owners and Stakeholders (10 meetings) (Section 3 of RFP Scope)

3.6 Gather information on Common Business Climate Themes

The information will be determined by the process. The common business climate themes are those things that keep rising to the top that we keep hearing over and over as we meet with stakeholders, residents, businesses, property owners, and prospective investors. These are some of the items that either need to be capitalized on or addressed in order to be successful.

3.7 Gather information on Economic Growth Opportunities

The specific information will be an outcome of the input, and we will frame the input into those things that are most important to preserve, to enhance, to expose, to invest in and to capitalize on, for economic growth and investment.

3.8 Manage and respond to inquiries or concerns regarding the Bimini Basin Plan. (Section 1 of RFP Scope)

Deliverable: Summary of Public Input

Meetings Included in Task 3:

- *One (1) all day 10-hour Open House*
- *Twelve (12) One-on-One City Meetings*
- *Ten (10) One-on-One Property/Stakeholder Meetings*

City's Responsibility:

- Provide notices, advertising, and outreach for the public meeting/open house.

Task 4.0 Feasibility Analysis

Based on the information gathered in Tasks 2 and 3, the Economic Development, Urban Design, Business Attraction and Real Estate teams will perform a feasibility analysis that evaluates the development options for the study area and a feasibility analysis which will identify realistic scenarios that will meet the CRA and City's objectives.

4.1 Develop three (3) realistic basic development programs for the site. (This task does not include renderings) The aerial view outlining the site is attached.

4.2 Evaluate the financial feasibility of the identified potential development programs, including financial feasibility and proformas as well as a sample schedule and projected timelines for the development programs. (Section 2 of RFP Scope)

- a. The proforma will include development program, development costs, and an operating finance plan that includes revenues and expenses, looking at various return on investment measures, to determine feasibility and identify opportunities to enhance feasibility and attract private investment. This will include evaluation of potential financing mechanisms that are identified by RMA and the City.
- b. A schedule and timeline will be provided to estimate the length of the development process, to estimate operating and capital needs, project stabilization, fiscal and tax impacts, and renewal and replacement.

4.3 Identify challenges to development within the special flood hazard area. (Section 3 of RFP Scope)

4.4 Estimate the fiscal impact of the project on ad valorem tax collections and TIF (Tax Incremental Financing) revenues.

Deliverable: Financial Feasibility Analysis Summary Report

This scope will include the following:

- **Three (3) Financial Feasibility Scenarios**

Task 5.0 Strategy Development and Implementation

RMA will provide an implementation strategy which includes the CRA that identifies the specific action needed, priority, timeframe, lead agencies/organizations, cost estimates and funding sources. The action steps identified in the strategy can result in need for further analysis of future land acquisitions and development agreements by the City (beyond the scope of this agreement), grants and other resources, business attraction strategy and redevelopment and economic development incentives. RMA will provide the client with a Bimini Basin Implementation Plan that includes the financial feasibility assessment of the Bimini Basin area and the additional redevelopment opportunities, including redevelopment, regulatory, and incentive strategies that

can enhance the climate to attract additional investment to the area. The report will identify actions that the City can realistically take to foster economic development, redevelopment, business attraction, job retention, and improve the economic condition of local households. The plan will also include an evaluation of the incentives and alternate financing strategies that may be available for redevelopment in the study area, including incentives currently under consideration by the city. RMA will provide one draft and one set of revisions of the analysis and presentation based on staff comments of the Bimini Basin Implementation Plan. A digital copy in Microsoft Office, IN Design, and PDF of the booklet will be provided.

5.1 Identify actions the City can take to enhance the marketability of the area for a private development partner, including concepts for amendments to the land development regulations.

5.2 Identify Economic Development/Marketing Goals & Strategies.

5.3 Develop an Implementation Plan. (Tactics & Budget)

5.4 Coordinate with Public Works and Utilities to identify real estate requirements for infrastructure to include cost estimates.

(Section 3 of RFP Scope)

5.5 Identify parameters to develop design concepts. (Section 4 of RFP Scope)

5.6 Identify best practices, sources and resources to secure potential development partners for Bimini Basin projects. (Section 4 of RFP Scope)

Deliverable: Draft Bimini Basin Implementation Plan

Meeting Included in Task 5:

- Up to three (3) Client meeting to review draft Bimini Basin Implementation Plan as needed.

City's Responsibility:

- Review the proposed draft of the Bimini Basin Redevelopment Plan and provide written comments and requested changes within 15 days of submittal of draft.

This scope does not include the following:

- **Conceptual plans and renderings illustrating the development potential based on the market analysis for each parcel in the study area.**
- **Detailed parking analysis to understand the existing inventory and/or deficiency/surplus.**
- **Strike thru and/or underline of specific sections of the code that may need to be amended.**

- **Design alternatives of existing parks and open spaces and/or community facilities.**
- **Design manual to include specific design standards for signage, landscaping and building design.**

Task 6.0 Final Plan and Presentation

6.1 Develop PowerPoint presentation

6.2 City Staff Meeting to review plan

6.3 CRA Board and CRA Advisory Board Presentation

6.4 City Council Presentation

Deliverable: Final Bimini Basin Implementation Plan and Presentation

Meetings Included in Scope:

- Attendance at one (1) staff meeting to review the final draft of the Bimini Basin Redevelopment Plan (one draft and one revised public hearing draft), up to two staff members attending meeting)
- Attendance at one CRA Board workshop and meeting including drafting of PowerPoint presentation. (up to four staff members attending meeting)
- Attendance at one CRA Advisory Board workshop and meeting including drafting of PowerPoint presentation. (up to four staff members attending meeting)
- Attendance at one final City Council Meeting for adoption including drafting of power-point presentation. (up to five staff members attending meeting)

City Staff Responsibility:

- Prepare mailing list, label and mail notices for the submittal for approval and adoption meetings, if applicable. Any signs that must be posted for meeting will also be the responsibility of staff.
- Copies made by RMA to be reimbursed by Client (applicable to all tasks).

Compensation: The fee for services shall be a lump sum fee, for each task, to be paid monthly based on percentage complete.

Not to exceed \$120,000

<i>Task 1.1-1.4: Background Review (lump sum).....</i>	<i>\$9,000</i>
<i>Task 2.1-2.3: Market Assessment and Situation Analysis (lump sum)</i>	<i>\$12,500</i>
<i>Task 3.1-3.7: Public Input (lump sum).....</i>	<i>\$25,000</i>
<i>Task 3.8: Public Input (hourly component not to exceed).....</i>	<i>\$6,000</i>
<i>Task 4.1-4.6: Feasibility Analysis (lump sum).....</i>	<i>\$21,000</i>
<i>Task 5.1-5.3: Strategy Development and Implementation.....</i>	<i>\$20,000</i>
<i>Task 5.4-5.6: Strat. Dev 7 Imp (hourly component not to exceed).....</i>	<i>\$11,500</i>
<i>Task 6.1-6.4: Final Plan and Presentation (lump sum).....</i>	<i>\$15,000</i>

Reimbursable Expenses: Costs considered reimbursable include all third-party design services requested by the Client, renderings, additional printed materials or duplicate copies of presentation materials and reports. Marketing for public meetings will be completed by the City of Cape Coral or will be submitted as a reimbursable expense by the Consultant. Travel expenses are included in the total cost quoted.

Additional Services: Additional services may include, but are not limited to: additional document revisions not mentioned in the above scope of work; additional community outreach/planning meetings/workshops, City Council Planning Workshops, one-on-one meetings with stakeholders, developers (not already included in this scope), P&Z Board members, or City Council members; and public hearings. Those meetings and any other tasks, such as a market and economic analysis, are not included above will be billed at the hourly rate per the RMA contract.

Fee Schedule: The fee schedule for hourly services is as follows:

Business Attraction & Marketing

GIS/CAD Operator	\$ 95.00
Graphic Designer	\$ 85.00
Creative Director	\$150.00
Director of Digital Solutions	\$150.00
Marketing Assistant	\$ 85.00
Marketing Coordinator	\$100.00
Marketing Manager	\$125.00
Sr. Marketing Manager	\$150.00
Tourism Specialist	\$150.00
Director – Business Attraction & Marketing	\$185.00

Construction

Construction Inspector	\$ 95.00
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Bimini Basin Redevelopment Project Management
Scope of Services

Construction Manager	\$145.00
Construction Director	\$180.00

Economic Development

Economic Develop Assistant	\$ 85.00
Economic Develop Coordinator	\$115.00
Economic Develop Manager	\$150.00
Director – Economic Development	\$185.00

Engineering

Engineer	\$ 95.00
Engineer I	\$125.00
Engineer II	\$150.00
Sr. Engineer	\$195.00

Government Management & Administration

Administrative Assistant	\$ 80.00
CRA Clerk	\$ 80.00
Sr. Admin Assistant	\$105.00
Sr. Redevelopment Associate	\$195.00
Managing Director	\$205.00
Principal	\$230.00

Project Management

Project Coordinator	\$ 95.00
Project Manager I	\$125.00
Project Manager II	\$145.00
Sr. Project Manager	\$180.00

Real Estate

Real Estate Coordinator	\$115.00
Real Estate Manager	\$150.00
Director – Real Estate	\$185.00

Urban Design & Planning

Landscape Architect I	\$105.00
Landscape Architect II	\$120.00
Landscape Architect III	\$135.00

Bimini Basin Redevelopment Project Management
Scope of Services

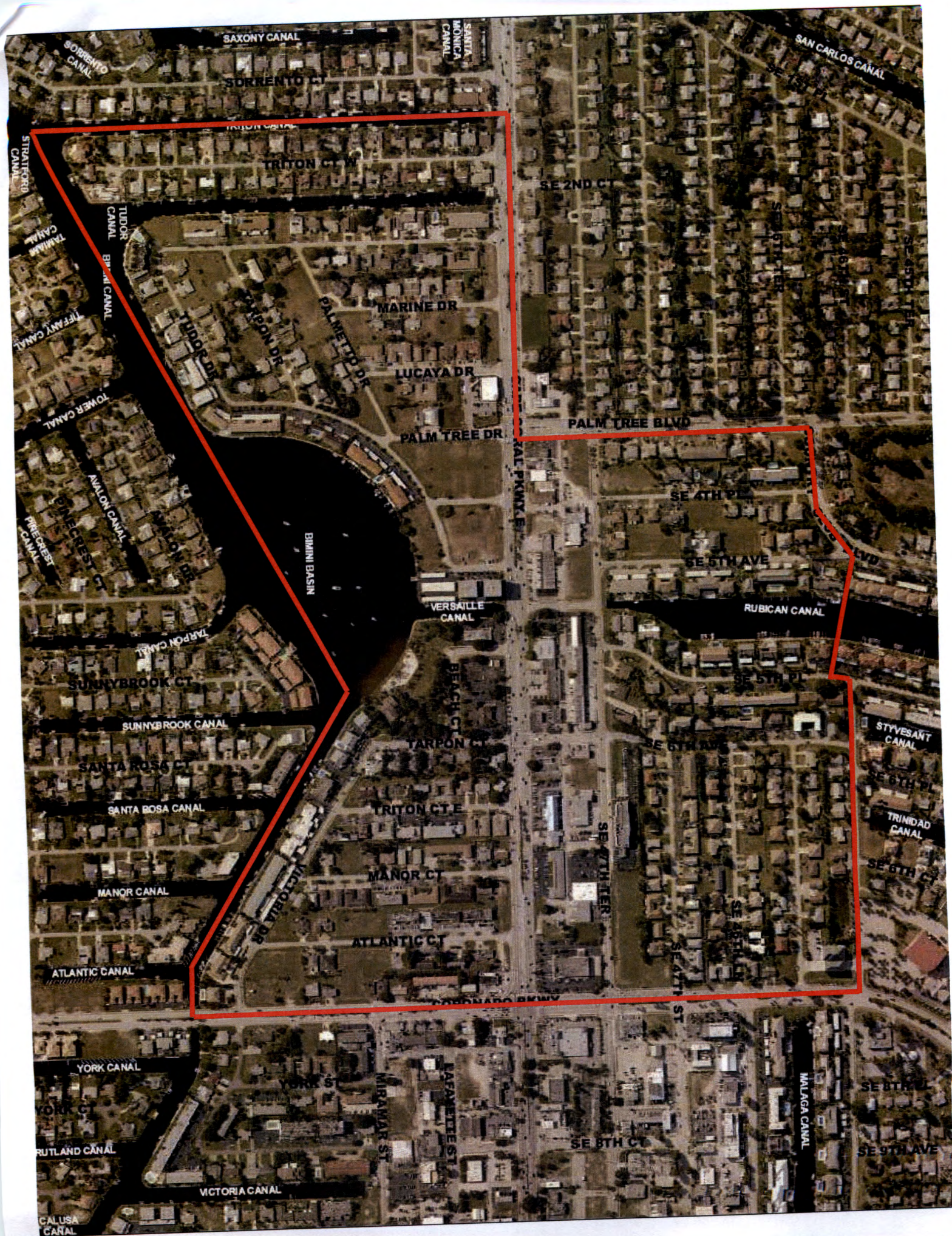
Sr. Landscape Architect	\$155.00
Planning Assistant	\$105.00
Planner I	\$115.00
Planner II	\$125.00
Sr. Planner	\$150.00
Urban Design Assistant	\$105.00
Urban Designer I	\$115.00
Urban Designer II	\$125.00
Sr. Urban Designer	\$150.00
Director - Urban Design & Planning	\$185.00

RMA Internal

Bookkeeper	\$ 90.00
Business Development Coordinator	\$ 90.00
Budget & Operations Analyst	\$105.00
Finance	\$160.00
Controller	\$170.00
Director of Administration	\$185.00
Director of Operations	\$185.00

Reimbursable Expenses

Postage and Shipping	Actual Cost
Copies 8 1/2 x 11 black and white	.05
Copies 8 1/2 x 11 color	.25
Copies 8 1/2 x 14 black and white	.10
Copies 8 1/2 x 14 color	.30
Copies 11 x 14 black and white	.20
Copies 11 x 14 color	.35
Reproduction (Blue/White Prints)	Actual Cost
Printing/Binding	Actual Cost
Mylar Sheets	Actual Cost
Photographic Supplies & Services	Actual Cost
Permit Fees	Actual Cost
CD/DVD	Actual Cost
Aerials	Actual Cost
Courier Service	Actual Cost
Sub-consultant Fees on their Letterhead	Actual Cost – No Markup



Item Number: B.(3)
Meeting Date: 1/23/2017
Item Type: CONSENT AGENDA

AGENDA REQUEST FORM
CITY OF CAPE CORAL



TITLE:

Resolution 12-17 Award ITB-PD17-19/CH for the purchase of ammunition for the Police Department to Florida Bullet, Inc. (Bid Items 1, 2, 4, 5, 6, and 7); Dana Safety Supply, Inc. (Bid items 8, 9, and 11); GT Distributors, Inc. (Bid item 3), at the unit prices bid not to exceed budgetary limits, and authorize the City Manager, or designee, to sign the purchase orders; Department: Police Department; Dollar Value \$99,120; (General Fund)

REQUESTED ACTION:

Approve or Deny

STRATEGIC PLAN INFO:

1. Will this action result in a Budget Amendment? No
2. Is this a Strategic Decision? No
If Yes, Priority Goals Supported are listed below.
If No, will it harm the intent or success of the Strategic Plan? No

PLANNING & ZONING/HEARING EXAMINER/STAFF RECOMMENDATIONS:

SUMMARY EXPLANATION AND BACKGROUND:

1. Invitation to Bid #ITB-PD17-19/CH was issued on October 12, 2016 for the purchase and delivery of ammunition used by the Police Department for duty, qualification and training.
2. Notices were sent to 80 vendors, eight vendors were sent the bid documents and four bids were received.
3. Staff recommends awarding the items to the following vendors as the lowest responsive responsible bidders per item:
 - Bid Items #1, #2, #4, #5, #6, and #7, to Florida Bullet, Inc.;
 - Bid Item #3 to GT Distributors;
 - Bid items #8, #9, and #11 to Dana Safety Supply
4. The Department will not be awarding Bid Item #10, as it was determined that the ammunition requested on the invitation to Bid was not the training ammunition required by the department.
5. If approved, a purchase order will be issued to each vendor for this purchase.
6. This is a budgeted item in Fiscal Year 2017.
7. Funding Source: 121101.652123 (Police Support Administration/Weapons and Ammunition)

LEGAL REVIEW:

Legal review is not required as purchase orders will be issued.

EXHIBITS:

Department Recommendation

Resolution 12-17

Bid Tabulation - Bid #ITB-PD17-19/CH

PREPARED BY:

Wanda

Roop

Division- Procurement

Department- Finance

SOURCE OF ADDITIONAL INFORMATION:

David Newlan, Police Chief

ATTACHMENTS:

Description	Type
▣ Department Memo	Backup Material
▣ Resolution 12-17	Resolution
▣ Bid Tabulation- #ITB-PD17-19/CH	Backup Material



CAPE CORAL POLICE DEPARTMENT

Office of the Chief of Police

TO: John Szerlag, City Manager

FROM: David Newlan, Chief of Police 

DATE: December 28, 2016

SUBJECT: Bid Recommendation for Delivery of Department Ammunition for FY17

Background

The Cape Coral Police Department has reviewed Bid ITB-PD17-19CH for duty, qualification, and training ammunition. Only four bids were received; Dana Safety Supply, Florida Bullet, GT Distributors, and Lawmen's & Shooters Supply.

Recommendation

The Cape Coral Police Department recommends awarding this Invitation to Bid to the lowest, responsive, and responsible bidders as follows:

- Award Bid Items 1, 2, 4, 5, 6, and 7 to Florida Bullet, Inc. in the amount of \$76,619.50.
- Award Bid Item 3 to GT Distributors in the amount of \$17,496.00.
- Award Bid Item 8, 9, and 11 to Dana Safety Supply in the amount of \$5,004.00.

The Department is not awarding Bid Item 10 as it was determined that the ammunition requested on the Invitation to Bid was not the simunition less-lethal training ammunition required by the Department.

The purchase of the above will meet our requirements for duty, qualification, and training ammunition for the 2017 fiscal year.

Fund Availability

Funds are budgeted in the FY17 approved budget under 121101.652123.

DN:mbi

C: Victoria Bateman, Financial Services Director
Wanda Roop, Procurement Manager

RESOLUTION 12 - 17

A RESOLUTION OF THE CITY OF CAPE CORAL AWARDING A BID FOR THE PURCHASE OF POLICE DEPARTMENT AMMUNITION TO FLORIDA BULLET, INC., GT DISTRIBUTORS, INC., AND DANA SAFETY SUPPLY, INC.; PROVIDING FOR SUBSEQUENT EXECUTION OF THE PURCHASE ORDERS BY THE CITY MANAGER OR HIS DESIGNEE; PROVIDING AN EFFECTIVE DATE.

WHEREAS, on October 12, 2016, INVITATION TO BID (ITB) #PD17-19/CH was issued for the purchase and delivery of duty, qualification, and training ammunition for the Police Department; and

WHEREAS, four (4) bids were submitted; and

WHEREAS, the City determined the lowest qualified responsible and responsive bidders per item who met the requirements and criteria by taking into consideration, in addition to price, the qualities specified in Section 2-144(a)(12) of the City of Cape Coral Code of Ordinances; and

WHEREAS, the City Manager recommends the award to Florida Bullet, Inc., for Bid Items 1, 2, 4, 5, 6 and 7; to GT Distributors, Inc., for Bid Item 3; and to Dana Safety Supply, Inc., for Bid Items 8, 9, and 11 as the lowest qualified responsible and responsive bidders, based on the lowest unit price bid per item; and

WHEREAS, the City Council desires to award the bid for the purchase and delivery of duty, qualification, and training ammunition for the Police Department to Florida Bullet, Inc., for Bid Items 1, 2, 4, 5, 6 and 7; to GT Distributors, Inc., for Bid Item 3; and to Dana Safety Supply, Inc., for Bid Items 8, 9, and 11.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF CAPE CORAL, FLORIDA, AS FOLLOWS:

Section 1. The City Council hereby awards the bid for the purchase and delivery of duty, qualification, and training ammunition for the Police Department to Florida Bullet, Inc., for Bid Items 1, 2, 4, 5, 6 and 7; to GT Distributors, Inc., for Bid Item 3; and to Dana Safety Supply, Inc., for Bid Items 8, 9, and 11, in the amount of \$99,120, not to exceed budgetary limits.

Section 2. The City Council hereby authorizes the City Manager or his designee to execute the purchase orders between the City of Cape Coral and Florida Bullet, Inc., GT Distributors, Inc., and Dana Safety Supply, Inc.

Section 3. This Resolution shall take effect immediately upon its adoption.

ADOPTED BY THE CITY COUNCIL OF THE CITY OF CAPE CORAL AT ITS REGULAR COUNCIL SESSION THIS _____ DAY OF _____, 2017.

MARNI L. SAWICKI, MAYOR

VOTE OF MAYOR AND COUNCILMEMBERS:


SAWICKI _____
BURCH _____
CARIOSCLA _____
STOUT _____

LEON _____
ERBRICK _____
WILLIAMS _____
COSDEN _____

ATTESTED TO AND FILED IN MY OFFICE THIS _____ DAY OF _____, 2017.

REBECCA VAN DEUTEKOM,
CITY CLERK

APPROVED AS TO FORM:


DOLORES D. MENENDEZ
CITY ATTORNEY
res/Bid Award-Florida Bullet

City of Cape Coral
Bid Tabulation Sheet for Bid # PD17-19/CH
Purchase and Delivery of Ammunition

			Florida Bullet, Inc Clearwater FL 33758		Dana Safety Supply, Inc Ft Myers FL 33916		GT Distributors, Inc Austin TX 78758		Supply, Inc Vero Beach FL 32968	
Item #	Ammunition Type	Estimated Qty	Price/Case	Extended Price	Price/Case	Extended Price	Price/Case	Extended Price	Price/Case	Extended Price
1	.40 S&W Speer LE Gold Dot 165 gr. GDHP *NO SUBSTITUTES*	5,000 rounds 5 cases Case = 1000 rds.	\$364.90	\$1,824.50	NO BID	NO BID	NO BID	NO BID	NO BID	NO BID
2	.223 Federal 62 gr. Tactical Bonded *NO SUBSTITUTES*	2,000 rounds 10 cases Case = 200 rds.	\$252.90	\$2,529.00	NO BID	NO BID	NO BID	NO BID	NO BID	NO BID
3	Hornady .308 168 gr. AMAX Tap *NO SUBSTITUTES*	20,000 rounds 100 cases Case = 200 rds.	No Bid	No Bid	NO BID	NO BID	\$174.96	\$17,496.00	\$182.70	\$18,270.00
4	.223 Frangible (Clean Fire) 55 gr. *NO SUBSTITUTES*	30,000 rounds 60 cases Case = 500 rds.	\$399.00	\$23,940.00	NO BID	NO BID	NO BID	NO BID	NO BID	NO BID
5	.40 Federal 125 gr Frangible *NO SUBSTITUTES*	60,000 rounds 60 cases Case = 1000 rds.	\$529.90	\$31,794.00	NO BID	NO BID	NO BID	NO BID	NO BID	NO BID
6	.223 Federal .55g Ball *NO SUBSTITUTES*	30,000 rounds 30 cases Case = 1000 rds.	\$188.90	\$11,334.00	NO BID	NO BID	NO BID	NO BID	NO BID	NO BID
7	.40 Speer 165g Ball *NO SUBSTITUTES*	20,000 rounds 20 cases Case = 1000 rds.	\$259.00	\$5,198.00	NO BID	NO BID	NO BID	NO BID	NO BID	NO BID
8	9mm "any color" Marking Training Rounds *NO SUBSTITUTES*	3,000 rounds 6 cases Case = 500 rds.	\$265.90	\$1,595.40	\$255.00	\$1,530.00	NO BID	NO BID	NO BID	NO BID
9	9mm Blanks Training Rounds *NO SUBSTITUTES*	5,000 rounds 10 cases Case = 500 rds.	\$265.90	\$2,659.00	\$192.00	\$1,920.00	NO BID	NO BID	NO BID	NO BID
10 *	5.56 Blanks Training Rounds *NO SUBSTITUTES*	2,000 rounds 4 cases Case = 500 rds.	329.90 *	1319.60 *	355.00 *	1420.00 *	NO BID	NO BID	NO BID	NO BID
11	9mm Non-Marking Training Rounds *NO SUBSTITUTES*	3,000 rounds 6 cases Case = 500 rds.	\$265.90	\$1,595.40	\$259.00	\$1,554.00	NO BID	NO BID	NO BID	NO BID
TOTAL BID				\$82,469.30		\$5,004.00		\$17,496.00		\$18,270.00
TOTAL AWARDED				\$76,619.50		\$5,004.00		\$17,496.00		\$ -

Shaded is recommendation for award

* Bid Item #10 - Not recommended for award.

Item Number: B.(4)
Meeting Date: 1/23/2017
Item Type: CONSENT AGENDA

AGENDA REQUEST FORM
CITY OF CAPE CORAL



TITLE:

Resolution 17-17 Approval of Contract for Purchase of Lots 36, 37 and 38, Block 573, Unit 12, Cape Coral Subdivision, 3607 Del Prado Boulevard South, for future access to Master Pump Station 200 for maintenance and repairs, for a purchase price of \$229,500 plus closing costs not to exceed \$500; Department: Financial Services / Real Estate; Dollar Value: \$230,000; (Water and Sewer Fund)

REQUESTED ACTION:

Approve or Deny

STRATEGIC PLAN INFO:

1. Will this action result in a Budget Amendment? No
2. Is this a Strategic Decision? Yes
If Yes, Priority Goals Supported are listed below.
If No, will it harm the intent or success of the Strategic Plan?

ELEMENT C: INVEST IN COMMUNITY INFRASTRUCTURE INCLUDING UTILITIES EXPANSION IMPROVEMENTS TO ENHANCE THE CITY'S ABILITY TO MEET THE NEEDS OF ITS CURRENT AND FUTURE RESIDENTS AND BUSINESSES

PLANNING & ZONING/HEARING EXAMINER/STAFF RECOMMENDATIONS:

SUMMARY EXPLANATION AND BACKGROUND:

1. In 1997, the City's largest wastewater pump station, Master Pump Station 200, was constructed at 3601 Del Prado Boulevard South. Master Pump Station 200 (MPS 200) receives the majority of the flows within the southeast area of Cape Coral from 32 duplex lift stations and contributes approximately half of the total influent flow to the Everest Water Reclamation Facility.
2. MPS 200 is located on the heavily traveled and often congested Del Prado Boulevard, just north of Savona Parkway. There is an improved commercial structure to the north and a canal to the east of MPS 200. On the south side of the MPS 200 there is a vacant three-lot commercial site.
3. Due to the limited choices available of additional lands for future access to maintain and/or complete repairs at the master pump station, without having to shut down the north bound lanes of Del Prado Boulevard for extended periods of time, Staff submitted a contract to purchase the adjoining lots to the south.

4. This property is currently listed for sale at \$259,900. A contract to purchase the subject site, based on a December 2016 appraisal by an independent State Certified Appraiser, reflecting a market value of \$215,000 was presented to the property owner. The Seller countered the City's offer at \$229,500. Although the Seller's counter offer of \$229,500 is slightly above the City's appraised value, Staff has determined the counter offer to be reasonable when considering the potential of increased costs of a future acquisition. The contract requires the Seller to pay the closings costs incurred by the closing agent and any commission.

5. Staff recommends approval of the purchase of Lots 36, 37 and 38, Block 573, Unit 12, Cape Coral Subdivision, for a purchase price of \$229,500 plus closing costs not to exceed \$500.

LEGAL REVIEW:

EXHIBITS:

Resolution 17-17
Property Appraiser Printout
Location Map

PREPARED BY:

Dawn Y. Andrews, Property Broker	Division- Real Estate	Department- Financial Services
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SOURCE OF ADDITIONAL INFORMATION:

Jeff Pearson, Utilities Director
239-574-0709

Jody Sorrels, Civil Engineer III
Utilities Department 239-242-3227

Doug Sayers, Property Acquisition Agent
Real Estate Division 239-574-0714

ATTACHMENTS:

Description	Type
▣ Resolution 17-17	Resolution
▣ Property Appraiser Sheet - Block 573, Lots 36-38	Backup Material
▣ Location Map - Block 573, Lots 36-38	Backup Material

RESOLUTION 17 – 17

A RESOLUTION OF THE CITY OF CAPE CORAL AUTHORIZING THE CITY MANAGER TO ENTER INTO A “CONTRACT FOR SALE AND PURCHASE” BETWEEN ELNG, LLC, AND THE CITY OF CAPE CORAL FOR THE PURCHASE OF LOTS 36-38, BLOCK 573, UNIT 12, CAPE CORAL SUBDIVISION, FOR FUTURE ACCESS TO MASTER PUMP STATION 200 FOR MAINTENANCE AND REPAIRS; PROPERTY LOCATED AT 3607 DEL PRADO BOULEVARD SOUTH; PROVIDING AN EFFECTIVE DATE.

WHEREAS, in 1997, Master Pump Station 200, the City’s largest sewer pump station, was constructed at 3601 Del Prado Boulevard South; and

WHEREAS, Master Pump Station 200 is bounded by an improved commercial structure to the north, a canal to the east, Del Prado Boulevard to the west, and a vacant three-lot commercial site to the south; and

WHEREAS, due to the limited options for access to the Master Pump Station 200 site, staff presented an offer to purchase the adjoining vacant three-lot site, to be utilized for access to maintain and/or complete repairs at Master Pump Station 200 without obstructing traffic in the northbound lanes of Del Prado Boulevard for extended periods of time; and

WHEREAS, the City has obtained a recent appraisal pursuant to Section 2-152 of the City of Cape Coral Code of Ordinances; and

WHEREAS, City staff recommends that the City purchase the subject property pursuant to the terms and price set forth in the contract; and

WHEREAS, the City Manager requests approval to enter into the “Contract for Sale and Purchase.”

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF CAPE CORAL, FLORIDA, AS FOLLOWS:

Section 1. The City Council hereby authorizes the City Manager or his designee to execute a “Contract for Sale and Purchase” between ELNG, LLC, and the City of Cape Coral for the purchase of Lots 36-38, Block 573, Unit 12, Cape Coral Subdivision, as more fully described in the Contract, in the amount of \$229,500. The property is located at 3607 Del Prado Boulevard South. The City Council also authorizes an additional \$500 for closing costs associated with the purchase. A copy of the “Contract for Sale and Purchase” is attached hereto as Exhibit A.

Section 2. This resolution shall take effect immediately upon its adoption.

ADOPTED BY THE CITY COUNCIL OF THE CITY OF CAPE CORAL AT ITS REGULAR COUNCIL SESSION THIS _____ DAY OF _____, 2017.

MARNI L. SAWICKI, MAYOR


VOTE OF MAYOR AND COUNCILMEMBERS:

SAWICKI	_____	LEON	_____
BURCH	_____	ERBRICK	_____
CARIOSCIA	_____	WILLIAMS	_____
STOUT	_____	CODEN	_____

ATTESTED TO AND FILED IN MY OFFICE THIS _____ DAY OF _____,
2017.

REBECCA VAN DEUTEKOM
CITY CLERK

APPROVED AS TO FORM:



DOLORES D. MENENDEZ
CITY ATTORNEY

Res/Purchase Real Property-Master Pump Station Access L36-38 B573

CONTRACT FOR SALE AND PURCHASE

THIS IS A LEGALLY BINDING CONTRACT WHEN PROPERLY COMPLETED AND EXECUTED. IF NOT FULLY UNDERSTOOD, SEEK LEGAL ADVICE BEFORE SIGNING.

PARTIES: ELNG, LLC, a Florida limited liability company, 1503 NW 41st Place, Cape Coral, Florida 33993 as "SELLER", and City of Cape Coral, a Florida Municipal Corporation, P.O. Box 150027, Cape Coral, Florida 33915-0027, successors or assigns, as "BUYER", hereby agree that the SELLER shall sell and BUYER shall buy the following (hereinafter referred to as "PROPERTY") described property upon the following terms and conditions:

1. **LEGAL DESCRIPTION** of real estate located in Lee County, Florida:
Lots 36, 37, 38, Block 573, Unit 12, Cape Coral Subdivision, as recorded in Plat Book 13, Pages 49 - 55, inclusive of the Public Records of Lee County, Florida.
2. **PURCHASE PRICE** 229,500
~~\$215,000.00~~ CS
3. **CONDITIONAL CONTRACT.** This contract for sale and purchase is a binding contract once it is executed by the SELLER and by the City Manager on behalf of the BUYER. However, this contract is expressly subject to approval by the Cape Coral City Council. If the Cape Coral City Council fails or refuses to approve the purchase within 45 calendar days of the date when the City Manager has signed this contract, then this contract shall be null and void. This contract is subject to applicable Florida probate proceedings, if required. BUYER and SELLER understand and agree that in the event probate proceedings are necessary, SELLER shall be solely responsible for any and all expenses necessary to complete said probate proceedings.

4. **EFFECTIVE DATE & CLOSING DATE.** The Effective Date of this contract shall be the date of Council authorization. This contract shall be closed and the deed shall be delivered within 30 business days after Council authorization unless extended by other provisions of this contract. Such other provisions shall include, but not be limited to, paragraph 7. Possession shall be granted on the day of closing unless otherwise agreed in writing.
5. **CONVEYANCE.** SELLER shall convey title to the property to BUYER by Warranty Deed subject only to matters contained in this contract and taxes for the year of closing.
6. **RESTRICTIONS AND EASEMENTS.** BUYER shall take title subject to:
- (a) Zoning and restrictions and prohibitions imposed by governmental authority;
 - (b) Restrictive covenants of record;
 - (c) Public utility easements of record, provided however said easements are located along the perimeter of the property and are not more than six feet (6') in width;
 - (d) Taxes for the year of closing and subsequent years;

Provided, however, that none of the foregoing shall prevent use of the entire property for the purpose of right-of-way or any other governmental purpose.

7. **EVIDENCE OF TITLE.** Within fifteen (15) days from the date of this contract, ~~BUYER~~ ^{*Seller*} shall at ~~BUYER'S~~ ^{*9/5*} expense, obtain a title insurance binder issued by a qualified title insurer of its choice, agreeing to issue to BUYER, upon the recording of the deed hereafter mentioned, a title insurance policy in the amount of the purchase price insuring the title to that real property. BUYER shall have fifteen (15) days from the date of receiving the evidence of title to examine same. If title is found to be defective, BUYER or closing agent shall, within said period of time, notify SELLER in writing specifying defects that need to be cured. For purposes of this contract, a requirement by the title insurer that the SELLER institute and complete a quiet title action shall be deemed to be a

title defect that shall be cured by **SELLER**. If said defects render the title unmarketable or uninsurable **SELLER** shall have ninety (90) days from the receipt of such notice to cure the defects, and if after said period **SELLER** shall not have cured the defects, then **BUYER** shall have the option of (1) accepting the title as it then is; (2) affording **SELLER** additional time to cure the defect(s); or (3) terminate the contract by providing written notice to the **SELLER**.

8. **EXISTING MORTGAGES.** **SELLER** shall furnish estoppel letters from mortgagee(s) setting forth the principal balance, escrow balance, method of payment, and whether the mortgage is in good standing. It shall be **SELLER'S** obligation to obtain any satisfactions of mortgage required for closing.
9. **SURVEY.** If **BUYER** desires a survey, **BUYER** shall have the property surveyed at its expense prior to closing date. If the survey shows an encroachment, the same shall be treated as a title defect.
10. **OTHER AGREEMENTS.** No agreements or representations, unless incorporated in this contract, shall be binding upon any of the parties, unless they be in writing and agreed to by all parties.
11. **MECHANIC'S LIENS.** **SELLER** shall execute an affidavit that there have been no improvements to the subject property and that **SELLER** has not entered any contracts for the provision of goods or services that could give rise to a mechanic's lien for the ninety (90) days immediately preceding the date of closing.
12. **TIME IS OF THE ESSENCE** in the performance of this contract.
13. **DOCUMENTS FOR CLOSING.** **SELLER** shall execute a Warranty Deed, Seller's Affidavit and other necessary closing documents provided by closing agent.

14. **EXPENSES.** Documentary stamps, title insurance, title search, title exam and settlement fee shall be paid by ~~BUYER~~ *SEZLR* *ls*
15. **PRORATION OF TAXES (REAL AND PERSONAL).** Taxes shall be prorated based upon the current year's tax without regard to discount. If the closing takes place and the current year's taxes are not fixed, and the current year's assessment is available, taxes will be prorated based upon such assessment and the prior year's millage. If the current year's assessment is not available, then taxes will be prorated on the prior year's tax, provided, however, if there is a completed improvement of the subject premises by January 1 of the year of closing, then the taxes shall be prorated to the date of closing based upon the prior year's millage. It is further agreed that should, upon receipt of current tax statement, the taxes be different by more than Ten Dollars (\$10.00) than those estimated, the proration shall be adjusted.
16. **ATTORNEY'S FEES AND COSTS.** In connection with any litigation arising out of the contract, the prevailing party shall be entitled to recover all costs incurred, including reasonable attorney's fees. The parties agree to venue in Lee County, Florida for any action arising out of this Contract.
17. **DEFAULT BY SELLER.** If SELLER fails to perform any of the covenants of this contract other than the failure of SELLER to render his title marketable after diligent effort BUYER may proceed at law or in equity to enforce its legal rights under this contract, including, but not limited to, the right to bring suit for specific performance.
18. All covenants and agreements herein contained shall extend to and be obligatory upon the heirs, executors, administrators, successors and assigns of the respective parties.
19. This agreement shall be interpreted, construed, and governed according to the Laws of the State of Florida.

20. The invalidity or unenforceability of any particular provision of this agreement shall not affect the other provisions hereof, and the agreement shall be construed in all respects as if such invalid and unenforceable provisions were omitted.
21. **SELLER** and **BUYER** hereby agree that this contract to purchase the real property described above is for a proper municipal purpose and grants the **BUYER** the right to enter the real property described above for the purpose of surveying, soil borings, or any other work as deemed necessary by the **BUYER**. The parties herein further agree that the purchase of this property does not destroy or cause any damage whatsoever to **SELLER** or his successor or assigns with respect to any commercial or residential property owned by them whose lands are being so purchased or located upon adjoining lands.
22. The place of closing and delivery of the deed to **BUYER** shall be at any office designated by **BUYER**.
23. **ENVIRONMENTAL AUDIT.** **BUYER** may perform or have performed, at **BUYER'S** expense, an environmental audit of the property. If such an audit identifies environmental problems unacceptable to the **BUYER** then **BUYER** may elect to accept the property in its existing condition or **BUYER** may terminate this Contract without obligation.
24. **REAL ESTATE COMMISSIONS.** **BUYER** and **SELLER** understand and agree that in the event **BUYER** has knowledge of any listing agreement for the subject property, then **BUYER**, at its option, may elect to notify and provide a copy of this contract to the listing Broker. **SELLER** shall be solely responsible for any Broker compensation, Realtor notification or any other terms and conditions of any listing agreement. **SELLER** shall also be responsible for any Realtor transaction fee or administration fee.
25. **DISCLOSURE OF BENEFICIAL INTERESTS.** **SELLER** agrees to comply with the provisions of Section 286.23(1), Florida Statutes. Said section requires that, before

property that is owned by a partnership, limited partnership, corporation, trust or any other form of representative capacity whatsoever for others, is conveyed to a governmental unit, the representative of the owner/entity shall make a public disclosure in writing, under oath and subject to the penalties prescribed for perjury, which shall state the names and addresses of every person having a beneficial interest in the Real Property, however small or minimal.

26- JACK PARKER ESQ WILL
1845 TITLE POLICY + CLOSE TRANSACTION

IN WITNESS THEREOF, BUYER and SELLER have signed this contract on the date set forth below.

CITY OF CAPE CORAL, FLORIDA

Witness to A. John Szerlag

BY: _____
A. John Szerlag Date
City Manager

Witness to Rebecca van Deutekom

BY: _____
Rebecca van Deutekom Date
City Clerk

ELNG, LLC, a Florida limited liability company

Ei Leen Simone
(Signature) Date

Print Name: _____ Ei Leen Simone

Title: _____ Owner

Witness _____
Print Name: _____

Witness _____
Print Name: _____

APPROVED AS TO FORM:

Dolores D. Menendez, City Attorney

DISCLOSURE AFFIDAVIT

Project Name: Master Pump Station 200
STRAP Number: 054524C1005790360

STATE OF Florida

COUNTY OF Lee

BEFORE ME, the undersigned authority in said County and State, personally appeared Eileen Simone
who being first duly sworn, deposes and says:

1. THAT he/she is:

() a. President (or Vice President) of _____
Corporation, a corporation under the laws of the State of _____;

or () b. A Partner (or limited Partner) of the firm of _____
composed of _____ and _____
doing business under the name of _____

or ☒ c. Managing Member of ELNG, LLC

2. THAT the names and addresses listed on Exhibit "A" attached hereto and by this reference made a part hereof are the name and address of every person having a beneficial interest in the real property described as Lots 36, 37 and 38, Block 573, Unit 12, Cape Coral Subdivision, however small or minimal.

3. THIS Affidavit is provided to comply with the provisions of Section 286.23, Florida Statutes.

Under penalties of perjury, I do hereby declare that the information contained in this Affidavit is true and correct.

(Signature)

Print Name:

Title:

Address:

Sworn to and subscribed before me this 3RD day of JANUARY 2017 by
EILEEN SIMONE as _____ who is personally known by me or
has produced _____ as identification.
(describe identification)

My Commission Expires: 1-16-18

(seal)



SHARON A. MEMOLI
MY COMMISSION # FF 065885
EXPIRES: January 16, 2018
Bonded Thru Budget Notary Services

Notary Public (Signature)

Notary Public (Print Name)

EXHIBIT "A"

The following is a list of every person with a beneficial interest in the real property described as Lots 36, 37, 38, Block 573, Unit 12, Cape Coral Subdivision:

NAME Eileen Simone
ADDRESS 1503 NW 41st PL
ADDRESS Cape Coral, FL 33993

NAME Angelo Simone
ADDRESS 1503 NW 41st PL
ADDRESS CAPE CORAL 33993

NAME _____
ADDRESS _____
ADDRESS _____

NAME _____
ADDRESS _____
ADDRESS _____

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Lee County Property Appraiser

Tax Year
[Next Parcel Number](#) [Previous Parcel Number](#) [Tax Estimator](#) [Cape Coral Fees](#) [Tax Bills](#) [Print](#)

Property Data

STRAP: 05-45-24-C1-00573.0360 Folio ID: 10188849

Owner Of Record

ELING LLC
1503 NW 41ST PL
CAPE CORAL FL 33993

Site Address

3607 DEL PRADO BLVD S
CAPE CORAL FL 33904

Property Description

CAPE CORAL UNIT 12
BLK 573 PB 13 PG 54
LOTS 36 THRU 38

Classification / DOR Code

VACANT COMMERCIAL / 10

[Tax Map Viewer]



[Pictometry Aerial Viewer]



Current Working Values



Just 75,000 As Of 06/30/2016

Attributes

Land Units Of Measure	SF
Units	15000.00
Frontage	120
Depth	125
Total Number of Buildings	0
Total Bedrooms / Bathrooms	0
Total Living Area	0
1st Year Building on Tax Roll	0
Historic District	No

Image of Structure



Exemptions



Values (2016 Tax Roll)



Taxing Authorities



Sales / Transactions



Parcel Numbering History



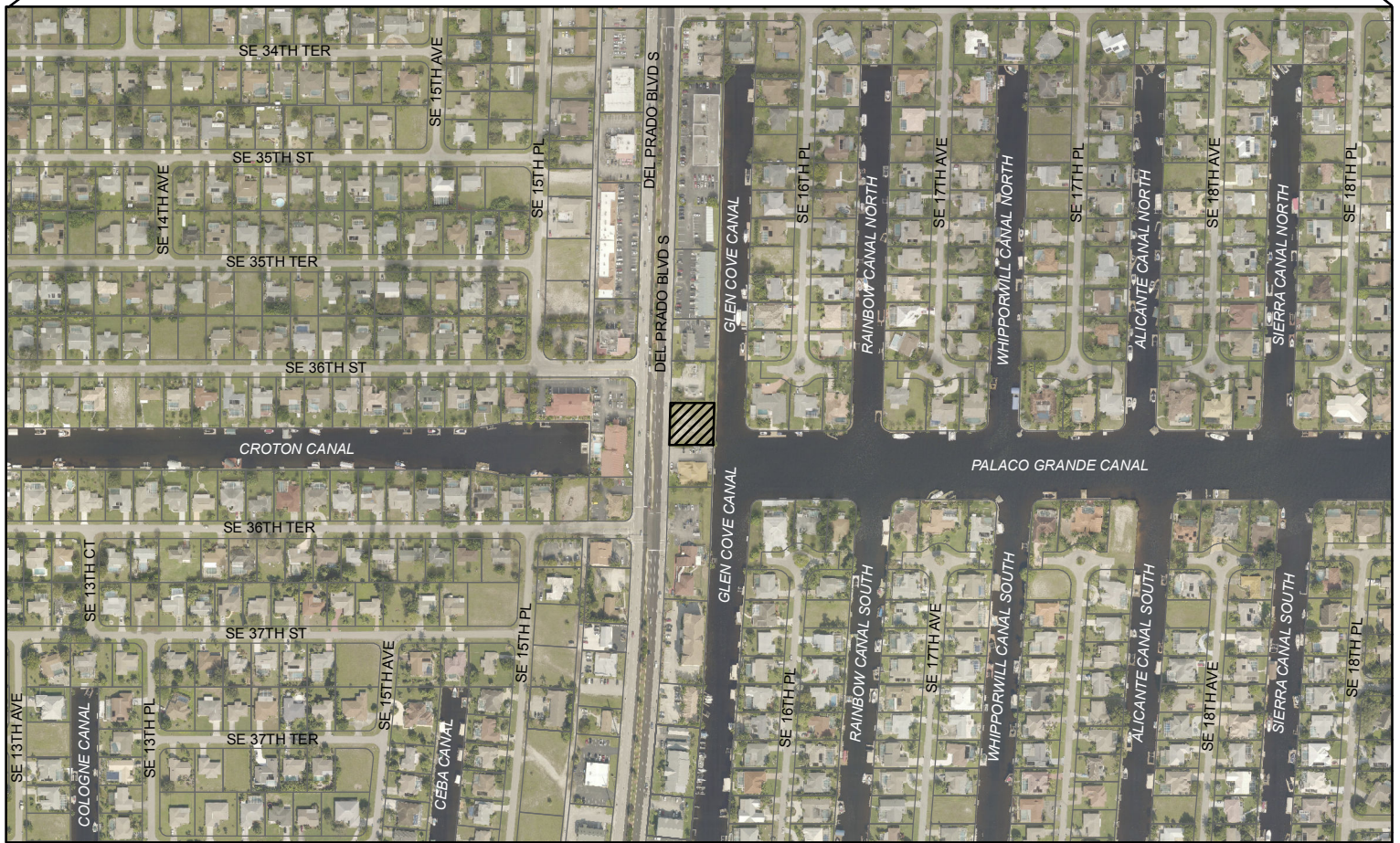
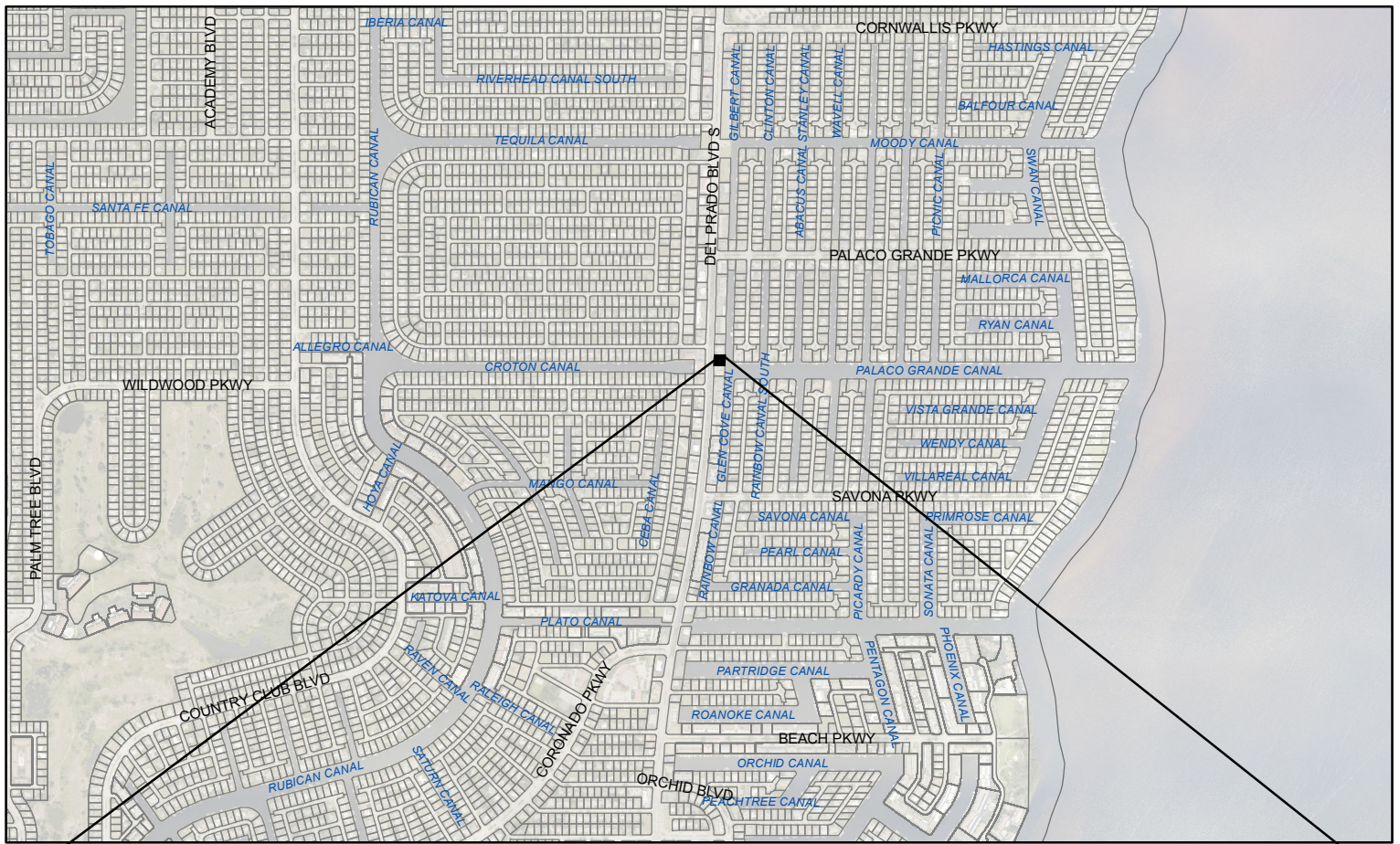
Location Information



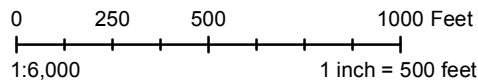
Solid Waste (Garbage) Roll Data



Flood and Storm Information



This map is not a survey and should not be used in place of a survey. While every effort is made to accurately depict the mapped area, errors and omissions may occur. Therefore, the City of Cape Coral cannot be held liable for incidents that may result due to the improper use of the information presented on this map. This map is not intended for construction, navigation or engineering calculations. Please contact the Department of Community Development with any questions regarding this map product. Prepared by: The City of CAPE CORAL Real Estate Division-Gregory L. Spivey



MASTER PUMP STATION 200
Block 573 Lots 36, 37 and 38
3607 Del Prado Boulevard S

Item Number: B.(5)
Meeting Date: 1/23/2017
Item Type: CONSENT AGENDA

AGENDA REQUEST FORM
CITY OF CAPE CORAL



TITLE:

Resolution 18-17 Utilities Agreement - On Site and Off Site Improvements for Water, Wastewater and Irrigation Facilities, Sandoval Phase IV

REQUESTED ACTION:

Approve or Deny

STRATEGIC PLAN INFO:

1. Will this action result in a Budget Amendment?
2. Is this a Strategic Decision?
 - If Yes, Priority Goals Supported are listed below.
 - If No, will it harm the intent or success of the Strategic Plan?

PLANNING & ZONING/HEARING EXAMINER/STAFF RECOMMENDATIONS:

SUMMARY EXPLANATION AND BACKGROUND:

A resolution approving the Utilities Agreement - On Site and Off Site Improvements for Water, Wastewater and Irrigation Facilities between the City of Cape Coral and PBV PINE ISLAND COMML LLC for the extension of water, wastewater and irrigation facilities to Sandoval Phase IV.

LEGAL REVIEW:

Brian R. Bartos, Assistant City Attorney

EXHIBITS:

Resolution 18-17

PREPARED BY:

Division- Department-

SOURCE OF ADDITIONAL INFORMATION:

ATTACHMENTS:

Description	Type
□ Resolution 18-17	Resolution

RESOLUTION 18 – 17

A RESOLUTION OF THE CITY OF CAPE CORAL APPROVING THE UTILITIES AGREEMENT-ON SITE & OFF SITE IMPROVEMENTS FOR WATER, WASTEWATER AND IRRIGATION FACILITIES BETWEEN THE CITY OF CAPE CORAL AND PBV PINE ISLAND COMML LLC; PROVIDING AN EFFECTIVE DATE.

WHEREAS, PBV PINE ISLAND COMML LLC desires to provide water, wastewater and irrigation facilities to allow service to Sandoval Phase IV as described in Ordinance 31-15 (PDP 15-0001) prior to the City's extension of the City's utility system; and

WHEREAS, the City desires to allow, at the expense of PBV PINE ISLAND COMML LLC, the extension of water, wastewater and irrigation to and within Sandoval Phase IV, pursuant to the terms and conditions contained in the Utilities Agreement-On Site and Off Site Improvements for Water, Wastewater and Irrigation Facilities; and

WHEREAS, the City Council desires to approve the Utilities Agreement-On Site & Off Site Improvements for Water, Wastewater and Irrigation Facilities between the City of Cape Coral and PBV PINE ISLAND COMML LLC.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF CAPE CORAL, FLORIDA, AS FOLLOWS:

Section 1. The City Council hereby approves the Utilities Agreement-On Site & Off Site Improvements for Water, Wastewater and Irrigation Facilities between the City of Cape Coral and PBV PINE ISLAND COMML LLC. A copy of the Agreement is attached hereto and incorporated by reference.

Section 2. The City Council hereby authorizes the City Manager to execute the Utilities Agreement-On Site & Off Site Improvements for Water, Wastewater and Irrigation Facilities between the City of Cape Coral and PBV PINE ISLAND COMML LLC.

Section 3. This Resolution shall take effect immediately upon its adoption.

ADOPTED BY THE CITY COUNCIL OF THE CITY OF CAPE CORAL AT ITS REGULAR COUNCIL SESSION THIS _____ DAY OF _____, 2017.

MARNI L. SAWICKI, MAYOR

VOTE OF MAYOR AND COUNCILMEMBERS:


SAWICKI _____
BURCH _____
CARIOSCIA _____
STOUT _____

LEON _____
ERBRICK _____
WILLIAMS _____
COSDEN _____

ATTESTED TO AND FILED IN MY OFFICE THIS _____ DAY OF _____, 2017.

REBECCA VAN DEUTEKOM,
CITY CLERK

APPROVED AS TO FORM:


DOLORES D. MENENDEZ
CITY ATTORNEY
res/Utility Agreement-Sandoval Phase IV

**UTILITIES AGREEMENT
ON SITE & OFF SITE IMPROVEMENTS FOR
WATER, WASTEWATER AND IRRIGATION FACILITIES**

THIS IS AN AGREEMENT MADE THIS ____ day of _____, 2017, by and between the CITY OF CAPE CORAL, a Florida Municipal Corporation, hereinafter called "City" and PBV PINE ISLAND COMML LLC, hereinafter called "Customer."

WHEREAS, the Customer desires the provision of water, wastewater and irrigation facilities to allow service to an area located within the City of Cape Coral, Lee County, Florida, and further described in Exhibit "A" attached hereto and hereafter called "Site" that precedes the City's extension of the City's utility system.

WHEREAS, the City desires to allow the extension at the Customer's expense of water, wastewater and irrigation facilities to allow for services to the Site under the terms and conditions as contained herein.

NOW, THEREFORE, in consideration of the terms and conditions set forth herein, the parties mutually agree as follows:

1. The Customer, at its expense, will extend water, wastewater and irrigation facilities ("off-site improvements") to the Site in Cape Coral, Florida. Customer at its expense will further extend water, wastewater and irrigation facilities within the Site as described in PDP 15-0001 Sandoval Phase IV at Sandoval, Ordinance 31-15, and ("on-site improvements"). Such on-site and off-site improvements shall be placed within City rights-of-way and/or easements as approved by the City.

2. The Customer shall grant to the City such easements or rights-of-way over property owned by the Customer corresponding with the installation of the proposed on-site and off-site improvements, as required by the City. Such grant or conveyance shall be in a form satisfactory to the City Attorney. Such conveyances shall be made without cost to the City as part of the consideration of this Agreement.

3. The design for the on-site and off-site improvements authorized by this Agreement shall be prepared by a professional engineer registered in the State of Florida regularly engaged in the field of Civil, Sanitary or Environmental Engineering. The design proposed by the Customer shall be subject to the approval of the Utilities and/or Public Works Department and must conform to the City's standards for the installation and extension of these facilities. Customer shall obtain all required permits and pay permit, inspection and other applicable fees.

4. During all phases of the construction and installation of the on-site and off-site improvements, the City of Cape Coral may inspect all facilities installed under this Agreement to include televising the wastewater lines. All constructed facilities determined not to be in compliance with City practices, regulations, or ordinances shall be corrected by the Customer at its expense. At its discretion, the City may be present at all tests of component parts of the system installed by the Customer to determine that the system, as constructed, conforms to the City's criteria. The City will charge a one-time inspection fee not to exceed the actual inspection cost or four percent (4%) of the project construction cost of the facilities installed by the Customer, whichever is less. No fee charged herein shall be intended or

interpreted as a waiver of City permit fees or inspection fees for other services required by the City of Cape Coral Code.

5. Customer shall be required to pay water, wastewater, and irrigation Contribution in Aid of Construction (CIAC) Fees as described in Exhibit "C". Said CIAC Fees shall include the area of the project less the square footage associated with lakes and rights-of-way. In addition, Customer shall pay CIAC Fees on thirty percent (30%) of the square footage of the linear parks and common areas. Customer agrees that if any lake, right-of-way, linear park, or common area, or portion thereof, is subsequently developed with residential dwellings or clubhouse facilities, CIAC Fees will be due for the property being developed at the CIAC Fee rate within this agreement at the time the lake, right-of-way, linear park, or common area, or portion thereof, is developed. Development occurring subsequent to the expiration of this Utility Agreement, ten years as stated in paragraph 8 below, shall be subject to the CIAC Fees in effect at the time of development. Said CIAC Fees shall be payable on a tract or parcel basis within the Site at the time of permit issuance. In addition to water, sanitary sewer and irrigation Contribution in Aid of Construction fees, any other fees specified by City Ordinances, including but not limited to Utility Capital Expansion Fees (impact fees), shall be paid by Customer.

6. Customer and City agree the total CIAC Fee for Sandoval Phase IV is \$97,564.42 after reduction of the Customer's estimated costs for the contributory assets to be conveyed to the City, subject to any changes to the estimated contributory assets cost amount or changes affecting the developable property as stated hereinabove. Sandoval Phase IV development order authorizes a maximum of 186 multi-family dwelling units. Based on the current size of the linear parks, common areas, right-of-ways, and lakes, the per building CIAC fee is \$12,195.56 for the first three (3) building permits issued, \$12,195.55 for the next four (4) building permits, and \$12,195.54 for the last building permit.

7. Customer agrees that in the event the total CIAC Fee is greater or less than the CIAC Fee stated in paragraph 6, due to any changes affecting the square footage of developable property or the estimated costs of the contributory assets, then the total CIAC Fees for Sandoval Phase IV will be adjusted up or down such that the Customer will pay the total recalculated CIAC Fee. The recalculation of the CIAC Fee shall occur immediately upon the submittal by the Customer of revisions to the square footage of developable property, or the cost of contributory assets.

8. This Utility Agreement shall be in effect for a period of 10 years from date of execution. All CIAC Fees remaining unpaid shall be due and payable prior to the expiration of said 10 year term.

9. Customer and City agree there are no refundable advances available with this internal line extension.

10. Upon the completion of construction of the on-site and off-site improvements installed by the Customer under this Agreement and acceptance by the City, the Customer agrees that the on-site improvements shall become the property of the City, and Customer shall transfer same to City in a form acceptable to the City, as part of the consideration of this Agreement for service to the Site, as referenced in Exhibit "B". If the current estimates of the cost of construction for the on-site and off-site improvements, as stated in Exhibit "B", differ from the actual costs of said improvements when built, Customer agrees that CIAC Fees will increase should the actual cost be lower than the estimate due to the corresponding

credit toward CIAC Fees being reduced, and City agrees that CIAC Fees will decrease should the actual cost be greater than the estimate due to the corresponding credit toward CIAC Fees being increased.

11. It shall be the Customer's obligation to furnish to the City accurate information with regard to matters of engineering, construction of buildings, dwellings, and proposed densities. The Customer is responsible for compliance with the conditions of all permits and approvals, City ordinances, and approved construction documents.

12. It shall be the responsibility of the Customer to connect the on-site and off-site improvements with the facilities of the City. The on-site improvements shall be connected to the City's facilities as approved by the City in the development site plan. The City reserves the right to inspect all such connections to be assured that the same are properly made in accordance with the City's rules governing such connections and that the connections, as made, are free from infiltration or inflow. Any plumber's connection covered over without the benefit of inspection by City may result in the Customer being required to reopen the connection for subsequent inspection without cost to the City.

13. Water, wastewater and irrigation services to buildings to be constructed within the Site shall be at the point of delivery of service for such buildings. This point of delivery of service with respect to water service shall be up to and including the water meter. The point of delivery of service with respect to sanitary sewer service shall be the point of connection between the City's line and the service constructed by the property owner at the inflow end of the wastewater service for that building, which is generally located at the property line. The point of delivery of service with respect to irrigation service shall be the outflow end of the curb stop. Any facilities in the category of "user's lines" located on a property owner's side of the point of delivery of service shall not be transferred to the City and shall remain the property of the Customer, or its successors and assigns. The City reserves the right to inspect all such connections to be assured that the same are properly made in accordance with the City's rules governing such connections and that the connections, as made, are free from infiltration or inflow. Any plumber's connection covered over without the benefit of inspection by City may result in the Customer being required to reopen the connection for subsequent inspection without cost to the City. Such user's lines shall remain the maintenance responsibility of the property owners. This Agreement is not intended to nor shall it grant any third party any rights whatsoever under this Agreement for service from the City and the City reserves the right to refuse connection to and the commencement of any service to any user seeking to be connected to any portion of the facilities installed by the Customer under this Agreement until all of the terms and conditions of this Agreement have been met by the Customer.

14. Prior to the commencement of construction of the installation of the on-site and off-site improvements authorized by this Agreement, the Customer shall obtain all necessary permits, including those required from the City of Cape Coral Department of Community Development and all regulatory authorities.

15. The Customer shall be insured against all losses and injury caused by the construction and installation of the facilities authorized by this Agreement. The Customer agrees to indemnify or hold harmless the City and its officers and employees from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of Customer and person employed or utilized by Customer in the performance of this Agreement.

16. Customer acknowledges that trees and/or bushes have been planted or may be planted in City utility easements located at the Site and further acknowledges that such planting is subject to provisions of Section 3.14 of the City of Cape Coral Land Use and Development Regulations. In consideration of City allowing the installation of said plantings, Customer agrees that he/she will indemnify and hold City, its officers, employees and agents, harmless from any and all claims for injuries and damages to persons and property, both real and personal resulting from said plantings. Customer further agrees that City may remove the plantings by any method required at any time and for any reason, including, but not limited to, utility repairs and utility expansion. Customer agrees to be responsible for all costs involved in relocating or replacing any plantings removed by City from the easement. Customer agrees that City shall be under no obligation to compensate Customer for any damage to any plantings that may occur during City removal of said plantings. Other than in the event of an emergency, as determined by the City, City agrees to give notice to Customer of its intention to remove said plantings not less than seven (7) days where practical, prior to the removal, so that Customer may relocate the plantings if he/she so desires. Any costs associated with relocation or replacement of said plantings shall be the obligation of Customer and City shall have no responsibility or liability for same.

17. The Customer shall ensure that proper compaction of all trenches in driveways and roads are to a minimum of ninety-eight percent (98%) density and swales and rights-of-way are to a minimum of ninety-five percent (95%) density to assure stabilization of all replacement swales and driveway aprons.

18. Customer agrees that while the City will maintain facilities transferred to City under this Agreement, it will be the Customer's obligation to perform any final restoration at no cost to the City that may be required as a result of future City maintenance or repairs of the utility facilities. The City's restoration will generally consist of backfilling the trench and leveling the disturbed area with fill material to ground surface. In performing such maintenance or repair functions, the City shall use reasonable efforts to minimize damage to portions of the Site adjoining such required work and shall return and restore materials excavated during such activities and will compact any roadbeds excavated by the City in such activities. All final paving work shall be the responsibility of the Customer and must be approved by the City.

19. The Contractor(s) constructing the on-site and off-site improvements must be State Certified or hold a valid Certificate of Competency in underground utility construction.

20. Binding Agreement. The covenants and agreements contained herein shall be binding upon and inure to the benefit of the City and Customer and their respective successors, assigns and legal representatives. On-going maintenance, repair and reimbursement obligations may be conveyed by Customer to the homeowners association to be formed for the Site, upon which assignment Customer will be relieved of and from such obligations. The responsibility of such homeowners association for such on-going maintenance and reimbursement obligations shall be set forth in the declaration of covenants and restrictions and be recorded prior to the conveyance of any residence to a homeowner within the Site

21. Counterparts. This Agreement may be executed in multiple counterparts each of which shall be deemed to be an original and all of which together shall constitute one and the same document.

22. Governing Law. This Agreement shall be governed by the laws of the State of Florida. Venue for any action brought to enforce the provisions of this Agreement shall be in Lee County, Florida.

23. Severability. If any section, paragraph, term or provision of this Agreement is determined to be illegal, invalid, or unconstitutional, or in violation of any bond covenants of the City of Cape Coral, by any Court of competent jurisdiction, such determination shall have no effect on any other section, paragraph, term or provision hereof, all of which shall remain in full force and effect for the term of this non-exclusive license.

24. Statutory Liability. Nothing in this Agreement shall be construed or interpreted as a waiver of the maximum statutory liability of the City or Customer.

ACCEPTED BY:

PBV PINE ISLAND COMML LLC .

Phoenix Bay Ventures, LLC,
Manager of PBV Pine Island Comml LLC
by: Brian Lucas, Manager of Phoenix Bay Ventures, LLC

CITY OF CAPE CORAL

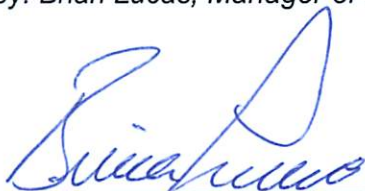
John Szerlag
City Manager

Sworn to and subscribed before me this _____ day of _____, 2017, personally appeared John Szerlag, who is personally known to me or who has produced _____ as identification, who being duly sworn, did depose and say that he/she executed the above Utilities Agreement, and that all of the Statements contained herein are true, correct and complete.

Notary Signature _____

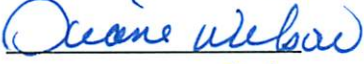
Notary Print Name _____

NOTARY STAMP



Brian Lucas
Manager


Sworn to and subscribed before me this 17th day of January, 2017, personally appeared Brian Lucas, who is personally known to me or who has produced _____ as identification, who being duly sworn, did depose and say that he/she executed the above Utilities Agreement, and that all of the Statements contained herein are true, correct and complete.

Notary Signature 
Notary Print Name Diane Wilson

NOTARY STAMP



LEGAL REVIEW:



Brian R. Bartos
Assistant City Attorney

EXHIBIT "A"

LEGAL DESCRIPTION

Legal Description of Sandoval Phase IV

Parcel in
Section 20, Township 44 South, Range 23 East
City of Cape Coral, Lee County, Florida

A tract or parcel of land lying in Section 20, Township 44 South, Range 23 East, City of Cape Coral, Lee County, Florida, said tract or parcel of land being more particularly described as follows:

COMMENCING at the North Quarter corner of said Section 20, run S01°06'33"E along the West line of the Northeast Quarter of said Section 20 for 150.86 feet to an intersection with the South right of way line of Pine Island Road (State Road No. 78) (F.D.O.T. right of way Section No. 12060-0000), as described in a deed recorded in Instrument 2012000018788, Lee County Records; thence run S89°36'38"E along said South right of way line for 100.03 feet to the Northeast corner of lands described in a deed recorded in Instrument 2012000017805, Lee County Records and the POINT OF BEGINNING.

From said Point of Beginning continue S89°36'38"E along said South right of way line for 736.15 feet to an intersection with the Easterly line of lands as described in a deed recorded in Official Records Book 3385, at Page 2016, Lee County Records; thence run S01°06'33"E along the Easterly line of said lands for 593.01 feet to the Northerly most corner of lands described in Instrument 2012000005443, Lee County Records; thence run S88°53'27"W along the North line of said lands for 750.89 feet to the Southeast corner of said lands described in a deed recorded in Instrument 2012000017805, Lee County Records; thence run along the Easterly line of said lands the following three (3) courses: N01°06'33"W for 439.64 feet; N15°35'15"E for 52.21 feet and N01°06'33"W for 122.62 feet to the POINT OF BEGINNING.

Containing 10.34 acres, more or less.

Bearings hereinabove mentioned are State Plane for the Florida West Zone (1983/NSRS 2007) and are based on the West line of the Northeast Quarter (NE 1/4) of Section 20 to bear S01°06'33"E.

Exhibit "B"
**Estimated Project Cost for On-Site and Off-Site
Improvements**

WATER IMPROVEMENTS

The Customer's current estimate of the total cost for the construction of the water improvements is \$198,762.00 (off-site \$36,242.00 & on-site \$162,550.00). On completion of the project, an Amendment to this Agreement shall be executed by the Customer. The Amendment shall include a Bill of Sale, Certificate of Contributory Assets, and Release of Lien by the General Contractor, all in a form acceptable to the City Attorney. Said Amendment to this Agreement shall be executed by Customer and submitted to City for acceptance prior to the City accepting the water facilities under this agreement and prior to Customer connecting to the City's system.

WASTEWATER IMPROVEMENTS

The Customer's current estimate of the total cost for the construction of sanitary sewer improvements is \$168,052.00 (off-site \$40,172.00 & on-site \$127,880.00). On completion of the project, an Amendment to this Agreement shall be executed by the Customer. The Amendment shall include a Bill of Sale, Certificate of Contributory Assets, and Release of Lien by the General Contractor, all in a form acceptable to the City Attorney. Said Amendment to this Agreement shall be executed by Customer and submitted to City for acceptance prior to the City accepting the wastewater facilities under this agreement and prior to Customer connecting to the City's system.

IRRIGATION IMPROVEMENTS

The Customer's current estimate of the total cost for the construction of irrigation improvements is \$81,535.00 (off-site \$32,735.00 & on-site \$48,800.00). On completion of the project, an Amendment to this Agreement shall be executed by the Customer. The Amendment shall include a Bill of Sale, Certificate of Contributory Assets, and Release of Lien by the General Contractor, all in a form acceptable to the City Attorney. Said Amendment to this Agreement shall be executed by Customer and submitted to City for acceptance prior to the City accepting the irrigation facilities under this agreement and prior to Customer connecting to the City's system.

Exhibit "C"
CIAC Calculation Method

Phase IV		
	Acres	Square Feet
Total Area as of 12/09/2016	10.36	450,410.4
ROW	1.19	51,836.4
Lake Area	0.89	38,768.4
Less (30% of the Common Area 154,638 x 70% = 108,246.6)	2.485	108,246.6
Phase IV Less Lakes, Common Area and ROW	7.97	251,559.0
Total Sq Ft for CIAC		251,559.0

	CIAC Rate per Utility Agreement	Extended Amount	Less Credit for Construction	Total CIAC	CIAC Per MF Bldg- 8 Bldgs total
Water	\$0.32 per sq ft	\$80,498.88	\$198,792.00	\$0	0
Wastewater	\$1.05 per sq ft	\$264,136.95	\$168,052.00	\$96,084.95	7@ \$12,010.62, 1@12,010.61
Irrigation	\$0.33 per sq ft	\$83,014.47	\$81,535.00	\$1479.47	3 @ \$184.94, 5@ \$184.93
Total CIAC for Phase 4		\$427,650.30	\$448,379.00	\$97,564.42	

Item Number:	F.(1)
Meeting Date:	1/23/2017
Item Type:	APPOINTMENTS TO BOARDS / COMMITTEES / COMMISSIONS

**AGENDA
REQUEST FORM**
CITY OF CAPE
CORAL



TITLE:

Municipal General Employees' Pension Trust Fund Board of Trustees - 1 Vacancy

REQUESTED ACTION:

Appoint

STRATEGIC PLAN INFO:

1. Will this action result in a Budget Amendment? No
2. Is this a Strategic Decision? No
If Yes, Priority Goals Supported are listed below.
If No, will it harm the intent or success of the Strategic Plan? No

PLANNING & ZONING/HEARING EXAMINER/STAFF RECOMMENDATIONS:

SUMMARY EXPLANATION AND BACKGROUND:

Vacancy: 1 vacancy (Category: Appointed by Council)

Expiration: Current Expiration due to term ending 10/31/2016. The new term will expire on 10/31/2020.

Applications: Two: Robert Keppler and Frank Perry

Advertisement: The vacancy was advertised on November 30, 2016 and December 16, 2016 in the Breeze and was posted on the City website and Facebook page.

LEGAL REVIEW:

EXHIBITS:

Board Sheet

Application: Robert Keppler

Application: Frank Perry

PREPARED BY:

Kimberly
Bruns

Division- Managerial

Department- City Clerk's
Department

SOURCE OF ADDITIONAL INFORMATION:

Elisabeth Delgado
Senior Recording Secretary
1-239-574-0415

ATTACHMENTS:

Description	Type
▣ Board Sheet	Backup Material
▣ Application: Robert Keppler	Backup Material
▣ Application: Frank Perry	Backup Material

CITY OF CAPE CORAL - BOARDS AND COMMISSIONS

MUNICIPAL GENERAL EMPLOYEES PENSION TRUST FUND BOARD OF TRUSTEES

BOARD INFO	MEMBERS	QUAL.	INITIAL APPOINT	LAST REAPPOINT	TERM EXPIRES
<p>Re-established by Ordinance 50-00 Revised by Ordinances (after 50-00): 30-01; 87-01; 92-01; 121-02; 52-03;103-03; 123-03; 58-05, 02-07, 114-07, 68-08,12-09, 61-10</p> <p>Establish and maintain the policies and procedures for investing pension funds. They review income summaries to assure investments are obtaining maximum income with minimal risk. They are ever vigilant of ways to provide enhanced benefits for City employees. Their goal is to ensure a healthy pension fund that will provide retirement benefits to all present and future City retirees.</p> <p><u>Membership shall be composed of the following:</u> Two (2) Residents appointed by Council * Two (2) general employees elected by a majority of the General Employees in the system. One (1) Member shall be chosen by the other four Trustees and approved by Council</p> <p>Financial Disclosure Required: Yes Trustees shall elect a Chairman and Secretary</p> <p>Board Attorney: Lee Dehner, Esq. 941-377-2200</p> <p>Plan Administrator: Pension Resource Center Nick Scheiss 561-624-3277 x 816</p>	<p>Alisa Callahan 3930 SE 18th Place Cape Coral, FL 33904</p> <p>239 549-2888</p>	<p>appointed by Council</p>	8/18/2014	10/26/2015	10/31/2019
	<p>Vacant exempt</p>	<p>appointed by Council</p>			10/31/2020
	<p>Chair Brian Fenske PO Box 150027 Cape Coral, FL 33915-0027 574-0873</p>	<p>elected by majority of General Employees in the system</p>	11/1/2005	10/1/2007	10/31/2019
	<p>Secretary Mike Ilcyszyn PO Box 150027 Cape Coral, FL 33915-0027 574-0457</p>	<p>elected by majority of General Employees in the system</p>	10/8/2004	10/17/2016	10/31/2020
	<p>Sam Mazzotti 12621 Apopka Ct North Fort Myers, FL 33903 997-6811 (H) 772-7575 (W)</p>	<p>chosen by other 4 Trustees & approved by Council</p>	5/19/1997	10/26/2015	10/31/2019

Updated 1/9/2017

C:\Program Files (x86)\neevia.com\docConverterPro\temp\NVDC\53694414-DA28-4B6E-B5E1-1F2FB341357E\Cape Coral.5085.1.Board_Sheet_-_General_FY2017.xlsx

**CITY OF CAPE CORAL
APPOINTMENT INFORMATION FORM**

DEC 15 2016

CITY OF CAPE CORAL
CLERK'S OFFICE

This Appointment Information Form, when completed, signed and filed with the City Clerk's Office, is a PUBLIC RECORD under Chapter 119, Florida Statutes, and, therefore, is open to public inspection by any person.

YOU ARE RESPONSIBLE TO KEEP THE INFORMATION ON THIS FORM CURRENT. APPLICATIONS WILL BE RETAINED IN THE CLERK'S OFFICE IN ACCORDANCE WITH STATE RECORDS RETENTION LAWS.

Please Type, if possible (or print clearly)

Date: 12/14/2016

Name: Keppler Robert R.
(Last) (First) (Middle)

E-mail address: rkeppler.mech701@gmail.com

Address: (H) 527 NW 36th Place Cape Coral FL Zip Code 33993
(O) _____ Zip Code _____

Phone: (H) 708 267 1293 (O) _____ (C) _____

Occupation: Retired Union Official

Employer: Automobile Mechanics Union Position: Director How Long: 24 years
Local 701

Education: Highest education level achieved and institutions attended:

Name & Location	Dates Attended	Degrees Earned
<u>East Leyden High School</u>	<u>1970 - 1974</u>	

Have you ever held a professional or business license or certificate?

Yes _____ No X

If "Yes", please provide the title, issue date and issuing authority.

License/Certificate Title	Issue Date	Issuing Authority

Board(s) /Commission(s) for which you are applying:

Municipal General Employees Pension Trust Fund
Trustee

1. Are you a U.S. Citizen? Yes X No _____

2. Are you a Cape Coral Resident? Yes X No _____

3. Are you currently serving on a City Board(s)? Yes _____ No X

If yes, which Board(s) and since when?

4. Have you ever served on a City Board(s)? Yes _____ No X

If yes, which Board(s) and when?

5. Are you currently serving on a Board, Authority, or Commission for another governmental agency?

Yes _____ No X If yes, what Board, etc. and since when?

Work Experience:

14 years as a trustee, the last 7 years as the Chairman
for the Automobile Mechanics Local 701 Welfare and Pension
Funds. Pension Fund Assets 850 million Welfare Assets 150 million

Community Involvement:

Member of the Northwest Neighborhood Association (NWNNA)
Member of the Loyal Order of Moose
Member of the Reel Anglers Fishing Club

Interests/Activities:

Classic cars fishing travel

Why do you desire to serve on this/these Board(s)?

Have always taken interest in employee benefits and can bring
many years of experience as a Trustee.

How did you learn about the vacancy? ☒ Cape Coral Website ___ Newspaper ___ Facebook ___ Word of Mouth

A resume or separate sheet with additional information may be included.

Florida law requires that members of certain Boards file a financial disclosure form. Would you be willing to file a financial disclosure form? Yes ☒ No ___

The City of Cape Coral Code of Ordinances, Section 2-60 has a limitation on offices held; however, this can be waived by a two-thirds (2/3) vote of City Council. If you are already serving on a Board, Authority, or Commission for the City of Cape Coral or for another governmental agency, you would have to be approved by a two-thirds (2/3) vote.

The City of Cape Coral Code of Ordinances, Section 2-57 states that an applicant for membership on a board, committee, or commission or a sitting member of those bodies shall not have any delinquent accounts with the City of Cape Coral at the time of appointment.

I understand the responsibilities associated with being a Board member, and I have adequate time to serve on the above Board(s).

Robert R. Kepph
Signature

12/14/2016
Date

If you have any questions, please call the office of the City Clerk at (239) 574-0411. Return this form to:

City of Cape Coral, City Clerk's Office, P.O. Box 150027, Cape Coral, Florida 33915-0027

FOR OFFICIAL USE ONLY

Interviewed: Date: _____

Yes ___ No ___

Council Action: Date: _____

**CITY OF CAPE CORAL
APPOINTMENT INFORMATION FORM**

RECEIVED

DEC 28 2016

This Appointment Information Form, when completed, signed and filed with the City Clerk's Office, is a PUBLIC RECORD under Chapter 119, Florida Statutes, and, therefore, is open to public inspection by any person.

YOU ARE RESPONSIBLE TO KEEP THE INFORMATION ON THIS FORM CURRENT. APPLICATIONS WILL BE RETAINED IN THE CLERK'S OFFICE IN ACCORDANCE WITH STATE RECORDS RETENTION LAWS.

Please Type, if possible (or print clearly)

Date: 27 DEC 2016

Name: PERRY FRANK C
(Last) (First) (Middle)

E-mail address: FCPerry45@HOTMAIL.COM

Address: (H) 2278 S.E. 28th STREET Zip Code 33904
(O) _____ Zip Code _____

Phone: (H) 239-458-7733 (O) _____ (C) _____

Occupation: EDUCATOR - RETIRED

Employer: WARREN CONSOLIDATED SCHOOLS Position: TEACHER How Long: 25 YEARS
WARREN, MICHIGAN

Education: Highest education level achieved and institutions attended:

Name & Location	Dates Attended	Degrees Earned
<u>WAYNE STATE U. DETROIT, MI.</u>	<u>1966-68</u>	<u>BA - EDUCATION</u>
<u>WAYNE STATE U DETROIT, MI.</u>	<u>1968-72</u>	<u>MA - COUNSELING</u>
<u>OAKLAND UNIVERSITY, MI.</u>		<u>POST GRADUATE</u>

Have you ever held a professional or business license or certificate? Yes _____ No _____

If "Yes", please provide the title, issue date and issuing authority.

License/Certificate Title	Issue Date	Issuing Authority
<u>MICH TEACHING CERTIFICATE 1968</u>		<u>STATE OF MICH.</u>

Board(s) /Commission(s) for which you are applying:

MUNICIPAL GENERAL EMPLOYEES' PENSION TRUST
FUND - BOARD OF TRUSTEES

1. Are you a U.S. Citizen? Yes ☒ No _____

2. Are you a Cape Coral Resident? Yes ☒ No _____

3. Are you currently serving on a City Board(s)? Yes _____ No ☒

If yes, which Board(s) and since when?

4. Have you ever served on a City Board(s)? (NOT CAPE CORAL) Yes _____ No ☒

If yes, which Board(s) and when?

BOARD OF ZONING APPEALS - STERLING HGTS, MICH. (APPROX. 1974)

5. Are you currently serving on a Board, Authority, or Commission for another governmental agency?

Yes _____ No ☒ If yes, what Board, etc. and since when?

Work Experience:

CHRYSLER CORP. - DET MICH - 5 YEARS
 MT. CLEMENS PUBLIC SCHOOLS - 2 YEARS (MICH)
 WARREN CONSOLIDATED SCHOOLS - 25 YEARS
 LEE COUNTY SCHOOLS - 5 YEARS

Community Involvement:

LEE COUNTY HABITAT FOR HUMANITY - 2 YEARS
 LEE COUNTY - GUARDIAN AD LITEM - 3 YEARS
 CAPE CORAL CIVIC ASSOCIATION - 10 YEARS

Interests/Activities:

- CITY GOVERNMENT
 - INTEREST IN LOCAL REAL ESTATE

Why do you desire to serve on this/these Board(s)?

TO SERVE THE CITY.

How did you learn about the vacancy? ☐ Cape Coral Website ☒ Newspaper ☐ Facebook ☐ Word of Mouth


A resume or separate sheet with additional information may be included.

Florida law requires that members of certain Boards file a financial disclosure form. Would you be willing to file a financial disclosure form? Yes ☒ No ☐

The City of Cape Coral Code of Ordinances, Section 2-60 has a limitation on offices held; however, this can be waived by a two-thirds (2/3) vote of City Council. If you are already serving on a Board, Authority, or Commission for the City of Cape Coral or for another governmental agency, you would have to be approved by a two-thirds (2/3) vote.

The City of Cape Coral Code of Ordinances, Section 2-57 states that an applicant for membership on a board, committee, or commission or a sitting member of those bodies shall not have any delinquent accounts with the City of Cape Coral at the time of appointment.

I understand the responsibilities associated with being a Board member, and I have adequate time to serve on the above Board(s).


 Signature

12 DEC 2016
 Date

If you have any questions, please call the office of the City Clerk at (239) 574-0411. Return this form to:

City of Cape Coral, City Clerk's Office, P.O. Box 150027, Cape Coral, Florida 33915-0027

FOR OFFICIAL USE ONLY

Interviewed: Date: _____

Yes ☐ No ☐

Council Action: Date: _____

Item Number:	A.(1)
Meeting Date:	1/23/2017
Item Type:	ORDINANCES/RESOLUTIONS - Public Hearings

**AGENDA
REQUEST FORM
CITY OF CAPE
CORAL**



TITLE:

Ordinance 4-17 Public Hearing [This item was advanced by Councilmember Cosden]

REQUESTED ACTION:

Approve or Deny

STRATEGIC PLAN INFO:

1. Will this action result in a Budget Amendment? No
2. Is this a Strategic Decision? Yes
 - If Yes, Priority Goals Supported are listed below.
 - If No, will it harm the intent or success of the Strategic Plan? No

ELEMENT D: IMPROVE THE CITY'S IMAGE WITH THE PURPOSE OF BUILDING LASTING RELATIONSHIPS WITH OUR RESIDENTS AND VALUABLE PARTNERSHIPS WITH OTHER ORGANIZATIONS, AND CONTINUALLY PROVIDE A WELL-BALANCED AND POSITIVE WORKPLACE FOR OUR INTERNAL STAKEHOLDERS.

PLANNING & ZONING/HEARING EXAMINER/STAFF RECOMMENDATIONS:

SUMMARY EXPLANATION AND BACKGROUND:

The ordinance amends the Code of Ordinances, Chapter 2, Administration, Article III, Personnel Rules and Regulations, to prohibit discrimination on the basis of sexual orientation, gender identity, and gender expression.

LEGAL REVIEW:

Dolores D. Menendez, City Attorney

EXHIBITS:

Ordinance 4-17
Memo from Councilmember Cosden

PREPARED BY:

Division- Department- City
Attorney

SOURCE OF ADDITIONAL INFORMATION:

ATTACHMENTS:

Description	Type
▣ Ordinance 4-17	Ordinance
▣ Memo from Councilmember Cosden	Backup Material

ORDINANCE 4 - 17

AN ORDINANCE AMENDING THE CITY OF CAPE CORAL CODE OF ORDINANCES, CHAPTER 2, ADMINISTRATION, ARTICLE III, PERSONNEL RULES AND REGULATIONS, DIVISION 1, GENERAL PROVISIONS, SECTION 2-25.4, DEFINITIONS, DIVISION 2, EMPLOYMENT POLICIES, SECTIONS 2-26.1, EQUAL EMPLOYMENT, AND SECTION 2-26.2, PROHIBITION OF DISCRIMINATION, TO PROHIBIT DISCRIMINATION ON THE BASIS OF SEXUAL ORIENTATION, AND GENDER IDENTITY AND EXPRESSION; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS the City Council has determined that discrimination against certain classes of persons is detrimental to the public health, welfare and safety of its residents; and

WHEREAS, the City Council desires to prohibit discrimination in city employment decisions based on sexual orientation, and gender identity and expression.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CAPE CORAL, AS FOLLOWS:

SECTION 1. The City of Cape Coral Code of Ordinances, Chapter 2, Article III, is hereby amended as follows:

ARTICLE III: PERSONNEL RULES AND REGULATIONS

DIVISION 1. GENERAL PROVISIONS

§ 2-25.4 Definitions

For the purpose of this article, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

...

GENDER EXPRESSION shall mean all of the external characteristics and behaviors that are socially defined as either masculine or feminine, such as dress, grooming, mannerisms, speech patterns and social interactions. Social or cultural norms can vary widely and some characteristics that may be accepted as masculine, feminine or neutral in one culture may not be assessed similarly in another.

GENDER IDENTITY shall mean an individual's innate, deeply felt psychological identification as a man, woman or some other gender, which may or may not correspond to the sex assigned to them at birth (e.g., the sex listed on their birth certificate).

...

SEXUAL ORIENTATION shall mean an individual's actual or perceived heterosexuality, homosexuality, or bisexuality.

...

DIVISION 2. EMPLOYMENT POLICIES

§ 2-26.1 Equal employment.

The city is an equal opportunity employer. The city shall assure fair and equal treatment of its employees regardless of race, religion, national origin, color, sex, age, political affiliation, gender identity, gender expression, sexual orientation, or disability.

§ 2-26.2 Prohibition of discrimination.

Discrimination against any person in recruitment, examination, appointment, training, promotion, retention, or any other personnel action because of race, religion, national origin, color, sex, age,

political affiliation, gender identity, gender expression, sexual orientation, or disability is prohibited. The City Manager shall provide for an alternate reporting procedure for sexual harassment complaints.

...

SECTION 2. Severability. In the event that any portion or Section of this ordinance is determined to be invalid, illegal or unconstitutional by a court of competent jurisdiction, such decision shall in no manner affect the remaining portions or Sections of this ordinance which shall remain in full force and effect.

SECTION 3. Effective Date. This ordinance shall become effective immediately after its adoption by the Cape Coral City Council.

ADOPTED BY THE COUNCIL OF THE CITY OF CAPE CORAL AT ITS REGULAR SESSION THIS _____ DAY OF _____, 2017.

MARNI L. SAWICKI, MAYOR

VOTE OF MAYOR AND COUNCILMEMBERS:

SAWICKI _____
BURCH _____
CARIOSCIA _____
STOUT _____

LEON _____
ERBRICK _____
WILLIAMS _____
COSDEN _____

ATTESTED TO AND FILED IN MY OFFICE THIS _____ DAY OF _____, 2017.

REBECCA VAN DEUTEKOM
CITY CLERK

APPROVED AS TO FORM:


DOLORES D. MENENDEZ

CITY ATTORNEY

ord/City Employment-Gender Identity&Expression

**CITY OF CAPE CORAL
MAYOR AND COUNCIL OFFICE**

MEMORANDUM

TO: Mayor and Council

FROM: Jessica Cosden, Councilmember, District 7

DATE: January 18, 2017

SUBJECT: Ordinance 4-17

In reference to proposed Ordinance 4-17, the City Attorney gave a brief explanation of the reasoning during introduction at the January 9, 2017, Regular Council Meeting. I would like to echo the City Attorney's statements in preparation for any questions other Councilmembers may have, or may receive from constituents regarding this ordinance.

Many Americans make the assumption that LGBTQ (lesbian, gay, bisexual, and transgender and "questioning," "queer"), employees are expressly protected from discrimination under Title VII. While "sex" is a protected class, it does not equate to sexual orientation or gender identity. That leaves interpretation to the courts. Case law has paved the way for expanded definitions of sex discrimination; not every court ruling has interpreted sexual orientation or gender identity to fall into the category of "sex," but many have. As one of the City's largest employers, I believe that it is our duty to make this protection clear.

JC/gp

Item Number:	A.(2)
Meeting Date:	1/23/2017
Item Type:	ORDINANCES/RESOLUTIONS - Public Hearings

**AGENDA
REQUEST FORM**
CITY OF CAPE
CORAL



TITLE:

Ordinance 5-17 (PDP 16-0001)*

REQUESTED ACTION:

Approve or Deny

STRATEGIC PLAN INFO:

1. Will this action result in a Budget Amendment? No
2. Is this a Strategic Decision? No
 - If Yes, Priority Goals Supported are listed below.
 - If No, will it harm the intent or success of the Strategic Plan? No

PLANNING & ZONING/HEARING EXAMINER/STAFF RECOMMENDATIONS:

Hearing Examiner Recommendation: The Hearing Examiner recommended approval with all staff conditions following a public hearing held on November 1, 2016

Staff Recommendation: Staff recommends approval of this project.

SUMMARY EXPLANATION AND BACKGROUND:

An ordinance approving a Planned Development Project entitled "Circle K", approving rezoning the subject property from Professional Office (P-1) to Pedestrian Commercial (C-1); approving a special exception to allow an Automotive Service Station, Limited use in a Pedestrian Commercial (C-1) zone; granting a deviation for relief from a setback requirement; granting a deviation for relief from the minimum required separation distance for a driveway on a minor arterial street; property is located at 819 SE 26th Street.

LEGAL REVIEW:

Brian R. Bartos, Assistant City Attorney

EXHIBITS:

Memo - Landscaping for the Circle K. Project

Ordinance 5-17

Staff Presentation

Maps of Convenience Stores, convenience stores with gas pumps, and Dollar stores

Back-up from Hearing Examiner Hearing on November 1, 2016
Additional Back up Received from Hearing Examiner Hearing dated November 1, 2016
Case #PDP 16-0001 Recording Order #2-2016
Affidavit - Revised
Ad Proof
Sign Pictures

PREPARED BY:

Division- Department- City
 Attorney

SOURCE OF ADDITIONAL INFORMATION:

Mike Struve, Planning Team Coordinator

ATTACHMENTS:

Description	Type
▣ Landscaping for the Circle K Project	Backup Material
▣ Ordinance 5-17	Ordinance
▣ Staff Presentation	Backup Material
▣ Maps of Convenience Stores, convenience stores with gas pumps, and Dollar stores	Backup Material
▣ Back-Up from Hearing Examiner Hearing on November 1, 2016	Backup Material
▣ Additional Back up Received from Hearing Examiner Hearing dated November 1, 2016	Backup Material
▣ Case #PDP 16-0001 Recommendation Order #2-2016	Backup Material
▣ Revised Affidavit	Backup Material
▣ Ad Proof	Backup Material
▣ Sign Pictures	Backup Material

Make part of
Agenda packet.

CITY MANAGER

MEMORANDUM

CITY OF CAPE CORAL
DEPARTMENT OF COMMUNITY DEVELOPMENT

2017 JAN 18 PM 2:40

TO: John Szerlag, City Manager

THRU: Robert H. Pederson, Planning Manager *RHP*

FROM: Mike Struve, Planning Team Coordinator *MS*

DATE: January 17, 2017

SUBJECT: Landscaping for the Circle K Project (ORD 5-17)

This memo is to provide more detailed information on the landscaping for the proposed Circle K project at the southwest corner of Veterans Drive and County Club Boulevard.

This site address is 819 SE 26th Street; adjacent to Country Club Boulevard. Country Club Boulevard is a four-lane divided arterial street with a 100-foot right-of-way (ROW) separating this site from single-family homes to the east.

Landscaping

A comparison of the City landscaping standards compared to the enhanced standards recommended by staff and the Hearing Examiner for the eastern and southern property lines of the site are as follows:

	Code Required		Proposed	
	Number	Size (height)	Number	Size (height)
Eastern Property line				
Canopy Trees	8	10 ft.	12	14 ft.
Accent Trees	0	8 ft.	12	10 ft.
Shrubs	74	24 in.	74	32 in.
Southern Property Line				
Canopy Trees	9	10 ft.	13	14 ft.
Accent Trees	0	8 ft.	13	10 ft.
Shrubs	84	24 in.	84	32 in.

As this table shows, 4 additional canopy trees and 12 additional accent trees are proposed for the buffer adjacent to Country Club Boulevard. Seventy-four (74) shrubs will be planted at a height of 32" at planting (vs, the code standard of 24" at planting). Please note that shrubs on commercial sites must be maintained at a minimum height of 36 inches at maturity. Enhanced landscaping will also be installed in the buffer along

the south property line. The Hearing Examiner concurred with the staff recommendation for this enhanced landscaping and the applicant has not objected.

In addition to landscaping on the Circle K site, we note there is considerable landscaping and fencing on both single-family lots directly to the east.

There are also 6 accent trees and 2 mature palms in the Country Club Blvd. median between the site and the nearby residences (photos attached).

With respect to the site design, we note that:

- Parking is on the western side of the site away from single-family homes.
- The distance between the most eastern drive isle on the site and the nearest single-family home is ± 110 ft.

We believe that all of these factors should minimize any light trespass from the site caused by headlights.

Should you have any additional questions regarding landscaping on this site, please contact us.

RHP/ms (P:\Planning_Division_2009\Mike\PDP\Circle K\Circle K Landscape Memo

C: Vince Cautero, Community Development Director
Dolores Menendez, City Attorney
Brian Bartos, Assistant City Attorney









Image capture: Feb 2015 © 2017 Google

Cape Coral, Florida

Street View - Feb 2015

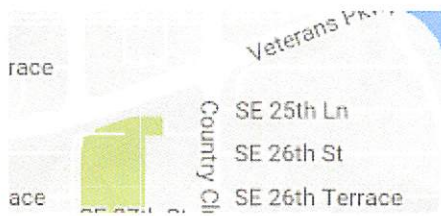
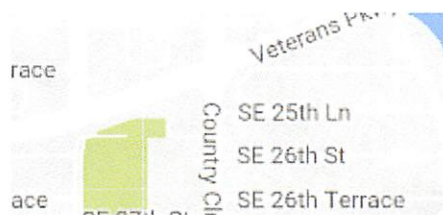




Image capture: Feb 2015 © 2017 Google

Cape Coral, Florida

Street View - Feb 2015



ORDINANCE 5 - 17

AN ORDINANCE APPROVING A PLANNED DEVELOPMENT PROJECT IN THE CITY OF CAPE CORAL, FLORIDA ENTITLED "CIRCLE K" FOR CERTAIN PROPERTY DESCRIBED AS A PARCEL OF LAND SITUATED IN LOTS 12 THROUGH LOT 23, BLOCK 821, CAPE CORAL SUBDIVISION, UNIT 21, AND A PORTION OF FORMER COUNTY ROAD NO. 884 (VETERANS PARKWAY) RIGHT OF WAY, AND A PORTION OF VACATED SE 8TH PLACE RIGHT OF WAY, AS MORE PARTICULARLY DESCRIBED HEREIN; PROPERTY LOCATED AT 819 SE 26TH STREET; REZONING THE SUBJECT PROPERTY FROM PROFESSIONAL OFFICE (P-1) TO THE PEDESTRIAN COMMERCIAL (C-1) ZONE; GRANTING A SPECIAL EXCEPTION TO ALLOW AN AUTOMOTIVE SERVICE STATION, LIMITED USE IN A PEDESTRIAN COMMERCIAL (C-1) ZONE; GRANTING A DEVIATION FROM THE CITY OF CAPE CORAL LAND USE AND DEVELOPMENT REGULATIONS, SECTION 3.9, FOR RELIEF FROM A SETBACK REQUIREMENT; GRANTING A DEVIATION FROM SHEET D-5 OF THE ENGINEERING AND DESIGN STANDARDS, THAT REQUIRES A 150-FOOT MINIMUM SEPARATION DISTANCE BETWEEN A DRIVEWAY ON A MINOR ARTERIAL STREET AND THE PROPERTY LINE LOCATED ALONG A LOCAL ROAD TO ALLOW THE PROJECT TO DEVELOP WITH A SEPARATION DISTANCE OF 45 FEET; GRANTING DEVELOPMENT PLAN APPROVAL PURSUANT TO SECTION 4.2 OF THE CITY OF CAPE CORAL LAND USE AND DEVELOPMENT REGULATIONS; PROVIDING FOR FINDINGS OF FACT AND CONCLUSIONS OF LAW; PROVIDING FOR ACTION ON REQUEST AND CONDITIONS OF APPROVAL; PROVIDING FOR LEGAL EFFECT AND LIMITATIONS OF THIS PDP DEVELOPMENT ORDER AND ADMINISTRATIVE REQUIREMENTS; PROVIDING SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, an application from Estate of James E. Kinsey, Jr., has been received requesting approval of a Planned Development Project (PDP) for "Circle K"; requesting a rezoning, special exception, deviations, and development plan approval; and

WHEREAS, the request has been reviewed by the Hearing Examiner; and

WHEREAS, the City Council has considered the recommendations of the Hearing Examiner.

NOW, THEREFORE, THE CITY OF CAPE CORAL, FLORIDA, HEREBY ORDAINS PURSUANT TO THE LAWS OF FLORIDA, AND OTHER APPLICABLE LAWS, THIS ORDINANCE:

SECTION I. PDP APPROVAL, DEVIATIONS, SPECIAL EXCEPTION, REZONING, AND DEVELOPMENT PLAN APPROVAL.

Having reviewed the application requesting approval of a Planned Development Project for "Circle K" PDP, requesting rezoning the subject property from the Professional Office (P-1) to the Pedestrian Commercial (C-1) Zone; requesting a special exception to allow an Automotive Service Station, Limited use in a Pedestrian Commercial (C-1) zone, requesting a deviation from the City of Cape Coral Land Use and Development Regulations, Section 3.9, to allow a wall along the north property line to extend in front of the convenience store and the fuel island canopy; requesting a deviation from the City of Cape Coral Engineering and Design Standards, Sheet D-5, that require a 150 foot minimum separation distance between a driveway on a local arterial street and a property line located along a local street at its intersection with the minor arterial street to allow a separation distance of 45 feet between the driveway on Country Club Boulevard and the property line located along SE 26th Street; and having considered the recommendations of the Hearing Examiner, the City Council of the City of Cape Coral, Florida, does hereby grant the aforesaid PDP approval in accordance with plan set, titled "Circle K", Sheets 1-2, dated September 29, 2015, and also bearing a revision date of July 11, 2016, prepared by Florida Engineering and Environmental Services, Inc.; "Boundary and Topographic Survey", dated September 21, 2015, prepared by AFN Consulting, Inc.; "Building Exterior Elevations", Sheet A-2, dated December 10, 2015, prepared by GreenbergFarrow; and "Fuel Canopy Elevations", Sheet CA-6, dated March 8, 2016, prepared by GreenbergFarrow, all attached hereto as Composite Exhibit "A," for purposes of development plan approval pursuant to Section 4.2

of the City of Cape Coral Land Use and Development Regulations from the date of adoption of this ordinance. Approval of the PDP shall be subject to the terms and conditions set forth below.

SECTION II. FINDING OF FACT/CONCLUSION OF LAW

- A. The "Circle K" development is a commercial Planned Development Project (PDP). This development consists of 1.36 acres of land located at 819 SE 26th Street. The proposed development will have an automotive service station limited that has a convenience store with an area of 4,968 square feet square feet, and a maximum of eight gas pumps. Alternatively, the project may also be developed with a convenience store only or with the convenience store and any number of gas pumps numbering eight or fewer. For the purposes of this development order, a gas pump shall be considered a single structure that contains two fueling stations that can be utilized to dispense fuel to two motor vehicles at the same time. The development will have a build out of ten years from the date of the adoption of this ordinance.

- B. The name(s) of the legal and equitable owner(s) are Estate of James E. Kinsey, Jr.

- C. The legal description of the property is as follows:

A parcel of land situated in Lots 12 through Lot 23, Block 821, Cape Coral Subdivision, Unit 21, as recorded in Plat Book 13 at Pages 149 through 173, of the Public Records of Lee County, Florida, and a portion of former County Road No. 884 (Veterans Parkway) right of way, and a portion of vacated SE 8th Place right of way, said parcel being more particularly described as follows:

Beginning at the northeast corner of said Lot 22, Block 821, Cape Coral Subdivision, Unit 21; Thence S00°00'11"W for 192.01 feet along the westerly right of way of Country Club Boulevard (100.00 feet wide) to the point of curvature of a curve to the right having a radius of 25.00 feet, a central angle of 89°58'20"; Thence southerly, southwesterly, and westerly along the arc of said curve for 39.26 feet to the point of tangency and a point on the northerly right of way line of SE 26th Street (60.00 feet wide); Thence S89°58'31"W for 250.01 feet along said northerly right of way line to the centerline of SE 8th Place (50.00 feet wide); Thence N00°00'11"E for 97.00 feet along said centerline; Thence N89°58'31"E for 25.00 feet to an intersection with the easterly right of way line of SE 8th Place; Thence N00°00'11"E for 52.00 feet along the westerly line of said Lots 14 and 15, and the easterly right of way line of SE 8th Place; Thence N45°00'11"E for 138.66 feet; Thence N89°58'31"E for 151.95 feet to the westerly right of way line of Country Club Boulevard; Thence S00°00'11"W for 30.00 feet along said westerly right of way line to the Point of Beginning.

Bearings mentioned herein are based on the plat of Cape Coral Subdivision, Unit 21, as recorded in Plat Book 13, at Pages 149 through 173, of the Public Records of Lee County, Florida.

- D. That the City of Cape Coral Official Zoning District Map of all of the property within the limits of the City of Cape Coral is hereby amended with respect to real property described in Subsection C. above by rezoning said property from PROFESSIONAL OFFICE (P-1) to PEDESTRIAN COMMERCIAL (C-1) District, and the City administrative office shall amend the City of Cape Coral Official Zoning District Map to reflect this zoning change.

The amendments to the City of Cape Coral Official Zoning District Map as prescribed herein are consistent with the City of Cape Coral Comprehensive Plan.

- E. The "Circle K" PDP subject parcel has 1.36 acres zoned Pedestrian Commercial (C-1), pursuant to the authority of Chapter 166, Florida Statutes, and the Land Use and Development Regulations, Cape Coral, Florida, as same may hereafter be amended. The subject property has approximately 1.36 acres with a Future Land Use designation of Pedestrian Commercial (1.36).
- F. All existing and future structures and uses, population density, building intensity, and building height shall conform to the respective provisions of the Pedestrian Commercial (C-1) zoning district of the Land Use and Development Regulations, Cape Coral, Florida, as same may hereafter be amended. In addition, the development shall obtain all local development permits from the City of Cape Coral, Florida, and other governmental jurisdictions. Failure of this agreement to address a particular permit, condition, term, restriction, or zoning regulation

shall not relieve the Developer of the necessity of complying with the law governing said permitting requirements, conditions, terms, restrictions, or zoning regulations.

- G. The proposed development does not unreasonably interfere with the achievement of the objectives of the adopted State Land Development Plan applicable to the area.
- H. The "Circle K" PDP, as noted, is consistent with the adopted City of Cape Coral Comprehensive Plan, and the City of Cape Coral Land Use and Development Regulations.
- I. The term Developer for purposes of this development order shall mean and refer to Estate of James E. Kinsey, Jr., its successors in interest, lessees, and/or assigns.

SECTION III. ACTION ON REQUEST AND CONDITIONS OF APPROVAL

NOW, THEREFORE, be it ordained by the City Council of Cape Coral, Florida, in public meeting duly advertised, constituted and assembled, that the Planned Development Project application for development approval submitted by Estate of James E. Kinsey, Jr. , is hereby ordained approved, subject to the following conditions, restrictions, and limitations deemed necessary for the public health, safety, and welfare.

A. DRAINAGE/WATER QUALITY

- 1. At completion of construction, as required by the conditions imposed by SFWMD and prior to the issuance of a Certificate of Occupancy, the Developer will be required to provide certification by the Engineer of Record that all stormwater infrastructure and facilities have been constructed in accordance with the design approved by SFWMD and the City of Cape Coral, and should consist of the wording "Construction Compliance Certification".
- 2. Developer shall convey to the City the component parts of the stormwater infrastructure constructed by the Developer and being transferred to the City by bill of sale in a form satisfactory to the City Attorney, together with such other evidence as may be required by the City that the stormwater infrastructure is free of all liens and encumbrances.

B. WETLANDS, VEGETATION, AND WILDLIFE

- 1. Ongoing control and removal of nuisance exotic plants onsite is required, including but not limited to, *Casuarina* sp. (Australian Pine), *Melaleuca quinquenervia* (melaleuca), *and schinus terebinthifolius* (Brazilian Pepper), all Category I invasive exotic plants listed by the Florida Exotic Pest Plant Council.
- 2. All landscaping and screening required in the subject development by either this Development Order or the City Code of Ordinances or the City Land Use and Development Regulations shall be maintained in good condition throughout the life of this development.
- 3. The Developer shall comply with the State of Florida regulations pertaining to the protection of gopher tortoise burrows located on the site and a protective barrier composed of stakes, silt fence, and rope or other suitable materials shall be placed around all gopher tortoise burrows, including any that are discovered during the life of the project. This requirement shall be waived if the Developer provides the City with evidence of a funded permit prior to the issuance of any City of Cape Coral permit. The Developer shall seek a gopher tortoise relocation permit for some or all of the gopher tortoises that must be removed from the site, if such permit is available at the time of development. Only as a last resort shall the Developer seek a gopher tortoise take permit. Entombment of tortoise is strictly prohibited at all times, regardless of the type of permit procured by the applicant.
- 4. In the event all or a portion of the subject property is located within an Eagle Nest Management Zone, the developer shall comply with all City laws, regulations, and guidelines that are currently in effect or that may be hereafter adopted by the City concerning the protection and management of bald eagle nests including, but not limited to Chapter 23 of the City Code of Ordinances. No development shall occur

on any portion of the subject property that is within an Eagle Nest Management Zone except in accordance with a Bald Eagle Management Plan that has been approved by the City. Once an Eagle Management Plan has been approved by the City for all or a portion of the property, the Developer's ability to develop in accordance with such Plan shall not be affected by any amendment to the City's regulations concerning eagle nests, so long as no additional or "new" eagle nest need to be accommodated. In the event, however, that one or more eagle nests are hereafter established or determined to be active in locations that result in all or a portion of the subject property being located in a new or expanded Eagle Nest Management Zone, then no development shall occur in such new zone except in accordance with an Eagle Management Plan that has been approved by the City for such zone.

C. FIRE PROTECTION

1. Fire impact fees shall be paid as specified by City Ordinance.
2. The Developer shall review site development plans with the Cape Coral Fire Department to incorporate fire protection design recommendations into the project.

D. WATER CONSERVATION

1. The Developer shall incorporate the use of water conserving devices as required by state law (Section 553.14, Florida Statutes).
2. For the purpose of non-potable water conservation, the development should require, through the use of deed restriction, the utilization of Florida Yards and Neighborhoods (FYN) and other xeriscape principals, where feasible, in the design and installation of the project's landscaping. FYN materials and assistance are available through the Planning Division and Environmental Resources Division.
3. Irrigation will be accomplished in accordance with City Ordinance(s) or South Florida Water Management District mandate as applicable.

E. SOLID WASTE

1. The Developer and tenants of the project should investigate methods of reducing solid waste volume at the project.
2. The Developer and tenants of the project shall identify to the City, the presence of and the proper on-site handling and temporary storage procedures for hazardous waste that may be generated on-site, in accordance with local, regional, and state hazardous waste programs.
3. The Developer will require that an EPA/DEP approved holding storage tank be provided on-site along with the proper monitoring devices if a prospective user has the potential for producing toxic or industrial waste. These wastes shall be disposed of off-site by a company licensed to dispose of such wastes.
4. The Developer shall inform the waste hauler and disposer of the nature of any hazardous waste on the site, to determine if, and the extent of, any special precautions that may be necessary.
5. No solid waste disposal facilities shall be located on site.
6. The Developer will participate in recycling programs.
7. Solid waste disposal shall be provided through Lee County, Florida pursuant to Special Act, Chapter 85-447. Current and planned facilities have sufficient capacity to meet the demands of this development.

F. WASTEWATER MANAGEMENT

1. Wastewater (sewer) service is available to the site.

2. The Developer shall design, construct and install all improvements required by the City to connect to the City's wastewater system. Said design, construction, and installation shall be accomplished in accordance with prevailing City design criteria and shall be subject to City inspection and approval prior to acceptance.
3. Wastewater containing hazardous materials shall be segregated and handled in accordance with Florida Department of Environmental Protection (DEP) criteria. Wastewater entering the City system shall meet quality limitations as specified by City Ordinance(s).
4. Sewer impact fees, betterment fees, and/or all other applicable fees shall be paid as specified by City Ordinance(s).
5. The Developer shall connect to City wastewater facilities as specified by City Ordinance.
6. The Developer shall grant appropriate easements to City for utility service prior to issuance of a building permit. Prior to connection of this development to City utility facilities, the Developer shall convey to the City the component parts of the Wastewater system that were constructed by Developer by bill of sale in a form satisfactory to the City Attorney, together with such other evidence as may be required by the City that the utility system proposed to be transferred to the City is free of all liens and encumbrances.

G. WATER SERVICE

1. Water service is available to the site.
2. The Developer shall design, construct and install all improvements required by the City to connect to the City's water system. Said design, construction, and installation shall be accomplished in accordance with prevailing City design criteria and shall be subject to City inspection and approval prior to acceptance.
3. Water impact fees, betterment fees, and/or all other applicable fees shall be paid as specified by City Ordinances(s).
4. The Developer shall connect to City water facilities as specified by City Ordinance.
5. The Developer shall grant appropriate easements to City for utility service prior to issuance of a building permit. Prior to connection of this development to City utility facilities, the Developer shall convey to the City the component parts of the water system that were constructed by Developer by bill of sale in a form satisfactory to the City Attorney, together with such other evidence as may be required by the City that the utility system proposed to be transferred to the City is free of all liens and encumbrances.

H. IRRIGATION SERVICE

1. Irrigation service is available to the site. When service becomes available, Developer shall connect to the City's irrigation system as prescribed by Ordinance.
2. Developer shall connect to the City's irrigation system as prescribed by City Ordinance. The Developer shall design, construct, and install all improvements required by the City to connect to the City's irrigation system in accordance with prevailing City design criteria and shall be subject to City inspection and approval prior to acceptance.
3. Irrigation betterment fees and/or all other applicable fees shall be paid as specified by City Ordinance(s).
4. The Developer shall grant appropriate easements to the City for utility service prior to issuance of a building permit. Prior to connection of this development to City utility facilities, the Developer shall convey to the City the component parts of the irrigation system that were constructed by Developer by Bill of Sale in a form satisfactory to the City Attorney, together with such other evidence as may be required by the City that the utility system proposed to be transferred to the City is free of all liens and encumbrances.

I. AIR QUALITY

1. If any of the individual tract owners/developers create a complex source of pollution as defined by DEP rules, they shall apply directly to DEP for permitting.
2. Each individual tract development will be required to comply with all federal, state and local laws and codes governing air quality and emissions.

J. HISTORICAL/ARCHAEOLOGICAL

During the life of the project, if any historical or archaeological sites are uncovered, work in the vicinity shall cease until the proper authorities can be contacted and an evaluation of the site carried out.

K. TRANSPORTATION

1. The traffic impacts of this development do not degrade roadway and intersection level of service (LOS) below LOS standards adopted in the City of Cape Coral Comprehensive Plan.
2. The Developer shall provide the City of Cape Coral all appropriate Road Impact Fees at the time of application for each building permit.
3. Developer shall convey to the City the component parts of the transportation infrastructure constructed by the Developer and being transferred to the City on a form acceptable to the City Attorney, together with such other evidence as may be required by the City that the transportation infrastructure is free of all liens and encumbrances.
4. The following improvements in the City right-of-way shall be completed by the Developer and inspected by the City prior to the issuance of a certificate of occupancy (CO) for the development.

Required ROW Improvement	When Required	Responsible Party
Construct the south bound right turn lane on Country Club Boulevard as shown on Sheet 1 of 2, dated September 29, 2015, and also bearing a revision date of June 15, 2016, prepared by Florida Engineering and Environmental Services, Inc., appearing in Composite Exhibit "A".	Prior to CO	Developer
Increase the length of the existing north bound left turn on Country Club Boulevard at SE 26 th Street to provide a total turn lane length of 275 feet as shown on Sheet 1 of 2, dated September 29, 2015, and also bearing a revision date of June 15, 2016, prepared by Florida Engineering and Environmental Services, Inc., appearing in Composite Exhibit "A".	Prior to CO	Developer

L. GENERAL CONSIDERATIONS

1. Prior to issuance of a permit, the Developer shall enter into an agreement, in a form acceptable to the City Attorney, regarding obligations resulting from landscaping located in utility easements.
2. To minimize light trespass on surrounding properties and to reduce glare associated with on-site lighting, the following conditions are prescribed:
 - a. Lighting levels along the eastern property lines of Lots 20-23 shall not exceed 0.5 foot-candles. Lighting levels along the eastern property lines of Lots 18 and 19, and the southern property lines of Lots 17 and 18 shall not exceed 1.0 foot-candles. The Developer shall submit a lighting plan for staff review that demonstrates compliance with this requirement prior to site plan approval for the project.

- b. Lighting trespass and glare shall be limited to a reasonable level through the use of shielding and directional lighting methods. All free-standing lights on the site shall be aimed downward and away from the property lines.
 - c. Light fixtures mounted under the canopy shall be completely recessed into the canopy with flat lenses that are translucent and completely flush with the bottom surface of the canopy.
 - d. Lights shall not be mounted on the exterior sides of the gas canopy and the sides of the canopy shall not be illuminated.
3. The total area of an Electronic Message Center (EMC) or sign shall not exceed 24 square feet for the development. For the purposes of this development order, an EMC is any electrically changeable sign whose variable message or graphic presentation capability can be electronically programmed by computer from a remote location. Except for the 24 square feet of sign area allowed within this subsection for an EMC, signage that blinks, fluctuates, moves, or changes message, characters, or background is prohibited on the site.
4. Air vacuum equipment, if utilized on the site, shall be located north of the convenience store.
5. Any vending machines, automated teller machines (ATMs), or similar equipment or display items shall be placed inside the store or adjacent to the walkway in front of the store.
6. The outdoor storage of products and materials is prohibited. This provision, however, shall not apply to the propane storage rack shown on Sheet 1 of 2 prepared by Florida Engineering and Environmental Services, Inc., appearing in Composite Exhibit "A", or ice machines that are used solely to store ice.
7. Materials, finishes, and colors utilized for the convenience store and fuel canopy shall be consistent with those shown on the elevations for each structure produced by GreenbergFarrow appearing in Composite Exhibit "A." Modifications to either structure may be approved by the DCD Director or his designee provided the changes do not result in a diminution in aesthetic appeal or durability in either structure.
8. Deliveries to the site made by Class 7 and 8 Heavy Duty Trucks shall be limited to the hours beginning at 6:00 am and ending at 11:00 pm.
9. Landscaped buffers shall be installed along the east and south property lines in accordance with the minimum standards provided in the table below. Bald cypress and slash pine are prohibited along both property lines. Palms shall not be substituted for either canopy or accent trees. Areas of the project occupied by visibility triangles are exempt from these planting requirements.

Category of planting	Spacing	Minimum Size at time of planting
Shrubs	One shrub for every three linear feet of frontage	32 inches in height; 7 gallon container size
Accent Trees	One accent tree for every 20 feet of frontage	10 feet in height; caliper of 2 inches
Canopy Trees	One canopy tree for every 20 linear feet of frontage	14 feet in height; 3.5 caliper of 3.5 inches

10. The decorative wall along the northern property line shown on the Development Plan appearing in Composite Exhibit "A" shall be constructed of one or more of the following materials: concrete block coated with stucco, textured concrete block, stone, brick, or formed, decorative, or precast concrete.

M. CONCURRENCY

The "Circle K" PDP is concurrent for roads, sewer, water, drainage, solid waste, and parks based on the analysis of the proposed development and specific mitigation programs specified herein.

SECTION IV. LEGAL EFFECT AND LIMITATIONS OF THIS DEVELOPMENT ORDER, AND ADMINISTRATIVE REQUIREMENTS

- A. This Development Order shall constitute an ordinance of the City of Cape Coral, adopted by this Council in response to the Planned Development Project Application filed for the "Circle K" PDP.
- B. This Development Order shall be binding on the Developer.
- C. The terms and conditions set out in this document constitute a basis upon which the Developer and City may rely in future actions necessary to implement fully the final development contemplated by this Development Order.
- D. All conditions, restrictions, stipulations, and safeguards contained in this Development Order may be enforced by either party hereto by action at law or equity, and all costs of such proceedings, including reasonable attorney's fees, shall be paid by the defaulting party.
- E. Any references herein to any governmental agency shall be construed to mean to include any future instrumentality which may be created and designated as successor in interest to or which otherwise possesses any of the powers and duties of any referenced governmental agency in existence on the effective date of this Development Order.
- F. The approval granted by this Development Order is limited. Such approval shall not be construed to obviate the duty of the Developer to comply with all applicable local or state review and permitting procedures, except where otherwise specifically provided. Such approval shall also not obviate the duty of the Developer to comply with any City Ordinance or other regulations adopted after the effective date of this Development Order.
- G. Subsequent requests for local development permits shall not require further review, unless it is found by the City Council, after due notice and hearing, that one or more substantial deviation(s), or other changes to the approved development plans which create a reasonable likelihood of adverse impacts which were not evaluated in the review by the City have occurred. Substantial deviations include but are not limited to:
 - 1. Any change which requires a variance to code and above those specifically incorporated herein.
 - 2. An increase of more than five (5) percent in density, parking requirements, trip generation rates, water or sewer usage, or building square footage.
 - 3. An expiration of the period of effectiveness of this Development Order as herein provided.
 - 4. If development order conditions and applicant commitments incorporated within the Development Order to mitigate impacts are not carried out as indicated to the extent or in accordance with the Development Order, then this shall be presumed to be a substantial deviation from the Development Order.

Upon a finding that any of the above is present, the City Council may order a termination of all development activity until such time as a new PDP Application for Development Approval has been submitted, reviewed and approved, and all local approvals have been obtained.

- H. Substantial construction shall commence within two years from the date of project approval or within one year of the last permit approval from all appropriate regulatory bodies, whichever is less, unless otherwise approved by the City Council. Substantial construction shall mean that a valid building permit has been issued for construction of the main building or buildings. Failure to commence construction within the specified time period shall cause

the PDP approval to be null and void, except that the rezoning approved during the PDP approval process shall remain in full force and effect.

- I. The physical development authorized under this Development Order shall terminate in ten years from the date of adoption of this Development Order, unless an extension is approved by this Council. The Council may grant an extension if the project has been developing substantially in conformance with the original plans and approved conditions, and if no substantial adverse impacts not known to Cape Coral at the time of their review and approval, or arising due to the extension, have been identified. For purposes of determining when the buildout date has been exceeded, the time shall be tolled during the pendency of administrative and judicial proceedings relating to development permits. All conditions imposed on the subject development shall remain in full force and effect throughout the life of the development unless rescinded or amended by the City and shall not be affected by any termination of the authorization for physical development.
- J. The Director of the Cape Coral Department of Community Development or his/her designee, shall be the local official responsible for assuring compliance with this Development Order. Upon reasonable notice by the City and at all reasonable times, the Developer shall allow the City of Cape Coral, its agents, employees, and/or representatives, access to the project site for the purpose of assuring compliance with this Development Order.
- K. This Development Order shall be recorded with the Office of the Lee County Clerk of Court by the City of Cape Coral. The Developer shall be responsible for reimbursing the City for all recording fees within 30 days of being notified by the City that the Development Order has been recorded.

SECTION V. SEVERABILITY.

In the event that any portion or section of this Ordinance is determined to be invalid, illegal, or unconstitutional by a court of competent jurisdiction, such decision shall in no manner affect the remaining portions or sections of this Ordinance which shall remain in full force and effect.

SECTION VI. EFFECTIVE DATE.

This Ordinance shall take effect immediately upon its adoption by the Cape Coral City Council. Permits issued prior to or after the effective date of this Ordinance are obtained solely at the risk of the Developer.

ADOPTED BY THE COUNCIL OF THE CITY OF CAPE CORAL AT ITS REGULAR SESSION THIS _____ DAY OF _____, 2017.

MARNI L. SAWICKI, MAYOR

VOTE OF MAYOR AND COUNCILMEMBERS:

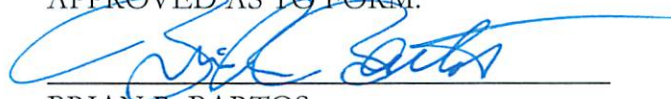
SAWICKI _____
BURCH _____
CARIOSCLA _____
STOUT _____

LEON _____
ERBRICK _____
WILLIAMS _____
COSDEN _____

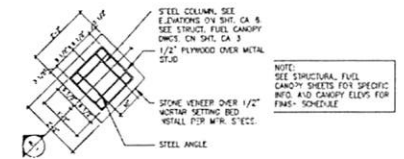
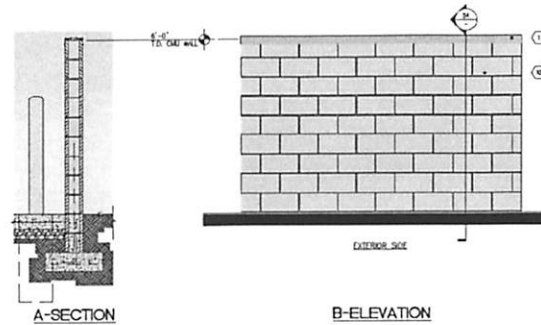
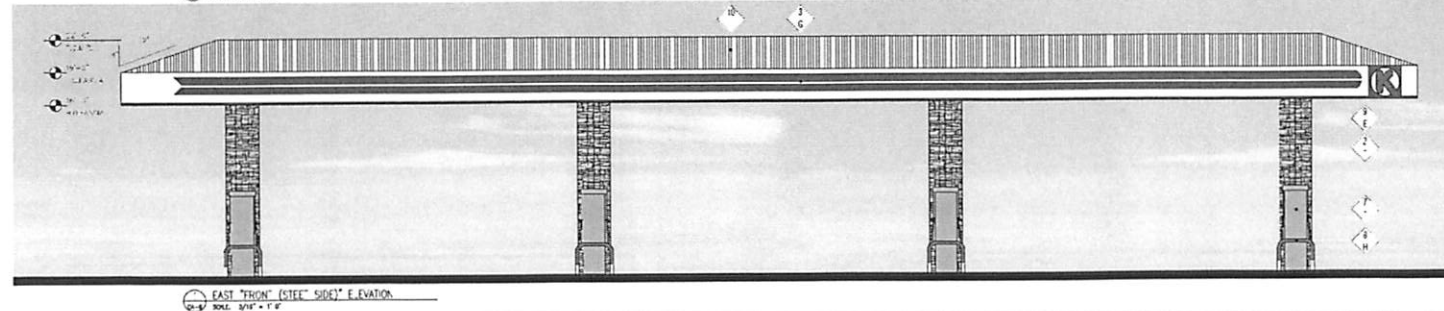
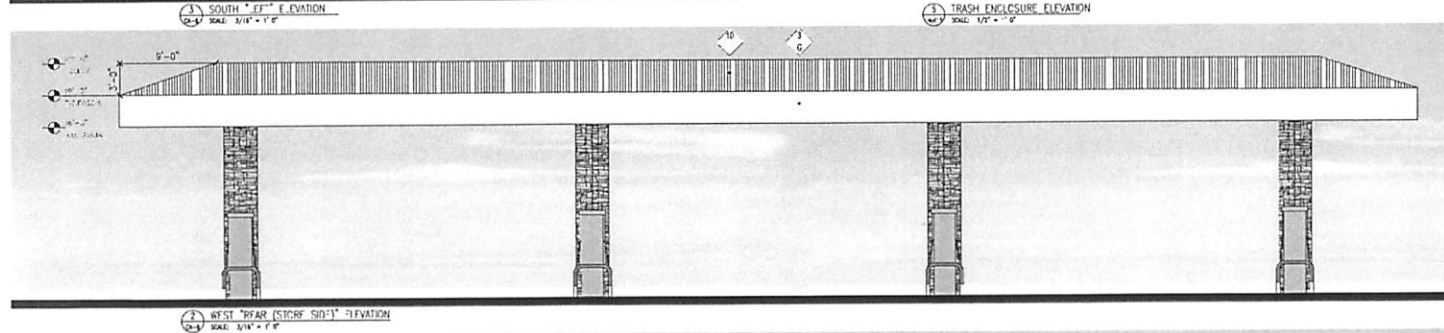
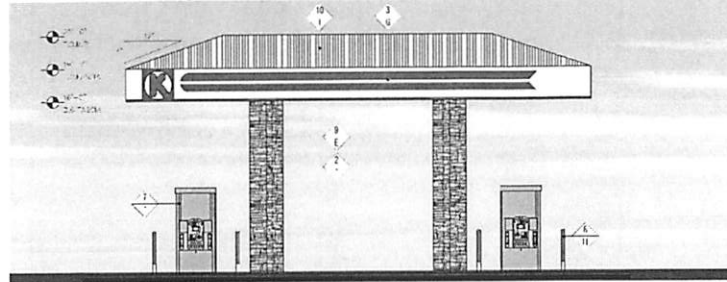
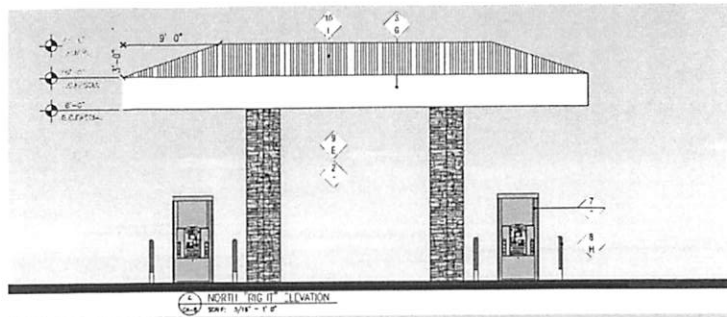
ATTESTED TO AND FILED IN MY OFFICE THIS _____ DAY OF _____, 2017.

REBECCA VAN DEUTEKOM
CITY CLERK

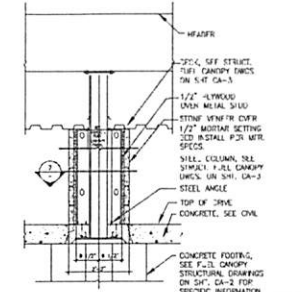
APPROVED AS TO FORM:



BRIAN R. BARTOS
ASSISTANT CITY ATTORNEY
ord/PDP16-0001 Circle K



7 COLUMN PLAN FUEL CANOPY TYP
SCALE: 1/2" = 1'-0"



8 COLUMN SECTION FUEL CANOPY TYP
SCALE: 1/2" = 1'-0"

FINISH SCHEDULE

FINISH MATERIAL	FINISH CODE
1. NOT USED	A. NOT USED
2. STEEL CANOPY COLUMN (GALVANIZED)	B. NOT USED
3. FLAT FASCIA	C. NOT USED
4. NOT USED	D. NOT USED
5. NOT USED	E. ENVIRONMENTAL STONEWORK
6. NOT USED	F. WEATHERED EDGE SIDING - CHALKBOARD
7. FUEL PUMP	F. NOT USED
8. 4\"/>	
9. STONE VENEER	H. ENVIRONMENTAL - DARK GRAY
10. METAL WALL VENEER	I. CA. PROBABILITY CHANGES

GreenbergFarrow
19000 MacArthur Blvd., Suite 250
Irvine, CA 92612
t: 949 296 0450 f: 949 296 0437



CIRCLE K STORES INC.
1130 W. Werner Road, Building B
Tempe, Arizona 85284
t: (602) 728-4550 f: (602) 307-4850

Composite Exhibit "A" - 5 of 5

CIRCLE K
819 SE 26TH ST
CAPE CORAL, FLORIDA
20151311

FUEL CANOPY ELEVATIONS
SCALE: AS NOTED
CA-6

03/08/16

Ordinance 5-17 (PDP 16-0001)

Circle K

**Cape Coral City Council Meeting
Final Public Hearing**

January 23, 2017

Ordinance 5-17

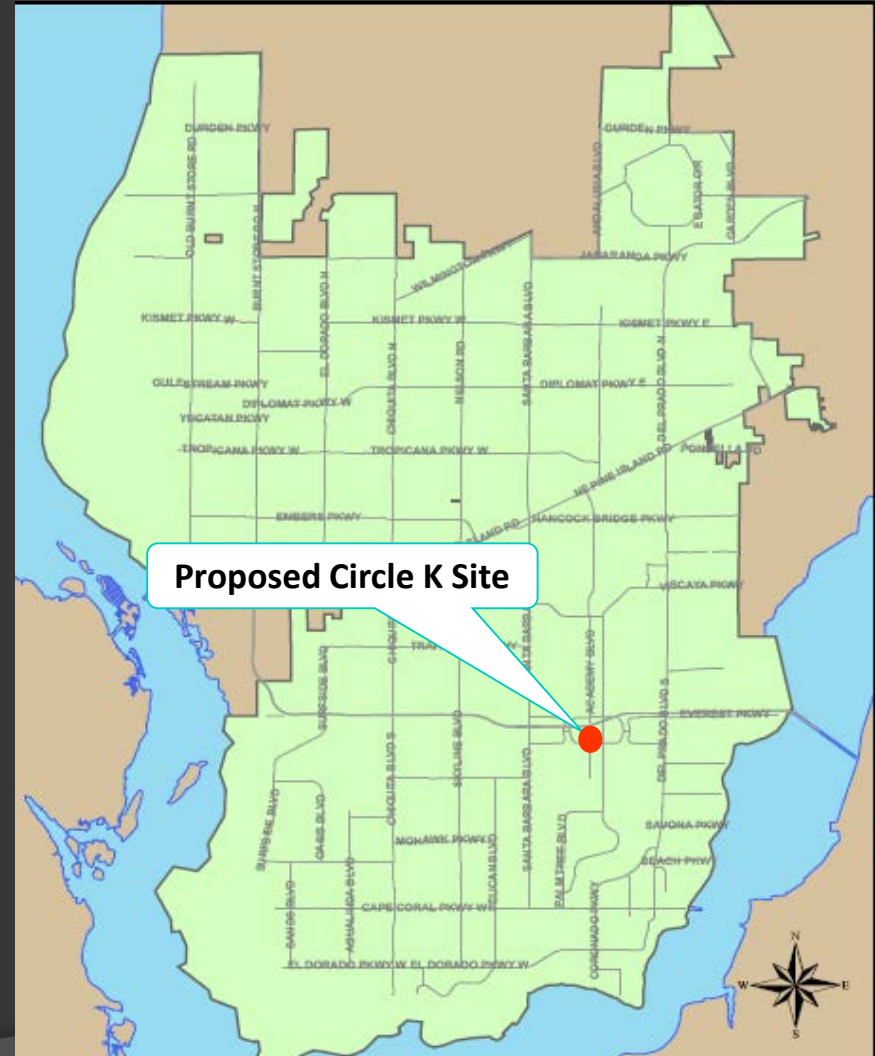
Owner: Estate of James E. Kinsey Jr.

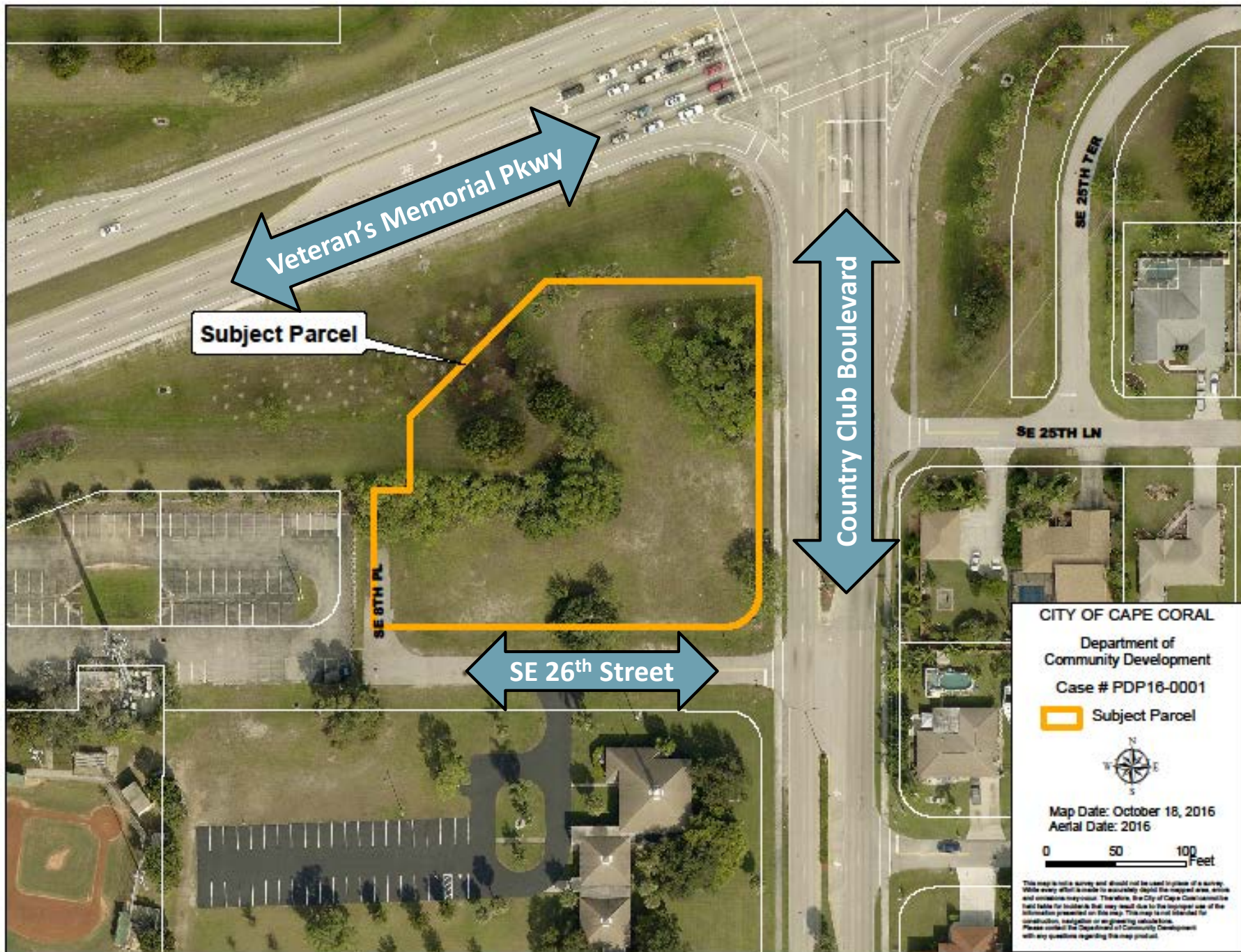
Authorized Rep: Neale Montgomery, Pavese Law Firm

Project: Commercial PDP

Location: 819 SE 26th Street

Area: 1.36 acres





Veteran's Memorial Pkwy

Subject Parcel

SE 8TH PL

SE 26th Street

Country Club Boulevard

SE 25TH TER

SE 25TH LN

CITY OF CAPE CORAL

Department of
Community Development

Case # PDP16-0001

 Subject Parcel



Map Date: October 18, 2016
Aerial Date: 2016

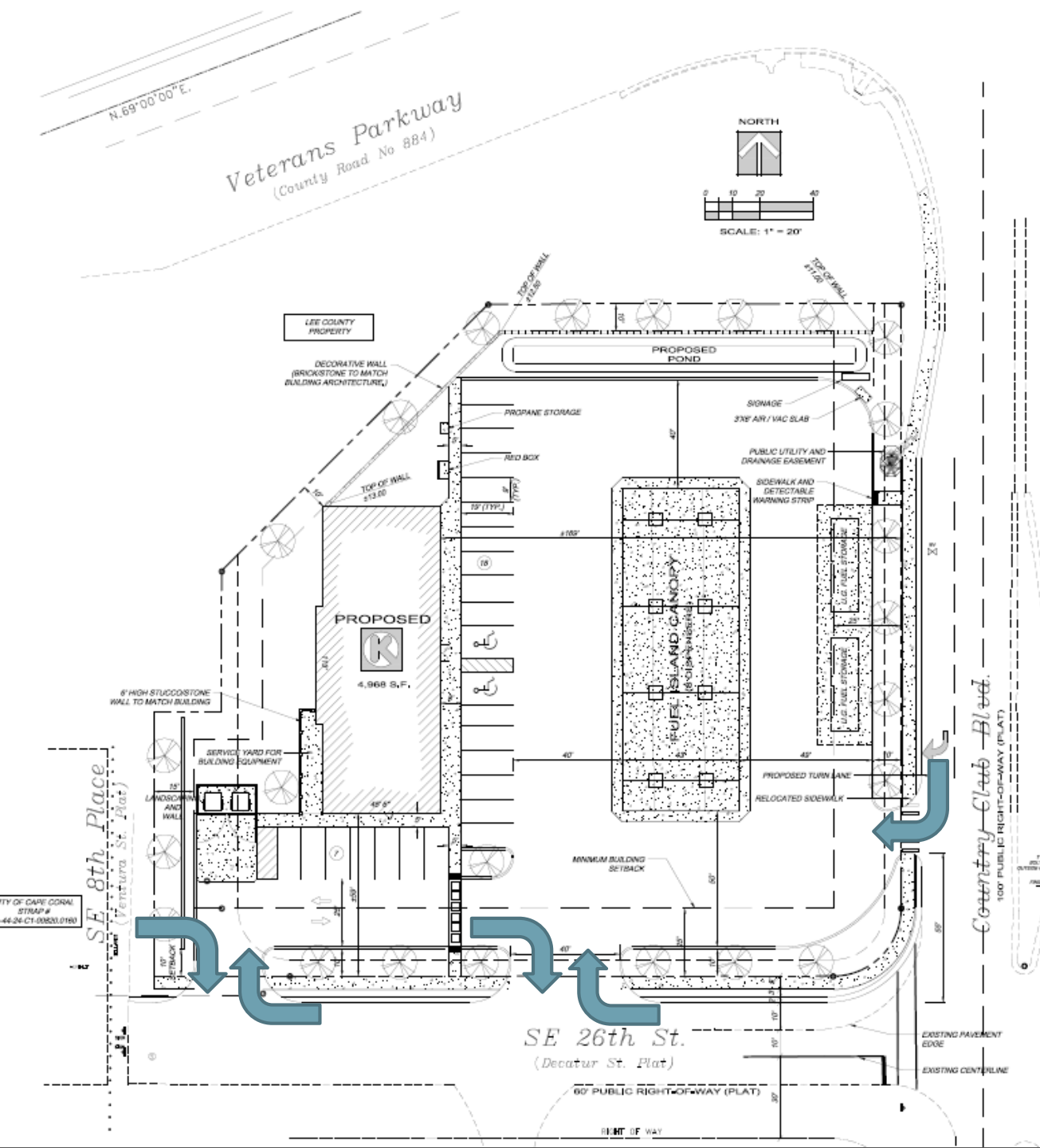
0 50 100 Feet

This map is not a survey and should not be used in place of a survey. While every effort is made to accurately depict the mapped area, errors and omissions may occur. Therefore, the City of Cape Coral disclaims any liability for incidents that may result due to the improper use of the information presented on this map. This map is not intended for construction, legislation or engineering calculations. Please contact the Department of Community Development with any questions regarding this map product.

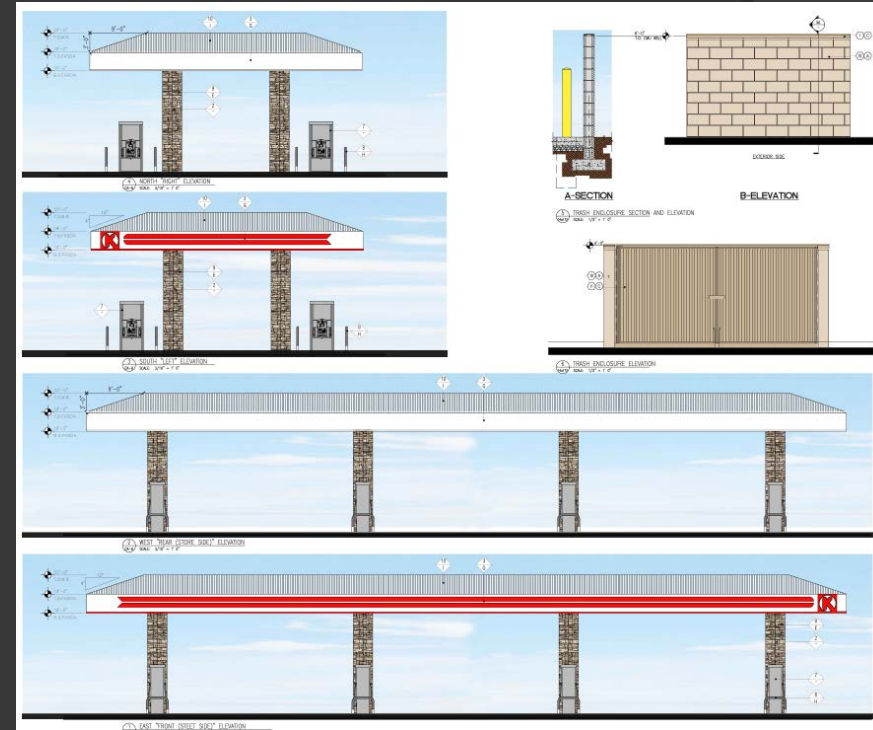
Project Details

- ◎ The proposal is a convenience store with gas pumps.
- ◎ Details include:
 - A 4,968 sq. ft. convenience store.
 - A fuel canopy allowing up to 16 vehicles to refuel at the same time.
- ◎ Requests:
 - Rezone
 - Special exception
 - Deviations

Development Plan

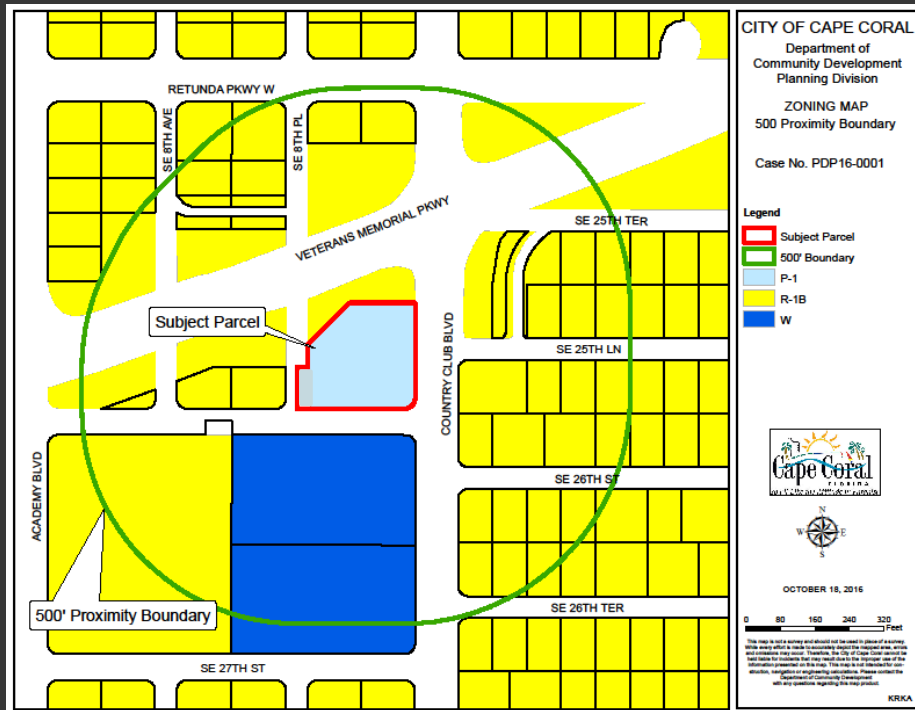


Building and Fuel Canopy Elevations

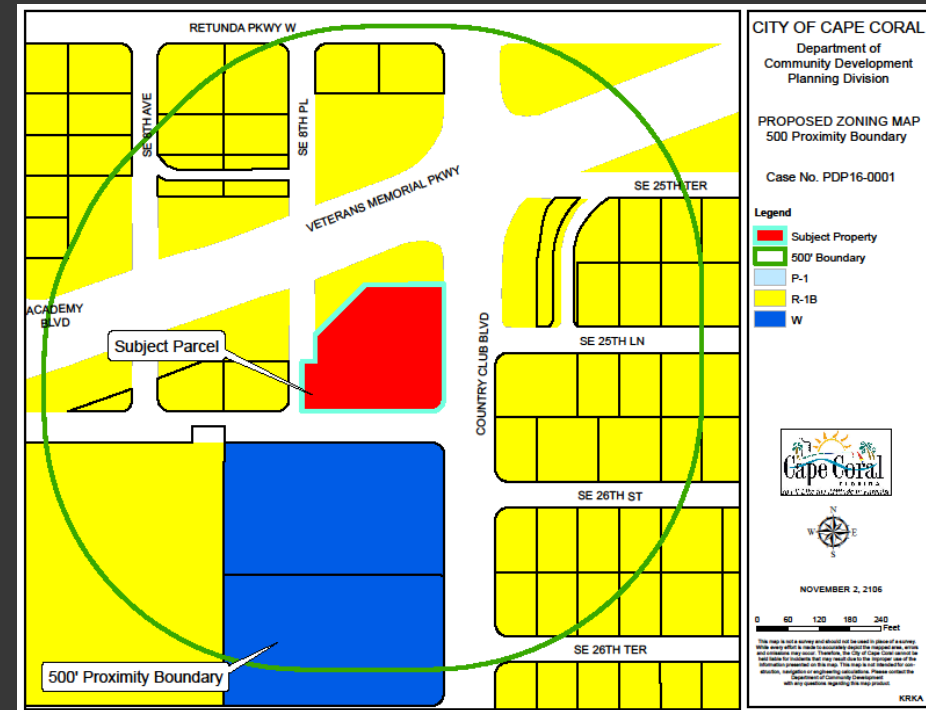


Rezone

Request: P-1 to C-1



Current Zoning Map



Proposed Zoning Map

Analysis (LUDR, Sections 2.7.7 and 8.7.3)

- The request is consistent with the 10 standards established for a rezone.
 - Frontage along three streets, including two major streets.
 - Adequate depth.
 - Adequate area for most C-1 uses.
 - Nearest residential uses separated by four or six-lane streets.
 - C-1 zoning is consistent with Policy 1.15.c of the Future Land Use Element.

Special Exception

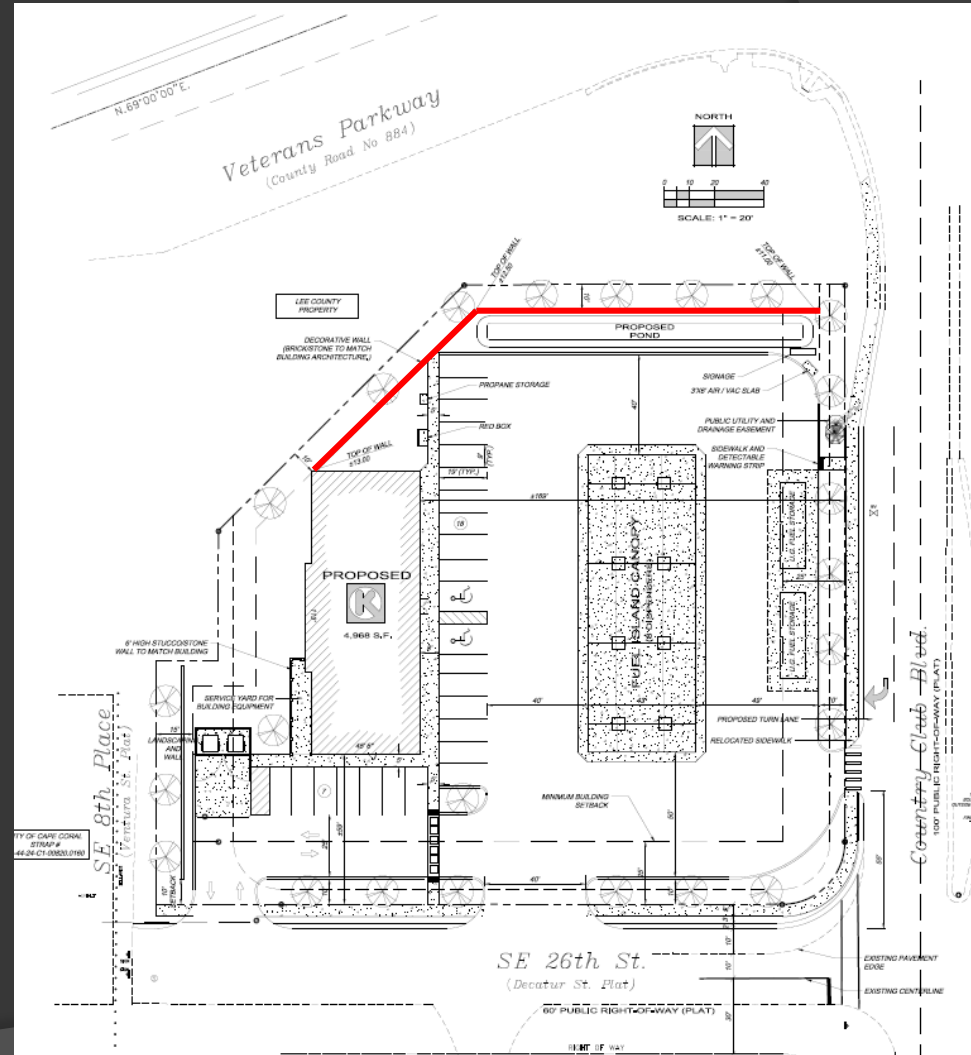
- A Special Exception is requested for an Automotive Service Station, Limited Use.
- Auto repair and car wash facilities are not proposed.

Analysis (LUDR, Sections 2.7.7 and 8.8.5a-d)

- ◎ With staff conditions, the use is consistent with the five standards for special exception uses.
- ◎ Conditions include:
 - Limits on lighting.
 - Limits on LED signs on the site.
 - Restrict air vacuum equipment to north of the store.
 - Prohibit the outdoor storage of products and materials.
 - Restrict the hours of deliveries.
 - Require consistency in materials, finishes, and colors for the convenience store and the fuel canopy.
 - Require larger and greater numbers of trees and shrubs along the east and south property lines.

LUDR Deviation

- A deviation to Section 3.9 which limits the placement of walls in front yards of commercial properties.
- Will allow a wall along the north property line to extend within 10 feet of the east property line.

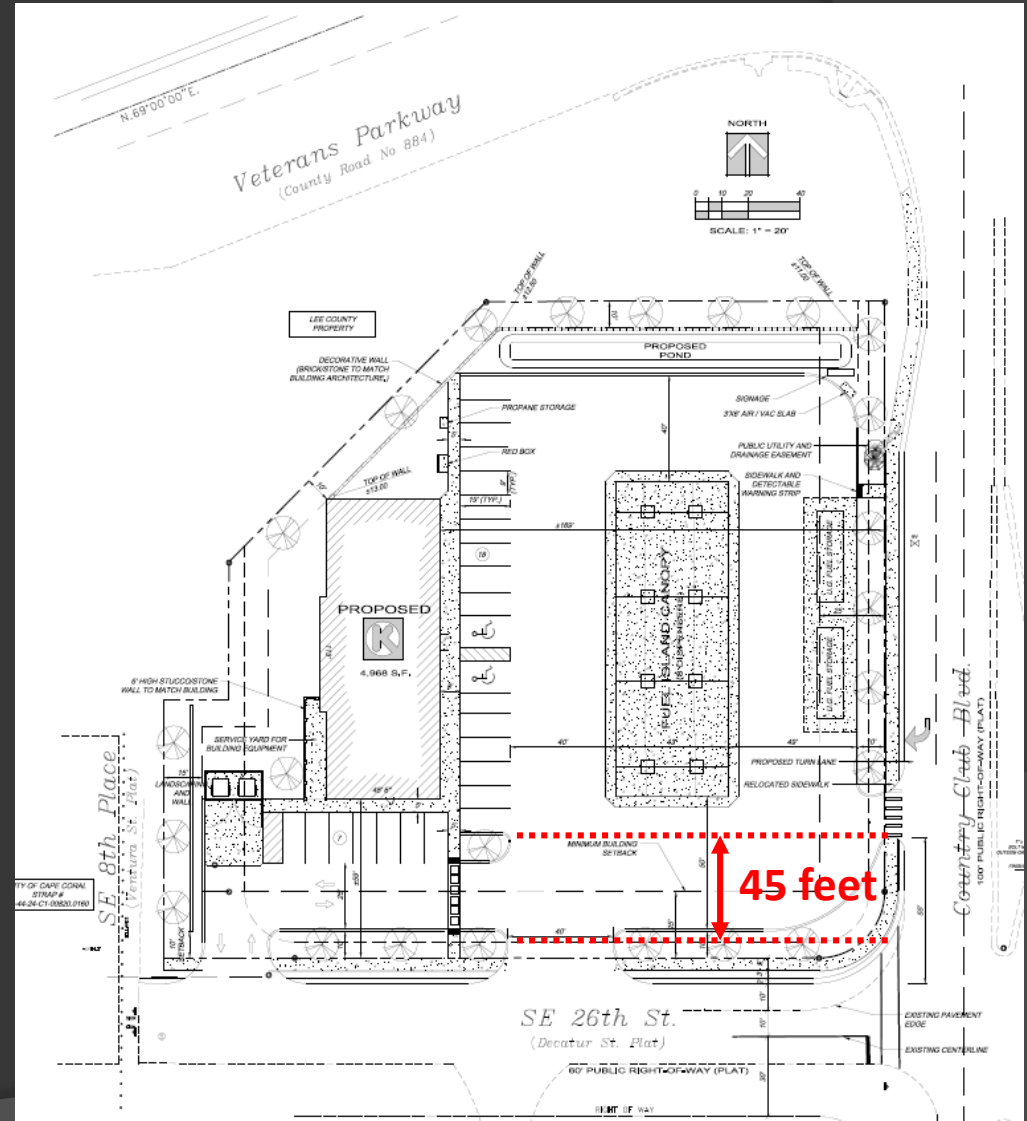


Analysis (LUDR, Section 4.2.4.K)

- ⦿ Deviation meets the “Unique and innovative design” standard.
- ⦿ The wall will serve the following purposes:
 - Capture runoff from Veteran’s Memorial Parkway ROW for treatment.
 - Define the northern boundary of the site.
 - Provide an aesthetic enhancement to the development.

EDS Deviation

- Will allow a driveway 45 feet from SE 26th Street.
- The EDS requires driveways along a major street to be at least 150 feet from a local street.
- Staff recommends approval.



Project Recommendations

Planning Division

Staff recommends **approval** of this project.

Hearing Examiner


The Hearing Examiner recommended **approval** with all staff conditions following a public hearing held on November 1.


Correspondence

Four residents spoke against the project. Six emails/letters received – five against; one in support.

MEMORANDUM

CITY OF CAPE CORAL
DEPARTMENT OF COMMUNITY DEVELOPMENT

TO: John Szerlag, City Manager 

FROM: Robert H. Pederson, Planning Manager 

DATE: January 17, 2017

SUBJECT: Maps of Convenience Stores, convenience stores with gas pumps, and Dollar stores

Maps

As you requested, we have prepared the attached maps showing the locations of all convenience stores, convenience stores with gas pumps, and Dollar stores of all varieties in the City of Cape Coral.

The first map shows convenience stores and convenience stores with gas pumps with a red dot at each location. The site of the proposed Circle K store is shown with a blue star.

The second map contains the same information but adds the location of all "dollar" stores with a yellow square at each location.

Hours of Operation

We do not have specific information as to the hours of operation for convenience stores in the City. Since almost all such stores are a permitted use by zoning, they may be open 24/7. Staff is aware of only one convenience store with gas pumps that has a restriction limiting the hours of operation. This is a gas station at 801 Cape Coral Parkway West. This station was approved in 2012 by Special Exception with limited hours of operation from 6:00 am to 11:00 pm. These hours were later extended by the Board of Zoning Adjustment and Appeals (BZA) in 2015; 5:00 am to 1:00 am.

RHP/rhp maps of convenience stores.docx

C: Vince Cautero, Community Development Director
Rebecca vanDeutekom, City Clerk
Dolores Menendez, City Attorney

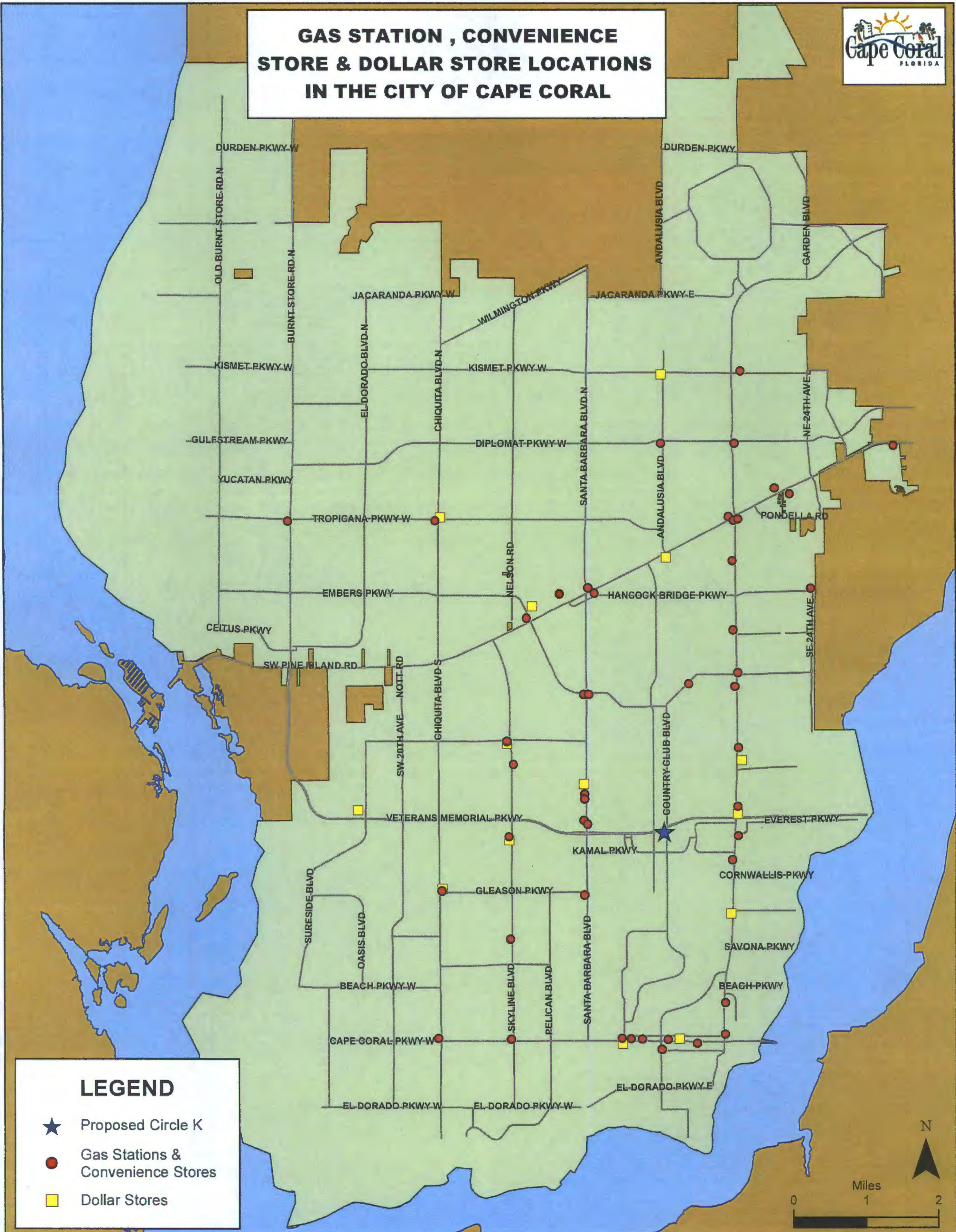


**GAS STATION & CONVENIENCE
STORE LOCATIONS IN THE
CITY OF CAPE CORAL**





**GAS STATION , CONVENIENCE
STORE & DOLLAR STORE LOCATIONS
IN THE CITY OF CAPE CORAL**





PLANNED DEVELOPMENT PROJECT (PDP) APPLICATION

PROPERTY OWNER IS A CORPORATION, LIMITED LIABILITY COMPANY (LLC), LIMITED COMPANY (LC), PARTNERSHIP, LIMITED PARTNERSHIP, OR TRUST

Project Name:

Project Number:

Circle K
PDP16-0001

To help prepare this application, the applicant should obtain copies of the following:

- Land Use and Development Regulations (this document is linked)
 1. Land Development Regulations (Article 4)
 2. Parking Requirements (Article 5.1)
 3. Landscape Ordinance (Article 5.2)
 4. Sign Ordinance (Article 7)
- NFPA 1 Fire Prevention Code
- Engineering Design Standards

The advisory review is conceptual only and any staff comments are subject to change based on detailed information with an application to the City of Cape Coral. Formal review may result in additional changes not noted at this time. The final design or project must comply with the Land Use and Development Regulations, Engineering Design Standards, City Code of Ordinances, Comprehensive Plan and other applicable laws and regulations.

ACKNOWLEDGEMENT

I Leslie Kinsey Personal Rep as the owner of this property or the duly Authorized Representative, agree to conform to all applicable laws of the City of Cape Coral and to all applicable Federal, State and County laws, and certify that all information supplied is correct to the best of my knowledge.

In addition, I understand that prior to the issuance of the Certificate of Occupancy for this development, the engineer of record must supply the Department of Community Development with record drawings and a letter of substantial compliance for the project.

In addition, I authorize the staff of the City of Cape Coral to enter upon the property for purposes of investigating and evaluating the request made through this application.

Please note: Advertising fees must be paid in full at least 10 days prior to public hearing or the item may be pulled from the agenda and continued to a future date once the fees have been paid.

(Name of Entity)

Leslie Kinsey Personal Representative
By: NAME AND TITLE (PLEASE TYPE OR PRINT)

Leslie Kinsey
SIGNATURE

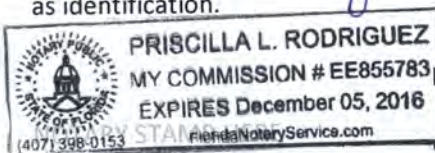
(SIGNATURE MUST BE NOTARIZED)

STATE OF

FL, COUNTY OF

Lee.

Sworn to (or affirmed) and subscribed before me this 25 day of Oct, 2016, by Leslie Kinsey who is personally known or produced FLDL as identification.



Exp. Date:

12/5/16

Commission Number:

EE855783

Signature of Notary Public:

Printed name of Notary Public:

Priscilla Rodriguez

***Please include additional pages for multiple property owners.**

R. authorized representative
or property owner's initials

**Authorization to Represent Property Owner(s) –
Property Owner is a Corporation, Limited Liability Company (LLC),
Limited Company (LC), Partnership, Limited Partnership, or Trustee**

Please be advised that

Ryan Plate, Circle K Stores

(Name of Authorized Representative(s) and business entity, if any)

is authorized to submit an application and represent me in the hearing(s) to the Planning & Zoning Commission/Local Planning Agency, Board of Zoning Adjustments and Appeals and /or City Council for a Planned Development Project.

Unit 21 Block 821 Lot 15-22, and portions of 12, 13 Subdivision 14, 23 Cape Coral.

Or Legal Description: ☐ (described as an exhibit A in Microsoft Word format and attached hereto)


* James E. Kinsey Jr. Estate Personal Representative
** Name of Entity (Corporation, Partnership, LLC, etc) Title of Signatory

James E. Kinsey Jr.
Signature

Leslie Kinsey
Name (Please print or type)

STATE OF FL, COUNTY OF Lee (SIGNATURE MUST BE NOTARIZED)

Sworn to (or affirmed) and subscribed before me this 25 day of Oct, 2016, by Leslie KENN Kinsey who is personally known or produced FLDL as identification.

Exp. Date: 12/5/16 Commission Number: EE855780
 Signature of Notary Public: Priscilla Rodriguez
Printed name of Notary Public:

*Please include additional pages for multiple property owners.

****Notes:**

If the applicant is a corporation, then it is executed by the corp. pres. or v. pres, sec, tres, or a director, .

If the applicant is a Limited Liability Company (L.L.C.) or Limited Company (L.C.), then the documents should be signed by the Company's "Managing Member."

If the applicant is a partnership, then a partner can sign on behalf of the partnership.

If the applicant is a limited partnership, then the general partner must sign and be identified as the "general partner" of the named partnership.

If the applicant is a trust, then they must include their title of "trustee."

In each instance, first determine the applicant's status, e.g., individual, corporate, trust, partnership, estate, etc., and then use the appropriate format for that ownership.

**Authorization to Represent Property Owner(s) –
Property Owner is a Corporation, Limited Liability Company (LLC),
Limited Company (LC), Partnership, Limited Partnership, or Trustee**

Please be advised that

Neale Montgomery, Pavese Law Firm
(Name of Authorized Representative(s) and business entity, if any)

is authorized to submit an application and represent me in the hearing(s) to the Planning & Zoning Commission/Local Planning Agency, Board of Zoning Adjustments and Appeals and /or City Council for a Planned Development Project.

Unit 21 Block 821 Lot 14, 23 Subdivision 15-22 and portions of 12, 13 Cape Coral.

Or Legal Description: ☐ (described as an exhibit A in Microsoft Word format and attached hereto)

* Estate of James E. Kinsey Jr. Personal Representative
** Name of Entity (Corporation, Partnership, LLC, etc) Title of Signatory

Leslie Kinsey
Signature

Leslie Kinsey
Name (Please print or type)

STATE OF FL, COUNTY OF Lee (SIGNATURE MUST BE NOTARIZED)

Sworn to (or affirmed) and subscribed before me this 25 day of Oct, 2016, by
Leslie Kern Kinsey who is personally known or produced FLA
as identification.



Exp. Date: 12/5/16 Commission Number: EE855783
Signature of Notary Public: [Signature]
Printed name of Notary Public: Priscilla Rodriguez

*Please include additional pages for multiple property owners.

****Notes:**

If the applicant is a corporation, then it is executed by the corp. pres. or v. pres, sec, tres, or a director, .
If the applicant is a Limited Liability Company (L.L.C.) or Limited Company (L.C.), then the documents should be signed by the Company's "Managing Member."
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If the applicant is a limited partnership, then the general partner must sign and be identified as the "general partner" of the named partnership.
If the applicant is a trust, then they must include their title of "trustee."
In each instance, first determine the applicant's status, e.g., individual, corporate, trust, partnership, estate, etc., and then use the appropriate format for that ownership.

[Signature] authorized representative
or property owner's initials

5/19/2014 12:49 PM Filed Lee County Clerk of Courts

**IN THE CIRCUIT COURT FOR LEE COUNTY, FLORIDA
PROBATE DIVISION**

IN RE: ESTATE OF

File No. 14-CP-1057

**JAMES E. KINSEY, JR. a/k/a
JAMES EDWARD KINSEY, JR.
Deceased.**

**LETTERS OF ADMINISTRATION
(single personal representative)**

TO ALL WHOM IT MAY CONCERN

WHEREAS, James E. Kinsey, Jr. a/k/a James Edward Kinsey, Jr., a resident of Lee County, Florida, died on April 1, 2014, owning assets in the State of Florida, and

WHEREAS, Leslie Kinsey has been appointed Personal Representative of the Estate of the Decedent and has performed all acts prerequisite to issuance of Letters of Administration in the Estate,

NOW, THEREFORE, I, the undersigned Circuit Judge, declare Leslie Kinsey duly qualified under the laws of the State of Florida to act as Personal Representative of the Estate of James E. Kinsey, Jr. a/k/a James Edward Kinsey, Jr., deceased, with full power to administer the Estate according to law; to ask, demand, sue for, recover and receive the property of the Decedent; to pay the debts of the Decedent as far as the assets of the Estate will permit and the law directs; and to make distribution of the Estate according to law.

ORDERED on May 16, 2014.


Circuit Judge

STATE OF FLORIDA - COUNTY OF LEE

I hereby certify that the foregoing is a true copy as filed in my office and the same is in full force and effect.

This 20 day of May 20 14

LINDA DOGGETT

Clerk of Circuit Court

By Donna Burt
Deputy Clerk

1160
170

3989182

THIS INSTRUMENT PREPARED BY:
GUARDIAN TITLE SERVICES CORPORATION
LINDA GREGORY
13391 MCGREGOR BOULEVARD
FORT MYERS, FLORIDA 33919

**THIS IS A CORRECTIVE DEED, CORRECTING
THE LEGAL DESCRIPTION AS SHOWN IN
DEED RECORDED IN ORB 2706, Page 3320.

STRAP NO: 30-44-24-B2-00821.0160
GRANTEE'S SOCIAL SECURITY NO:

THIS WARRANTY DEED Made this 21st day of June, 1996,

by Anna Marie Jenero, An Unremarried Widow and Surviving Spouse of Daniel Jenero, deceased.

whose post office address is: 7854 W. Cahill Terrace
Chicago, Ill. 60634

herein after called the grantor, to

James E. Kinsey, Jr., Trustee

whose post office address is: PO Box 1662
Fort Myers, Fl. 33902

hereinafter called the grantee:

(wherever used herein the terms "grantor" and "grantee" include all the parties to this instrument and the heirs, legal representatives and assigns of individuals, and the successors and assigns of corporations)

WITNESSETH: That the grantor, for and in consideration of the sum of \$10.00 and other valuable considerations, receipt whereof is hereby acknowledged, hereby grants, bargains, sells, aliens, remises, releases, conveys and confirms unto the grantee, all that certain land situate in Lee County, Florida:

Lots 16 and 17, Block 821, Unit 21, CAPR CORAL SUBDIVISION, according to the plat thereof as recorded in Plat Book 13, Pages 149 through 173, inclusive, in the Public Records of Lee County, Florida.

TOGETHER with all the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining.

TO HAVE AND TO HOLD, the same in fee simple forever.

AND the grantor hereby covenants with said grantee that the grantor is lawfully seized of said land in fee simple; that the grantor has good right and lawful authority to sell and convey said land; that the grantor hereby fully warrants the title to said land and will defend the same against the lawful claims of all persons whomsoever; and that said land is free of all encumbrances, except taxes accruing subsequent to December 31, 1995, restrictions, reservations and easements of record, if any.

IN WITNESS WHEREOF, the said grantor has signed and sealed these presents the day and year above written.

Signed, sealed and delivered in our presence:

Christ Theros
Witness
Also Print: CHRIST THEROS

Anna Marie Jenero
Anna Marie Jenero

Francis Nolan
Witness
Also Print: Francis Nolan

OR2720 PG2980

RECORD VERIFIED - CHARLIE GREEN, CLERK
BY: C. KELLER, D.C. RC

STATE OF Illinois
COUNTY OF Cook

EXECUTION OF the foregoing instrument was acknowledged before me this 21st day of June, 1996 by Anna Marie Jenero, An Unremarried Widow and Surviving Spouse of Daniel Jenero, deceased.

who is personally known to me or who has produced sufficient evidence of identification (described below) and who did not take an oath.

Description of identification produced: State of Illinois ID Card
5400-5329-6665

Joanne M. Piemonte
NOTARY PUBLIC - SIGNATURE ABOVE

NOTARY NAME - Joanne M. Piemonte

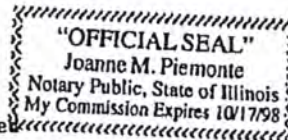
COMMISSION NO. - 231201

COMMISSION EXP. DATE - 10/17/98

Notary Name/Commission No./Exp. Date - typed or printed

FILE NO: C67042R

(Affix Notary Seal)



DR2720 PG298

HANDLE GREENVILLE CITY
96 JUN 28 PM 2:56

PDP Applicant Checklist

Project Name: _____ CIRCLE K _____

Applicant must submit the completed application and the associated documentation listed below, collated into 17 separate packets (one (1) original and 16 copies). These are minimum requirements for all PDP applications. Based on the nature of your project, additional items may be required by staff.

Incomplete submittals will not be accepted

- ☒ All application pages must be initialed by the property owner or their authorized representative
- ☒ 24" x 36" engineered PDP Development Plans, including landscape buffer areas and building elevations – See pages 7 – 10 for further information
- ☒ Certified Boundary Surveys, in NGVD 1929, completed within the last six (6) months showing elevations – See page 7 for further information
- ☒ PDP application fees paid in full at time of application – See page 11 for further information
- ☒ Letter of Intent (LOI) – See page 6 for further instructions
- ☒ Environmental Survey/Report – See page 7 for further instructions
- ☒ Warranty or Quit Claim Deed – Applicant shall provide a copy of Warranty or Quit Claim Deed for one hundred (100) percent of the property comprising the Planned Development Project.
- _____ Vacation of Plat requests must include letter of "No Objection" from the electric company, the telephone company, and the cable company – See page 9 for further instructions
- ☒ Page 1 must be signed and notarized by either all property owner(s) or the authorized agent
- ☒ The "Authorization to Represent Property Owners", page of the application, must be signed by all property owner(s) and notarized
- _____ Properties owned by corporations, limited liability companies, limited partnerships, general partnerships, and trustees must provide legal documentation (For example, the Articles of Incorporation) listing persons authorized to sign for the entity and in these situations the property owner(s) must sign all applicable PDP forms in their corporate capacity.

As an alternative to submitting everything in paper format, the applicant may opt to submit the following:

- _____ 11 sets of plans, in paper format, as described above
- _____ 11 signed and sealed Boundary Surveys, in paper format, as described above
- _____ One (1) copy of the application & all other documents you are submitting for review
- _____ 1 CD/DVD with PDFs of documents you are submitting:
 - Each document you are submitting needs to be a separate PDF, appropriately identified by name. For example, the application will be one PDF, titled "Application", the Letter of Intent will be another PDF, titled "Letter of Intent", plans, boundary surveys, etc.

GENERAL INFORMATION

Project Name: CIRCLE K
Applicant: Circle K Stores, Inc.
Address: 12911 N Telecom Parkway, Tampa, FL 33637
Phone: 813-910-6870 Fax: 813-910-6912 E-Mail: jchristi@circlek.com

*Property Owner: Estate of James E. Kinsey, Jr.
Address P.O. Box 1662, Fort Myers, FL 33902
Phone 239-939-1367 Fax 239-939-1161 E-Mail bkinsey@kinseysells.com

Authorized Representative
Address Neale Montgomery, Esq., Pavese Law Firm
Phone 239-336-6235 Fax 239-332-2243 E-Mail nealemontgomery@paveselaw.com

Location

Unit 21 Block 821 Lot(S) 15-22, portions 12, 13, 14, 23
Subdivision Cape Coral Strap Number(s) 31-44-24-C1-00821.0160

Legal Description ☐ (Described as Exhibit A in Microsoft Word Format and attached hereto)

Property Address: 819 SE 26th Street
Plat Book 13 Page 159 Current Zoning P-1 Future Land Use CP

This application includes the following requests: (Please check all that apply)

<input type="checkbox"/> Subdivision	<input checked="" type="checkbox"/> Special Exception	<input checked="" type="checkbox"/> Rezoning	<input type="checkbox"/> Variance
<input type="checkbox"/> Deviation to Landscaping	<input type="checkbox"/> Deviation to Non-residential Design Standards	<input checked="" type="checkbox"/> Deviation to Engineering Design Standards (EDS)	<input checked="" type="checkbox"/> All Other Deviation Requests
<input type="checkbox"/> Borrow Pit	<input type="checkbox"/> Vacation of Plat		

*Please include additional pages for multiple property owners.

Planned Development Project (PDP) Application Fees *

	Administrative Review	Fees	Your Costs
<input checked="" type="checkbox"/>	PDP - without Subdivision	\$2,525.00	\$ 2,525.00
<input type="checkbox"/>	** Additional charge for PDP's in excess of ten (10) acres: _____ acres x \$55.00 for each acre or portion thereof in excess of 10 acres.	(with maximum cap of \$3,625.00 for additional acres)	\$
<input type="checkbox"/>	PDP - with Subdivision	\$2,815.00	\$
<input type="checkbox"/>	** Additional charge for PDP's in excess of ten (10) acres: _____ acres x \$55.00 for each acre or portion thereof in excess of 10 acres.	(with maximum cap of \$3,915.00 for additional acres)	\$
Fire Review			
<input checked="" type="checkbox"/>	Fire review (mandatory)	\$104.00	\$ 104.00
Public Hearing			
<input checked="" type="checkbox"/>	PDP - without Subdivision	\$665.00	\$ 665.00
<input type="checkbox"/>	PDP - with Subdivision	\$1,415.00	\$
<input checked="" type="checkbox"/>	Zoning Amendment within PDP	\$1,165.00	\$ 1,165.00
<input type="checkbox"/>	Vacation of Plat within PDP	\$880.00	\$
<input checked="" type="checkbox"/>	Variance/Deviation within PDP	\$1,250.00	\$ 1,250.00
<input checked="" type="checkbox"/>	Special Exception within PDP	\$1,365.00	\$ 1,365.00
<input type="checkbox"/>	Borrow Pit within PDP	\$1,725.00	\$
		Total	\$
			7,074.00

* Advertising fees will be due at time of advertising.

** PDP – Acres x \$55.00 for each acre or portion thereof in excess of 10 acres (i.e. A 20.2 acre of land is calculated as follows.

20.2 – 10.00 = 10.2, then the 10.2 acres is rounded up to 11 acres)

PROPERTY and PROJECT DEVELOPMENT DATA

a.	Zoning District	<u>P-1</u>		
b.	Future Land Use Class	<u>CP Commercial/Professional</u>		
c.	Area of Subject Property	<u>1.3599+/-</u>	acres	
d.	Type of Development	<u> </u>		
e.	Estimated Number of Employees	<u> </u>		
	Number of Seats in Assembly	<u> </u>		
f.	Parking Spaces Required	<u>25</u>		
g.	Parking Spaces Provided	<u>31</u>		
h.	Parking and Street Area	<u>29,532</u>	sq. ft.	<u>50</u> % of Site
i.	Ground Floor Building Area	<u>4,968</u>	sq. ft.	<u>8.4</u> % of Site
j.	Total Floor Area	<u>4968</u>	sq. ft.	<u>8.4</u> % of Site
k.	Building Heights	<u>23'-8"</u>	feet	<u>1</u> stories
l.	Total Proposed Impervious Surface Area	sq. ft. <u>44,937</u>		% of Site <u>76</u>
m.	Permanent Open Space	sq. ft. <u> </u>		% of Site <u> </u>
	Landscaped Area	<u> </u>	sq. ft.	% of Site <u> </u>
n.	Recreation Area	<u> </u>	sq. ft.	% of Site <u> </u>

If the proposed project is a multifamily residential development, the following additional data shall be shown on the plans.

o.	Number of Dwelling Units (du)	<u> </u>
p.	Gross Density (du/acres)	<u> </u>
q.	Number, Type, and Floor Area of each Dwelling Unit:	
1.	Efficiency	<u> </u> Floor Area <u> </u> sq. ft. <u> </u>
2.	1 Bedroom	<u> </u> Floor Area <u> </u> sq. ft. <u> </u>
3.	2 Bedroom	<u> </u> Floor Area <u> </u> sq. ft. <u> </u>
4.	3 Bedroom	<u> </u> Floor Area <u> </u> sq. ft. <u> </u>
5.	4 Bedroom	<u> </u> Floor Area <u> </u> sq. ft. <u> </u>

LETTER OF INTENT

Please include a Letter of intent (LOI), stipulating your request, addressed to the Community Development Director. This letter must specify all applicable requests. Such requests may include any and/or all of the following:

- a. General purpose and intent of the PDP
- b. Subdivision requests – See Article 4.1 and 4.2.5
- c. Rezoning requests specifying the actual request and explanation of need for the rezoning
- d. Special exception requests and explanation of need for the special exception
- e. Variance requests specifying the actual request and explanation of need. All variance requests must address the five (5) criteria for the granting the a variance, per Land Use and Development Regulations, section 8.10. Note: Variances run with the land.
- f. Vacation of Plat as outlined in section 8.11 and explanation of vacation request
- g. Borrow pit requests as outlined in section 3.23, 4.2.5, and 8.3.2

DEVIATION REQUEST LETTER(S)

Applicant must complete a separate deviation request letter for each deviation type requested. Please ensure that proper justification for the requested deviation accompanies each request. Staff will not analyze any requested deviation that does not include justification for the deviation sought and this may result in a rejection of your application. Refer to the appropriate section of the LUDRs for guidance on the criteria for which a particular deviation may be sought. Note: Deviations do not run with the land.

- Landscaping Deviations shall be in accordance with Section 5.2.19
- Non-residential Design Standards Deviations shall be in accordance with Section 5.6.10 Deviation,
- Engineering Design Standards (EDS) Deviations in accordance with sheet 1, "Foreword" paragraph 5,
- All Other Deviation Requests, shall be in accordance with Section 4.2.4.K

TRAFFIC GENERATION ESTIMATE

The following will determine the need of a Traffic Impact Statement. Trip Generation Estimate, based on the most current edition of the Institute of Transportation Engineers (ITE) Trip Generation manual:

ITE Code _____ Is estimate based on locally collected data? _____

Regression equation (if used) _____

Independent Variable _____

Daily Two Way Trip Estimate _____

Peak Hour (of generator) Entering _____

Peak Hour (of generator) Exiting _____

Total Peak Hour (of generator) _____

Peak Hour Entering and Exiting trips greater than 300 trips _____

If the total peak hour traffic exceeds 300 trips, a Traffic Impact Statement (TIS) will be required. A methodology meeting with the City staff is required prior to submitting the TIS. The methodology meeting will be scheduled after the initial submittal of the PDP application.

GRAPHIC STANDARDS: GENERAL INFORMATION

Sheet # of submitted plans: The Development Plan shall be of sufficient scale to show all detail. The scale of the Plan shall be illustrated by a graphic scale on every sheet. The date and true north arrow shall be shown on every sheet. The following general information is required:

1

1. Names and addresses of the owners, planner, architect, landscape architect Engineer and surveyor.

1

2. A General Location and Vicinity Map (plat sheet). Please indicate the relationship of the proposed project site to surrounding existing land uses, zonings, future land uses, community facilities, major streets, utilities and any other principal buildings or physical features in and adjoining the subject property. These features shall be indicated for a distance of three hundred (300) feet from the outside boundaries of the subject property. Indicate all names and locations of adjoining subdivisions, development projects, unplatted properties, and streets within unincorporated Lee County.

3

3. Certified Boundary Survey, completed within the last 6 months, meeting the Minimum Technical Standards as set forth in Chapter 5J-17, Florida Administrative Code.

EXISTING PROPERTY CONDITIONS

Sheet # of submitted plans:

1

1. Acreage of land within property.

3

2. Boundary lines of the project and their bearings and distances.

1

3. Existing and proposed easements and their locations, widths and distance, as well as existing structures.

1

4. Streets and waterways on and adjacent to the project, their names, widths and other dimensions as may be required.

2

5. The location of all existing utilities connections available to the property site.

2

6. Tree Survey: The location, quantity, diameter/caliper, botanical and common name, and native status of all heritage trees and other existing trees with a caliper of two inches or greater, and whether they are proposed to be preserved or removed. Trees to be removed, if any, shall be indicated on a separate sheet. Reference 5.2.6 of the City's Land Development Regulations. The City is a designated "Tree City" and tree retention is encouraged.

Report

1

7. Environmental Site Survey - see the City's guidelines for conducting an environmental survey

1

8. Flood elevation data and flood zone boundary lines delineated, if applicable.

1

9. Any other significant existing features, as may be required by the Director.

DEVELOPMENT PLANS

Sheet # of
submitted
plans:

The Development Plan should be viewed as a conceptual plan and not construction drawings or a site plan. A high level detailed site plan with information not needed will be rejected at submittal. The Development Plan shall show the following information, as applicable to the type of project being proposed, including the proposed dimensions, size, location and arrangement of the following.

1

1. Name of project, north arrow, date and scale.

Elevations

2. Elevations, (drawing of front, sides, and rear faces of buildings), and use of all proposed buildings and structures.

1

3. Internal and peripheral landscaping locations showing landscape area sizes and overall dimensions of the various planting areas, providing calculations per Article 5.2.

1

4. Approximate location of curb cuts, driveways, access roads, alleys, and parking areas indicating the number of spaces and all dimensions.

1

5. Location of existing and proposed pedestrian walks, malls, yards, and open areas.

6. Location, number, dimensions, character and orientation of all existing and proposed signs.

1

7. Location and heights of all proposed buffers, fences, screens, and walls.

1

8. Location of all existing and proposed buildings and structures with setback distances from the property lines and roadways.

9. Location of all known existing and proposed water, sewer and irrigation mains including the point of connection to the existing system and buildings, if applicable, including:

- a) Estimate of the average daily flow for potable water.
- b) Estimate of the average daily flow of wastewater
- c) Estimate of the average daily flow for irrigation water.

10. Location of all known existing and proposed easements and /or right of way.

11. Location of proposed outdoor lighting, showing direction, height and type.

12. An exhibit providing the peak hour trip distribution at the project entrance and adjacent local streets out to a collector.

13. Location and character of all outside waste disposal facilities and existing or proposed appropriate screening.

14. Phasing Plan: Where a project will be developed in phases, a Phasing Plan shall be presented for review of the entire project. Proposed development phases shall be numbered in sequence, and shall indicate the density for residential and/or floor area for non-residential uses, as applicable, for each phase. The phasing plan shall identify size, location, sequence and timing of the various phases of the development.

ADDITIONAL INFORMATION

Sheet # of
submitted
plans:

_____ 1. **Landscape Maintenance:**

The proposed method of assuring the provision and permanent maintenance of areas required for landscaping, screening, and common uses, including a proposed statement of such assurance. The coordinated development of the site shall be compatible with the surrounding area.

_____ 2. **Maintenance Assurance:**

The proposed method of assuring the perpetual ownership and maintenance of areas within the project that area to be used for open space, recreation or other quasi-public purposes, including a detailed statement of such assurance, including covenants, agreements or other specific documents as required.

_____ 3. **If seeking Subdivision approval; Covenants:**

Copies of proposed restriction or protective covenants, if any.

_____ 4. **Economics:**

The Commission or City Council, as applicable, may also require that the applicant provide additional supporting data, such as economic justification, financing, and construction scheduling, topographic data or similar information when deemed necessary for project review.

_____ 5. **Vacation of Plat**

In the case of vacation of plats submitted in conjunction with a PDP, the following additional information shall be required:

- a. Affidavits of city and county tax collectors stating that all city and county taxes levied against land covered by the portion of the plat of which vacation is sought have been paid;
- b. Sketches and descriptions; and
- c. Letter of no objection from the following utilities:
 - i. Lee County Electric Cooperative, Inc (LCEC)
 - ii. Century Link Telephone Company
 - iii. Comcast Cable Company

SUBDIVISION, PER FLORIDA STATUTES, CHAPTER 177 – IF APPLICABLE

Sheet # of
submitted
plans

The Subdivision Plan shall show the following information, as applicable to the type of project being proposed, including the proposed dimensions, size, location and arrangement of the following with accurate dimensions to the nearest one-hundredth of a foot. If flexibility is requested for property lines prior to Plat recording, this request must be requested in the Letter of Intent (LOI).

- _____ 1. Contours at an interval of not greater than one foot.
- _____ 2. Access roads and their relationship to existing and proposed streets, alleys and other public ways.
- _____ 3. Setback lines, permanent open space, recreation areas, separation strips, existing and proposed landscape areas and general land use activity areas.
- _____ 4. Location of areas and their acreages, if any, to be reserved or dedicated for public parks, playgrounds, schools, or other public uses, including bikeways or walks.
- _____ 5. Proposed lot numbers, lot lines, lot dimensions, lot areas, lot descriptions, lot locations, minimum yard requirements, and any other appropriate data and information for areas or parcels within the project property lines which have been designated for subdivision for any purpose or use.
- _____ 6. Utility locations on and adjacent to the project showing proposed dimensions and connections to existing utility systems.
- _____ 7. All dimensions, angles, bearings and similar data on the plan shall be tied to primary control points approved by the City Engineer. The location and description of said control points shall be given.
- _____ 8. Approximate location of proposed and existing surface water management system components including treatment, storage, conveyance, and discharge locations.
- _____ 9. Project boundary lines, right-of-way lines of streets, waterways, easements and other rights-of-way. Bearings or deflection angles, radii, arcs and central angles of all curves with dimensions to the nearest minute shall be provided for the center line of all streets and easements. Block corner radii dimensions shall also be shown.
- _____ 10. Name of each street, waterway, easement or other right-of-way and the designation of all buildings, parking areas, access roads, permanent open spaces, recreation areas, separation strips, landscaped areas, dedication or reserved areas, and other land use activity areas by name, use, purpose or other appropriate method as well as by width, length, land area or floor area devoted to such use or purpose.
- _____ 11. Certification of title and dedication, on plat, showing that the applicant is the owner and a statement by such owner dedicating streets, rights-of-way and any other sites for public use, if any.
- _____ 12. Certification by the City Engineer, on plat, that a surety bond, certified check or other guarantee has been posted with the City in sufficient amount to assure completion of all such required site improvements.
- _____ 13. Certificate of approval for recording, on plat, suitable to be signed by the Mayor as applicable, to indicate that the plan has been approved for recording.
- _____ 14. Any other appropriate certification required by the Governing Body or Necessary to comply with Florida Statutes, Chapter 177.

PAVESE LAW FIRM

NEALE MONTGOMERY

Direct dial: (239) 336-6235
Email: NealeMontgomery@paveselaw.com

1833 Hendry Street, Fort Myers, Florida 33901 | P.O. Drawer 1507, Fort Myers, Florida 33902-1507 | (239) 334-2195 | Fax (239) 332-2243

January 12, 2016

Vincent A. Cautero, AICP, Director
Community Development at City of Cape Coral
1015 Cultural Park Boulevard
Cape Coral, Florida 33990

**RE: *Planned Development Project with Rezoning and Special Exception
Circle K Veterans-Country Club Boulevard
F/K/A Kinsey Veterans-County Club Corner Development
819 SE 26th Street, Cape Coral, Florida 33904
STRAP No.: 31-44-24-C1-00821.0160***

***Applicant: Circle K Stores, Inc.
12911 N. Telecom Parkway
Tampa, Florida 33637***

Dear Mr. Cautero:

This application is submitted on behalf of Circle K Stores, Inc. ("Applicant"), a future lessee of the 1.36± acre parcel identified as 819 SE 26th Street, Cape Coral, Florida 33904 and further identified by STRAP No. 31-44-24-C1-00821.0160 ("Subject Property"). The Subject Property is located at the southwestern corner of the intersection of Country Club Boulevard and Veterans Parkway. The name of the legal and equitable owner is James E. Kinsey, Jr., individually and as trustee.

The Subject Property is zoned Professional Office ("P-1") with a Future Land Use Designation of Commercial/Professional ("CP"). The Subject Property, currently identified as the "Kinsey Veterans-Country Club Corner Development" (Ordinance No. 23-08; PDP 06-00800015), is approved for 18,600 square feet of banking/office professional uses. The P-1 district is only intended for major professional and related office complexes and does not allow gas stations with a convenience store ("Automobile Service Station – Limited with Convenience Store" - NAICS 447110) by right or by special exception pursuant to Section 2.7.9, Land Use and Development Regulations ("LUDR"). However, the Subject Property's location at the corner of two major roadways, Veterans Parkway and Country Club Boulevard, makes it an ideal location for such a use.

Accordingly, the Applicant is requesting the following approvals:

1. PDP approval;
2. A rezoning of the Subject Property from P-1 to Pedestrian Commercial ("C-1"); and
3. A special exception to allow a Circle K gas station with a convenience store in the C-1 district pursuant to Section 2.7.7.C.3, LUDR.

The C-1 district is designed to facilitate a variety of commercial uses which will have direct access to arterial or collector roads. See § 2.7.7.A, LUDR and Policy 1.15.c, City of Cape Coral Comprehensive Plan. The Subject Property has direct access to Country Club Boulevard at the corner of Veterans Parkway. The proposed gas station will also consist of a single-story 4,968 square foot convenience store building, eight (8) fuel pumps, a fuel island canopy, and related parking in excess of what is required by the LUDR. The proposed development will occur in a single phase and conform to the building intensity, height, setback, and other dimensional regulations of the C-1 zone of the LUDR. The proposed development and rezoning will also be consistent with the City of Cape Coral Comprehensive Plan. Specifically, the proposed development does not exceed the maximum floor area ratio permitted in the CP Future Land Use Designation and (Policy 1.15.c, City of Cape Coral Comprehensive Plan).

Approval of this PDP and the corresponding rezoning and special exception will not be injurious to the neighborhood or otherwise detrimental to the public welfare. The surrounding land uses, zoning, and future land uses are as follows:

	<i>Current Land Use</i>	<i>Zoning</i>	<i>Future Land Use</i>
<i>North</i>	<i>Single-family residential</i>	<i>R-1B</i>	<i>Single-Family</i>
<i>East</i>	<i>Single-family residential</i>	<i>R-1B</i>	<i>Single-Family</i>
<i>South</i>	<i>Place of Worship</i>	<i>W</i>	<i>Public Facility</i>
<i>West</i>	<i>Single-family residential</i>	<i>R-1B</i>	<i>Single-Family</i>

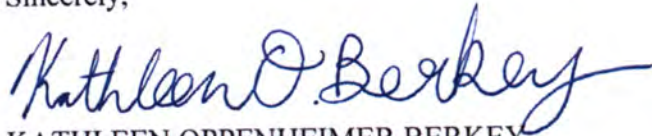
The proposed use is compatible with the surrounding uses, has sufficient lot frontage and access, will meet the required setbacks, and will provide adequate buffering and screening to surrounding properties.

The proposed gas station and convenience store will be constructed, operated, and maintained so as not to constitute a nuisance to owners or occupants of adjacent properties, nearby residents, or to the community, by reason of the emission or creation of noise, vibration, smoke, dust or other particulate matter, toxic or noxious waste materials, odors, fire, or explosive hazard.

In light of the foregoing, please accept this letter and its related enclosures as a formal written request for PDP, rezoning, and special exception approval for a gas station with a convenience store in a Pedestrian Commercial (C-1) zone.

Thank you for your time and consideration.

Sincerely,

A handwritten signature in blue ink, reading "Kathleen O. Berkey". The signature is fluid and cursive, with the first name "Kathleen" and last name "Berkey" being more prominent than the middle initial "O".

KATHLEEN OPPENHEIMER BERKEY
on behalf of Neale Montgomery

NM/KOB

Enclosures

CIRCLE K – VETERANS & COUNTRY CLUB

**ENVIRONMENTAL ASSESSMENT &
PROTECTED SPECIES SURVEY REPORT**

February 2016

Prepared For:

Circle K - Florida Division
c/o: Jon P Christiansen - Real Estate Development Manager
12911 N Telecom Parkway
Tampa, FL 33637
Phone: 813-910-6870
Email: jchristi@circlek.com

Prepared By:



BearPaws Environmental Consulting, Inc.
1327 Walden Drive Fort Myers, FL 33901
Phone: (239) 340-0678
Email: BearPaws.Env.Consulting@GMail.com

Introduction

A protected species survey was conducted on the Circle K – Veterans & Country Club property on February 4, 2016. The 1.36± acre site is located in Section 31, Township 44S, and Range 24E, of Lee County, Florida. More specifically; the site is located south of Veteran's Parkway, west of Country Club Boulevard, and immediately north of SE 26th Street in Cape Coral Florida, Florida. Please see the attached Project Location Map (Exhibit A).

The purpose of this survey was to inspect the property for potential listed species that could inhabit the site. These listed (endangered, threatened, etc.) species are regulated by the US Fish & Wildlife Service (FWS) and/or the Florida Fish & Wildlife Conservation Commission (FWC). Specific concentration was placed upon locating and identifying any potential burrows belonging to that of the gopher tortoise (*Gopherus polyphemus*) and/or the burrowing owl (*Athene cunicularia floridana*) that may inhabit the upland areas on-site.

The project's surrounding land uses are a mixture of residential homes, commercial developments, recreational fields, and undeveloped vacant land. The survey was conducted in the morning; the temperatures were in the upper 70's; there was a light breeze; and partly cloudy skies.

Methodology

Species surveys for the City of Cape Coral protected species are based on the presence of specific vegetation associations and habitat types noted on-site, as outlined in the City of Cape Coral Comprehensive Plan and City of Cape Coral Land Use and Development Regulations (LUDR). The frequency of transects performed in these habitats, unless otherwise discussed, were designed to meet the minimum updated coverage requirement. The specific methodology included pedestrian surveys of parallel and overlapping transects.

The vegetation communities or land-uses on the study area are delineated on an aerial photograph using the Florida Land Use, Cover and Forms Classification System (FLUCFCS). Next, these FLUCFCS codes are cross-referenced with the Protected Species List. With a list of the potential listed plants and animals, each FLUCFCS community is searched in the field for these species. An intensive pedestrian survey is conducted using parallel belt transects as a means of searching for protected plants and animals. Signs or sightings of these species are then recorded.

Existing Site Conditions

Boundary – The boundary is approximate and based upon Lee County parcel data and is assumed to be approximately 1.36± acres.

Soils - The soils on the property have been mapped by the National Resource Conservation Service (NRCS, formerly the Soil Conservation Service). These mappings are general in nature, but can provide a certain level of information about the site as to the possible extent of wetland area. The agencies commonly use these mappings as justification for certain wetland/upland determinations. According to these mappings, the parcel is underlain by Boca fine sand, (NRCS #13; non-hydric). Boca fine sand is considered non-hydric. Please see the attached NRCS Soils Map (Exhibit D).

Vegetation Descriptions – Vegetation is one parameter used in determining the presence of uplands or wetlands; these community mappings will generally reflect what a specific area could be considered by the regulatory agencies. We did not observe any wetland communities on-site during the site inspection. While on-site, generalized community delineations are hand-drawn on an aerial defining the different vegetation associations on-site. These general delineations were based on the nomenclature of the Florida Land Use, Cover and Forms Classification System (FLUCFCS), Level III and IV (FDOT 1999). Please see the attached FLUCFCS Map with Aerial (Exhibit B) and FLUCFCS Map without Aerial (Exhibit C). Listed below are the vegetation communities and land-uses identified on the site.

FLUCFCS Codes & Community Descriptions

Uplands

The following community areas have been designated as upland habitats. Uplands are any area that does not qualify as a wetland because the associated hydrologic regime is not sufficiently wet enough to elicit development of vegetation, soils, and/or hydrologic characteristics associated with wetlands.

FLUCFCS 740 – Disturbed Lands (1.36± Acres)

This upland community occupied the entire 1.36± acres of the site. This area appears to have been cleared years ago and continues to be mowed and maintained. The canopy and sub-canopy is open with widely cabbage palm (*Sabal palmetto*), earleaf acacia (*Acacia auriculiformis*), mimosa (*Mimosa spp.*), carrotwood (*Cupaniopsis anacardioides*), and Brazilian pepper (*Schinus terebinthifolius*). The groundcover is dominated bahia grass (*Paspalum notatum*) and St. Augustine grass (*Stenotaphrum secundatum*), with wild coffee (*Psychotria nervosa*), Spanish needle (*Bidens alba*), ragweed (*Ambrosia artemisiifolia*), broomsedge (*Andropogon virginicus*), finger grass (*Eustachys floridana*), crowfoot (*Dactyloctenium aegyptium*), fox tail (*Setaria sp.*), and other various opportunistic weedy species. This community should be considered uplands by regulatory agencies.

Table 1. FLUCFCS Community Table

FLUCFCS Code	Community Description	Acreage	Percent Habitat
740	Disturbed Lands	1.36± ac.	100.00%
Total		1.36± ac.	100.00%

Results & Discussion

During this field survey for protected species, specific concentration was placed upon locating any burrows belonging to that of the gopher tortoise (*Gopherus polyphemus*) and/or the burrowing owl (*Athene cunicularia floridana*); however, we did not identify any of these species or signs thereof any other protected species, while conducting the survey on-site. There were several non-listed species identified while conducting the protected species survey, among those were the northern mocking bird (*Mimus polyglottos*), common grackle (*Quiscalus quiscula*), and several pine warblers (*Setophaga pinus*). The various listed species that may occur in the FLUCFCS communities on-site have been tabulated on the attached table. Please see the Protected Species Survey Map, attached as Exhibit E.

Due to the historic land use (cleared residential/commercial lot), the surrounding land uses, and busy roadways, it is unlikely that this site supports or would provide habitat for any other protected species. Generalized community locations were estimated and hand-drawn on a non-rectified aerial with approximate property boundaries, hence their location and aerial extent is approximate.

Table 2: Listed Species by Habitat with Current Status

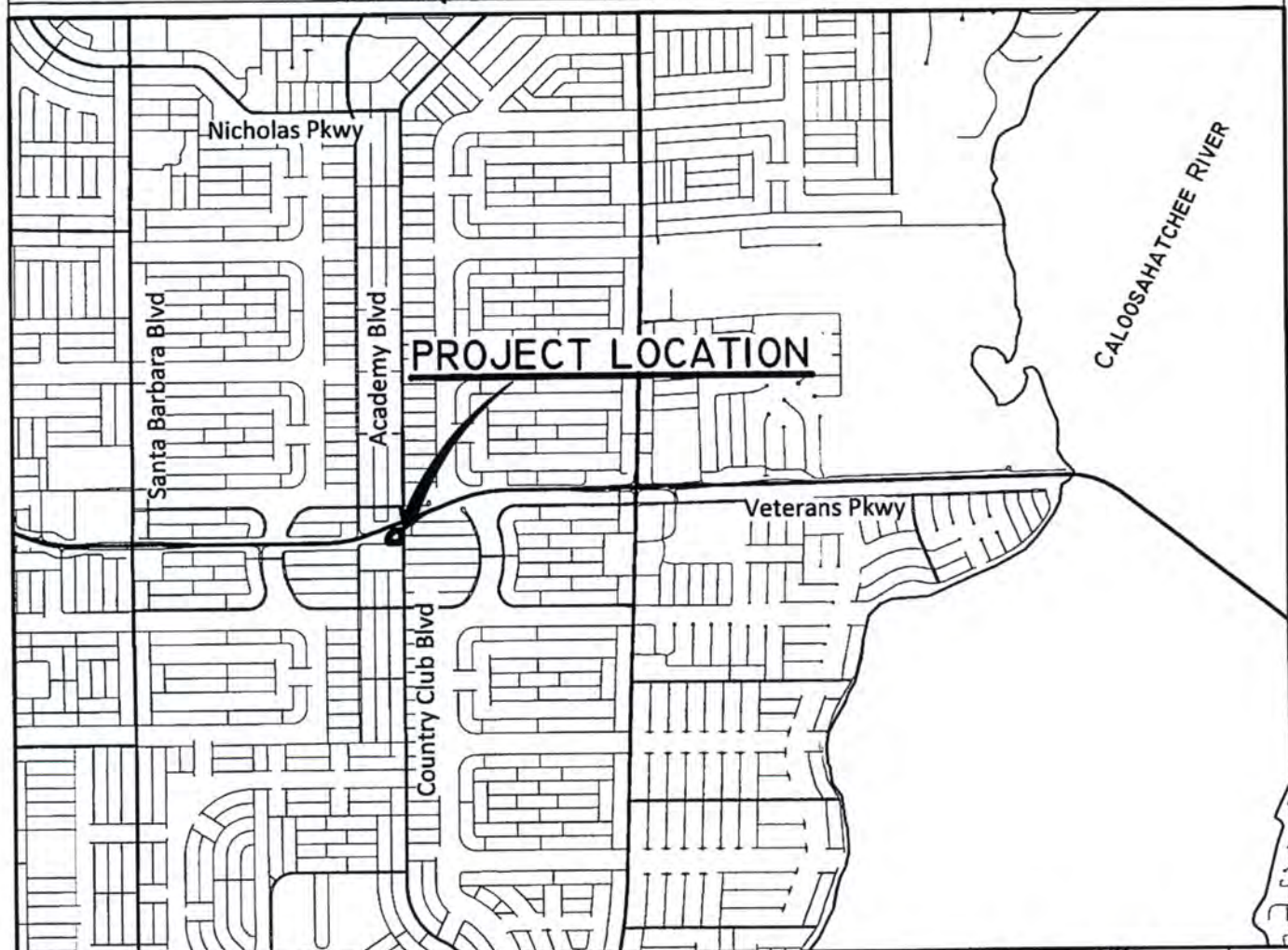
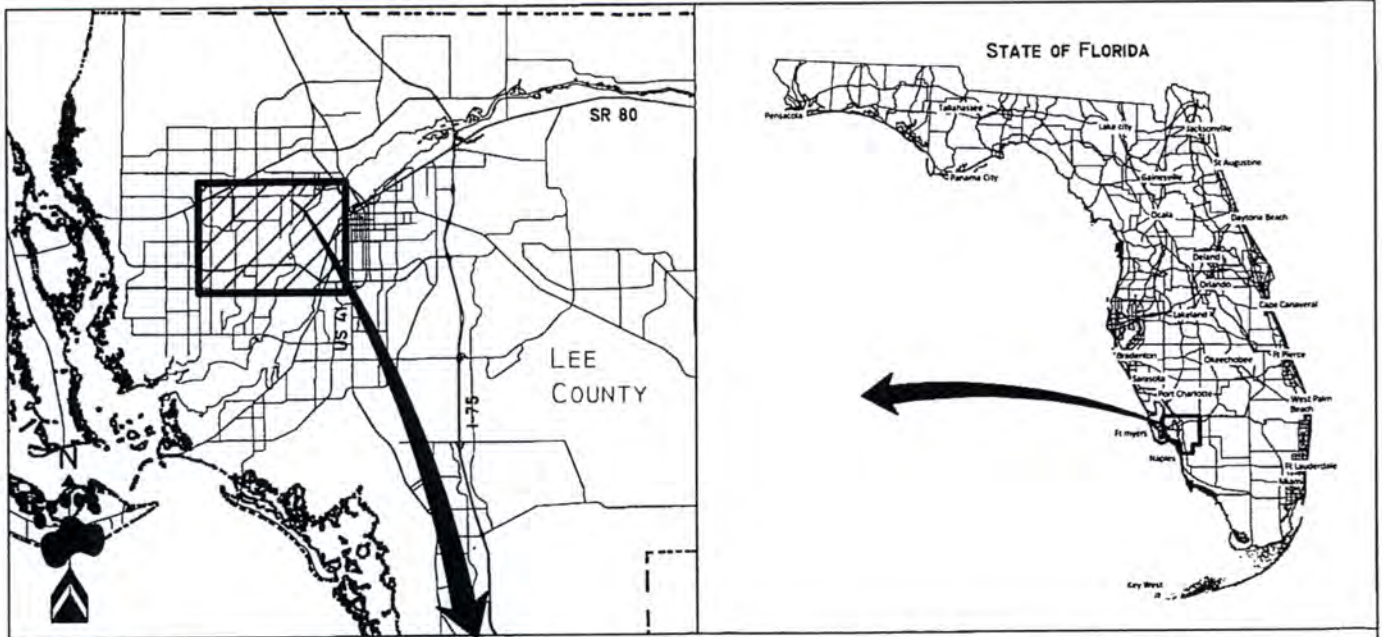
FLUCFCS Code	FLUCFCS Description	Common Name	Scientific Name	Percent Coverage	Observed	USDA	FDA&CS	FWS	FWC
740	Disturbed Land	N/A	--	90	--	--	--	--	--

C = Commercially Exploited, SAT = Similarity of Appearance Threatened, SSC = Species of Special Concern, T = Threatened, E = Endangered

Table designates listed species with potential to occur in each FLUCFCS community.

EXHIBIT A

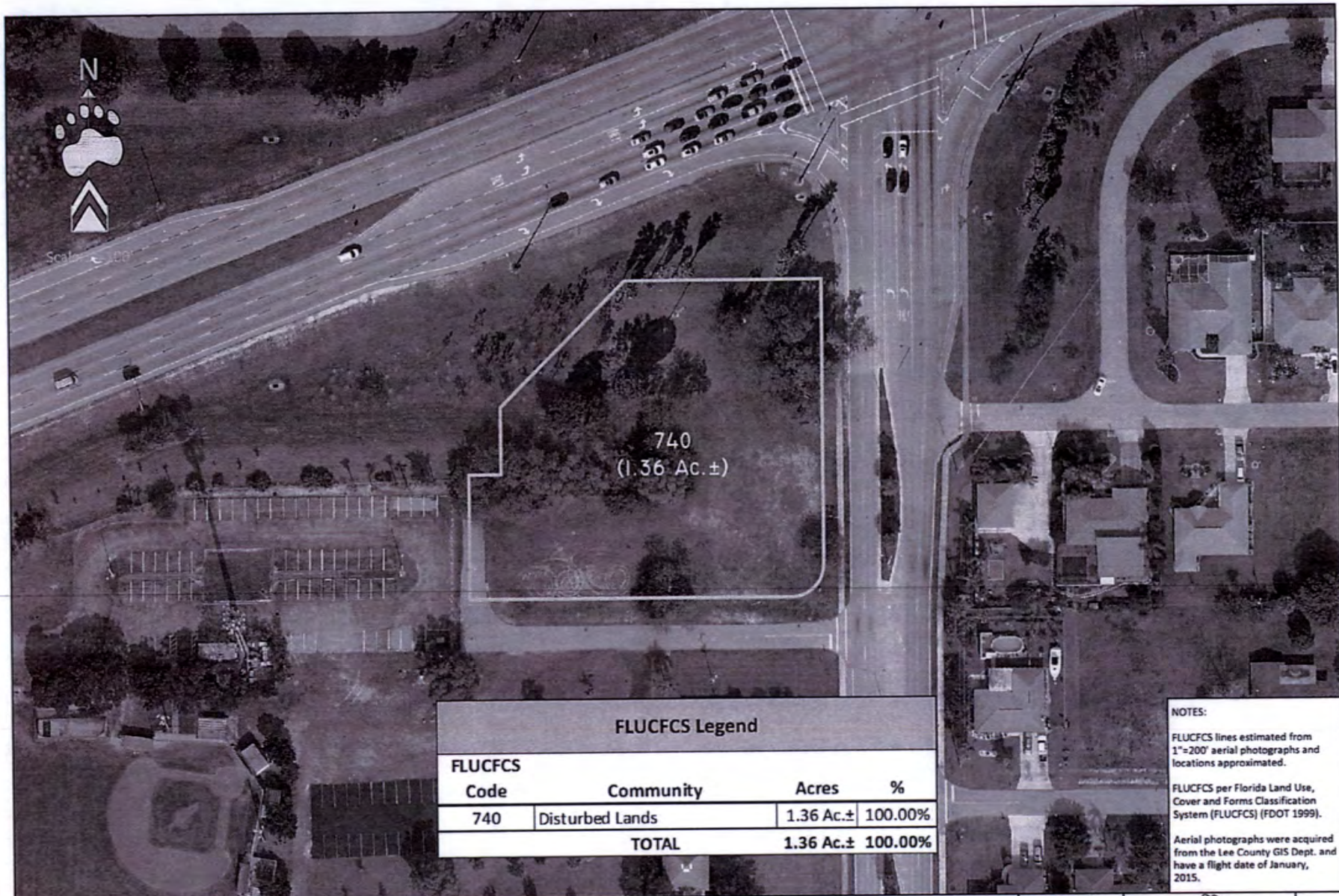
Project Location Map



DRAWN BY: BWS		DATE: 2/6/16	CATEGORY: LOCATION	<h2 style="text-align: center;">Circle K - Veterans & Country Club Location Map</h2>	 <small>1527 WALTON DRIVE, FORT MYERS, FL 33901 (239) 310-0618 BEARPAWS.ENVCONSULTING@GMAIL.COM</small>	PAGE
JOB NUMBER		SCALE:	EXHIBIT			
S/T/R		NTS				
31/44S/24E		COUNTY: LEE				

EXHIBIT B

FLUCFCS Map with Aerial



FLUCFCS Legend

FLUCFCS			
Code	Community	Acres	%
740	Disturbed Lands	1.36 Ac.±	100.00%
TOTAL		1.36 Ac.±	100.00%

NOTES:

FLUCFCS lines estimated from 1"=200' aerial photographs and locations approximated.

FLUCFCS per Florida Land Use, Cover and Forms Classification System (FLUCFCS) (FDOT 1999).

Aerial photographs were acquired from the Lee County GIS Dept. and have a flight date of January, 2015.

Revisions	Date:	Drawn By:	Date:
		BWS	2/4/16
		Job Number	
		S/T/R	
		31/44S/24E	

Circle K - Veterans & Country Club

Aerial FLUCFCS Map

Category
FLUCFCS
Scale:
1" = 100'
County
Lee



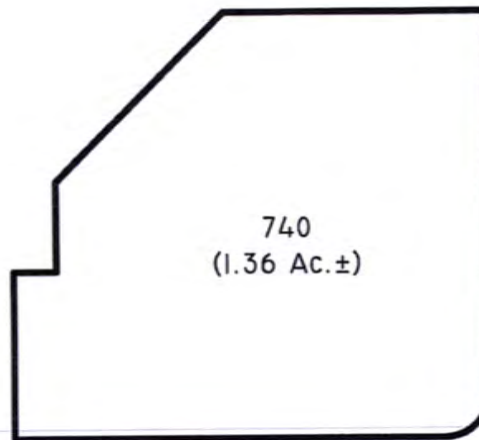
Page
-
Exhibit
-

EXHIBIT C

FLUCFCS Map



Scale: 1"=100'



FLUCFCS Legend			
FLUCFCS			
Code	Community	Acres	%
740	Disturbed Lands	1.36 Ac.±	100.00%
TOTAL		1.36 Ac.±	100.00%

NOTES:

FLUCFCS lines estimated from 1"=200' aerial photographs and locations approximated.

FLUCFCS per Florida Land Use, Cover and Forms Classification System (FLUCFCS) (FDOT 1999).


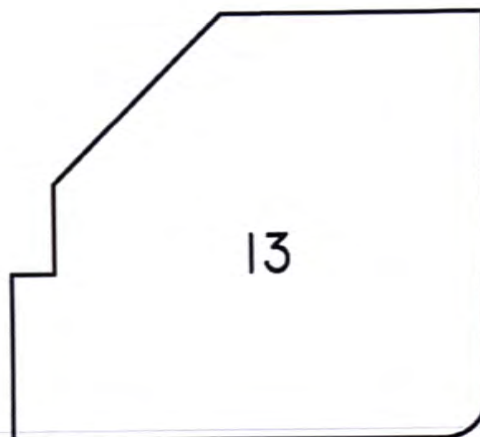
Revisions	Date:	Drawn By:	Date:	Circle K - Veterans & Country Club FLUCFCS Map		Category		Page
		BWS	2/4/16			FLUCFCS		-
		Job Number				Scale:		Exhibit
		S/T/R				1" = 100'		
		31/44S/24E				County	Lee	-

EXHIBIT D

NRCS Soils Map



Scale: 1"=100'



NRCS Soils Legend

Soil No	Description	Status
13	Boca Fine Sand	Non-Hydric

NOTES

Soils were acquired from LABINS
and are from the NRCS.


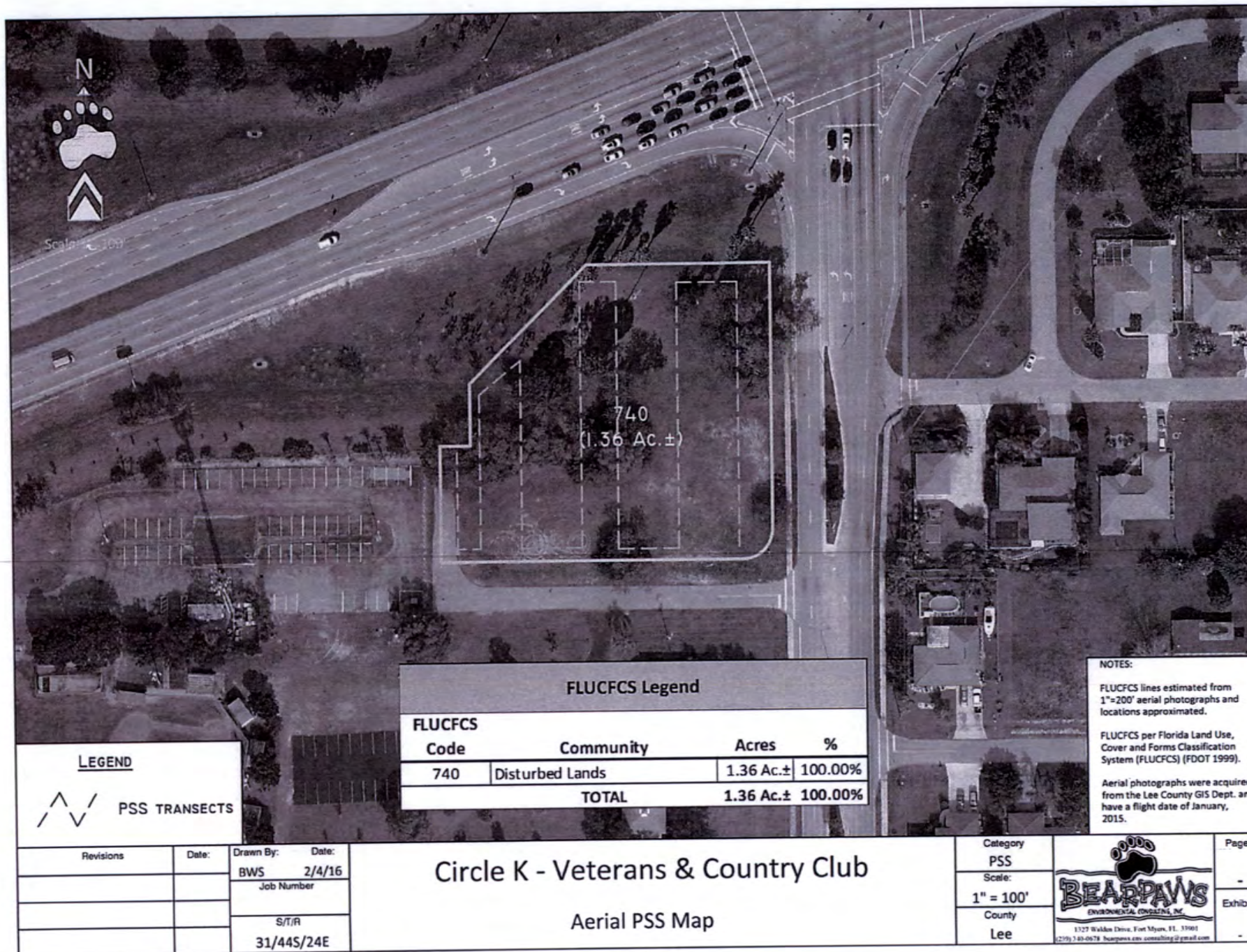
Revisions	Date:	Drawn By:	Date:	Circle K - Veterans & Country Club Soils Map	Category	 BEARPAWS ENVIRONMENTAL CONSULTING, INC. <small>1327 Wadsworth Drive, Fort Myers, FL 33901 (239) 340-0678 bearpawsenv.com/bearpawstop@gmail.com</small>	Page
		BWS	2/4/16		Soils		-
		Job Number			Scale:		Exhibit
		S/T/R			1" = 100'		-
		31/44S/24E			County	Lee	

EXHIBIT E

Protected Species Survey Map



LEGEND



PSS TRANSECTS

FLUCFCS Legend

FLUCFCS Code	Community	Acres	%
740	Disturbed Lands	1.36 Ac.±	100.00%
TOTAL		1.36 Ac.±	100.00%

NOTES:

FLUCFCS lines estimated from 1"=200' aerial photographs and locations approximated.

FLUCFCS per Florida Land Use, Cover and Forms Classification System (FLUCFCS) (FDOT 1999).

Aerial photographs were acquired from the Lee County GIS Dept. and have a flight date of January, 2015.

Revisions

Date:

Drawn By:

Date:

BWS

2/4/16

Job Number

S/T/R

31/44S/24E

Circle K - Veterans & Country Club

Aerial PSS Map

Category

PSS

Scale:

1" = 100'

County

Lee



Page

-

Exhibit

-

1327 Walden Drive, Fort Myers, FL 33901
(239) 740-0678 bearpaws.com consulting@bearpaws.com

CITY OF CAPE CORAL

Burrowing Owl/Gopher Tortoise Affidavit

Contractor or Owner

Jon Christiansen - Circle K (FL Div.)

Block 821

Lot 15-22

Unit 21

Strap # 31-44-24-C1-00821.0160

Site Address 819 SE 26th Street

Within the last 30 days, I have inspected the property described above AND any vacant properties near the jobsite where I or my subcontractors may drive vehicles or place construction material.

1. I have found the following number of Burrowing Owl and/or Gopher Tortoise burrow(s) located on or adjacent to the aforementioned property, including those located in abutting City rights-of-way.

☒ None (0) ☐ One (1) ☐ Two (2) ☐ Three (3) ☐ Four (4) ☐ (Other) _____

2. Please select one of the three available options below:

☐ **OPTION 1: STATE AND/OR FEDERAL PERMITS ARE NECESSARY.** I understand that State and/or Federal permits are required prior to the commencement of development activity.

****Please indicate species, in known.** ☐ BURROWING OWL ☐ GOPHER TORTOISE

☒ **OPTION 2: NO STATE PERMITS ARE NECESSARY.** No Burrowing Owl and/or Gopher Tortoise burrows exist on or adjacent to the aforementioned property, including those located in abutting City rights-of-way.

☐ **OPTION 3: NO STATE PERMITS ARE NECESSARY.** Appropriate buffers will be maintained during all phases of construction.

****Please indicate species, in known.** ☐ BURROWING OWL ☐ GOPHER TORTOISE

By accepting local building permits, I hereby assume all responsibility to ensure the protection of Burrowing Owls and/or Gopher Tortoises and their burrow(s) during all phases of construction activity. I will maintain a protection zone during all phases of construction. The protection zone should extend a radius of 10 feet (20-foot diameter) from the Burrowing Owl burrow entrance, and/or 25 feet (50-foot diameter) from the Gopher Tortoise burrow entrance. **All burrows must be staked using the aforementioned dimensions.** Permanent installation of a T-perch is recommended for Burrowing Owls. I understand that molesting, harassing, or injuring Burrowing Owls or Gopher Tortoises or their burrows is a crime. The City is required to notify the law enforcement division of the Florida Fish & Wildlife Conservation Commission if a Wildlife violation is observed.

I fully understand the Federal and State regulations that prohibit the endangerment and/or harassment of Burrowing Owls or Gopher Tortoises and their burrows, and I accept full responsibility for the actions of my employees and subcontractors.

I understand that the City is not liable for an applicant's failure to obtain state and/or federal permits, is not liable for the applicant's failure to fulfill obligations imposed by a state and/or federal agency, and is not liable for any actions taken by the applicant that result in violations to state and/or federal law. Further, I also understand that the City requires that all applicable state and federal permits be obtained **prior** to the commencement of development activities. I am fully aware that the failure to secure such permits will result in a **Stop Work Order** being issued on my site.

Under penalty of perjury, I declare that I have read the foregoing document and that all information contained herein is true and correct to the best of my knowledge and that violation of these Laws is punishable by a fine and/or imprisonment.

BY:

Jon Christiansen
Print Name & Title of Contractor or Property Owner

Edward F Giunta II

Assistant Secretary

Signature of Contractor or Property Owner
(Signature Must be Notarized)

STATE OF Florida, COUNTY OF Hillsborough

Subscribed and sworn to (or affirmed) before me this 24th day of Feb, 2016, by

Edward F Giunta II - Asst Sec who is personally known or produced
Printed name of person signing

as identification



CHERYL BARROW
MY COMMISSION # FF 153363
EXPIRES: August 21, 2018
Bonded Thru Budget Notary Services

Exp. 08.21.18

Commission Number: FF 153363

Signature of Notary Public:

Printed name of Notary Public:

Cheryl Barrow

TO: Circle K Stores, Inc.

FROM: Michael D. Raysor, P.E., PTOE
WAYSOR Transportation Consulting, LLC.

SUBJECT: Circle K -- Traffic Study
Country Club Boulevard at SE 26th Street, Cape Coral, Florida

DATE: February 25, 2016



SECTION 1.0 INTRODUCTION

The northwest corner of the intersection of Country Club Boulevard at SE 26th Street, in Cape Coral, Florida, is proposed for the development of a convenience store and gas station (refer to Figure 1.0 for project location map). This technical memorandum documents the traffic study performed to analyze the subject development. This study was undertaken pursuant to the City-approved methodology, as documented in Attachment "A".

SECTION 2.0 DESCRIPTION OF PROPOSED DEVELOPMENT

The project site is currently vacant and is proposed for the development of a convenience store and gas station (4,968 square feet & 16 vehicle fueling positions). Access to the project site is planned to be provided via (a) a right-in-only connection to Country Club Boulevard, and (b) two full access connections to SE 26th Street which provides access to Country Club Boulevard (refer to Figure 2.0 for the project's concept plan). Site development is anticipated to be completed within approximately one year.

SECTION 3.0 TRIP GENERATION

The daily and peak hour trip generation of the project site was estimated for the proposed development using trip characteristic data in accordance with the Institute of Transportation Engineers' Trip Generation Manual (ITE, 9th edition, 2012) and Trip Generation Handbook (ITE, 3rd edition, 2014). Trip generation estimates were made in consideration of both (a) ITE Land Use Category (LUC) 853 using convenience store square footage, and (b) ITE LUC 945 using vehicle fueling positions, with the worst-case values used in this traffic study; where the worst-case values for this site were found to result from use of ITE LUC 853. Attachment "B" summarizes the trip generation estimates, with the values used in the study shown below.

<u>Trip Type</u>	<u>Daily Trips</u>	<u>AM Peak Hour Trips</u>	<u>PM Peak Hour Trips</u>
New External	1,492	76	86
Pass-By	2,710	128	168
Total	4,202	204	254

FIGURE 1.0 PROJECT SITE LOCATION MAP

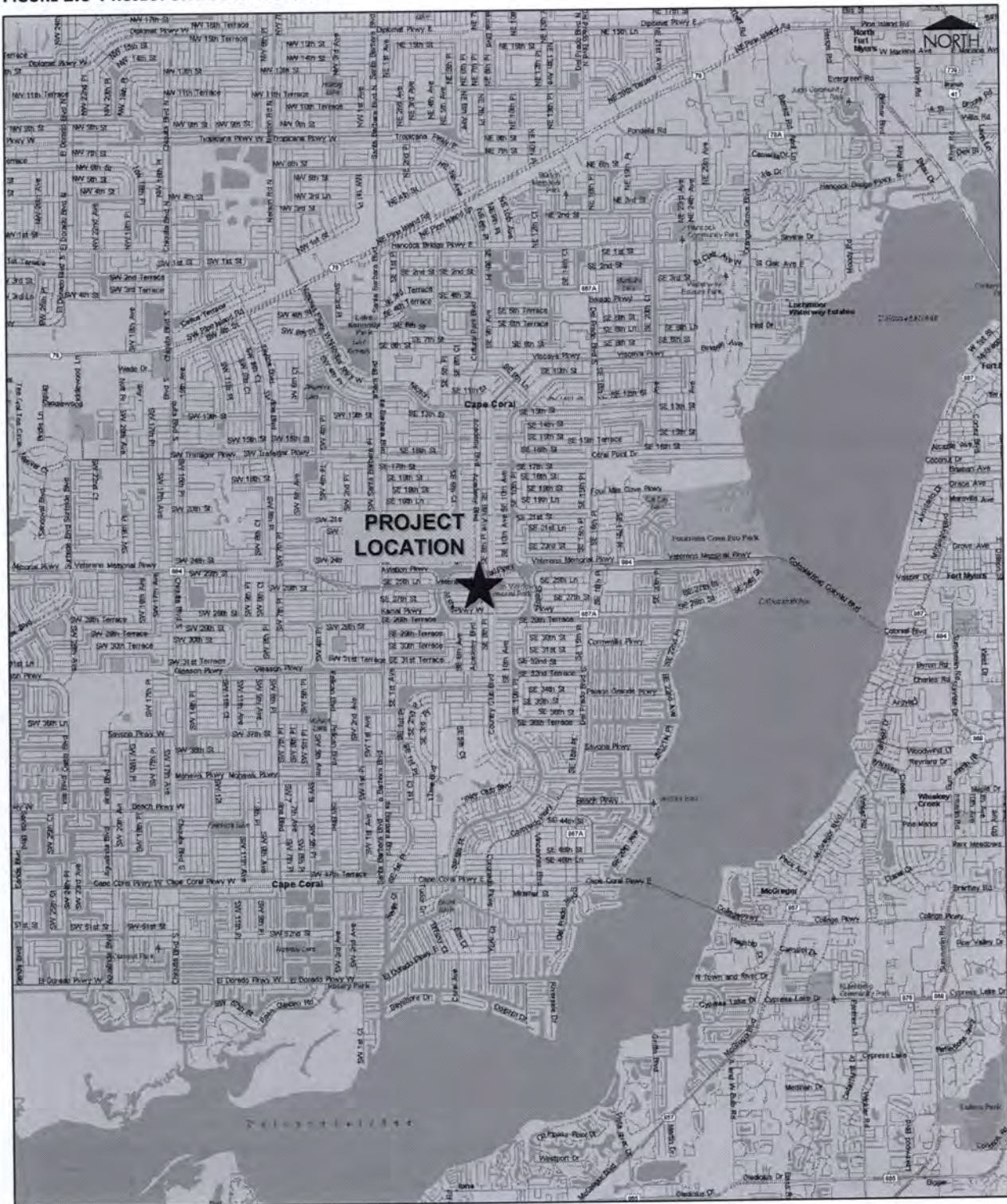
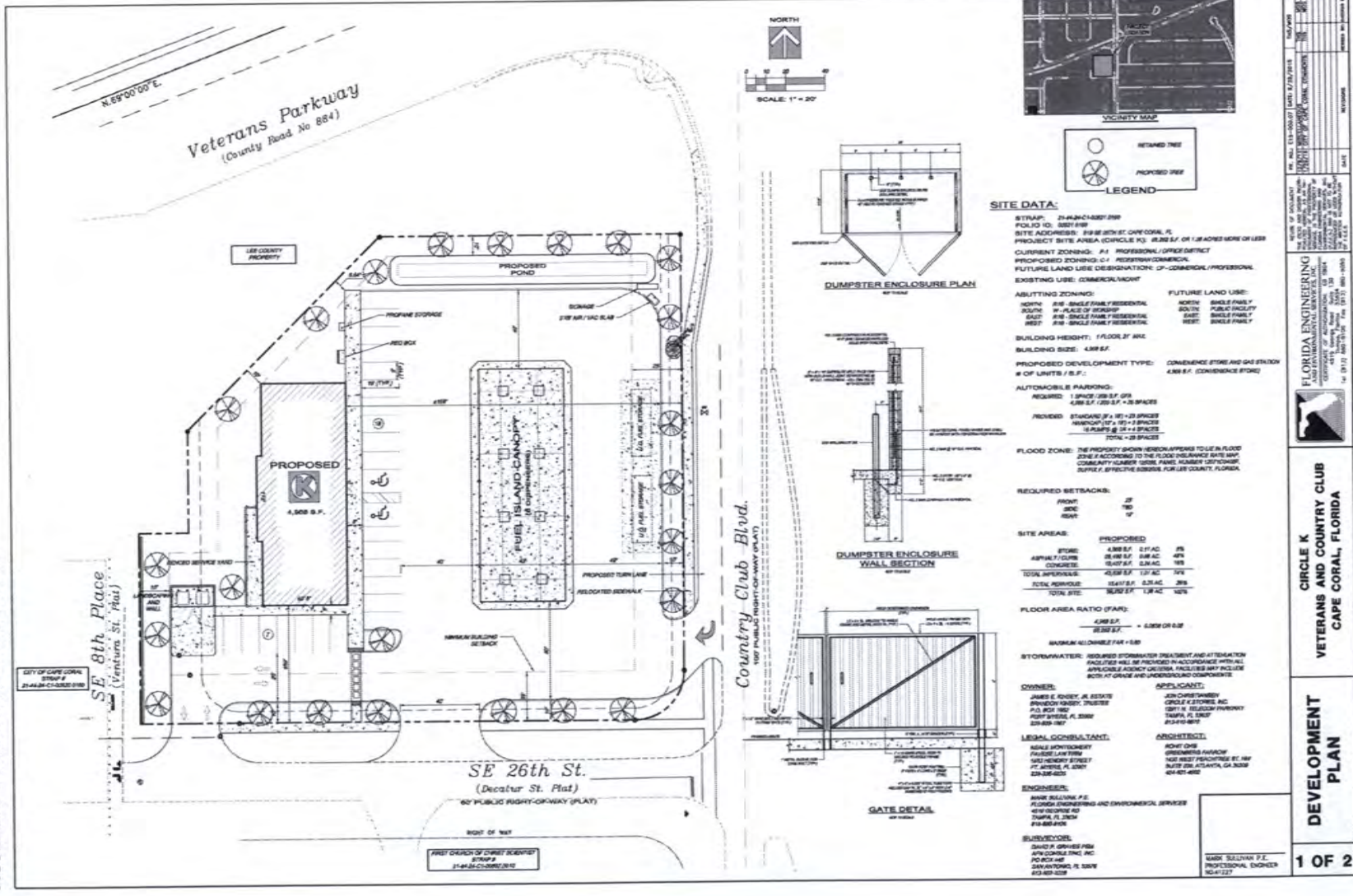


FIGURE 2.0 PROJECT SITE CONCEPT PLAN



SECTION 4.0 TRIP DISTRIBUTION

The distribution of project generated trips was estimated based on area development patterns for new external trips, and based on existing traffic patterns for pass-by trips. The estimated distribution and assignment of project generated trips is shown in Figures 3.0 and 4.0.

SECTION 5.0 STUDY AREA

Pursuant to discussions with City staff, the study area for this analysis was determined to consist of the following intersections:

- Country Club Boulevard at Project Site Driveway
- Country Club Boulevard at SE 26th Street

In addition, it was agreed that traffic volumes would be collected at the intersection of Country Club Boulevard at Veterans Memorial Parkway.

SECTION 6.0 TRAFFIC VOLUMES

Existing traffic volumes were obtained from intersection turning movement counts performed during the AM peak period (7:00 am to 9:00 am) and the PM peak period (4:00 pm to 6:00 pm). The traffic volumes obtained from the counts were adjusted using FDOT's 2014 peak season factors for Lee County; noting that the peak season factor corresponding to the date of the traffic counts was identified as 1.00. Refer to Attachment "C" for traffic count data and FDOT's 2014 peak season factors. Figures 5.0 and 6.0 show the existing traffic volumes.

Future year background traffic volumes were calculated by adding one year of growth to the existing traffic volumes. The three year historical growth rate for the adjacent segment of Country Club Boulevard was determined to be negative (i.e., -0.22% per year), as documented in Attachment "D". Therefore, a nominal 1.0% per year growth rate was used for this study. Figures 7.0 and 8.0 show the calculated background traffic volumes.

Future year post-development traffic volumes were calculated by adding the project generated traffic volumes to the background traffic volumes. Figures 9.0 and 10.0 show the post-development traffic volumes used in this study.

FIGURE 3.0 PROJECT TRAFFIC VOLUMES (AM PEAK HOUR)

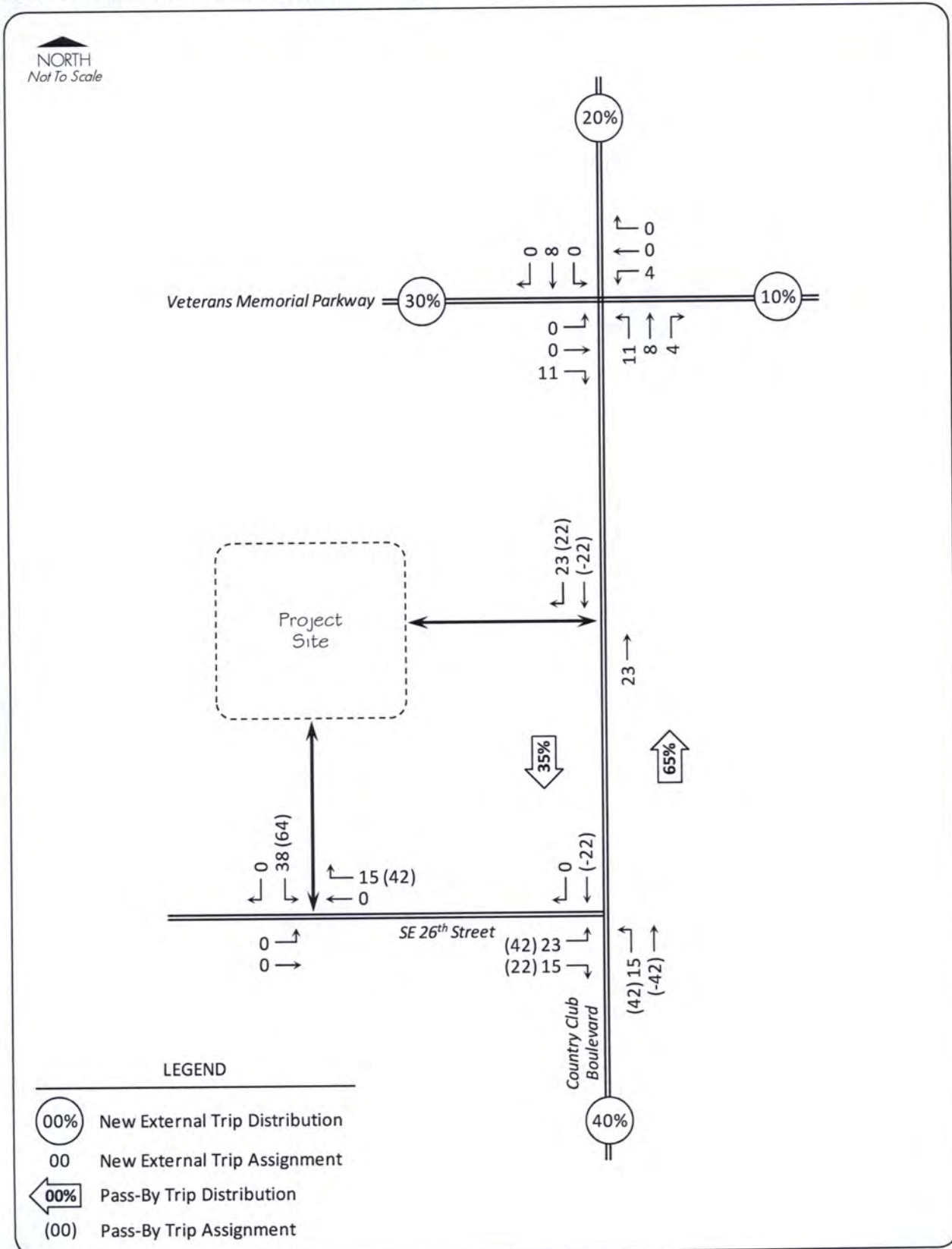


FIGURE 4.0 PROJECT TRAFFIC VOLUMES (PM PEAK HOUR)

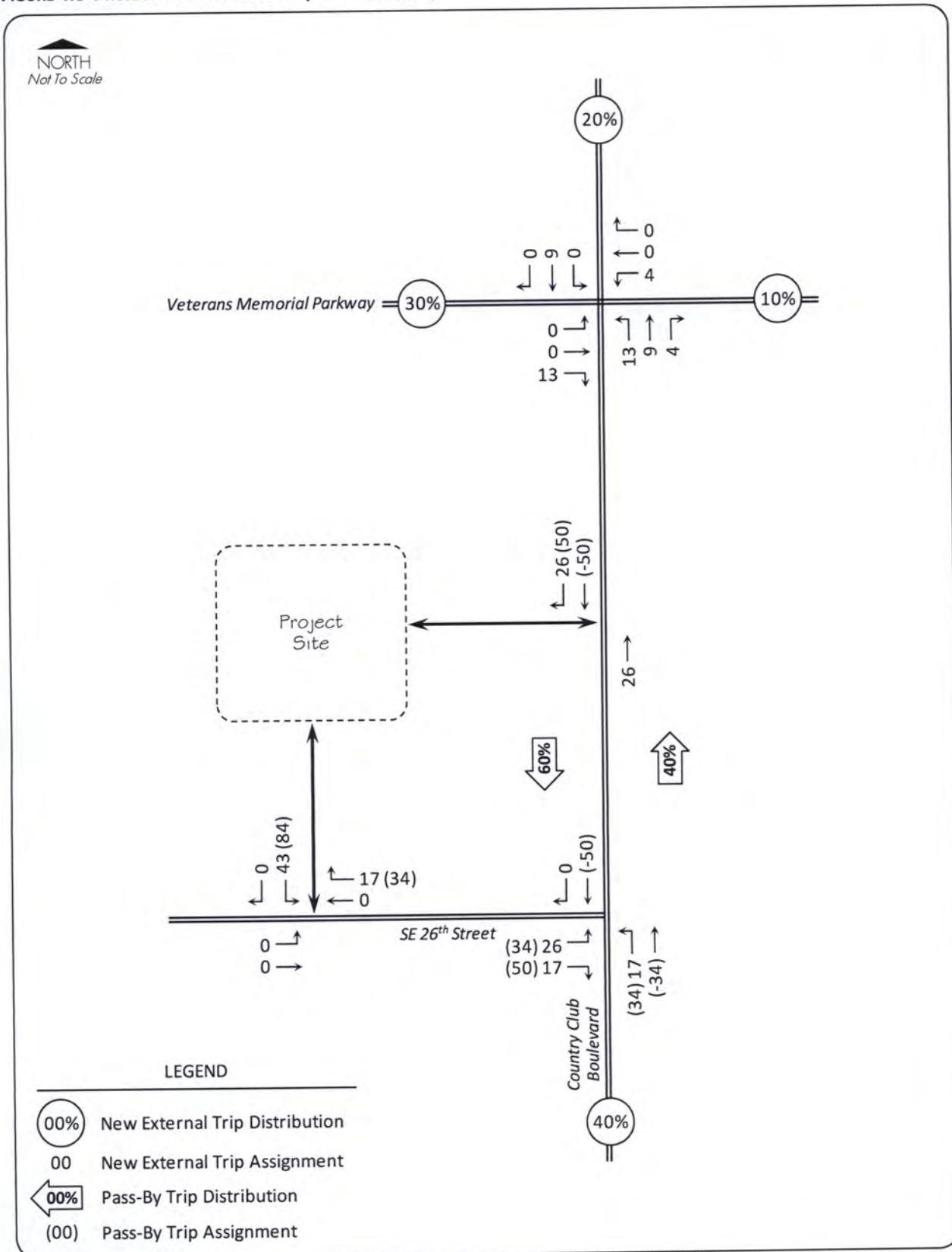


FIGURE 5.0 EXISTING TRAFFIC VOLUMES (AM PEAK HOUR)

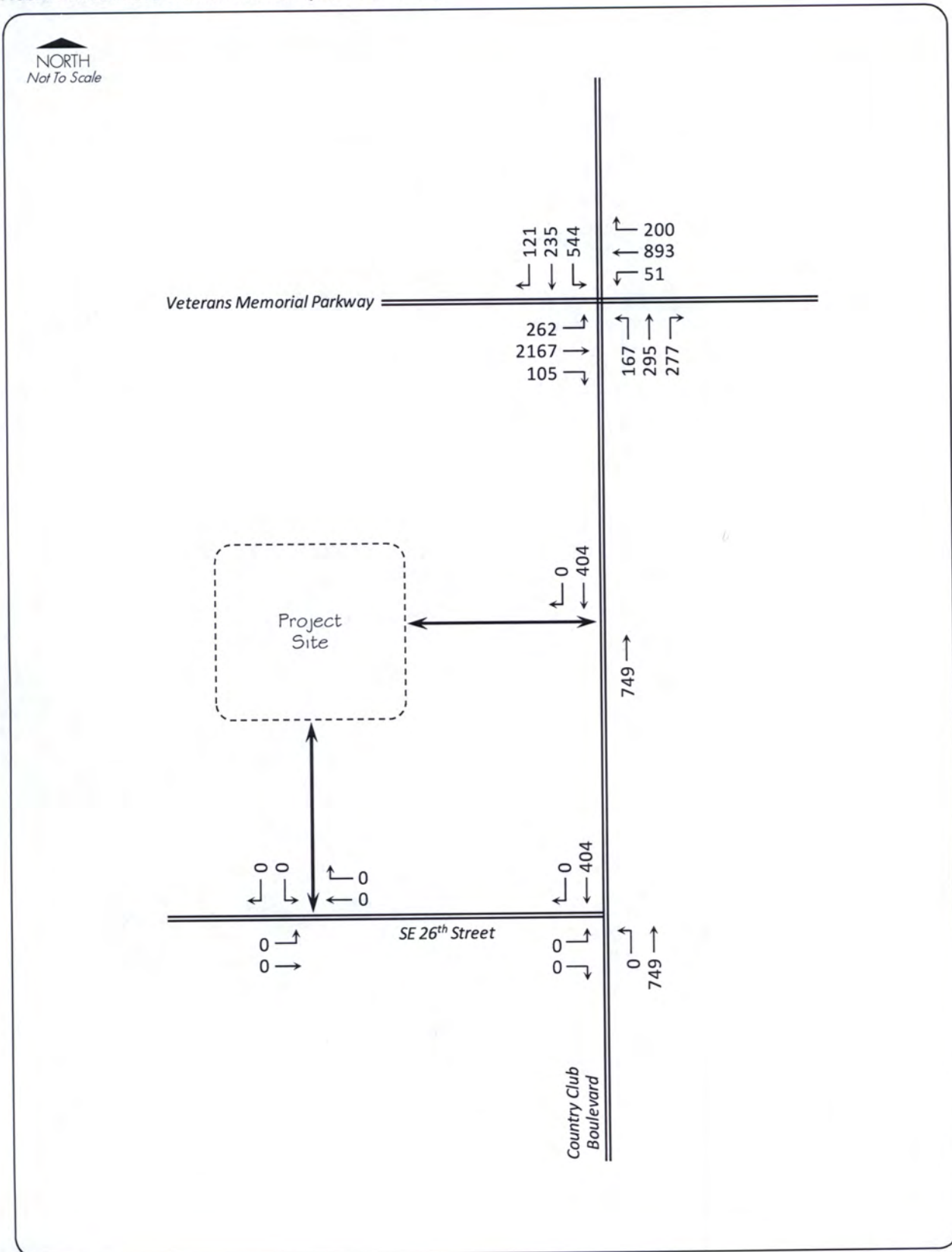


FIGURE 6.0 EXISTING TRAFFIC VOLUMES (PM PEAK HOUR)

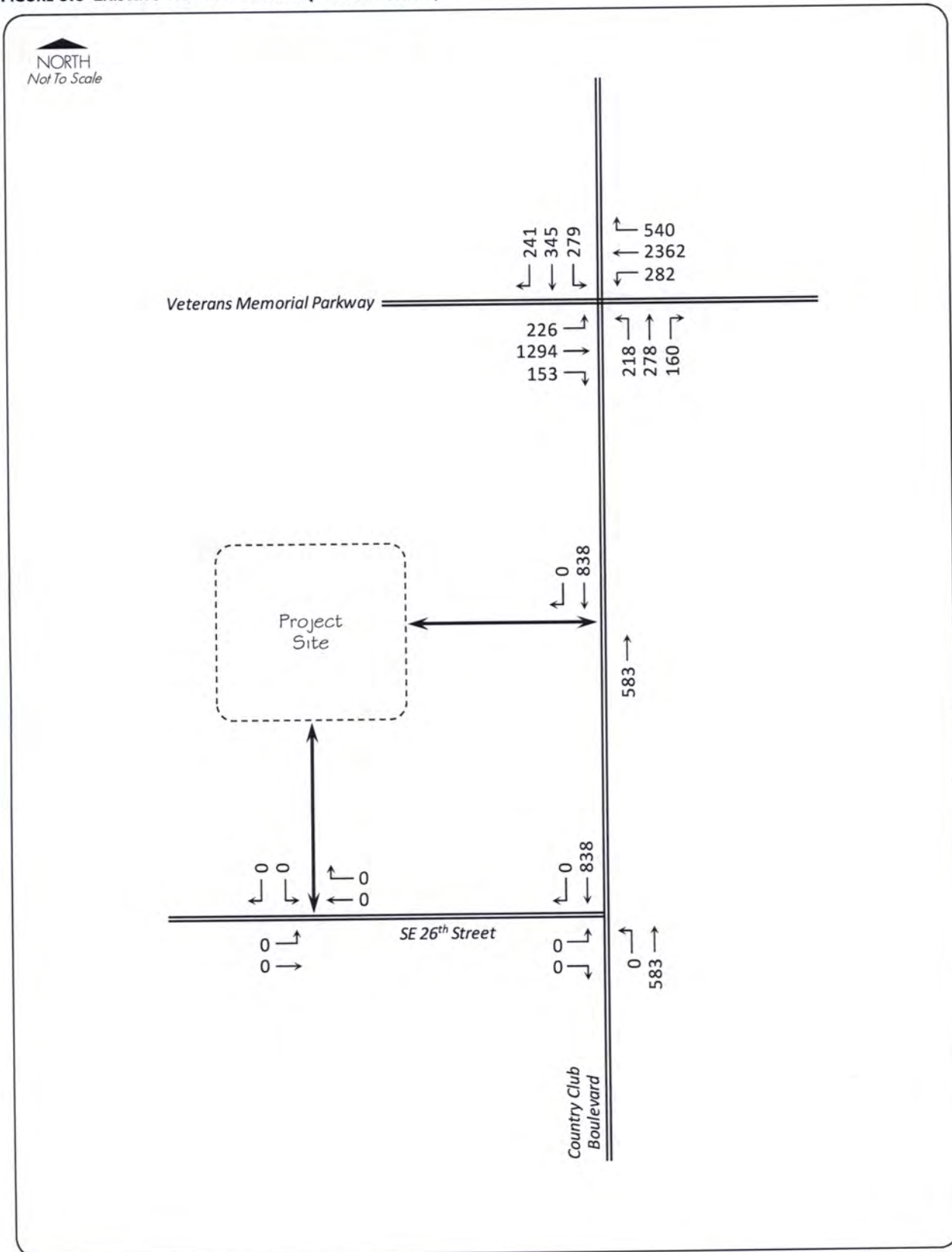


FIGURE 7.0 BACKGROUND TRAFFIC VOLUMES (AM PEAK HOUR)

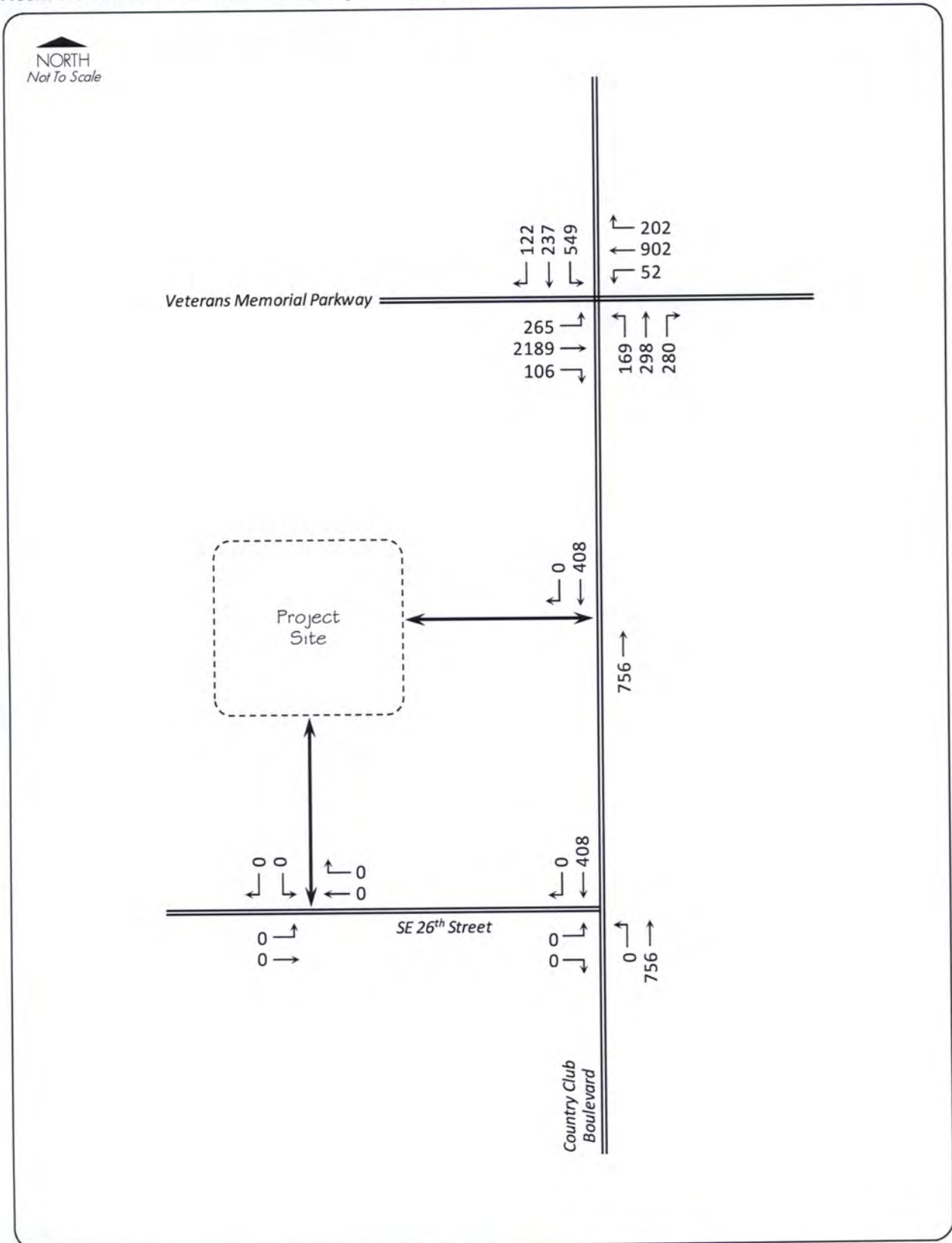


FIGURE 8.0 BACKGROUND TRAFFIC VOLUMES (PM PEAK HOUR)

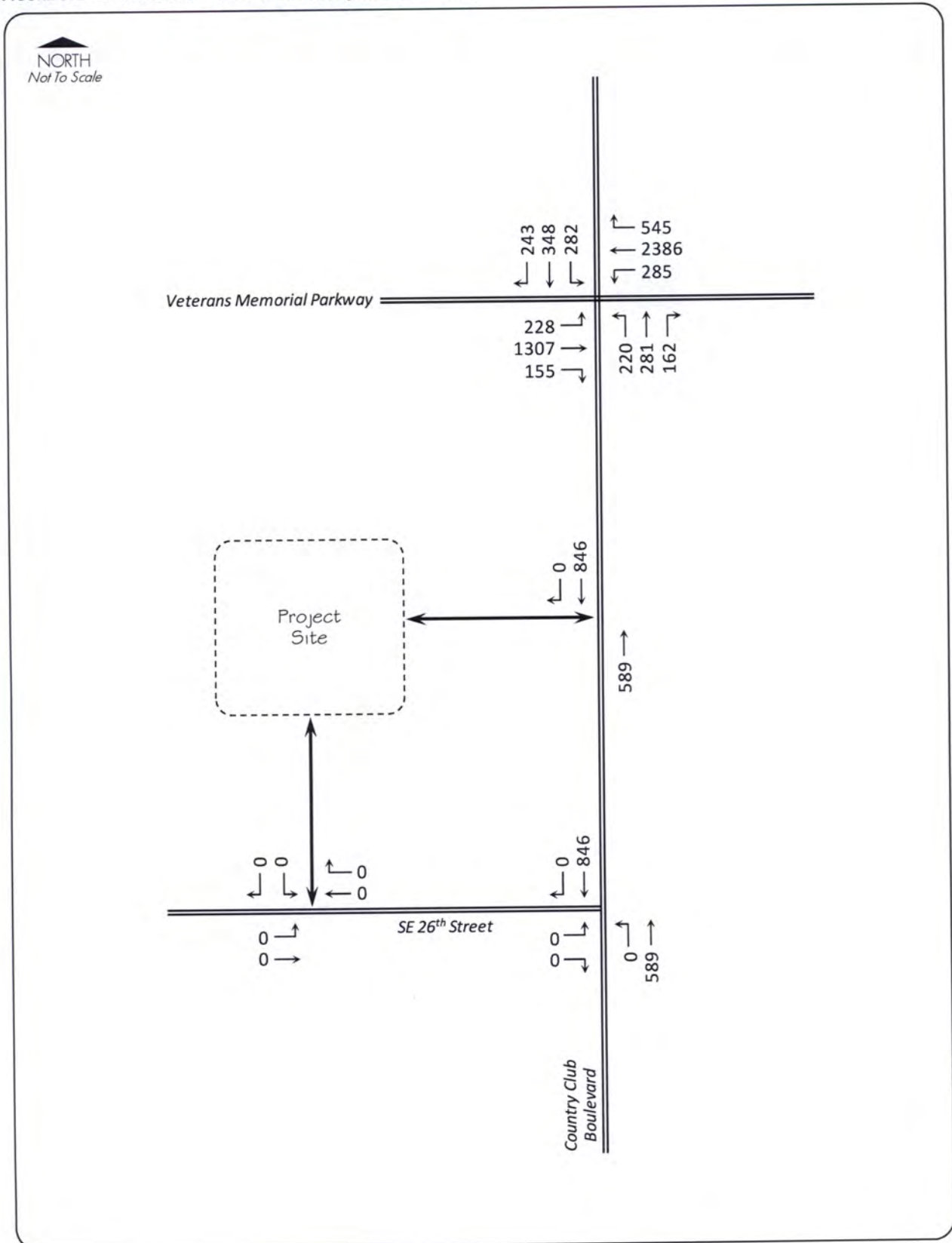


FIGURE 9.0 POST-DEVELOPMENT TRAFFIC VOLUMES (AM PEAK HOUR)

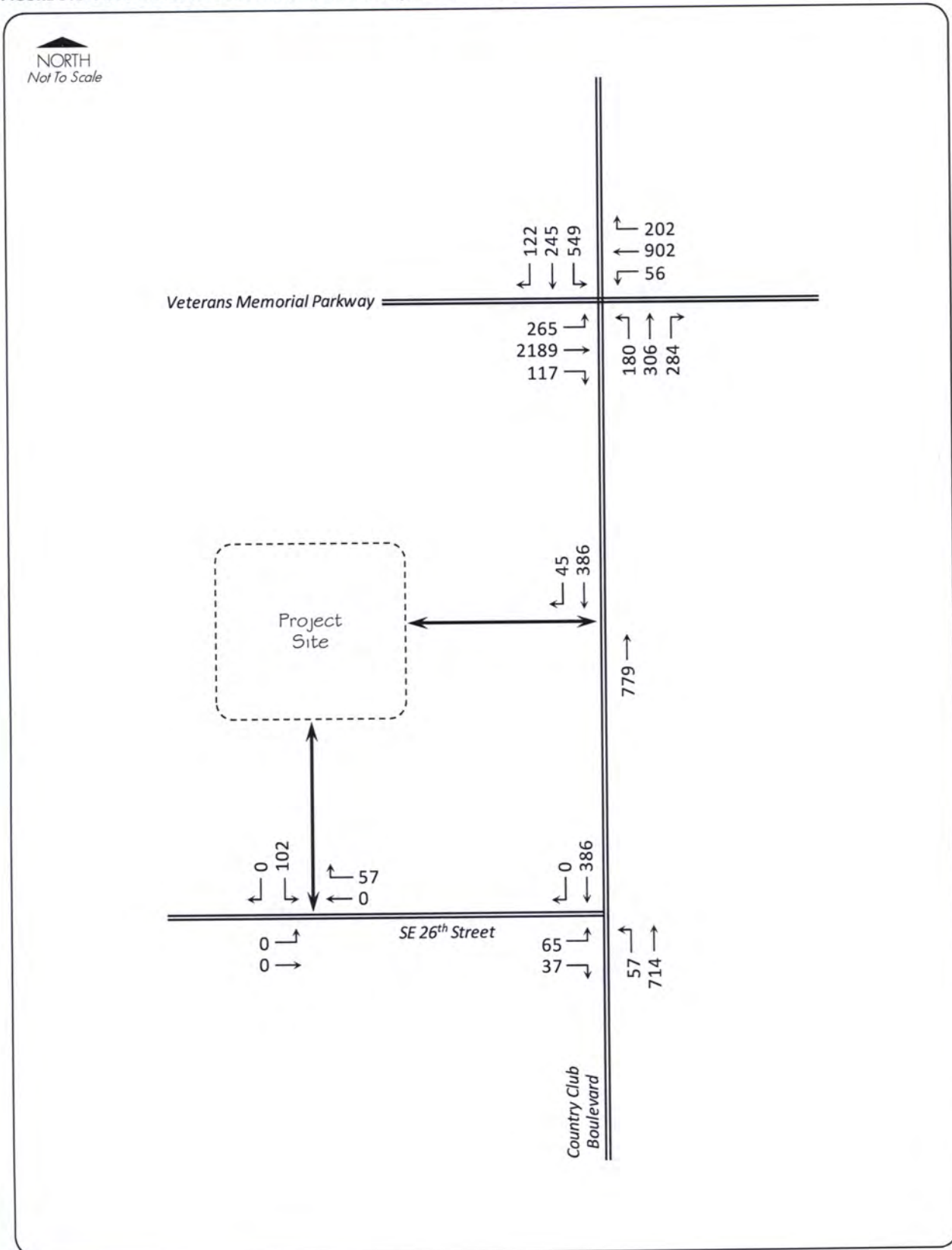
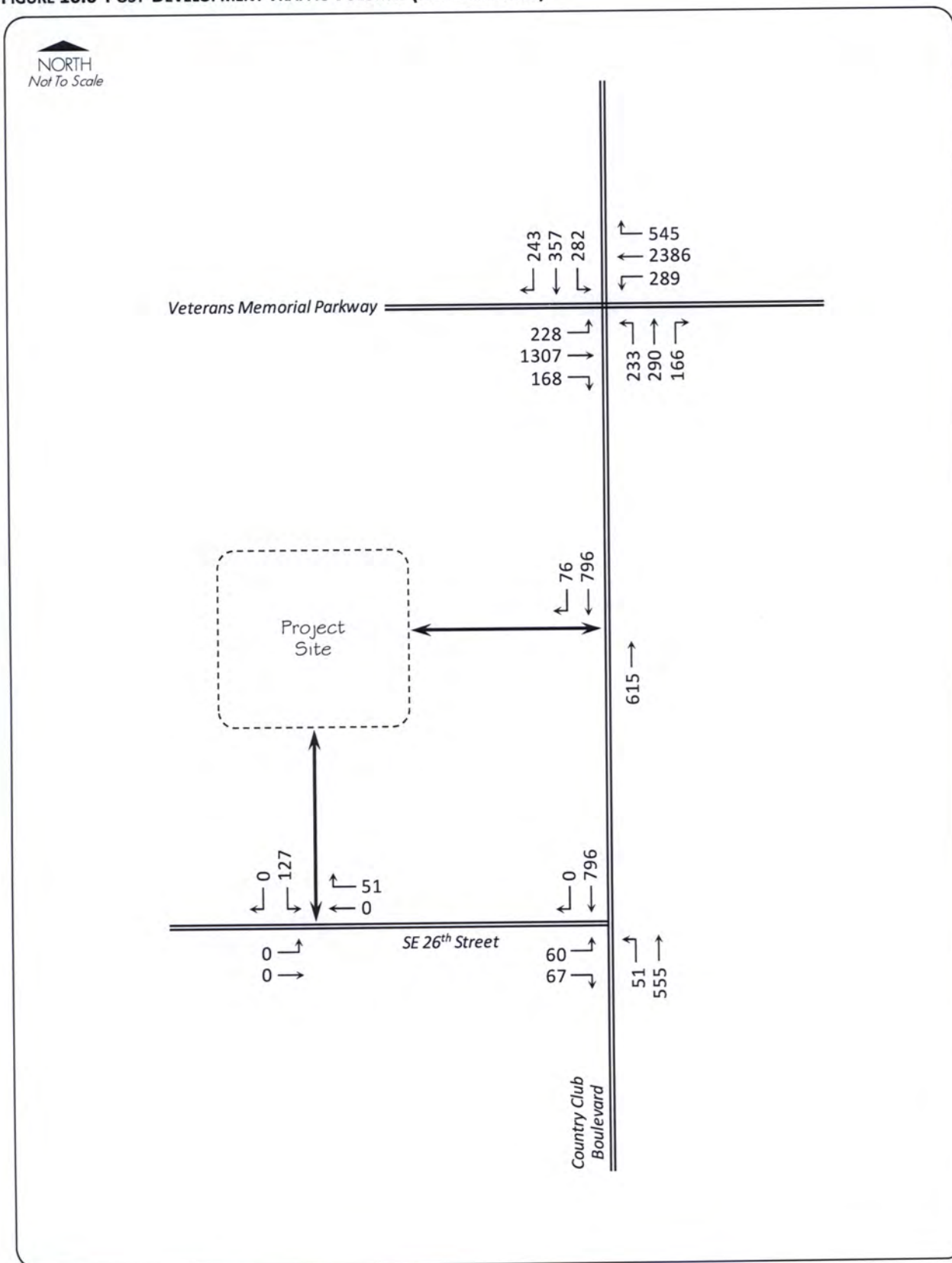


FIGURE 10.0 POST-DEVELOPMENT TRAFFIC VOLUMES (PM PEAK HOUR)



SECTION 7.0 INTERSECTION ANALYSIS

Intersection analyses were undertaken for AM and PM post-development traffic conditions using *Synchro* analysis software. Default software factors were used in the analysis, except for peak hour factors and heavy vehicle factors, which were based on the traffic counts performed in association with this traffic study. The results of the analysis are summarized in Table 1.0, as further documented in Attachment "E". The results of the analysis indicate that the study intersections are anticipated to operate acceptably for post-development traffic conditions.

TABLE 1.0 INTERSECTION ANALYSIS SUMMARY

Location	Peak Hour	Measure	Eastbound			Westbound			Northbound			Southbound		
			L	T	R	L	T	R	L	T	R	L	T	R
Country Club Boulevard at Project Site Driveway	AM	LOS	[1]	[1]	[1]	[1]	[1]	[1]	[1]	[2]	[1]	[1]	[2]	[2]
		V/C	[1]	[1]	[1]	[1]	[1]	[1]	[1]	[2]	[1]	[1]	[2]	[2]
		Queue	[1]	[1]	[1]	[1]	[1]	[1]	[1]	[2]	[1]	[1]	[2]	[2]
	PM	LOS	[1]	[1]	[1]	[1]	[1]	[1]	[1]	[2]	[1]	[1]	[2]	[2]
		V/C	[1]	[1]	[1]	[1]	[1]	[1]	[1]	[2]	[1]	[1]	[2]	[2]
		Queue	[1]	[1]	[1]	[1]	[1]	[1]	[1]	[2]	[1]	[1]	[2]	[2]
Country Club Boulevard at SE 26th Street	AM	LOS	C	[1]	[1]	[1]	[1]	[1]	A	[2]	[1]	[1]	[2]	[2]
		V/C	0.24	[1]	[3]	[1]	[1]	[1]	0.05	[2]	[1]	[1]	[2]	[3]
		Queue	25'	[1]	[3]	[1]	[1]	[1]	25'	[2]	[1]	[1]	[2]	[3]
	PM	LOS	C	[1]	[3]	[1]	[1]	[1]	A	[2]	[1]	[1]	[2]	[3]
		V/C	0.33	[1]	[3]	[1]	[1]	[1]	0.06	[2]	[1]	[1]	[2]	[3]
		Queue	50'	[1]	[3]	[1]	[1]	[1]	25'	[2]	[1]	[1]	[2]	[3]

[1] Not Applicable; [2] Unopposed Movement; [3] Shared Lane

SECTION 8.0 TURN LANE ANALYSIS

Existing and proposed turn lanes will serve the project site, where an evaluation was performed to determine the needed lengths of these turn lanes to accommodate post-development traffic conditions.

A northbound-to-westbound left-turn lane currently exists on Country Club Boulevard at SE 26th Street. The length of this turn lane, including both the taper and projection into the median opening, is approximately 210 feet. Pursuant to the results of the operational analysis, the estimated 95th percentile queue length for this movement was identified as 25 feet for post-development traffic conditions. In addition to the queue storage component, the turn lane should also include a deceleration/taper component. Pursuant to FDOT's Design Standards, Index No. 301, the deceleration/taper length for an assumed 45 mph design speed (i.e., posted speed of 40 mph + 5 mph), is 185 feet, which includes a 50 foot taper. Therefore, the total length needed for this turn lane is identified as 210 feet, as compared to the existing length of 210 feet. Thus, it is concluded that the existing length of this turn lane is adequate to accommodate post-development traffic conditions.

A southbound-to-westbound right-turn lane is proposed on Country Club Boulevard at the project site's planned right-in-only driveway connection; to be constructed concurrent with site development. The implementation of this turn lane is expected to minimize any potential for adverse impacts to the adjacent intersection of Country Club Boulevard at Veterans Memorial Parkway. Since the subject right-turn movement is unopposed by any conflicting traffic, there is no queue storage component needed for this turn lane (i.e., the vehicular queue is zero feet). Pursuant to FDOT's Design Standards, Index No. 301, the deceleration/taper length for an assumed 45 mph design speed (i.e., posted speed of 40 mph + 5 mph), is 185 feet, which includes a 50 foot taper. Therefore, the total length needed for this turn lane is identified as 185 feet, including the 50 foot taper; which is consistent with the planned design of this turn lane as shown on the project site plan.

SECTION 9.0 SITE CIRCULATION

An evaluation of on-site vehicular traffic circulation was performed in the context of the planed site access connections. The direct connection to Country Club Boulevard is planned to be restricted to right-in-only movements. Because of the restricted movements and due to the location of the ingress point, located south of the pump island/canopy and aligned with a drive aisle, it was determined that this connection is not anticipated to result in adverse impacts to on-site vehicular traffic circulation. The direct connections to SE 26th Street are planned to allow for full access to SE 26th Street; which was found to have very low traffic volumes during typical peak hour conditions, and thus no material vehicular conflicts are anticipated as a

result of these connections. Thus, it was determined that the connections to SE 26th Street are not anticipated to result in adverse impacts to on-site vehicular traffic circulation. Furthermore, pursuant to the results of the operational analysis, it was found that the estimated 95th percentile queue length on SE 26th Street at Country Club Boulevard was identified as 50 feet for post-development traffic conditions; as compared to a separation distance of more than 100 feet between Country Club Boulevard and the first site driveway connection to SE 26th Street. Thus, queuing on SE 26th Street is not anticipated to result in adverse impacts to vehicular traffic circulation.

SECTION 10.0 CONCLUSION

Based on the data, analyses and findings contained herein, the following is concluded in consideration of the development of the subject Circle K project site:

- ❖ The project site driveway connection to Country Club Boulevard is anticipated to operate acceptably for post-development traffic conditions.
- ❖ The intersection of Country Club Boulevard at SE 26th Street is anticipated to operate acceptably for post-development traffic conditions.
- ❖ The existing northbound-to-westbound left-turn lane on Country Club Boulevard at SE 26th Street was found to be of adequate length to accommodate post-development traffic conditions.
- ❖ A new southbound-to-westbound right-turn lane is proposed on Country Club Boulevard at the project site's planned right-in-only driveway connection, to be constructed concurrent with site development; and is expected to minimize any potential for adverse impacts to the adjacent intersection of Country Club Boulevard at Veterans Memorial Parkway.
- ❖ The length of the new southbound-to-westbound right-turn lane proposed on Country Club Boulevard at the project site's planned right-in-only driveway connection is identified as 185 feet, including the 50 foot taper; which is consistent with the planned design of this turn lane as shown on the project site plan.
- ❖ Adverse impacts to on-site vehicular traffic circulation are not anticipated as a result of the project site's planned access connections.

ATTACHMENT "A"

Michael Raysor

From: David Hyyti <dhyyti@capecoral.net>
Sent: Friday, February 5, 2016 1:28 PM
To: Kirkpatrick, Daniel
Cc: Michael Raysor; Persides Zambrano; Mike Struve; Jansen, Stephen
Subject: RE: Circle K - Veterans Memorial & Country Club Blvd.

Thank you Dan,

I will incorporate those comments into my project review comments and keep you in the loop as we receive new information.

Mike, you are good to go with the traffic/intersection(s) analysis as outlined.

Have a Great Weekend

Dave

From: Kirkpatrick, Daniel [mailto:DKirkpatrick@leegov.com]
Sent: Friday, February 05, 2016 1:22 PM
To: David Hyyti <dhyyti@capecoral.net>
Cc: Michael Raysor <mdr@raysor-transportation.com>; Persides Zambrano <pzambran@capecoral.net>; Mike Struve <mstruve@capecoral.net>; Jansen, Stephen <JANSENSJ@leegov.com>
Subject: RE: Circle K - Veterans Memorial & Country Club Blvd.

Dave,

I have coordinated with traffic staff and we are good from our end with the methodology. I would highly recommend to pass on the below comments to your Staff and the Applicant regarding this PDF submittal. As far as comment (1), the County has been working with the property owner and Attorney and given them our position on the issue, but we have not had feedback on a plan or other information to resolve it, so please pass our concerns onto the applicant.

LCDOT Comments:

- 1) The attached Circle K drawing shows all proposed work on private property, but Staff does not see any discussion on how this may affect the County's existing SFWMD permit, where their outfall is, and the existing live trees and berm /pond area on the owner's property. We need more information regarding those matters.
- 2) This store is likely to attract pedestrian traffic crossing Veterans Pkwy. To better serve those people there should be a stabilized walkway or sidewalk between the northeast corner of the site to the sidewalk on Country Club Blvd. This will make it more attractive for people to go to the signal and cross with the light than to trudge through the retention pond and cross midblock.

Dan Kirkpatrick
Engineer-Lee County Dept. of Transportation
3rd floor
1500 Monroe Street
Fort Myers, Florida 33901
direct line (239) 533-8580x48140

ATTACHMENT "A"

FAX (239) 533-8520
kirkpado@leegov.com

From: David Hyyti [<mailto:dhyyti@capecoral.net>]
Sent: Tuesday, February 02, 2016 5:08 PM
To: Kirkpatrick, Daniel
Cc: Michael Raysor; Persides Zambrano; Mike Struve
Subject: RE: Circle K - Veterans Memorial & Country Club Blvd.

Dan,

We have a PDP submittal for the subject project. During preliminary discussions with the applicant we had decided that additional traffic analysis was required due to the proximity to the Veterans Memorial Pkwy intersection. A full TIS is not required but we wanted to be sure that any concerns Lee County DOT may have with the proposed project are addressed. See attached conceptual site plan.

Please forward to your staff and let me know if the approach outlined below will cover any concerns from LCDOT or if there are any additional requests for the approach to the study.

We can schedule a methodology meeting if necessary but I thought it may be covered via email and save some staff time.

Have a Great Day
David A. Hyyti, P.E.
Development Services Manager
Department of Community Development
City of Cape Coral
Tel: (239) 573-3184

NOTE: Florida has a very broad public records law, and under Florida law, most written communications to or from city staff regarding city business to include your e-mail address is considered public records and will be made available to the public and the media upon request. If you do not want your email message and or your e-mail address released in response to a public records request, do not send electronic mail to this entity. Instead, contact this office by phone or in writing. Additionally, this communication is intended only for the addressee. If you are not the intended recipient, do not copy, disclose, or distribute this message to anyone else. If you have received this communication in error, please contact the sender of the message to inform him or her of the error and then delete this message.

From: Michael Raysor [<mailto:mdr@raysor-transportation.com>]
Sent: Friday, January 29, 2016 9:40 AM
To: David Hyyti <dhyyti@capecoral.net>
Subject: RE: Circle K - Veterans Memorial & Country Club Blvd.

David,

Per our discussion this morning, I have outlined the methodology we discussed last March for the Circle K site proposed at the northwest corner of Country Club Blvd at SE 26th Avenue. Can you please share this with Lee County to determine if the methodology is acceptable as-is, or if we need to schedule a methodology meeting.

- Estimate the project site trip generation per ITE's Trip Generation Manual (9th edition) and distribute those trips using manual methods based on existing traffic patterns.
- Adjust the traffic counts at the study intersections to project horizon conditions (i.e., application of peak season factors, and growth rate for one year of background growth).

ATTACHMENT "A"

- Conduct analyses at the study intersections for AM & PM peak hour conditions, where the study intersections are identified below.
 - Country Club Boulevard at Project Site Driveway
 - Country Club Boulevard at SE 26th Street
- Evaluate turn lane design length for existing and proposed turn lanes on Country Club Boulevard (i.e., existing NBL at 26th, and proposed SBR at project driveway).
- Evaluate on-site circulation in the context of site access connections.
- Prepare a report to document the data, analysis, and findings.

Thank you, Mike

Michael D. Raysor, P.E., PTOE
RAYSOR Transportation Consulting
19046 Bruce B. Downs Boulevard, #308
Tampa, Florida 33647
(813) 625-1699 | (813) 413-7432 fx

Please note: Florida has a very broad public records law. Most written communications to or from County Employees and officials regarding County business are public records available to the public and media upon request. Your email communication may be subject to public disclosure.

Under Florida law, email addresses are public records. If you do not want your email address released in response to a public records request, do not send electronic mail to this entity. Instead, contact this office by phone or in writing.

ATTACHMENT "B"

Circle K

Country Club Boulevard at SE 26th Street , Cape Coral, Florida

Trip Generation Estimate

ITE LUC	Land Use Description	Size	Daily				AM Peak Hour				PM Peak Hour			
			Trip Rate	Trips	Enter	Exit	Trip Rate	Trips	Enter	Exit	Trip Rate	Trips	Enter	Exit
853	Convenience Market w/ Gas Pumps	4,968 sf	845.60	4,202	2,101	2,101	40.92	204	102	102	50.92	254	127	127
Driveway Trips			--	4,202	2,101	2,101	--	204	102	102	--	254	127	127
Pass-By Trips			64.5%	2,710	1,355	1,355	63%	128	64	64	66%	168	84	84
New External Trips			--	1,492	746	746	--	76	38	38	--	86	43	43

ITE LUC	Land Use Description	Size	Daily				AM Peak Hour				PM Peak Hour			
			Trip Rate	Trips	Enter	Exit	Trip Rate	Trips	Enter	Exit	Trip Rate	Trips	Enter	Exit
945	Gas Station with Convenience Market	16 vfp	162.78	2,604	1,302	1,302	10.16	164	82	82	13.51	216	108	108
Driveway Trips			--	2,604	1,302	1,302	--	164	82	82	--	216	108	108
Pass-By Trips			59.0%	1,536	768	768	62%	102	51	51	56%	120	60	60
New External Trips			--	1,068	534	534	--	62	31	31	--	96	48	48

ATTACHMENT "C"

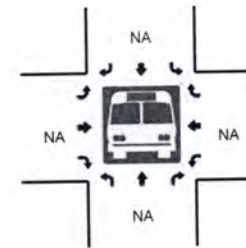
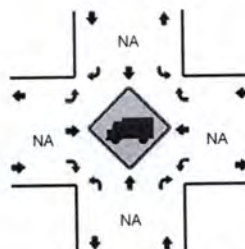
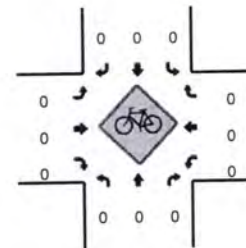
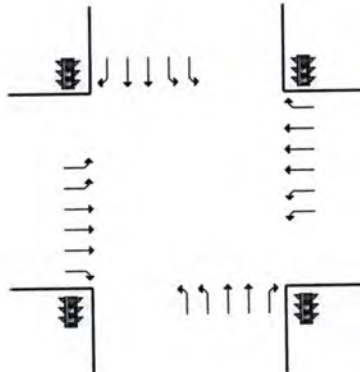
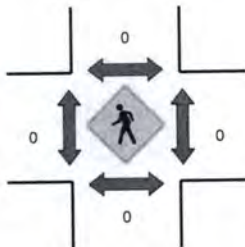
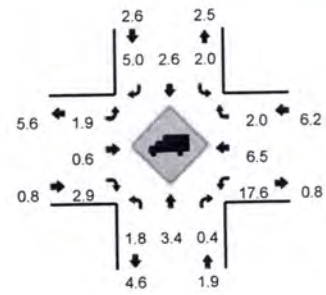
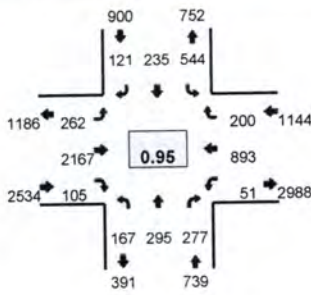
Type of peak hour being reported: Intersection Peak

Method for determining peak hour: Total Entering Volume

LOCATION: Country Club Blvd -- Veterans Pkwy
CITY/STATE: Cape Coral, FL

QC JOB #: 13713101
DATE: Thu, Feb 11 2016

Peak-Hour: 7:00 AM -- 8:00 AM
Peak 15-Min: 7:30 AM -- 7:45 AM



R* = RTOR

15-Min Count Period	Country Club Blvd (Northbound)					Country Club Blvd (Southbound)					Veterans Pkwy (Eastbound)					Veterans Pkwy (Westbound)					Total	Hourly Totals
Beginning At	Left	Thru	Right	U	R*	Left	Thru	Right	U	R*	Left	Thru	Right	U	R*	Left	Thru	Right	U	R*		
7:00 AM	28	48	85	0	0	144	49	9	0	13	38	640	9	3	8	9	180	18	0	21	1302	
7:15 AM	35	73	75	0	0	166	70	13	0	12	53	564	12	0	5	11	188	15	0	33	1325	
7:30 AM	54	78	58	0	0	128	58	10	0	27	75	528	18	0	14	16	275	49	0	14	1402	
7:45 AM	50	96	59	0	0	106	58	18	0	19	91	435	25	2	14	15	250	24	0	26	1288	5317
8:00 AM	43	95	53	0	0	126	58	13	0	17	56	469	15	2	10	16	213	30	1	16	1233	5248
8:15 AM	37	60	55	0	0	101	46	14	0	24	88	514	5	4	14	18	240	26	0	16	1262	5185
8:30 AM	42	75	64	0	0	145	56	13	0	18	68	459	18	3	8	18	221	11	1	22	1242	5025
8:45 AM	49	63	49	0	0	140	56	17	0	17	61	422	18	5	12	27	225	30	0	13	1204	4941
Peak 15-Min Flowrates	Northbound					Southbound					Eastbound					Westbound					Total	
	Left	Thru	Right	U	R*	Left	Thru	Right	U	R*	Left	Thru	Right	U	R*	Left	Thru	Right	U	R*		
All Vehicles	216	312	232	0	0	512	232	40	0	108	300	2112	72	0	56	64	1100	196	0	56	5608	
Heavy Trucks	4	4	0			12	4	4			4	20	0			16	68	0			136	
Pedestrians																					0	
Bicycles	0	0	64			0	0	0			0	0	0			0	0	0			0	
Railroad																						
Stopped Buses																						

Comments:

Report generated on 2/19/2016 4:10 PM

SOURCE: Quality Counts, LLC (<http://www.qualitycounts.net>) 1-877-580-2212

ATTACHMENT "C"

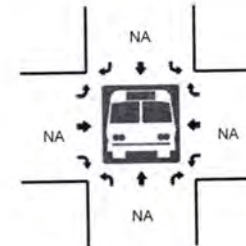
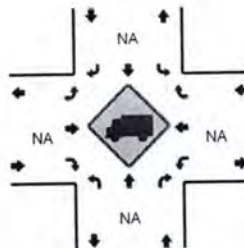
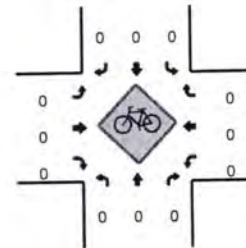
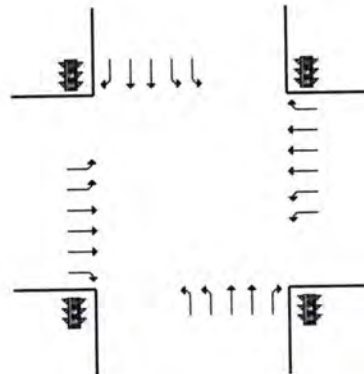
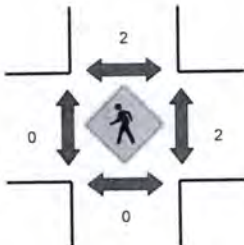
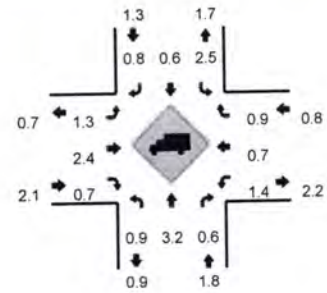
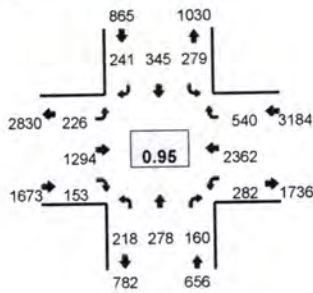
Type of peak hour being reported: Intersection Peak

Method for determining peak hour: Total Entering Volume

LOCATION: Country Club Blvd -- Veterans Pkwy
CITY/STATE: Cape Coral, FL

QC JOB #: 13713102
DATE: Thu, Feb 11 2016

Peak-Hour: 5:00 PM -- 6:00 PM
Peak 15-Min: 5:15 PM -- 5:30 PM



R* = RTOR

15-Min Count Period Beginning At	Country Club Blvd (Northbound)					Country Club Blvd (Southbound)					Veterans Pkwy (Eastbound)					Veterans Pkwy (Westbound)					Total	Hourly Totals
	Left	Thru	Right	U	R*	Left	Thru	Right	U	R*	Left	Thru	Right	U	R*	Left	Thru	Right	U	R*		
4:00 PM	50	67	45	0	0	72	87	25	0	25	54	375	35	8	9	56	487	69	0	47	1511	
4:15 PM	42	50	23	0	0	80	86	32	0	20	46	376	33	10	11	70	555	69	0	37	1540	
4:30 PM	48	56	32	0	0	76	106	36	0	30	46	332	33	7	6	72	579	63	1	34	1557	
4:45 PM	36	76	35	2	0	66	105	28	0	14	53	329	25	6	9	74	551	72	2	59	1542	6150
5:00 PM	42	74	27	4	0	85	93	52	0	9	53	305	28	1	8	56	486	72	1	69	1465	6104
5:15 PM	52	60	39	0	0	68	98	35	0	26	58	353	29	3	10	90	624	67	2	67	1681	6245
5:30 PM	58	74	49	0	0	72	86	39	0	12	52	332	31	4	7	62	622	77	0	69	1646	6334
5:45 PM	61	70	45	1	0	54	68	49	0	19	49	304	30	6	10	71	630	63	0	56	1586	6378
Peak 15-Min Flowrates	208	240	156	0	0	272	392	140	0	104	232	1412	116	12	40	360	2496	268	8	268	6724	
All Vehicles	4	4	0			4	0	8			4	40	0			0	12	8			84	
Heavy Trucks																					8	
Pedestrians	0	0	0			0	0	0			0	0	0			0	0	0			0	
Bicycles																						
Railroad																						
Stopped Buses																						

Comments:

Report generated on 2/19/2016 4:10 PM

SOURCE: Quality Counts, LLC (<http://www.qualitycounts.net>) 1-877-580-2212

ATTACHMENT "C"

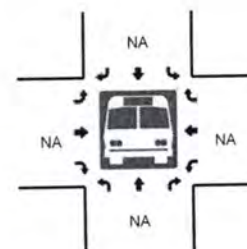
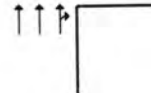
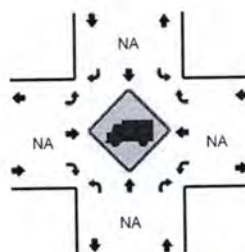
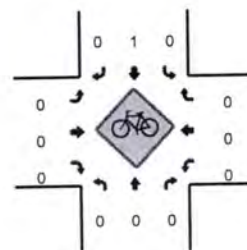
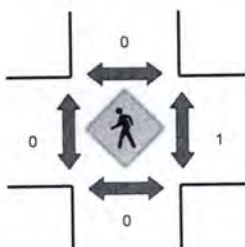
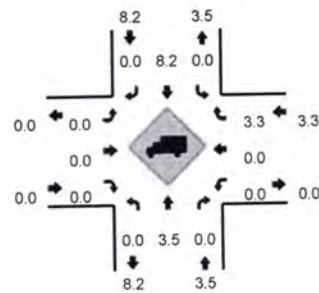
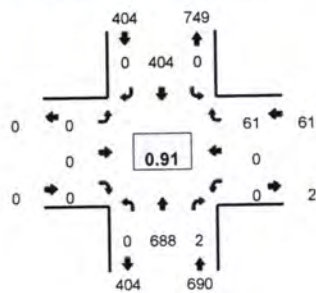
Type of peak hour being reported: Intersection Peak

Method for determining peak hour: Total Entering Volume

LOCATION: Country Club Blvd -- SE 26th St
CITY/STATE: Cape Coral, FL

QC JOB #: 13713103
DATE: Thu, Feb 11 2016

Peak-Hour: 7:15 AM -- 8:15 AM
Peak 15-Min: 7:30 AM -- 7:45 AM



R* = RTOR

15-Min Count Period	Country Club Blvd (Northbound)					Country Club Blvd (Southbound)					SE 26th St (Eastbound)					SE 26th St (Westbound)					Total	Hourly Totals
	Left	Thru	Right	U	R*	Left	Thru	Right	U	R*	Left	Thru	Right	U	R*	Left	Thru	Right	U	R*		
7:00 AM	0	147	1	0	0	0	81	0	0	0	0	0	0	0	0	0	0	6	0	0	235	
7:15 AM	0	164	0	0	0	0	87	0	0	0	0	0	0	0	0	0	0	11	0	0	262	
7:30 AM	0	187	2	0	0	0	113	0	0	0	0	0	0	0	0	0	0	16	0	0	318	
7:45 AM	0	178	0	0	0	0	109	0	0	0	0	0	0	0	0	0	0	17	0	0	304	1119
8:00 AM	0	159	0	0	0	0	95	0	0	0	0	0	0	0	0	0	0	17	0	0	271	1155
8:15 AM	0	132	2	0	0	0	84	0	0	0	0	0	0	0	0	0	0	14	0	0	232	1125
8:30 AM	0	145	2	0	0	0	89	0	0	0	0	0	0	0	0	0	0	12	0	0	248	1055
8:45 AM	0	155	0	0	0	1	111	0	0	0	0	0	0	0	0	0	0	5	0	0	272	1023
Peak 15-Min Flowrates	0	748	8	0	0	0	452	0	0	0	0	0	0	0	0	0	0	64	0	0	1272	
All Vehicles	0	20	0			0	52	0			0	0	0			0	0	0			72	
Heavy Trucks	0	0				0	0				0	0				0	0				4	
Pedestrians	0	0				0	0				0	0				0	0				0	
Bicycles	0	0				0	0				0	0				0	0				0	
Railroad																						
Stopped Buses																						

Comments:

Report generated on 2/19/2016 4:10 PM

SOURCE: Quality Counts, LLC (<http://www.qualitycounts.net>) 1-877-580-2212

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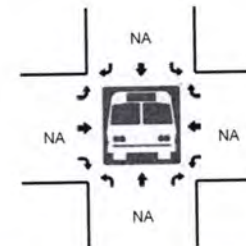
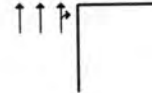
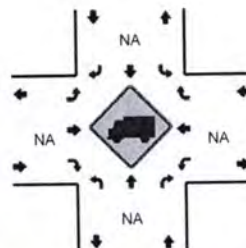
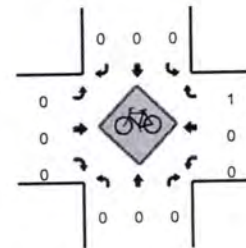
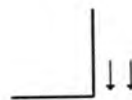
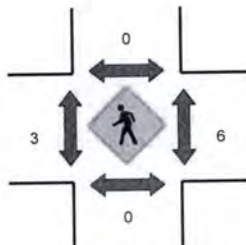
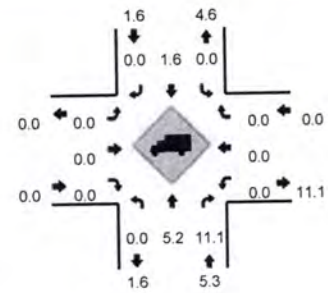
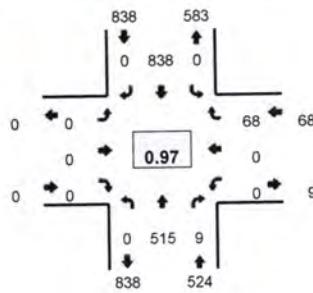
Type of peak hour being reported: Intersection Peak

Method for determining peak hour: Total Entering Volume

LOCATION: Country Club Blvd -- SE 26th St
CITY/STATE: Cape Coral, FL

QC JOB #: 13713104
DATE: Thu, Feb 11 2016

Peak-Hour: 4:30 PM -- 5:30 PM
Peak 15-Min: 5:15 PM -- 5:30 PM



R* = RTOR

15-Min Count Period	Country Club Blvd (Northbound)					Country Club Blvd (Southbound)					SE 26th St (Eastbound)					SE 26th St (Westbound)					Total	Hourly Totals
Beginning At	Left	Thru	Right	U	R*	Left	Thru	Right	U	R*	Left	Thru	Right	U	R*	Left	Thru	Right	U	R*		
4:00 PM	0	141	1	0	0	0	190	0	0	0	0	0	0	0	0	0	0	17	0	0	349	
4:15 PM	0	107	0	0	0	0	190	0	0	0	0	0	0	0	0	0	0	8	0	0	305	
4:30 PM	0	128	4	0	0	0	217	0	0	0	0	0	0	0	0	0	0	16	0	0	365	1373
4:45 PM	0	134	0	0	0	0	208	0	0	0	0	0	0	0	0	0	0	12	0	0	354	1366
5:00 PM	0	129	2	0	0	0	191	0	0	0	0	0	0	0	0	0	0	20	0	0	342	1366
5:15 PM	0	124	3	0	0	0	222	0	0	0	0	0	0	0	0	0	0	20	0	0	369	1430
5:30 PM	0	147	3	0	0	0	176	0	0	0	0	0	0	0	0	0	0	27	0	0	353	1418
5:45 PM	0	158	0	0	0	0	184	0	0	0	0	0	0	0	0	0	0	22	0	0	364	1428
Peak 15-Min Flowrates	Left	Thru	Right	U	R*	Left	Thru	Right	U	R*	Left	Thru	Right	U	R*	Left	Thru	Right	U	R*	Total	
All Vehicles	0	496	12	0	0	0	888	0	0	0	0	0	0	0	0	0	0	80	0	0	1476	
Heavy Trucks	0	12	0			0	0	0			0	0	0			0	0	0			12	
Pedestrians		0					0					8					8				16	
Bicycles	0	0	0			0	0	0			0	0	0			0	0	0			0	
Railroad																						
Stopped Buses																						

Comments:

Report generated on 2/19/2016 4:10 PM

SOURCE: Quality Counts, LLC (<http://www.qualitycounts.net>) 1-877-580-2212

ATTACHMENT "C"

2014 Peak Season Factor Category Report - Report Type: ALL
Category: 1200 LEE COUNTYWIDE

Week	Dates	SF	MOCF: 0.90 PSCF
1	01/01/2014 - 01/04/2014	0.97	1.08
2	01/05/2014 - 01/11/2014	0.98	1.09
3	01/12/2014 - 01/18/2014	0.98	1.09
4	01/19/2014 - 01/25/2014	0.96	1.07
* 5	01/26/2014 - 02/01/2014	0.94	1.04
* 6	02/02/2014 - 02/08/2014	0.92	1.02
* 7	02/09/2014 - 02/15/2014	0.90	1.00
* 8	02/16/2014 - 02/22/2014	0.88	0.98
* 9	02/23/2014 - 03/01/2014	0.88	0.98
*10	03/02/2014 - 03/08/2014	0.88	0.98
*11	03/09/2014 - 03/15/2014	0.88	0.98
*12	03/16/2014 - 03/22/2014	0.88	0.98
*13	03/23/2014 - 03/29/2014	0.89	0.99
*14	03/30/2014 - 04/05/2014	0.90	1.00
*15	04/06/2014 - 04/12/2014	0.91	1.01
*16	04/13/2014 - 04/19/2014	0.93	1.03
*17	04/20/2014 - 04/26/2014	0.94	1.04
18	04/27/2014 - 05/03/2014	0.96	1.07
19	05/04/2014 - 05/10/2014	0.97	1.08
20	05/11/2014 - 05/17/2014	0.99	1.10
21	05/18/2014 - 05/24/2014	1.00	1.11
22	05/25/2014 - 05/31/2014	1.02	1.13
23	06/01/2014 - 06/07/2014	1.04	1.16
24	06/08/2014 - 06/14/2014	1.06	1.18
25	06/15/2014 - 06/21/2014	1.08	1.20
26	06/22/2014 - 06/28/2014	1.09	1.21
27	06/29/2014 - 07/05/2014	1.10	1.22
28	07/06/2014 - 07/12/2014	1.10	1.22
29	07/13/2014 - 07/19/2014	1.11	1.23
30	07/20/2014 - 07/26/2014	1.11	1.23
31	07/27/2014 - 08/02/2014	1.11	1.23
32	08/03/2014 - 08/09/2014	1.10	1.22
33	08/10/2014 - 08/16/2014	1.10	1.22
34	08/17/2014 - 08/23/2014	1.10	1.22
35	08/24/2014 - 08/30/2014	1.11	1.23
36	08/31/2014 - 09/06/2014	1.12	1.24
37	09/07/2014 - 09/13/2014	1.13	1.26
38	09/14/2014 - 09/20/2014	1.14	1.27
39	09/21/2014 - 09/27/2014	1.12	1.24
40	09/28/2014 - 10/04/2014	1.10	1.22
41	10/05/2014 - 10/11/2014	1.08	1.20
42	10/12/2014 - 10/18/2014	1.05	1.17
43	10/19/2014 - 10/25/2014	1.04	1.16
44	10/26/2014 - 11/01/2014	1.04	1.16
45	11/02/2014 - 11/08/2014	1.03	1.14
46	11/09/2014 - 11/15/2014	1.02	1.13
47	11/16/2014 - 11/22/2014	1.01	1.12
48	11/23/2014 - 11/29/2014	1.00	1.11
49	11/30/2014 - 12/06/2014	0.99	1.10
50	12/07/2014 - 12/13/2014	0.98	1.09
51	12/14/2014 - 12/20/2014	0.97	1.08
52	12/21/2014 - 12/27/2014	0.98	1.09
53	12/28/2014 - 12/31/2014	0.98	1.09

* Peak Season

Page 1 of 23

ATTACHMENT "D"

Circle K

Country Club Boulevard at SE 26th Street , Cape Coral, Florida

Growth Rate Calculations

Historical AADT Volumes		
Year	Country Club Blvd	Linear Trend
2012	14,900	14,983
2013	15,100	14,933
2014	14,800	14,883
3 Year Average Annual Growth Rate:		-0.22%

SOURCE

FDOT Count Station 12-3043

ATTACHMENT "D"

Florida Department of Transportation
Transportation Statistics Office
2014 Historical AADT Report

County: 12 - LEE

Site: 3043 - COUNTRY CLUB BLVD, S OF VETERANS BLVD CC







Year	AADT	Direction 1	Direction 2	*K Factor	D Factor	T Factor
2014	14800 C	N 7400	S 7400	9.00	58.40	4.20
2013	15100 S	N 7800	S 7300	9.00	56.60	4.80
2012	14900 F	N 7700	S 7200	9.00	54.40	4.80
2011	14900 C	N 7700	S 7200	9.00	59.00	4.80
2010	14100 S	N 7100	S 7000	10.00	60.34	2.70
2009	14100 F	N 7100	S 7000	10.14	57.25	2.70
2008	14300 C	N 7200	S 7100	9.75	56.97	2.70

AADT Flags: C = Computed; E = Manual Estimate; F = First Year Estimate
S = Second Year Estimate; T = Third Year Estimate; F = Fourth Year Estimate
V = Fifth Year Estimate; 6 = Sixth Year Estimate; X = Unknown
*K Factor: Starting with Year 2011 is StandardK, Prior years are K30 values

ATTACHMENT "E"

HCM Unsignalized Intersection Capacity Analysis 100: Country Club Blvd & Project Site Driveway











Cape Coral Circle K
AM Peak Hour Post-Development Traffic Conditions

						
Movement	EBL	EBR	NBL	NBT	SBT	SBR
Lane Configurations				↑↑	↑↑	↑
Traffic Volume (veh/h)	0	0	0	779	386	45
Future Volume (Veh/h)	0	0	0	779	386	45
Sign Control	Stop			Free	Free	
Grade	0%			0%	0%	
Peak Hour Factor	0.91	0.91	0.91	0.91	0.91	0.91
Hourly flow rate (vph)	0	0	0	856	424	49
Pedestrians						
Lane Width (ft)						
Walking Speed (ft/s)						
Percent Blockage						
Right turn flare (veh)						
Median type				None	None	
Median storage (veh)						
Upstream signal (ft)						
pX, platoon unblocked						
vC, conflicting volume	852	212	473			
vC1, stage 1 conf vol						
vC2, stage 2 conf vol						
vCu, unblocked vol	852	212	473			
tC, single (s)	6.8	6.9	4.1			
tC, 2 stage (s)						
tF (s)	3.5	3.3	2.2			
p0 queue free %	100	100	100			
cM capacity (veh/h)	303	800	1099			
Direction, Lane #	NB 1	NB 2	SB 1	SB 2	SB 3	
Volume Total	428	428	212	212	49	
Volume Left	0	0	0	0	0	
Volume Right	0	0	0	0	49	
cSH	1700	1700	1700	1700	1700	
Volume to Capacity	0.25	0.25	0.12	0.12	0.03	
Queue Length 95th (ft)	0	0	0	0	0	
Control Delay (s)	0.0	0.0	0.0	0.0	0.0	
Lane LOS						
Approach Delay (s)	0.0		0.0			
Approach LOS						
Intersection Summary						
Average Delay			0.0			
Intersection Capacity Utilization			24.9%	ICU Level of Service		A
Analysis Period (min)			15			

ATTACHMENT "E"

HCM Unsignalized Intersection Capacity Analysis 200: Country Club Blvd & SE 26th Street







Cape Coral Circle K
AM Peak Hour Post-Development Traffic Conditions

						
Movement	EBL	EBR	NBL	NBT	SBT	SBR
Lane Configurations						
Traffic Volume (veh/h)	65	37	57	714	386	0
Future Volume (Veh/h)	65	37	57	714	386	0
Sign Control	Stop			Free	Free	
Grade	0%			0%	0%	
Peak Hour Factor	0.91	0.91	0.91	0.91	0.91	0.91
Hourly flow rate (vph)	71	41	63	785	424	0
Pedestrians						
Lane Width (ft)						
Walking Speed (ft/s)						
Percent Blockage						
Right turn flare (veh)						
Median type				Raised	Raised	
Median storage (veh)				1	1	
Upstream signal (ft)						
pX, platoon unblocked						
vC, conflicting volume	942	212	424			
vC1, stage 1 conf vol	424					
vC2, stage 2 conf vol	518					
vCu, unblocked vol	942	212	424			
tC, single (s)	6.8	6.9	4.1			
tC, 2 stage (s)	5.8					
tF (s)	3.5	3.3	2.2			
p0 queue free %	81	95	95			
cM capacity (veh/h)	378	800	1146			
Direction, Lane #	EB 1	NB 1	NB 2	NB 3	SB 1	SB 2
Volume Total	112	63	392	392	283	141
Volume Left	71	63	0	0	0	0
Volume Right	41	0	0	0	0	0
cSH	469	1146	1700	1700	1700	1700
Volume to Capacity	0.24	0.05	0.23	0.23	0.17	0.08
Queue Length 95th (ft)	23	4	0	0	0	0
Control Delay (s)	15.1	8.3	0.0	0.0	0.0	0.0
Lane LOS	C	A				
Approach Delay (s)	15.1	0.6			0.0	
Approach LOS	C					
Intersection Summary						
Average Delay			1.6			
Intersection Capacity Utilization			32.3%	ICU Level of Service		A
Analysis Period (min)			15			

ATTACHMENT "E"

HCM Unsignalized Intersection Capacity Analysis 100: Country Club Blvd & Project Site Driveway











Cape Coral Circle K
PM Peak Hour Post-Development Traffic Conditions

						
Movement	EBL	EBR	NBL	NBT	SBT	SBR
Lane Configurations				↑↑	↑↑	↑
Traffic Volume (veh/h)	0	0	0	615	796	76
Future Volume (Veh/h)	0	0	0	615	796	76
Sign Control	Stop			Free	Free	
Grade	0%			0%	0%	
Peak Hour Factor	0.97	0.97	0.97	0.97	0.97	0.97
Hourly flow rate (vph)	0	0	0	634	821	78
Pedestrians						
Lane Width (ft)						
Walking Speed (ft/s)						
Percent Blockage						
Right turn flare (veh)						
Median type				None	None	
Median storage (veh)						
Upstream signal (ft)						
pX, platoon unblocked						
vC, conflicting volume	1138	410	899			
vC1, stage 1 conf vol						
vC2, stage 2 conf vol						
vCu, unblocked vol	1138	410	899			
tC, single (s)	6.8	6.9	4.1			
tC, 2 stage (s)						
tF (s)	3.5	3.3	2.2			
p0 queue free %	100	100	100			
cM capacity (veh/h)	198	596	764			
Direction, Lane #	NB 1	NB 2	SB 1	SB 2	SB 3	
Volume Total	317	317	410	410	78	
Volume Left	0	0	0	0	0	
Volume Right	0	0	0	0	78	
cSH	1700	1700	1700	1700	1700	
Volume to Capacity	0.19	0.19	0.24	0.24	0.05	
Queue Length 95th (ft)	0	0	0	0	0	
Control Delay (s)	0.0	0.0	0.0	0.0	0.0	
Lane LOS						
Approach Delay (s)	0.0		0.0			
Approach LOS						
Intersection Summary						
Average Delay			0.0			
Intersection Capacity Utilization			25.3%	ICU Level of Service		A
Analysis Period (min)			15			

ATTACHMENT "E"

HCM Unsignalized Intersection Capacity Analysis
200: Country Club Blvd & SE 26th Street

Cape Coral Circle K
PM Peak Hour Post-Development Traffic Conditions

						
Movement	EBL	EBR	NBL	NBT	SBT	SBR
Lane Configurations						
Traffic Volume (veh/h)	60	67	51	555	796	0
Future Volume (Veh/h)	60	67	51	555	796	0
Sign Control	Stop			Free	Free	
Grade	0%			0%	0%	
Peak Hour Factor	0.97	0.97	0.97	0.97	0.97	0.97
Hourly flow rate (vph)	62	69	53	572	821	0
Pedestrians						
Lane Width (ft)						
Walking Speed (ft/s)						
Percent Blockage						
Right turn flare (veh)						
Median type				Raised	Raised	
Median storage (veh)				1	1	
Upstream signal (ft)						
pX, platoon unblocked						
vC, conflicting volume	1213	410	821			
vC1, stage 1 conf vol	821					
vC2, stage 2 conf vol	392					
vCu, unblocked vol	1213	410	821			
tC, single (s)	6.8	6.9	4.1			
tC, 2 stage (s)	5.8					
tF (s)	3.5	3.3	2.2			
p0 queue free %	79	88	94			
cM capacity (veh/h)	291	596	817			
Direction, Lane #	EB 1	NB 1	NB 2	NB 3	SB 1	SB 2
Volume Total	131	53	286	286	547	274
Volume Left	62	53	0	0	0	0
Volume Right	69	0	0	0	0	0
cSH	398	817	1700	1700	1700	1700
Volume to Capacity	0.33	0.06	0.17	0.17	0.32	0.16
Queue Length 95th (ft)	35	5	0	0	0	0
Control Delay (s)	18.4	9.7	0.0	0.0	0.0	0.0
Lane LOS	C	A				
Approach Delay (s)	18.4	0.8			0.0	
Approach LOS	C					
Intersection Summary						
Average Delay		1.9				
Intersection Capacity Utilization		42.8%		ICU Level of Service	A	
Analysis Period (min)		15				

PAVESE LAW FIRM

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March 23, 2016

Vincent A. Cautero, AICP, Director
Community Development at City of Cape Coral
1015 Cultural Park Boulevard
Cape Coral, Florida 33990

RE: Circle K- Estate of James E. Kinsey, Jr., PDP16-0001
819 SE 26th Street, Cape Coral, Florida 33904
STRAP No.: 31-44-24-C1-00821.0160

Applicant: Circle K Stores, Inc.
12911 N. Telecom Parkway
Tampa, Florida 33637

Dear Mr. Cautero:

Please accept this letter as a response to the sufficiency questions raised in your letter of February 4, 2016.

Environmental Rejection Comments

1. Please provide a completed and signed City of Cape Coral Burrowing Owl/Gopher Tortoise Affidavit.
2. Please provide a recent protected species survey of the subject property as required by LDO, Section 5.4.3 and Policy 1.2.17 of the Conservation and Coastal Management Element section of the City's Comprehensive Plan. The City's environmental survey guidelines can be found at the following link:
http://www.capecoral.net/departments/community_development/permitting/docs/Environmental_Survey_Guidelines.pdf.

Response: Enclosed please find both a completed and signed Burrowing Owl/Gopher Tortoise Affidavit and recent protected species survey.

Planning Rejection Comments on the Development Plan and Building Elevations

1. A free-standing sign is shown occupying an easement near the northeast corner of the property. The sign needs to be relocated outside the easement area. Please note that signs sought for this project are required to receive a permit and are reviewed separately apart from the PDP.

Response: The sign has been relocated outside the easement area and we understand that a permit for the sign must be sought and obtained outside the PDP approval process.

2. The City has amended its regulations to require roofs covering gas canopies to have a minimum pitch of 4/12. Please revise the elevation sheets to show compliance with this requirement.

Response: Elevations sheets are enclosed to reflect a minimum pitch of 4/12 for the gas copy roofs.

3. A landscape Buffer "C" is required along the western property line of Lots 16 and 17. A Buffer "C" requires a minimum 25-foot wide landscaped area or a minimum 15-foot wide landscaped area with a wall. Refer to Table 5 LUDR, Section 5.2.

Response: The development plan has been revised to include a Buffer "C" along the western property line of Lots 16 and 17.

4. Buffer yards shall not contain any development other than drainage facilities, sidewalks, plants, walls, or berms. Refer to LUDR, Section 5.2.13.C.5.c. As a result, please relocate the dumpster and dumpster enclosure that occupies the required Buffer "C" along the west property line of Lots 16 and 17.

Response: The development plan has been revised to relocate the dumpster and its enclosure outside of the required Buffer "C" along the western property line of Lots 16 and 17.

5. There appears to be a concrete area located behind the southwest portion of the building that is enclosed with a fence. Please describe the purpose of this area. In addition, please confirm whether this area will be enclosed with a fence or wall, and if so, describe the height and materials associated with this structure.

Response: The referenced area has been labelled on the plans as a "Fenced Service Yard". This area houses miscellaneous building equipment and is enclosed with a 6 foot high fence.

6. Any heritage tree removed from the site or damaged is required to be replaced with a Florida native tree that meets the quality of materials standards found in LUDR, Section 5.2.10, with a minimum caliper of six inches measured at a height of 12 inches above ground, with a height not less than 20 feet. A heritage tree is defined as a Florida native canopy tree with a minimum 20 inch caliper diameter based on breast height.

Response: This comment is noted and landscaping details will be provided at the time of site plan review.

7. At the time of site plan review, a landscaping plan, showing full compliance with the City's landscaping regulations, will be required for staff review. The landscaping shown on the Development Plan within this PDP application only shows the location of several proposed trees.

Response: This comment is noted and landscaping details will be provided at the time of site plan review.

8. Insufficient details have been provided to verify compliance of the proposed building with the City's nonresidential design standards found in LUDR, Section 5.6. The building will be evaluated for compliance with these standards during the site plan review of this project.

Response: The development plan has been revised to provide additional details to confirm the proposed building is compliant with the City's nonresidential design standards found in LUDR, Section 5.6.

9. Air conditioning and heating equipment, tanks, and electric meters associated with this development shall be located or screened so as not to be visible from any property line abutting a public street other than an alley when viewed along a line perpendicular to such a property line. Screening shall consist of a wall, fence, or plant material or combination thereof. Refer to LUDR, Section 5.6.9.

Response: This comment is noted and all appropriate screening will be provided.

Site Development Rejection Comments

1. Development Services has no objection to the PDP request for Rezoning and the Special Exception with the proposed conceptual site plan pending the outcome of the traffic analysis.
2. The project will require a limited scope traffic analysis to justify the right in on Country Club Blvd. as previously discussed. The analysis will generally include a review of the impacts of the proposed driveway on the Veterans Pkwy intersection and the intersection at SE 26th St. A methodology meeting, including Lee County staff, is required and can be scheduled by contacting David Hyyti.

Response: The project's transportation consultant, Michael D. Raysor, P.E., PTOE, confirmed the methodology for the required limited scope traffic analysis with both David Hyyti, P.E., the City's Development Services Manager, and Daniel Kirkpatrick, Engineer-Lee County Department of Transportation, by e-mail on January 29, 2015, February 2, 2016, and February 5, 2016 and it was determined that a methodology meeting is no longer required. Enclosed please also find the traffic study dated 2/25/16 prepared using the agreed upon methodology.

3. The development of projects in this area of the City requires the installation of lane widening, curb, cutter and sidewalks along the entire road frontage of the project. This would include Country Club Blvd. and SE 26th Street.

Response: The development plan has been revised to include the installation of lane widening, curb, cutter and sidewalks along the entire road frontage of the project, including Country Club Blvd. and SE 26th Street.

4. A full SDP application will be required for this project and may be submitted at any time. Final approval of the SDP would not be granted until the PDP DO has been approved and recorded. Additional comments should be excepted once a SDP application is submitted for review. Online submittal of an ADP application is now available.
5. You may contact the reviewer or Bridget Jackson, in the Development Services Group, at 573-3167 for additional information regarding the Site Development Plan review process. You can also obtain information and the SDP application on our website at:
http://www.capecoral.net/departments/community_development/development_plans.php.

Response: The Applicant will prepare and submit an SDP application for review with the understanding final approval will not be granted until after the PDP DO is approved and recorded.

LCDOT Comments*

*in e-mail from Dan Kirkpatrick, Engineer-Lee County Department of Transportation) to David Hyyti, City Development Services Manager, on February 5, 2016

1. The attached drawings show all proposed work on private property, but Staff does not see any discussion on how this may affect the County's existing SFWMD permit, where their outfall is, and the existing live trees and berm/pond area on the owner's property. We need more information regarding those matters.

Response: The applicant met with Lee County and discussed this issue. The applicant recently obtained a copy of the original SFWMD permit for the referenced pond. It is acknowledged that development of this parcel will require modification to the County stormwater facilities and the permit. This work is underway and design details and a copy of the modified permit will be provided to the City upon receipt. It is understood that this will be required prior to the City's approval of the SDP application.

2. This store is likely to attract pedestrian traffic crossing Veterans Parkway. To better serve those people there should be a stabilized walkway or sidewalk between the northeast corner of the site to the sidewalk on Country Club Boulevard. This will make it more attractive for people to go to the signal and cross with the light than to trudge through the retention pond and cross mid-block.

Response: The development plan will be revised to include a walkway between the northeast corner of the site to the sidewalk on Country Club Boulevard.


Survey General Comments

One thing that the Surveyor may want to correct, as it is possibly a scrivener's error; is the reference in the Surveyor's Notes No. 2: The Basis of Bearing reference differs from the Basis of Bearing shown following the Legal Description. Note No. 2 references Park Blvd., which is not shown on the Survey.

Response: The No. 2 of the Surveyor's Notes has been corrected.

Should you have any remaining questions, please feel free to contact me. Your consideration of this matter is greatly appreciated.

Sincerely,


Neale Montgomery

NM/kc

cc: Client

Enclosures (17 copies each):

- Burrowing Owl/Gopher Tortoise Affidavit
- Protected Species Survey
- Fuel Canopy Elevation Sheet
- Traffic Study Dated 2/25/16
- Revised Development Plan and Landscape Plan
- Revised Survey



May 9, 2016

Steven M. Neff, P.E.
Public Works Director
City of Cape Coral
1015 Cultural Park Boulevard
Cape Coral, Florida 33990

**Subject: Circle K – Country Club Boulevard at SE 26th Street
Request for Deviation from Engineering Design Standards**

Dear Mr. Neff,

The applicant for the above-referenced project seeks relief from the City of Cape Coral Engineering Design Standard D-5, "Commercial/Professional/Industrial Driveways, Collector Street and Arterials - Easement & Spacing", to allow a right-in-only driveway connection to Country Club Boulevard at a distance of approximately 45 feet from the project's property boundary line closest to SE 26th Street, where the otherwise required minimum separation distance is 150 feet to the property boundary line pursuant to Engineering Design Standard D-5. The subject driveway would be located 55 feet from the SE 26th Street edge of payment upon implementation of City required improvements in association with this development site.

The intent and purpose of access management is to provide safe access to land development while preserving the flow of traffic in terms of safety, capacity, and speed. Pursuant to the subsequent discussion below, the subject request is not anticipated to result in a deterioration of roadway capacity or travel time, and the number and severity of accidents is not anticipated to be increased.

The proposed right-in-only driveway connection will facilitate only one vehicular movement, that being a turn from Country Club Boulevard into private property (Circle K), which would occur from an auxiliary turn lane. In consideration that the subject movement would occur from an auxiliary turn lane, the movement would not have an adverse effect on the operation of Country Club Boulevard, thus maintaining roadway capacity and travel time. Furthermore, providing the referenced right-in-only project driveway would remove inbound right-turning project traffic from the Country Club Boulevard / SE 26th Street intersection, which benefits the inbound project traffic entering from the south via a left-turn at this intersection, as conflicting traffic would be reduced.

The proposed right-in-only driveway connection and the associated vehicular movement involves only one conflict point, which is categorized as a minor conflict, as compared to 36 conflict points (including both major and minor conflicts) for a typical full access connection; where the applicable spacing criteria of 150 feet makes no distinction between the type of driveway connection (i.e., full access versus restricted access). The single conflict point associated with the "restricted access" right-in-only driveway involves only the potential for a rear-end collision between the leading vehicle entering the private property (Circle K) via the subject driveway and the following vehicle intending to continue to SE 26th Street. However, this conflict exists regardless of the spacing between the driveway connection and SE 26th Street. Thus, the conflict point would not be eliminated as a result of achieving the otherwise required separation distance of 150 feet. Furthermore, as the distance between the driveway connection and SE 26th

WAYSOR Transportation Consulting

Steven M. Neff, P.E.

May 9, 2016

Page 2 of 2

Street decreases, so does the speed differential between the leading and following vehicles, which results in a proportional decrease in both the likelihood and severity of a collision. In addition, the subject driveway connection is planned to be designed with a radial curb return and ample throat distance, further diminishing the likelihood of vehicular collisions. Finally, it is noted that the peak hour traffic turning right onto SE 26th Street from southbound Country Club Boulevard was identified as zero vehicles for both the AM and PM peak hours, further supporting the lack of any material safety issue, as the conflicting volumes would be at or near zero during typical peak traffic periods. Therefore, it can be concluded that the number and severity of accidents would not be increased with the implementation of the subject right-in-only driveway connection at the requested location in comparison to the location necessary to meet the 150 foot standard.

In addition, a literature review of several access management, traffic operations, and roadway design reference materials was performed, including those of the Transportation Research Board (TRB), the National Cooperative Highway Research Program (NCHRP), the Institute of Transportation Engineers (ITE), the American Association of State and Highway Transportation Officials (AASHTO), and the Florida Department of Transportation (FDOT). The literature review resulted in the absence of any findings indicating a safety concern regarding a right-in-only driveway connection, regardless of its proximity to an intersection.

Pursuant to the above discussion, the right-in-only driveway connection to Country Club Boulevard at the requested location has been demonstrated to meet safety and operational criteria, as (a) roadway capacity and travel time is anticipated to be maintained, and (b) the number and severity of accidents is not anticipated to be increased; supporting the request for deviation from the City of Cape Coral Engineering Design Standard D-5.

If you should have any questions/comments regarding the materials discussed herein, please feel free to contact me.

Sincerely,

WAYSOR Transportation Consulting



Michael D. Raysor, P.E., PTOE

President

Prepared under the supervision of:

Michael D. Raysor, P.E.
P.E. Registration No.: 60919

Signature: 

Date: May 9, 2016



June 9, 2016

David A. Hyyti, P.E.
Development Services Manager
Department of Community Development
City of Cape Coral
1015 Cultural Park Boulevard
Cape Coral, Florida 33990

**Subject: Circle K -- Country Club Boulevard at SE 26th Street
Response to Comment**

Dear Mr. Hyyti,

This letter documents our response to your comment #4 for the above-referenced project, dated 4/19/16, as follows:

Please revise the calculations for the northbound left turn lane into SE 26th Street to reflect the Lee County Turn Lane Policy, AC11-4, as shown in the City's EDS, Appendix #1.

The County's turn lane policy references two components of the turn lane, these being the deceleration component and the storage component. Pursuant to our traffic study report dated 2/25/16, the design speed for Country Club Boulevard was identified to be 45 mph, which pursuant to the County's turn lane policy requires a deceleration length of 200 feet (refer to Attachment "A"). The storage component for this turn lane was identified as 75 feet, which was determined pursuant to the County's turn lane policy based on the traffic volumes documented in the our traffic study report dated 2/25/16 (refer to Attachment "B"). Thus, the total length required for the subject left turn lane is identified as 275 feet.

A northbound-to-westbound left-turn lane currently exists on Country Club Boulevard at SE 26th Street. The length of this turn lane, including both the taper and projection into the median opening, is approximately 210 feet. Thus, it is concluded that this turn lane would need to be lengthened by 65 feet to meet the above referenced length of 275 feet. It is noted that a portion of this turn lane (approximately 60 feet) occurs within the median opening on Country Club Boulevard due to the median nose being pulled back southward away from the intersection at SE 26th Street (refer to Attachment "C").

If you should have any questions/comments regarding the materials discussed herein, please feel free to contact me.

Sincerely,

RAYSOR Transportation Consulting

Michael D. Raysor, P.E., PTOE
President

ATTACHMENT "A"

Administrative Code 11-4 • Turn Lane Policy • Cont'd.

- (b) Number of right turning movements from the intersecting street or access point connection is equal to or greater than ninety (90) during either the A.M. or P.M. peak hour of the collector street.
 - (c) Traffic Control of the
intersecting street or access point connection is a traffic signal,
3. Intersection/Connection to Local Street
- (a) Posted speed limit of the intersecting street or access point connection is equal to or greater than ~~thirty~~ (30) mph.
 - (b) Number of right turning movements from the intersecting street or access point connection is equal to or greater than one hundred and twenty (120) during either the A.M. or P.M. peak hour of the local street.
 - (c) Traffic Control of the
intersecting street or access point connection is a traffic signal,

DESIGN

- I. Deceleration lanes consist of two distinct sections. The transition section is the distance needed for vehicles to achieve transfer from the through lane to the turn lane. The deceleration section is the distance needed to slow to a stop.

FDOT has tabulated standards for these distances, but those apply to typical rural highways. Under county urbanized conditions drivers begin deceleration immediately upon entry into the transition section and arrive at the deceleration section at lower speeds than the posted speed. Under urbanized conditions drivers utilize deceleration rates of 12 ft. per sec. per sec. which requires shorter deceleration lengths than 10 ft. per sec. per sec. which is typical of rural conditions. The table below represents a set of calculated County standards which differ from the FDOT standards except for those roads with a posted speed of 50 mph or above. County standards shall be used on County roads, except controlled access roadways which will utilize the FDOT standards. FDOT will specify requirements on State Highways. FDOT standards are found in Index #301.

Design Speed	Trans.	Decel.	Total
30	75	50	125
35	80	60	140
40	90	75	165
45	105	95	200
50			
55			

See FDOT Index #301

The initial 50 feet of the transition length shall consist of pavement taper and the remaining length shall be the full width of the deceleration lane.

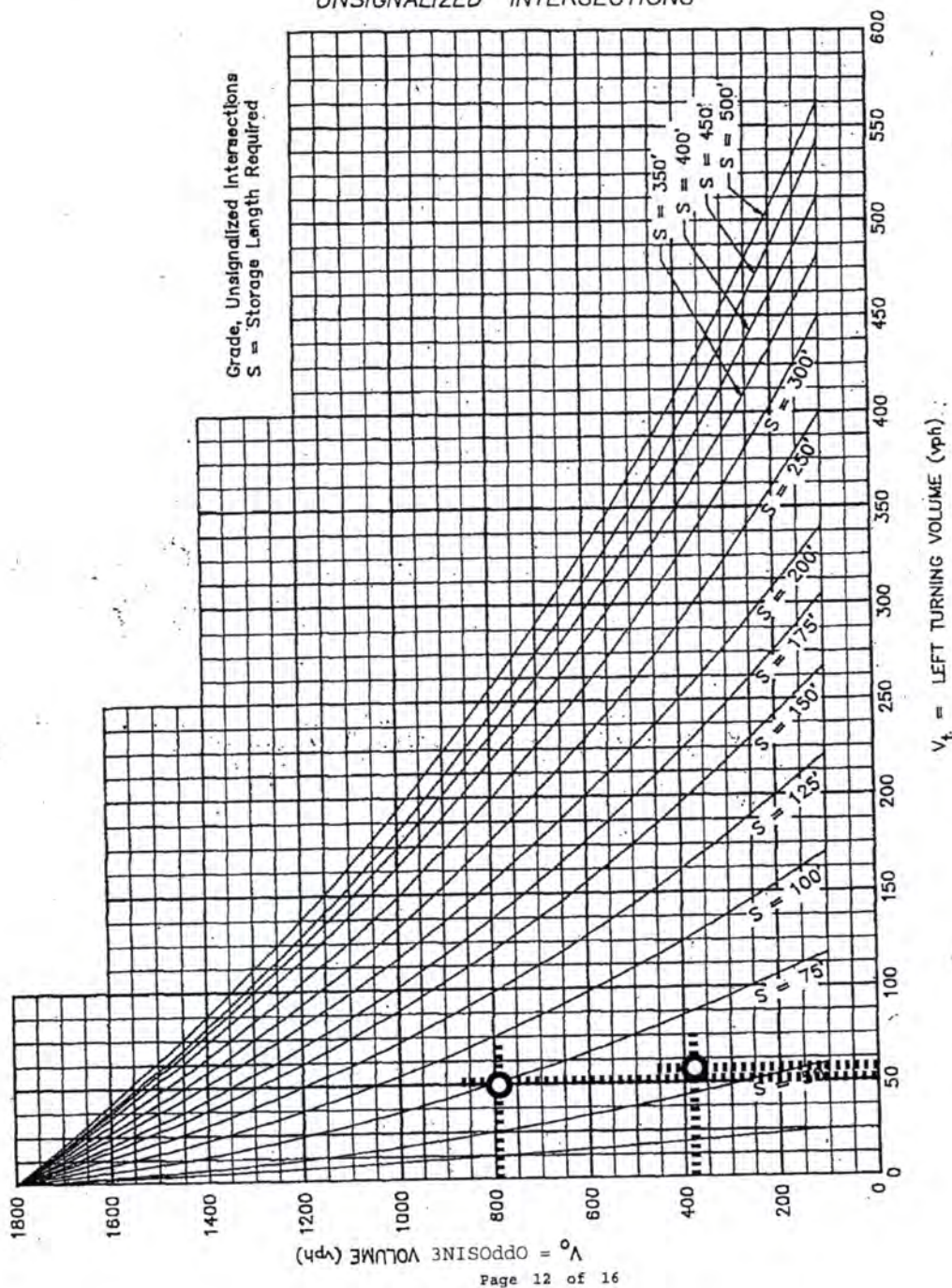
II. DESIGN OF LEFT AND RIGHT TURN LANES

Where left and right turn lanes are required, storage lanes shall be used in conjunction with deceleration lanes and their lengths shall be added to the required deceleration length. Turn lanes for right turns shall generally conform to the configuration shown in Fig. FB-1. Turn lanes for left turns shall generally conform to the configuration shown in Fig. FB-2.

ATTACHMENT "B"

AC-11-4 Continued

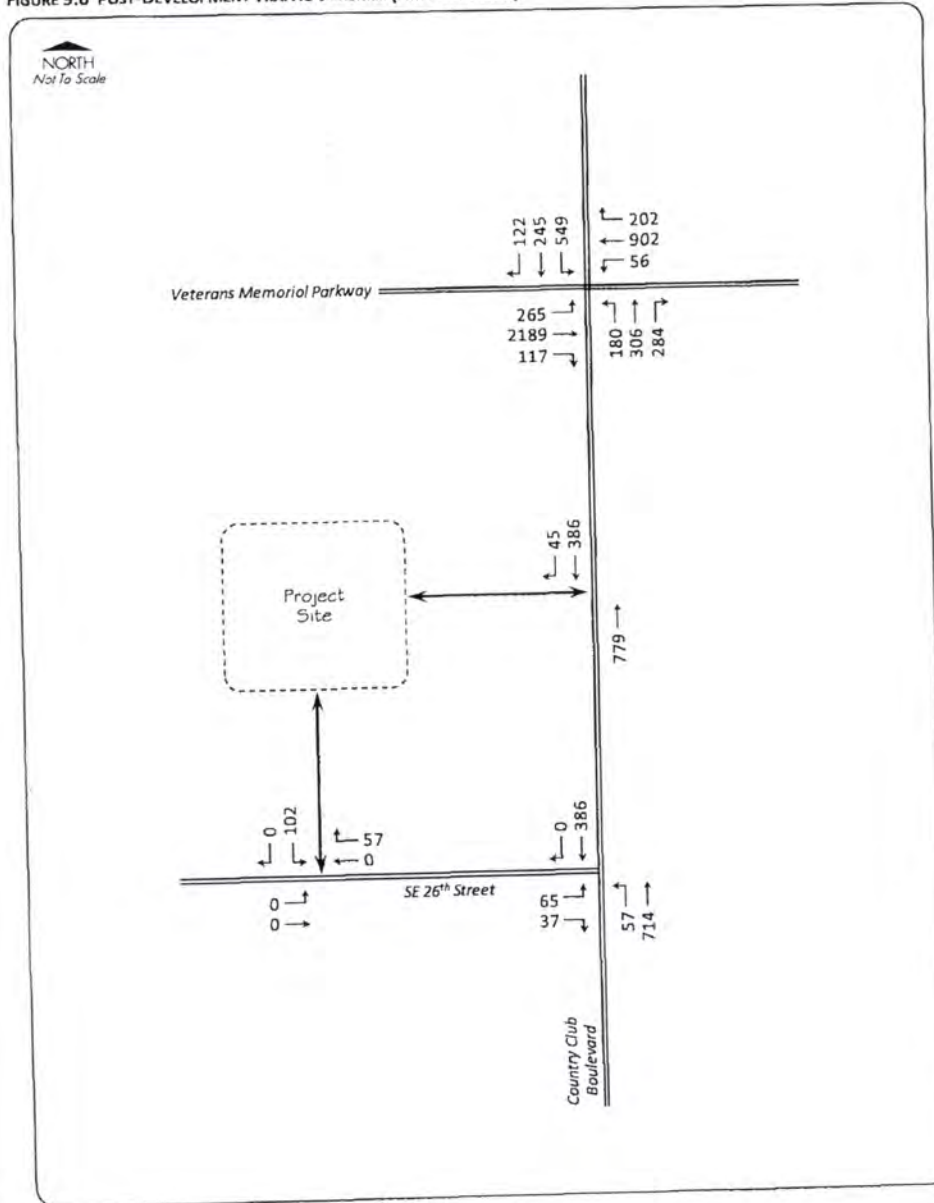
FIGURE N-1
LEFT-TURN STORAGE LENGTH
UNSIGNALIZED INTERSECTIONS



Source: M.D. Hamelink

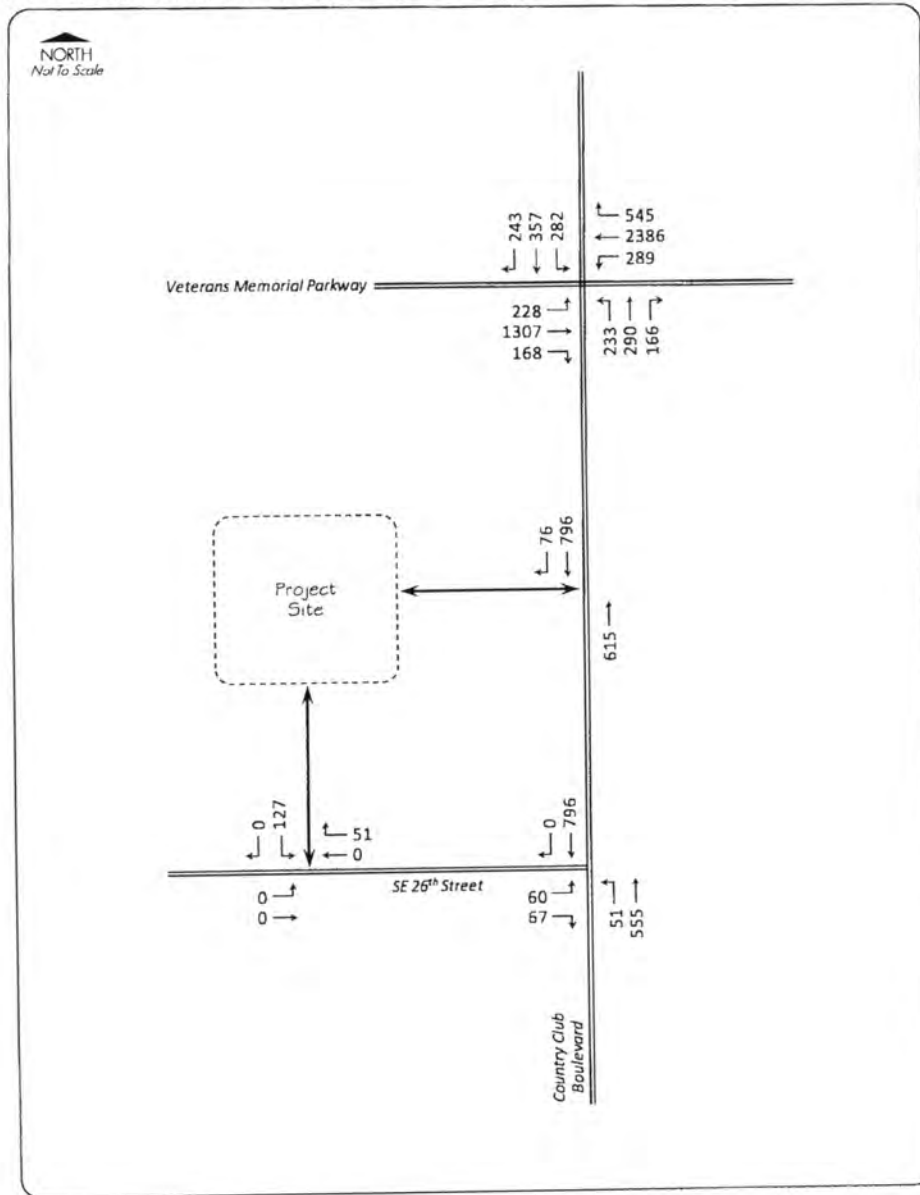
ATTACHMENT "B"

FIGURE 9.0 POST-DEVELOPMENT TRAFFIC VOLUMES (AM PEAK HOUR)



ATTACHMENT "B"

FIGURE 10.0 POST-DEVELOPMENT TRAFFIC VOLUMES (PM PEAK HOUR)



ATTACHMENT "C"

Country Club Boulevard at SE 26th Street
Northbound Left Turn Lane Details



RAYSOR Transportation Consulting

PAVESE LAW FIRM

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NEALE MONTGOMERY

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June 21, 2016

Vincent A. Cautero, AICP, Director
Community Development at City of Cape Coral
1015 Cultural Park Boulevard
Cape Coral, Florida 33990

RE: Circle K- Estate of James E. Kinsey, Jr., PDP16-0001
819 SE 26th Street, Cape Coral, Florida 33904
STRAP No.: 31-44-24-C1-00821.0160

Applicant: Circle K Stores, Inc.
12911 N. Telecom Parkway
Tampa, Florida 33637

Dear Mr. Cautero:

Please accept this letter as a response to the sufficiency questions raised in the April 19, 2016 sufficiency letter.

Planning Rejection Comments on the Development Plan and Building Elevations

1. The two-foot high decorative wall shown on the Development Plan is required to meet a minimum 10-foot setback from the north property lines of Lot 12 and Lot 23. Walls on corner lots are required to provide a minimum 10-foot setback from the side property line. Refer to LUDR, Section 3.9.2.B.1.d. In lieu of providing this setback, the applicant could seek a deviation to this requirement under LUDR, Section 4.2.4.K. If a deviation is sought, please provide proper justification for the deviation, that is, explain why the deviation involves a unique and innovative design that would enhance the PDP project and that the intent of this regulation to protect the health, safety, and welfare of the community would be served by the approval of the deviation.

Response: The decorative wall has been revised, and it meets the 10 ft setback requirement. The wall along the northwest property boundary was partially eliminated (per phone conversation between applicant and Mike Struve) and terminates once it reaches the northwest corner of the building.

2. There appears to be a concrete area located behind the southwest portion of the building that is enclosed with a fence. Please describe the purpose of this area. In addition, please confirm whether this area will be enclosed with a fence or wall, and if so, describe the height and materials associated with this structure. Revised staff comment dated 04-15-16: An opaque wall or fence, with a minimum height of six feet, is required for screening equipment located behind the store. The wall is required to be constructed of material the same as the building and shall incorporate architectural trim features consistent with the building. Refer to LUDR, Section 5.6.9. The

required wall associated with the buffer yard could be extended north and eastward to enclosure this equipment area to satisfy both the buffer yard and screening requirements (LUDR, Sections 5.2.13.C.5.c.(5)(c) and 5.6.9) provided this wall meets the architectural standards discussed previously within this paragraph.

Response: The purpose of this area is for electrical, HVAC, and other related equipment for the building. The area was originally intended to be enclosed with a fence, however, after discussions with staff we have determined that the equipment will be screened with an architecturally enhanced wall.

Site Development Rejection Comments

1. *After considering all of the aspects related to the proposed right turn lane on Country Club Blvd and the proposed project entrance staff has determined that a separate project entrance at that location would not be appropriate. The primary concerns are:*

a. The close proximity of the driveway and SE 26th Street will create confusion for right turning movements whether the turn lane is for Circle K or SE 26th Street. Drivers who are turning on 26th may enter the turn lane and then try to reenter the through lane causing unsafe conditions.

Response: This concern has been addressed. The turn lane has been extended through to SE 26th Street.

b. The current Development Plan as drawn does not reflect the required road widening, curb/gutter and sidewalk construction required on SE 26th Street. Once those improvements are made the separation between the drive and the road is reduced down to less than thirty feet.

Response: Improvements have been included in the updated plan. The distance from site access to SE 26th St. was increased by reducing the right-in access throat distance and shifting the entire access to the north. The adjustments still do not conform to the code requirements, however, the matter has been addressed through the issuance of a deviation for the driveway distance.

c. The drive as proposed does not appear to provide on or off-site traffic circulation benefits that would warrant the creation of potential off-site safety issues within Country Club right of way.

Response: The drive provides several benefits which were outlined in the deviation submittal. (See attached May 9, 2016 request narrative.)

2. *Please revise the Development Plan to reflect the removal of the project driveway on Country Club Blvd.*

Response: The plan has been revised to reflect the project drive as approved in the deviation submittal.

3. *Staff is not opposed to the installation of the right turn lane to serve SE 26th Street.*

Response: The revised site plan includes this change.

4. *Please revise the calculations for the north bound left turn lane into SE 26th Street to reflect the Lee County Turn Lane Policy, AC11-4, as shown in the City's EDS, Appendix #1.*

Response: The calculations have been revised and the site plan has been updated to reflect the required change. Please consider the information in the enclosed letter from Michael Raysor to David Hyyti.

5. The proposed Decorative Wall would need to provide buffering similar to the existing berm located along the west and north sides of the property. The elevation of the top of the wall could vary but should be no less than elevation 14.0 NAVD at the western end and elevation 11.0 NAVD at the eastern end.

Response: The proposed wall and landscaping as shown on the revised plan will be similar to the existing berm, however, the 14.0 NAVD at the western elevation does not appear to take into account the c-store building which provides far more buffering than the existing berm. The applicant would request that the elevation be no more than 11.0 NAVD for the entire length of the wall, which, when coupled with the new landscaping and c-store building will provide more buffering than the existing berm does today.

Survey General Comments

One thing that the Surveyor may want to correct, as it is possibly a scrivener's error, is the reference in the Surveyor's Notes No. 2: The Basis of Bearing reference differs from the Basis of Bearing shown following the Legal Description. Note No. 2 references Park Blvd., which is not shown on the Survey.

Response: No. 2 of the Surveyor's Notes was corrected in the revised survey dated 3/16/16 and included in the March 23 response package.

Should you have any remaining questions, please feel free to contact me. Your consideration of this matter is greatly appreciated.

Sincerely,



Neale Montgomery

NM/kc

cc: Client

Enclosures (17 copies each):

Revised Development Plan

Michael Raysor Deviation Request Narrative Dated May 9, 2016

Letter from Michael Raysor to David Hyyti Dated June 9, 2016

PAVESE LAW FIRM

NEALE MONTGOMERY

Direct dial: (239) 336-6235

Email: NealeMontgomery@paveselaw.com

1833 Hendry Street, Fort Myers, Florida 33901 | P.O. Drawer 1507, Fort Myers, Florida 33902-1507 | (239) 334-2195 | Fax (239) 332-2243

July 18, 2016

Vincent A. Cautero, AICP, Director
Community Development at City of Cape Coral
1015 Cultural Park Boulevard
Cape Coral, Florida 33990

RE: LETTER OF INTENT – ADDITIONAL DEVIATION REQUEST

Circle K- Estate of James E. Kinsey, Jr., PDP16-0001
819 SE 26th Street, Cape Coral, Florida 33904
STRAP No.: 31-44-24-C1-00821.0160

Applicant: Circle K Stores, Inc.
12911 N. Telecom Parkway
Tampa, Florida 33637

Dear Mr. Cautero:

Please accept this letter as an amendment to the January 12, 2016, Letter of Intent submitted on behalf of Circle K Stores, Inc. ("Applicant") for the application listed above.

The Applicant requests approval of a deviation to LUDR, Section 3.9.2.B.1.d. that states for fences/walls in commercial zoning districts *"no part of a fence shall be located forward of the forward-most part of the side of the principal structure to which the fence is closest. In no circumstance shall a fence enclose any portion of the front façade of the principal structure."*

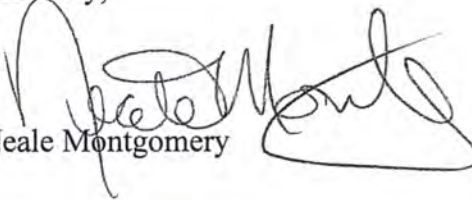
The proposed PDP incorporates a retaining wall along the northern boundary fronting Veterans Blvd. that will be located forward of the principal structure. The proposed wall will be unique and innovative in design features and enhances the overall project. The retaining wall is necessary due to the County right-of-way currently being used for storm water detention and supported by a manmade berm on the subject property. The removal of the berm and construction of the wall will allow the County storm water detention to remain unchanged in volume which generally protects the public health, safety, and welfare due to its close proximity to a heavily traveled corridor road. The proposed wall will also include an architectural finish resulting in a more aesthetically pleasing visual from the northern right-of-way compared to the current existing condition which is a poorly landscaped berm with overgrowth and high grasses.

Vincent A. Cautero, AICP, Director
July 18, 2016
Page 2

The Applicant feels this approval is necessary for the proposed PDP and adds great value to the project, the City of Cape Coral, and local residents. We appreciate your support of this deviation and look forward greatly enhancing this underutilized property.

Thank you for your time and consideration.

Sincerely,


Neale Montgomery

NM/kc

PAVESE LAW FIRM

NEALE MONTGOMERY

Direct dial: (239) 336-6235
Email: NealeMontgomery@paveselaw.com

1833 Hendry Street, Fort Myers, Florida 33901 | P.O. Drawer 1507, Fort Myers, Florida 33902-1507 | (239) 334-2195 | Fax (239) 332-2243

July 18, 2016

Vincent A. Cautero, AICP, Director
Community Development at City of Cape Coral
1015 Cultural Park Boulevard
Cape Coral, Florida 33990

**RE: Circle K- Estate of James E. Kinsey, Jr., PDP16-0001
819 SE 26th Street, Cape Coral, Florida 33904
STRAP No.: 31-44-24-C1-00821.0160**

**Applicant: Circle K Stores, Inc.
12911 N. Telecom Parkway
Tampa, Florida 33637**

Dear Mr. Cautero:

Please accept this letter as a response to the sufficiency questions raised in the July 11, 2016 sufficiency letter.

Planning Rejection Comments on the Development Plan

1. The City's fence regulations regarding setbacks state that "no part of a fence shall be located forward of the forward-most part of the side of the principal structure to which the fence is closest. In no instance shall a fence enclose any portion of the front façade of the principal structure." Refer to LUDR, Section 3.9.2.B.1.d.

Staff interprets this provision to mean that the two-foot tall wall located along the north property line cannot extend past the forward-most part of the convenience store. A deviation can be sought to allow the fence to extend eastward towards the front property line as currently shown on the development plan. If you choose to apply for a deviation, please review the language contained in LUDR, Section 4.2.4.K that discusses deviation requests. Briefly, deviations may be approved by the City Council provided that the PDP demonstrates unique and innovative design which would be enhanced by the approval of such deviation(s) and that the intent of such regulations to protect the health, safety, and welfare of the public would be served by the approval of the deviation. Alternatively, the wall could be removed in its entirety or at the forward-most part of the convenience store if you decide not to apply for a deviation.

Response: The Applicant is going to pursue a deviation. Attached please find a revised Letter of Intent and revised application pages 4 and 11 which reflect the deviation request, along with a check in the amount of \$1,250.00 for the deviation fee.

Site Development Rejection Comments

1. *The proposed Decorative Wall would need to provide buffering similar to the existing berm located along the west and north sides of the property. As the decorative wall is a significant compatibility mitigation item the final location and elevation should be shown on the PDP plan.*

Response: **The PDP plan has been revised to reflect the location and elevation.**

Should you have any remaining questions, please feel free to contact me. Your consideration of this matter is greatly appreciated.

Sincerely,



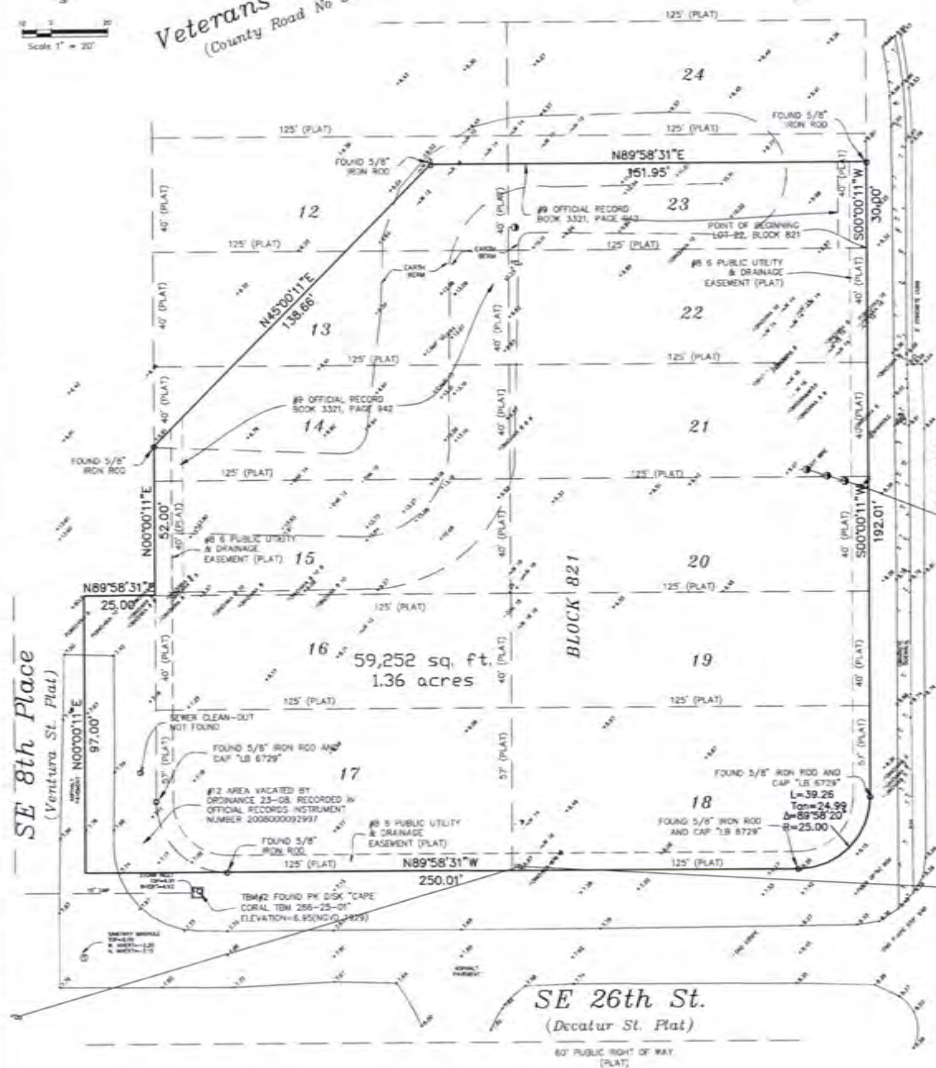
Neale Montgomery

NM/kc

cc: Client

Enclosures (17 copies each):

Revised Letter of Intent dated 7/18/16 (Additional Deviation Request)
Revised Application Pages 4 and 11 (Additional Deviation Request)
\$1,250 Check (Additional Deviation Request Fee)
Revised Development Plan



W	WATER VALVE
L	LIGHT ON POLE
M	WATER METER
P	UTILITY POLE
F	FOUND MONUMENT AS NOTED
H	FIRE HYDRANT
S	SANITARY SINKER OR MARKER
D	DUTY POLE/WHOLE
T	TREE AS LABELED
T	TREE AS LABELED
T	TREE AS LABELED
P	DATE PEDISTAL
S	STREET SIGN AS LABELED
M	MANICAP MARK ON PAVEMENT

INVESTOR'S NOTICE

1. BACKGROUND AND RESEARCH HEREON FROM THE DEEDS AND FIELD MEASUREMENTS BASED ON FLORIDA STATE PLANE COORDINATES, WEST ZONE NAD 1983, SAWS OF BEARINGS TO THE BEST KNOW OF WAY LINE OF COUNTRY CLUB BLVD., 3007071W (GRO). ELEVATIONS SHOWN ARE NOV0 1929.

2. THIS SURVEY WAS PREPARED WITH THE BENEFIT OF A TITLE SEARCH PROVIDED BY CHICAGO TITLE INSURANCE COMPANY, ORDER NO. 168, EFFECTIVE 01-14-2025 @ 11:00AM.

3. SUCCESSIONAL - NONE

4. Defects, fees, encumbrances, adverse claims or other matters, if any, created, first appearing in the public records or arising subsequent to the above survey have been set prior to the date the proposed instrument was recorded for value of record the estate or interest or mortgage therein covered by this Commitment. AFFECTS SUBJECT PROPERTY BUT NOT ABLE TO PLOT

5. Taxes and assessments for the year 2025 and subsequent years, which are not yet due and payable AFFECTS SUBJECT PROPERTY BUT NOT ABLE TO PLOT

6. Standard Exclusions:

A. Any encroachment, easement, license, variance, or adverse circumstance affecting the Title filed would be disclosed by an accurate and complete land survey of the Land. NONE

B. Rights or claims of parties in possession not shown by the public records or hereafter Unincorporated, claimed by law and not shown by the public records. NOT PLOTTED

C. Taxes or assessments which are not shown as existing later in the public records. AFFECTS SUBJECT PROPERTY BUT NOT ABLE TO PLOT

D. Any law provided by County Ordinance or by Chapter 136, Florida Statutes, in favor of any city, town, village or part authority for unpaid charges for service by any water, sewer or gas system supplying the involved land. AFFECTS SUBJECT PROPERTY BUT NOT ABLE TO PLOT

E. Subject property lies within the boundaries of the City of Cape Coral and may be subject to the levying of Special Assessments thereof

F. Subject is one and lies within the boundaries of Cape Coral Dual Rate Area Assessment District(s) and is subjected to any rate and/or assessment therefor. Liability under said Commitment/Pledge as to all City of Cape Coral Assessments and Fees is hereby limited to only that which the City of Cape Coral has levied on the Public Records of Lee County, Florida, which contains the property description, name of owner, and lot number. AFFECTS SUBJECT PROPERTY BUT NOT ABLE TO PLOT

7. Lee County Ordinances 86-14 and 86-38 providing for mandatory waste collection and the imposition of special assessments for local collection services. The special assessments for the current year are payable with the ad valorem taxes. AFFECTS SUBJECT PROPERTY BUT NOT ABLE TO PLOT

8. Restrictions, conditions, reservations, easements, adverse dedications, and other matters contained on the Plat of Cape Coral Unit #1, as recorded in Plat Book 138, Pages 149 through 171, inclusive, as affected by Ordinance 23-08 recorded in Official Instrument Number 2023000777. PLOTTED

9. Easements and restrictions contained in County Deed recorded in Official Records book 332, Page 142. PLOTTED

SE 25th Lane
(San Mateo St. Plat)

Country Club Blvd.

LEGAL DESCRIPTION

[illegible]

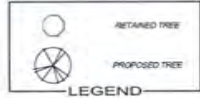
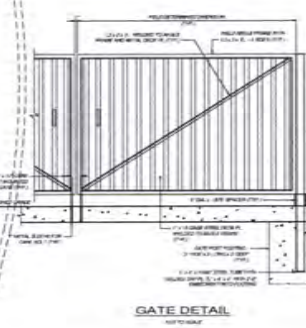
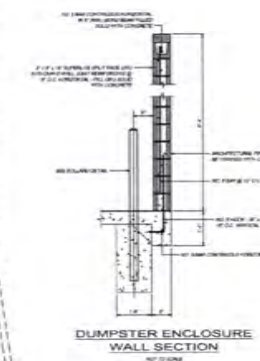
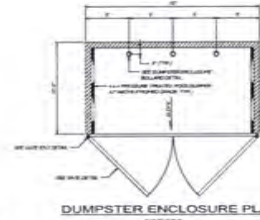
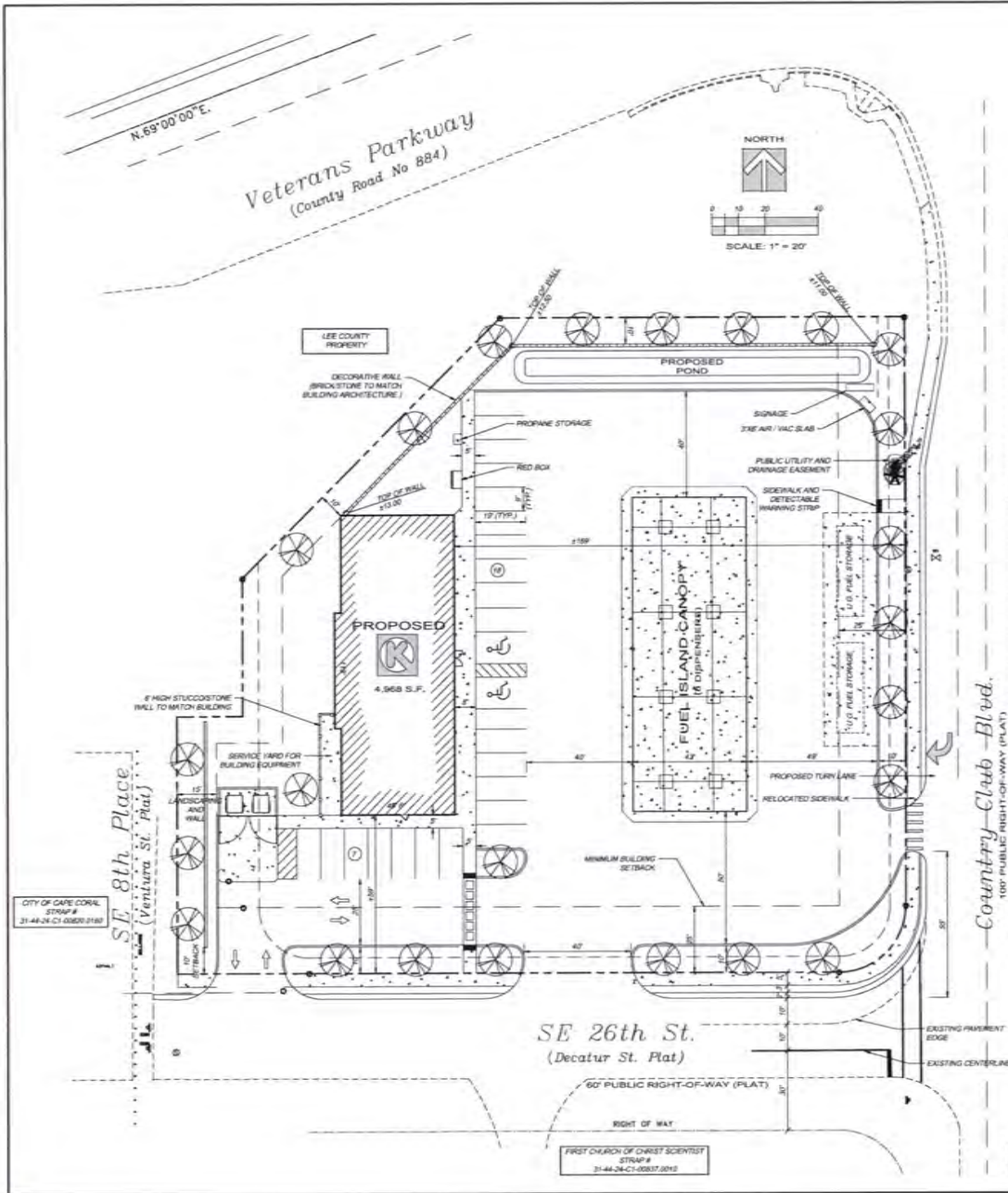
SURVEYOR'S CERTIFICATE

THIS IS TO CERTIFY THAT THIS MAP OR PLAN AND THE SURVEY ON WHICH IT IS BASED WERE MADE IN ACCORDANCE WITH THE 2011 ALABAMA STANDARD DETAIL REQUIREMENTS FOR ALTA/ACSM LAND TITLE SURVEYS, JOINTLY ESTABLISHED AND ADOPTED BY ALTA AND NSPS, AND INCLUDES ITEMS 1-8, 11, 13, 14, 16, 18, 19 & 23 OF TABLE A THEREOF. THE FIELD WORK WAS COMPLETED ON 3/2/2015.

NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND WRAPPER, DAVID P. GRAVES PSM #5382
APR CONSULTING, INC. #187258

DATE: 3/16/2016

PREPARED FOR RFP 32 0070 37 CORE CORP., LLC		PREPARED BY ALTA/ACSM BOUNDARY AND TOPOGRAPHIC SURVEY	
PROJECT CIRCLE K STORES, INC. 1212 N. TELECOM PARKWAY TAMPA, FL 33637		CLIENT CIRCLE K STORES, INC. 1212 N. TELECOM PARKWAY TAMPA, FL 33637 PHONE: 813.271.1232 FAX: 813.271.1232 E-MAIL: 813.271.1232	
DATE 10/1/2012		DRAWN BY JAC	
CHECKED BY JAC		SCALE AS SHOWN	
PROJECT NO. 1212N		SHEET NO. 15-05	



SITE DATA:

STRAP: 31-44-24-C1-0007-0180
 FOLIO ID: 0007-0180
 SITE ADDRESS: 815 SE 26TH ST, CAPE CORAL, FL
 PROJECT SITE AREA (CIRCLE K): 50,252 S.F. OR 1.16 ACRES MORE OR LESS

CURRENT ZONING: R-1 PROFESSIONAL / OFFICE DISTRICT
PROPOSED ZONING: C-1 PEDESTRIAN COMMERCIAL
FUTURE LAND USE DESIGNATION: CP-COMMERCIAL / PROFESSIONAL
EXISTING USE: COMMERCIAL/VACANT

ABUTTING ZONING:
 NORTH: R-1B-SINGLE FAMILY RESIDENTIAL
 SOUTH: R-1-PLACE OF WORSHIP
 EAST: R-1B-SINGLE FAMILY RESIDENTIAL
 WEST: R-1B-SINGLE FAMILY RESIDENTIAL

FUTURE LAND USE:
 NORTH: SINGLE FAMILY
 SOUTH: PUBLIC FACILITY
 EAST: SINGLE FAMILY
 WEST: SINGLE FAMILY

BUILDING HEIGHT: 1 FLOOR 21' MAX
BUILDING SIZE: 4,968 S.F.
PROPOSED DEVELOPMENT TYPE: CONVENIENCE STORE AND GAS STATION
OF UNITS (S.F.): 4,968 S.F. (CONVENIENCE STORE)

AUTOMOBILE PARKING:
REQUIRED: 1 SPACE / 200 S.F. OF 4,968 S.F. / 200 S.F. = 25 SPACES
PROVIDED: STANDARD (12' x 18') + 23 SPACES
 HANDICAP (12' x 18') + 2 SPACES
 18 SPACES @ 12' x 18' = 216 SPACES
TOTAL = 25 SPACES

FLOOD ZONE: THE PROPERTY SHOWN HEREON APPEARS TO BE IN FLOOD ZONE X ACCORDING TO THE FLOOD INSURANCE RATE MAP. COMMUNITY NUMBER 12506, PANEL NUMBER 107700000P, SUPPLEMENT EFFECTIVE 02/28/2004, FOR LEE COUNTY, FLORIDA.

VERTICAL DATUM: ELEVATIONS ARE NAVD 28

REQUIRED SETBACKS:
 FRONT: 25'
 SIDE: 10'
 REAR: 10'

SITE AREAS:

	PROPOSED	
STORE	4,968 S.F. 0.11 AC	2%
ASPHALT / CURB	26,430 S.F. 0.60 AC	49%
CONCRETE	15,437 S.F. 0.34 AC	19%
TOTAL IMPERVIOUS	43,835 S.F. 1.07 AC	71%
TOTAL PAVEMENT	15,417 S.F. 0.35 AC	29%
TOTAL SITE	50,252 S.F. 1.16 AC	100%

FLOOR AREA RATIO (FAR):
 4,968 S.F. / 50,252 S.F. = 0.0988 OR 0.09
 MAXIMUM ALLOWABLE FAR = 0.09

STORMWATER: REQUIRED STORMWATER TREATMENT AND ATTENUATION FACILITIES WILL BE PROVIDED IN ACCORDANCE WITH ALL APPLICABLE AGENCY CRITERIA. FACILITIES MAY INCLUDE BOTH AT-GRADE AND UNDERGROUND COMPONENTS.

OWNER:
 JAMES E. KINNEY, JR. ESTATE
 BRANCOON KINNEY, TRUSTEE
 P.O. BOX 1862
 FORT MYERS, FL 33902
 239-938-1387

APPLICANT:
 JOY CHRISTENSEN
 CIRCLE K STORES, INC.
 12911 N. TELECOM PARKWAY
 TAMPA, FL 33637
 813-919-6870

LEGAL CONSULTANT:
 NEALE MONTGOMERY
 FAYESSE LAW FIRM
 1033 HENRY STREET
 FT. MYERS, FL 33901
 239-336-6235

ARCHITECT:
 ROBERT OMB
 GREENBERG FARROW
 1435 WEST REACHES ST. NW
 SUITE 200 ATLANTA, GA 30339
 404-401-4000

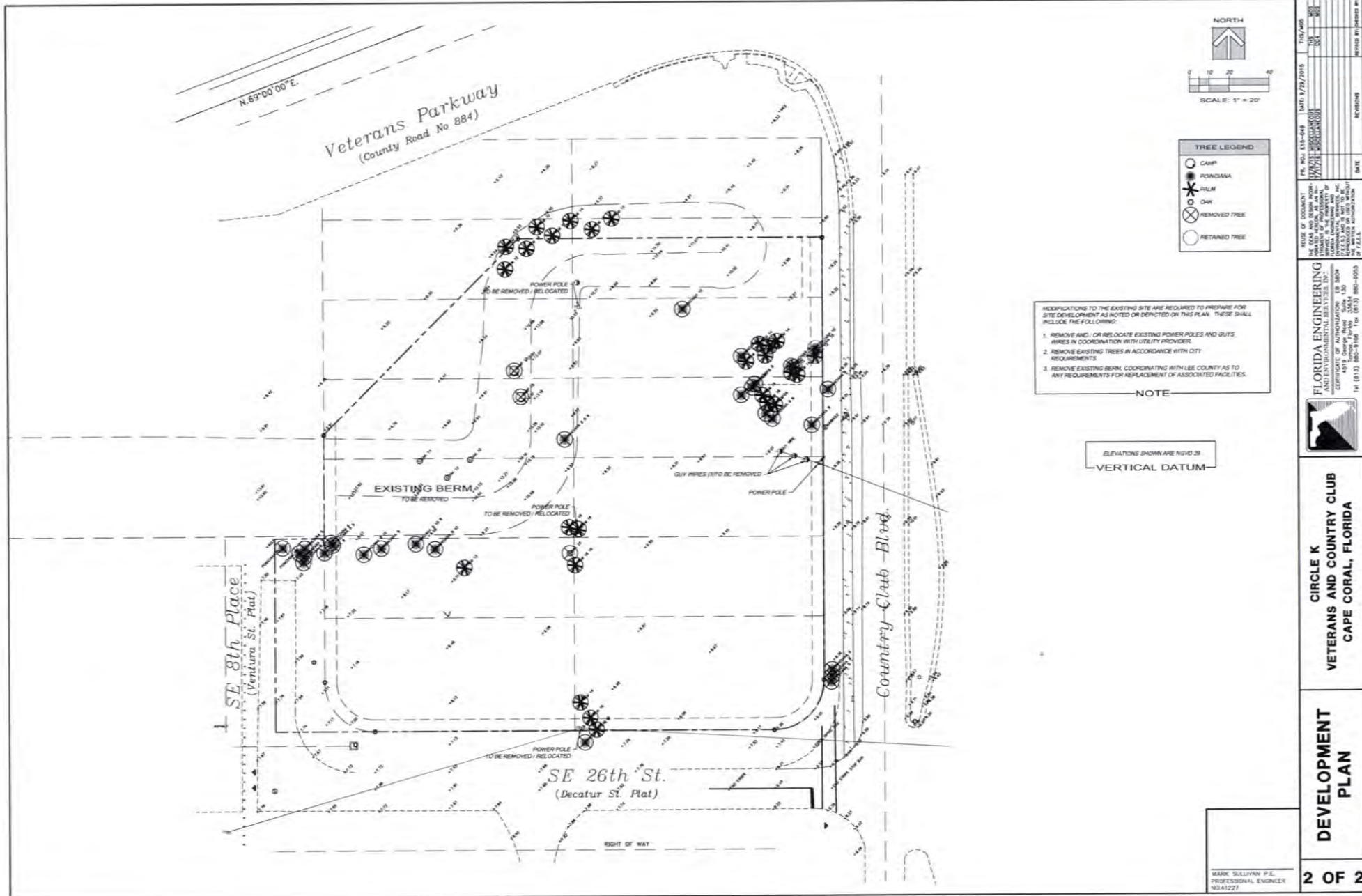
ENGINEER:
 MARK SULLIVAN, P.E.
 FLORIDA ENGINEERING AND ENVIRONMENTAL SERVICES
 4519 GEORGE RD
 TAMPA, FL 33604
 813-980-5006

SURVEYOR:
 DAVID P. GRIFFIN, PSM
 APN CONSULTING, INC.
 P.O. BOX 440
 SAN ANTONIO, FL 33578
 813-903-3228

MARK SULLIVAN, P.E.
 PROFESSIONAL ENGINEER
 NO. 41227

**CIRCLE K
 VETERANS AND COUNTRY CLUB
 CAPE CORAL, FLORIDA**

**DEVELOPMENT
 PLAN**



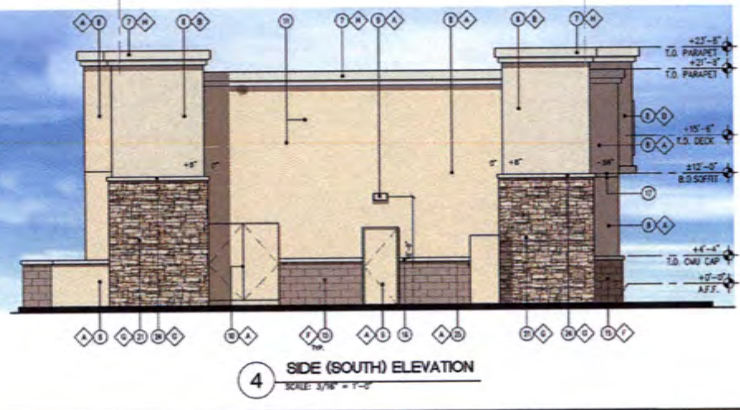
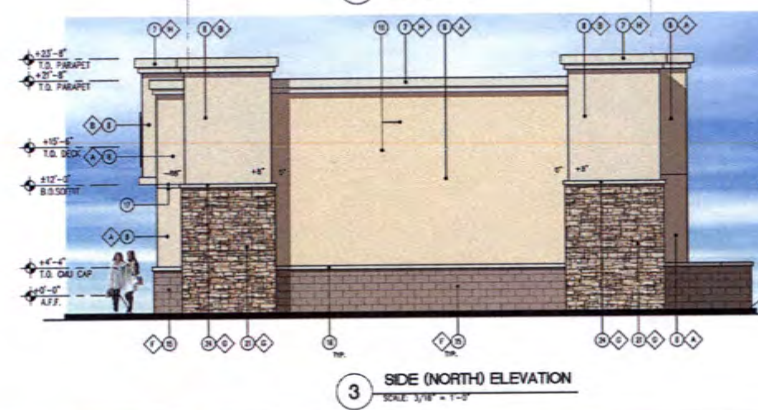
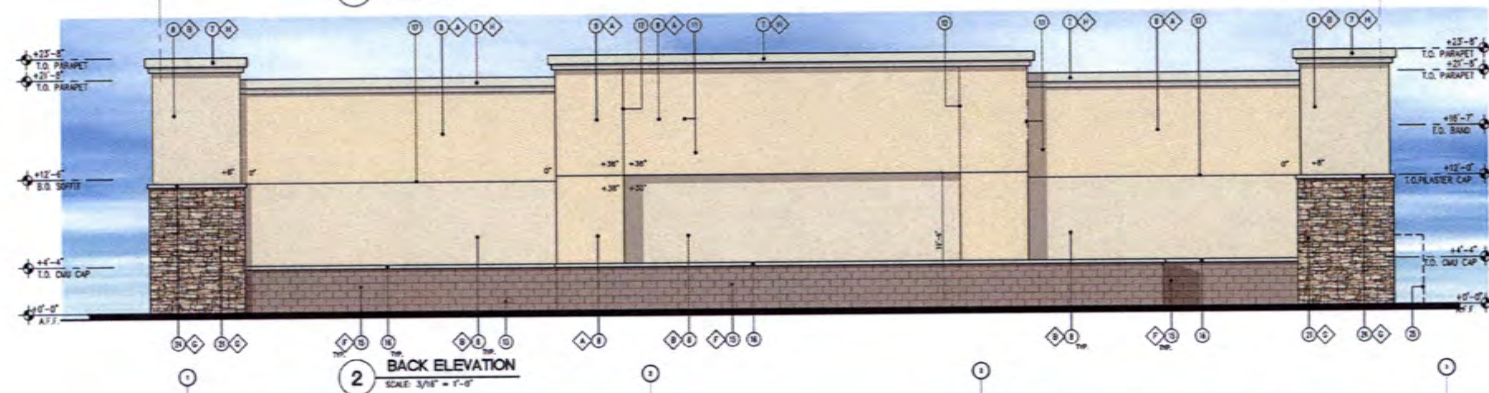
MARK SULLIVAN P.E.
 PROFESSIONAL ENGINEER
 NOA1227

**DEVELOPMENT
 PLAN**

**CIRCLE K
 VETERANS AND COUNTRY CLUB
 CAPE CORAL, FLORIDA**

**FLORIDA ENGINEERING
 AND ENVIRONMENTAL SERVICES, INC.**
 CERTIFICATE OF AUTHORIZATION: EE 3604
 4311 LANTANA BLVD., SUITE 300
 CAPE CORAL, FL 33914
 Tel: (813) 880-3108 Fax: (813) 880-9555

REVISIONS	DATE	BY	DATE	BY
1	9/29/2015	MS		
2	10/1/2015	MS		
3	10/1/2015	MS		
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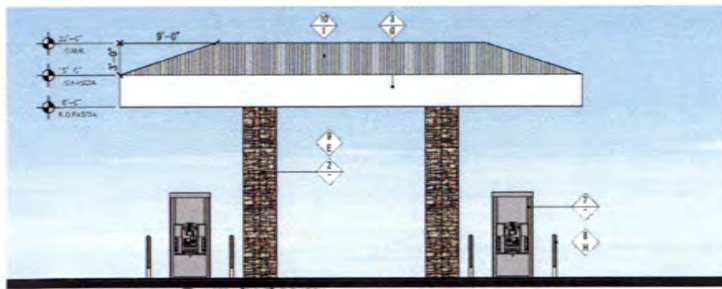


KEY NOTES

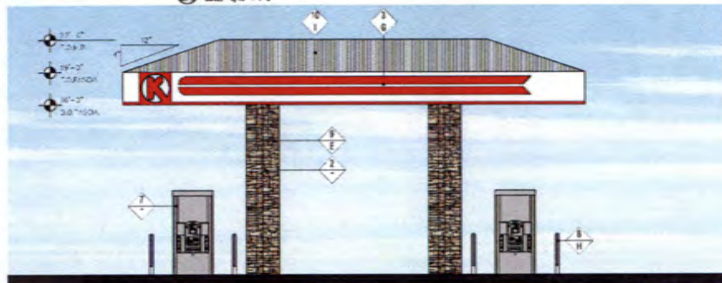
1. STEEL COLUMN WRAP WITH BRUSH METAL
2. USE OF CRACK/SEALANT
3. DRAIN BRIDGE W/ CLEAR GLASS WINDOW SYSTEM
4. INTERNALLY ILLUMINATED SIGN (SENDER SEPARATE PERMIT)
5. DRAIN BRIDGE W/ CLEAR GLASS WINDOW SYSTEM
6. SERVICE DOOR, PAINT TO MATCH SURROUNDING WALL
7. CORNER BRIDGING WITH METAL CAP FLASHING
8. STUCCO SYSTEM PER 2014-2017 WITH ACROLEIN FINISH, AND RAIN RESISTANCE
9. WALL MOUNTED LIGHT FIXTURE, SEE ELECTRICAL PLAN
10. SEE PANEL LOCATION, SEE ELECTRICAL PLAN
11. ROOF LINE AND HANG DOWN
12. STUCCO EXPANSION JOINT WITH PRE-CAST FIBER-REINFORCED CONCRETE, SEE DETAIL 11.1.1
13. ROOF DRAIN TAIL
14. ADDITIONAL LOCATION 8" TALL BRUSH METAL HANDRAILS
15. FINISH AREA ACCORDING TO THE DETAILING OF THE ROOF/PAVEMENT
16. HANG DOWN BRIDGE, PAINT FACE BY BRUSH METAL, COLORED TO MATCH CHALK COLOR
17. HANG DOWN BRIDGE, PAINT FACE BY BRUSH METAL, COLORED TO MATCH CHALK COLOR
18. HANG DOWN BRIDGE, PAINT FACE BY BRUSH METAL, COLORED TO MATCH CHALK COLOR
19. HANG DOWN BRIDGE, PAINT FACE BY BRUSH METAL, COLORED TO MATCH CHALK COLOR
20. HANG DOWN BRIDGE, PAINT FACE BY BRUSH METAL, COLORED TO MATCH CHALK COLOR
21. STUCCO SYSTEM PER 2014-2017 WITH ACROLEIN FINISH, AND RAIN RESISTANCE
22. HANG DOWN BRIDGE, PAINT FACE BY BRUSH METAL, COLORED TO MATCH CHALK COLOR
23. HANG DOWN BRIDGE, PAINT FACE BY BRUSH METAL, COLORED TO MATCH CHALK COLOR
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25. HANG DOWN BRIDGE, PAINT FACE BY BRUSH METAL, COLORED TO MATCH CHALK COLOR
26. HANG DOWN BRIDGE, PAINT FACE BY BRUSH METAL, COLORED TO MATCH CHALK COLOR

FINISH SCHEDULE

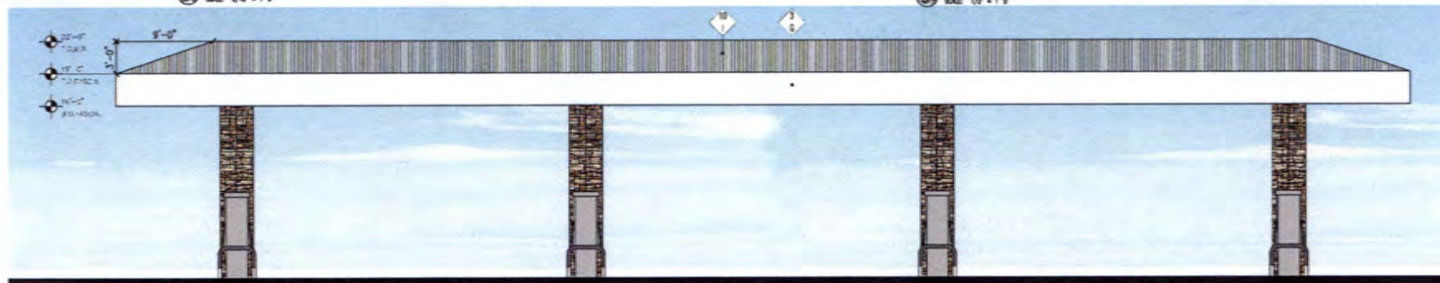
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- 2. INTERIOR WALLS FIN 010
- 3. INTERIOR WALLS FIN 010
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- 11. INTERIOR WALLS FIN 010
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- 20. INTERIOR WALLS FIN 010
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- 22. INTERIOR WALLS FIN 010
- 23. INTERIOR WALLS FIN 010
- 24. INTERIOR WALLS FIN 010
- 25. INTERIOR WALLS FIN 010
- 26. INTERIOR WALLS FIN 010



1 NORTH "RIGHT" ELEVATION
SCALE: 3/16" = 1' 0"



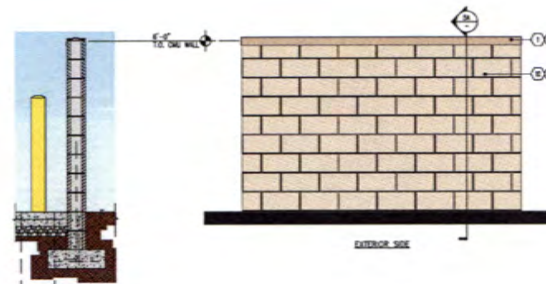
2 SOUTH "LEFT" ELEVATION
SCALE: 3/16" = 1' 0"



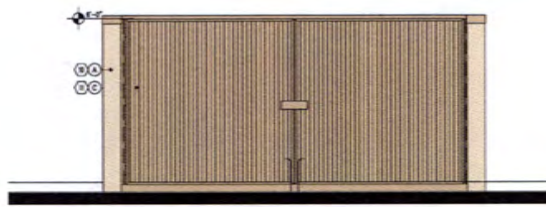
3 WEST "REAR (STORE SIDE)" ELEVATION
SCALE: 3/16" = 1' 0"



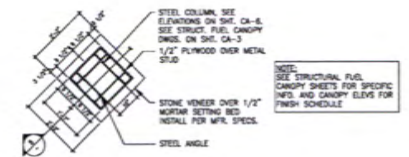
4 EAST "FRONT (STREET SIDE)" ELEVATION
SCALE: 3/16" = 1' 0"



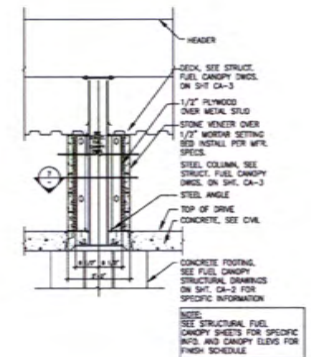
5 A-SECTION
6 B-ELEVATION
TRASH ENCLOSURE SECTION AND ELEVATION
SCALE: 1/4" = 1' 0"



7 TRASH ENCLOSURE ELEVATION
SCALE: 1/4" = 1' 0"



8 COLUMN PLAN FUEL CANOPY TYP
SCALE: 1/2" = 1' 0"



9 COLUMN SECTION FUEL CANOPY TYP
SCALE: 1/2" = 1' 0"

FINISH SCHEDULE

FINISH MATERIAL	FINISH COLOR
1 NOT USED	A NOT USED
2 STEEL CANOPY COLUMN (SHOWN DASHED)	B NOT USED
3 FLAT BASEC	C NOT USED
4 NOT USED	D NOT USED
5 NOT USED	E ENVIRONMENTAL STONEWORKS
6 NOT USED	F "WEATHERED EDGE SERIES" CHALKONNAY
7 FUEL PUMP	F NOT USED
8 4" B U-SHAPED DOLLARD 28" HIGH	G ACM PANELS CIRCLE K WHITE
9 STONE VENEER	H SHERBORN WILLIAMS - DARK GRAY
10 METAL MANGLED ROOF	I CK PRIMARY GRANGE

Notes:
1. Colors shown on these elevations are for illustration purposes only. For actual colors, refer to manufacturer's samples.
2. Approximate signage shall not exceed 100 characters per square meter.

GreenbergFarrow
19000 MacArthur Blvd., Suite 250
Irvine, CA 92612
t: 949 296 0450 f: 949 296 0437

CIRCLE K STORES INC.
1130 W. Warner Road, Building B
Tempe, Arizona 85284
t: (602) 728-4850 f: (602) 307-4850

CIRCLE K FUEL CANOPY ELEVATIONS
819 SE 26TH ST
CAPE CORAL, FLORIDA
20151311
SCALE: AS NOTED
CA-6

Circle K PDP 16-0001

Planning Division
Final Project Staff Report

Prepared by Mike Struve, AICP, LEED Green Associate,
Planning Team Coordinator

Approved by Robert H. Pederson, AICP, Planning Manager

October 20, 2016

PURPOSE

This document provides a single, consolidated review for a Planned Development Project (PDP) entitled "Circle K." Within this report the following topics are addressed:

- Description of the subject property;
- Previously granted entitlements associated with the project;
- Need for the PDP;
- Description of the proposed project;
- Analysis of applicant requests;
- Analysis of the project regarding general standards and requirements for PDPs
- Concurrency review;
- Consistency with the City Comprehensive Plan;
- Summary of the positive and negative aspects of the project; and,
- Project recommendation.

DESCRIPTION OF THE SUBJECT PROPERTY

The 1.36-acre parcel has frontage along three streets; Veteran's Memorial Parkway to the north, Country Club Boulevard to the east, and SE 26th Street to the south. Veteran's Memorial Parkway is classified as a Principal Arterial, Country Club Boulevard as a Minor Arterial, and SE 26th Street as a Local Street. Direct access to Veteran's Memorial Parkway will not be available to this property as this County-maintained street is managed as a limited access street.

This property is irregular in shape and is undeveloped. An earthen berm exists along the northern property line. This berm, that includes several palm trees, was constructed by Lee County when Veteran's Memorial Parkway was built. The berm detains stormwater runoff generated by Veteran's that collects in the swale on the south side of this street. The difference in elevation between the top of the berm and the bottom of the swale within the right-of-way is around seven feet, and this difference contributes to the elevated appearance of this site when viewed from Veteran's Memorial Parkway.

PREVIOUSLY APPROVED ENTITLEMENTS FOR THE SUBJECT PROPERTY

A PDP for this property was approved in 2008 for a project entitled "Kinsey Veterans – Country Club Corner Development." Ordinance 23-08 granted the following:

- Rezoning of the property from Single Family Residential (R-1B) to Professional Office (P-1);

- A deviation of 12 feet from the front setback requirement of 25 feet for a retaining wall;
- A Special Exception for a Bank and Financial Institution, Group I use in the P-1 District;
- A vacation of right-of-way for a portion of SE 8th Place; and,
- A vacation of all interior lot lines and easements of the subject property.

The PDP approved a three-story building containing 18,600 sq. ft. of office uses. Since substantial construction did not occur within two years from the date of PDP approval, the PDP was voided by the City. While the rezoning and the vacations remain in effect, all other entitlements granted by Ordinance 23-08 were lost (see LUDR, Section 4.2.4.H).

NEED FOR THE PDP AMENDMENT

When the project was initially submitted, a PDP was not mandatory since only a rezone and Special Exception were requested. Presumably the PDP was submitted to allow the project to undergo a single review, and in so doing, reduce the number of public hearings for this project.

As part of the fourth resubmittal of the project, the applicant requested a deviation for setback relief for a wall. Most deviations, including those seeking setback relief, are required to be approved through the PDP process.

DESCRIPTION OF THE PROPOSED PROJECT

The Developer seeks to construct a gas station, (classified as an Automotive Service Station Limited Use) on this site. This development will consist of a 4,968 sq. ft. convenience store near the western side of this site. A detached fuel island canopy will be oriented parallel with Country Club Boulevard on the eastern half of the property. The fuel island will have eight fuel dispenser stations allowing a maximum of 16 vehicles to refuel at the same time.

Access to the site is from Country Club Boulevard and SE 26th Street. A driveway along Country Club Boulevard will allow motorists traveling southbound on this street to enter the development. Two driveways along SE 26th Street will allow motorists to enter and exit the site.

SUMMARY OF APPLICANT REQUESTS

Developer requests along with the accompanying staff recommendations are summarized in Table 1. A thorough analysis of each request is provided later within a separate section of this report.

Table 1. Summary of applicant requests and staff recommendations for the Circle K Project.

Category	Request	Recommendation
Rezoning	Rezone parcel from P-1 to C-1	Approve
Special Exception	Special exception to allow an Automotive Service Station Limited Use	Approve with conditions
Deviation, LUDR, Section 3.9.2.B	Deviation to allow a wall to be located forward of the forward-most part of the side of the principal structure	Approve with conditions
Déviation, EDS, Sheet D-5	Deviation to allow a driveway off Country Club Boulevard about 45 feet from the southern property line of the property	Approve ¹

A) Rezoning**Request:**

The applicant seeks a rezoning of the subject property from P-1 to C-1.

Analysis:

Staff reviewed this application based on LUDR, Section 2.7.7, the C-1 District, and the ten (10) General Standards provided within LUDR, Section 8.7.3.B and offers the following analysis:

1. *The extent to which the value of the property is diminished by the proposed zoning of the property;*

Rezoning the site from P-1 to C-1 will not diminish the value of this parcel. The value of this parcel will likely increase because the C-1 District allows a greater number of uses compared to the P-1 District. The C-1 District allows a combined 92 Permitted and Special Exception Uses while the P-1 District allows a corresponding 39 combined uses.

2. *The extent to which the removal of a proposed change in zoning depreciates the value of other property in the area;*

The southwest corner of the Veteran's Memorial Parkway/Country Club Boulevard intersection contains several parcels with nonresidential uses including two churches and a City park. The park has three baseball diamonds where about 500 games are played annually. Residential properties are north of Veteran's and east of Country Club Boulevard. Although the C-1 District allows a greater number of uses and frequently more intensive uses than the P-1 District, this site is separated from residential uses by rights-of-way (ROW) with a width of at least 100 feet. Given the existence of nonresidential uses in this area, coupled with the location of this property at the intersection of two major streets, and the distance between this site and the nearest single-family homes, it appears unlikely that the value of surrounding properties will be diminished by this rezoning.

3. *The suitability of the property for the zoning purpose;*

¹ Recommended for approval by the Public Works Director. Analysis of the request provided in a separate memo.

This 1.36-acre parcel has depth of 250 feet or greater for over half its length. Based on Policy 1.15 of the Future Land Use Element of the Comprehensive Plan, preferred candidates for C-1 Zoning have 250 feet of depth and direct access onto aerial or collector roads. The property is at the intersection of a principal arterial (Veteran's Memorial Parkway) and minor arterial (Country Club Boulevard). While the property does not have access to Veteran's, direct access from Country Club Boulevard is recommended. The south side of the site has frontage along SE 26th Street that will accommodate two additional driveways to this property. These driveways provide options for customers and delivery vehicles and will improve traffic circulation within the site.

4. *The character of the neighborhood, existing uses, zoning of nearby and surrounding properties, and compatibility of the proposed zoning;*

Surrounding future land use, zoning, and existing uses of the site and nearby parcels is shown in Table 2.

Table 2. Zoning Classifications, Future Land Use Designations and Existing Uses of the Site and Surrounding Parcels.

Subject Parcel	Zoning	Future Land Use (FLU)	Existing Use
Current:	Professional Office (P-1)	Commercial/Professional	Undeveloped
Proposed:	Pedestrian Commercial (C-1)	Commercial/Professional	Gas Station
	Surrounding Zoning	Surrounding FLU	Surrounding Existing Uses
North:	Veteran's ROW/Single Family Residential (R-1B)	Veteran's ROW/Single-Family	Veteran's ROW/Single-Family Homes
South:	SE 26 th Street ROW/Worship (W)	SE 26 th Street ROW/Public Facilities	SE 26 th Street ROW/Church
East:	County Club Blvd ROW/Single Family Residential (R-1B)	Country Club Blvd ROW/Single-Family	County Club Blvd ROW/Single-Family Homes
West:	Single Family	Single Family	City Parking Lot

Surrounding properties on three sides have a Future Land Use Classification of Single Family. About 23 single-family houses are within 500 feet, either east or north of the site. However, these homes are separated from the site by one of two major streets, either Country Club Boulevard or Veteran's Memorial Parkway. A City-owned property with a Single Family Future Land Use Classification is immediately west of the site. This parcel is used as a parking lot for Jason Verdow Memorial Park. Two churches are immediately south of SE 26th Street along County Club Boulevard.

This rezone is anticipated for a gas station use but the staff analysis considers the full range of permitted uses in the C-1 District. The LUDRs require a minimum 10-foot wide landscaped area along the north, east, and south property lines. In addition, a Buffer "C" consisting of a 15-foot wide landscaped area with a wall, is required along the west property line of Lots 16

and 17 at the rear of this site. All buildings on this site will comply with the City's nonresidential design standards.

Based on nonresidential uses to the south and west, and the ROW width that separates this site from existing single-family homes to the north and the east, the range of uses permitted as a result of this rezone should be compatible with the surrounding area. Requirements including architectural standards for buildings and landscaping near property lines with frontage along City streets will promote compatibility between this commercial site and adjacent residential properties.

5. *The relative gain to the community as compared to the hardship, if any imposed, from rezoning said property;*

Since the site is relatively small and currently may be developed with P-1 uses, staff does not envision a major gain to the community should this request be approved. On the other hand, to the extent that a C-1 Zoning designation facilitates the development of this parcel sooner than would occur with P-1 Zoning, the community would benefit in the short-term by having goods and services provided at the neighborhood scale, through job creation, and by decreasing the City's reliance on *ad valorem* taxes.

6. *The community need for the use proposed by the zoning;*

The P-1 and C-1 Districts are consistent with the Commercial/Professional Future Land Use classification of the site. As a result, development of this property under either zoning designation will assist in a small way in addressing the City's imbalance of commercial development.

7. *Length of time the property proposed to be rezoned has been vacant, as zoned, when considered in the context of the City of Cape Coral Comprehensive Land Use Plan for the development of the proposed property and surrounding property;*

The future land use of this property was changed from Single Family to Commercial/Professional by Ordinance 30-07. Subsequently, the property was rezoned from R-1B to P-1 by Ordinance 23-08, that also approved the Kinsey Veterans Country Club Corner Development. Substantial construction did not occur within two years of project approval, and the PDP was later voided by the City. However, the P-1 Zoning approved by this PDP remains in effect.

8. *The extent to which the proposed zoning promotes the health, safety, morals, or general welfare of this community;*

Both P-1 and C-1 Zoning will promote the health, safety, and general welfare of the community by allowing uses appropriate for the location, area, and configuration of this site and will be harmonious with existing development in the area.

9. *The extent to which the proposed zoning will impact the level of service standards for public facilities as specified in the Comprehensive Plan;*

Potable water, sewer, and irrigation services are available to the site. Based on information provided by the applicant, the project will generate an estimated 254 trips per PM peak hour. While limited off-site roadway improvements will be required, the number of trips generated by this project will not adversely affect level of service standards for County Club Boulevard.

10. Whether the proposed zoning is consistent with the City of Cape Coral's Comprehensive Land Use Plan.

Both P-1 and C-1 Districts are consistent with the City's Commercial/Professional Future Land Use Designation, as outlined within Policy 1.15 of the Future Land Use Element of the Comprehensive Plan. Although not requested within this application, the P-2 (Professional Business) District is also consistent with this future and use designation. The P-2 District was designed for lands adjacent to C-1 properties where the potential for foot traffic is strong among office, retail, food service, and related establishments existing in a more intense, urban environment than that which occurs near this site.

This rezone request is also consistent with Policy 2.2.7 of the Transportation Element that states *"The City shall discourage new strip style development through efforts to promote the concentration of commercial development at the nodes of major intersections."*

Recommendation:

Based on the analysis contained within this report, staff recommends approval of the requested C-1 Zoning. Factors supporting C-1 Zoning include the location of this site at a major intersection, the area of the site, and the presence of nonresidential uses on the west side of County Club Boulevard. The property is not, however, an ideal candidate for C-1 Zoning as access to this site is limited to a single major street. In addition, residential uses exist east of this site, although these residential properties are separated from this parcel by a 100-foot wide ROW. Overall, a strong case exists for rezoning this parcel. This property has had P-1 Zoning since 2008, and despite the area and location of this highly visible parcel, has remained undeveloped.

B) Special Exception

Request:

The applicant seeks a Special Exception Use to establishment an Automotive Service Station, Limited Use.

Analysis:

Staff reviewed this application based on LUDR, Section 2.7.7, the C-1 District, and the five (5) standards outlined within Section 8.8.5a-e which covers Special Exception Uses, and offer the following analysis:

1. Generally

The C-1 Zoning requested for the parcel is consistent with the Commercial/Professional Future Land Use of this property. Automotive Service Station, Limited Uses are allowed as a Special Exception in the C-1 District. The City defines this use as *"an establishment primarily*

engaged in the retail sale of motor fuel and lubricants, but which may also include facilities for washing, waxing, detailing, polishing, greasing, tire repair (no recapping or vulcanizing) and other minor incidental repairs.” This property has 1.36 acres and the C-1 District, unlike the Corridor District, lacks a minimum area requirement for this use. The area and shape of this site is suitable for a gas station based on the recent history of permitting similar establishments in the City.

2. Compatibility

This site is at the intersection of two major streets, Country Club Boulevard and Veteran’s Memorial Parkway. The width of the Country Club Boulevard ROW directly adjacent to this site ranges from 100 to 175 feet. The width of the Veteran’s ROW directly north of the site is about 300 feet. While single-family homes exist to the north and east, these ROWs provide adequate separation between the site and these single-family homes.

A local street with a 60-foot wide ROW separates the parcel from two churches to the south.

To the west, a 25-foot wide ROW separates the parcel from a City parking lot for Jason Verdow Memorial Park.

This PDP application includes a rezone from P-1 to C-1. Despite the lack of commercial zoning at the intersection of Country Club Boulevard and Veteran’s, this parcel is part of a 12-acre area that is developed with nonresidential uses, including two churches and a City park. According to City Parks and Recreation staff, around 500 baseball games are held at Jason Verdow Memorial Park each year. Games held Monday through Friday are played in the evening beginning at 6:00 pm and generally conclude around 9:30 pm. Average annual attendance at this facility is 97,000.

There are eight single-family homes within 300 feet of the site. All but one of these homes are east of this property, across Country Club Boulevard. Due to the proximity to the gas station, residents in these homes would be the most affected by this use. Compatibility-related conflicts these residents may experience will likely be confined to the following: lighting, noise, site aesthetics, and traffic. Each of these items is discussed separately below along with mitigation strategies or conditions recommended for producing a compatible development with the surrounding area. Some of these conditions may reduce impacts associated with two or more of the four categories listed below.

Lighting. Lighting on a commercial site can disrupt nearby residents. Although significant levels of background illumination are present in most urban settings, lighting should be shielded and directed away from property lines to minimize light trespass from the site. Sources of background illumination levels at this site would include street lights at the Veteran’s/Country Club intersection, traffic passing the site, and to a lesser degree, lighting from night baseball at Jason Verdow Memorial Park. Illumination levels at gas stations can be minimized based on the placement and design of the fuel canopy. Staff recommends several conditions regarding lighting to reduce unnecessary lighting and minimize light trespass from the development.

Noise. The location at the intersection of two major streets means that background noise exists at this site independent of any use permitted on the property. However, vehicles entering and leaving the site as well as other activities occurring on the property will increase noise levels experienced by the surrounding community. Placing the dumpster near the western property line behind the convenience store will minimize noise experienced by the residential community to the east. Two conditions recommended by staff will further ameliorate noise associated with this project. Staff recommends that air vacuum equipment proposed near the northeast corner be relocated to the western side of the site, to increase the distance between this equipment and the homes east of Country Club Boulevard. Staff also recommends the Red Box Vending Machine be moved in front of the store or within the store itself. This change will place this vending machine closer to the travel path of customers entering and leaving the store, thereby reducing activity elsewhere on the site. This recommendation will have the added benefit of maintaining a more visually appealing site.

Deliveries to businesses can generate noise. Such noise may be particularly noticeable when deliveries and unloading activities occur late in the evening or early in the morning when background noise levels are low. According to Circle K personnel, two to three deliveries per week are anticipated for gas delivery. An additional one to two deliveries are anticipated by food and beverage distributors. Smaller vendors typically make deliveries by car or van. To minimize noise at the site, deliveries to the development by semi-tractor trailers and similar vehicles will be prohibited during late evening through early morning hours.

Site aesthetics. The location at a highly visible intersection means that visual attributes will be important. To ensure a visually integrated project, staff recommends consistency in materials and colors for the convenience store and fuel canopy. Larger trees and shrubs, beyond minimum City requirements, are recommended along the eastern and southern property lines. These plantings will provide enhanced buffering, particularly at the onset of this project, and provide for a more visually appealing site.

Traffic. PM peak hour trips generated by the project is estimated at 254. While the number of trips is substantial, it is lower than the 300 trip threshold that automatically triggers a Traffic Impact Study. Furthermore, certain uses, including gas stations, generally capture trips from the traffic passing the site. Thus, for a substantial percentage of the estimated trips, visits to the this development will be a secondary part of a linked trip such as from work to home. Information provided to the City showed that of the total number of PM peak hour trips for this project, 34% represented new external trips, with the remaining 66% constituting pass-by trips.

3. *Minimum Lot Frontage; Access*

The site has over 200 feet of frontage along Veteran's Memorial Parkway, Country Club Boulevard, and SE 26th Street. Access will be limited to Country Club Boulevard and SE 26th Street, with access from Country Club restricted to a right-in turn only. Country Club Boulevard is a four-lane divided street, with no center median at the Country Club/SE 26th Street intersection. Thus, vehicles leaving the site and entering SE 26th Street would have the option of making either a left (northbound) or right (southbound) turning movement onto Country Club Boulevard.

The development plan shows a 4,968 sq. ft. convenience store with 25 parking spaces. This meets the City's minimum parking requirement for this use.

4. Building Location; Setbacks

Buildings on the site are required to meet a 25-foot front setback from the east property line, a 10-foot side setback from the north and south property lines, and a 10-foot rear setback from the west property line.

5. Screening and Buffering

A 15-foot wide Buffer "C" is required along the west property lines of Lots 16 and 17. This buffer will include a six-foot wall, with trees and shrubs on the outside of the wall. Landscaping is also required along the north, east, and south property lines adjacent to the three streets. A landscaping area containing trees and shrubs with a minimum width of 10 feet along each property line is required. To provide for more effective buffering between the gas station and the residential and church properties, staff recommends larger trees and shrubs along the east and south property lines.

Recommendation:

The City defines a special exception use as *"a use which is essential to, or would promote the public health, safety or welfare in one or more districts, but which might impair the integrity and character of the district in which it is located, or in adjoining districts, such that restrictions or conditions on location, size, extent and character of performance may be imposed in addition to those already imposed in this ordinance."*

The character of the proposed use, the location at a highly visible intersection, and the presence of existing single-family homes directly east of Country Club Boulevard, warrant conditions that extend beyond the regulations in the LUDRs. The recommended conditions, collectively, will ensure this project is compatible with the surrounding area by ameliorating potential lighting and noise impacts associated with this use, as well as promoting a visually attractive development. Staff recommends **approval** of the Special Exception subject to the conditions listed below:

1. To minimize light trespass on surrounding properties and to reduce glare from on-site lighting, the following conditions are prescribed:
 - a. Lighting levels along the eastern property lines of Lots 20-23 shall not exceed 0.5 foot-candles. Lighting levels along the eastern property lines of Lots 18 and 19, and the southern property lines of Lots 17 and 18 shall not exceed 1.0 foot-candles. The Developer shall submit a lighting plan for staff review that demonstrates compliance with this requirement prior to site plan approval for the project.
 - b. Lighting trespass and glare shall be limited to a reasonable level through the use of shielding and directional lighting methods. All free-standing lights on the site shall be aimed downward and away from the property lines.

- c. Light fixtures mounted under the canopy shall be completely recessed into the canopy with flat lenses that are translucent and completely flush with the bottom surface of the canopy.
 - d. Lights shall not be amounted on the exterior sides or face of the fuel canopy and the sides of the canopy shall not be illuminated.
2. The total area of an Electronic Message Center (EMC) or sign shall not exceed 24 sq. ft. for the development. For the purposes of this development order, an EMC is any electrically changeable sign whose variable message or graphic presentation capability can be electronically programmed by computer from a remote location. Except for the 24 sq. ft. of sign area allowed within this subsection for an EMC, signage on the site is prohibited that blinks, fluctuates, moves, or changes message, characters, or background.
 3. Air vacuum equipment, if utilized on the site, shall be placed north of the convenience store.
 4. Any vending machines, automated teller machines (ATMs), or similar equipment or display items shall be placed inside the store or adjacent to the walkway in front of the store.
 5. The outdoor storage of products and materials is prohibited. This provision, however, shall not apply to propane tanks, and ice machines that are used solely to store ice.
 6. Materials, finishes, and colors utilized for the convenience store and fuel canopy shall be consistent with those shown on the elevations for each structure produced by GreenbergFarrow appearing in Exhibit "A" of the development order. Modifications to either structure may be approved by the DCD Director or his designee provided the changes do not result in a diminution in aesthetic appeal or durability in either structure.
 7. Deliveries to the site made by Class 7 and 8 Heavy Duty Trucks shall be limited to the hours beginning at 6:00 am and ending at 11:00 pm.
 8. Landscaped buffers shall be installed along the east and south property lines in accordance with the minimum standards provided in the table below. Bald cypress and slash pine are prohibited along both property lines. Palms shall not be substituted for either canopy or accent trees. Areas of the project occupied by visibility triangles are exempt from these planting requirements.

Category of planting	Spacing	Minimum Size at time of planting
Shrubs	One shrub for every three linear feet of frontage	32 inches in height; 7 gallon container size
Accent Trees	One accent tree for every 20 feet of frontage	10 feet in height; caliper of 2 inches
Canopy Trees	One canopy tree for every 20 linear feet of frontage	14 feet in height; 3.5 caliper of 3.5 inches

C) LUDR Deviation

Request

The Developer seeks a deviation to LUDR, Section 3.9.2.B.1.d, which limits placement of fences and walls in front yards of commercial, professional, and mixed-use zoning districts. More specifically, this section states that *"No part of a fence shall be located forward of the forward-most part of the side of the principal structure to which the fence is closest. In no instance shall a fence enclose any portion of the front façade of the principal structure."* The City defines the principal building or structure in Article XI of the LUDRs as *"The building or structure in which is conducted the principal use of the lot on which it is situated."*

The applicant seeks to have an automotive service station, limited use on the site. The definition of the use emphasizes the retail sale of motor fuel and lubricants. Staff considers the fuel canopy to constitute the principal structure of the proposed development. The requested deviation would allow the wall to extend about 39 feet in front of the fuel canopy to within 10 feet of the eastern property line.

Analysis

Staff analyzed this request based on LUDR, Section 4.2.4.K. "Deviations." Deviations to the LUDRs provide flexibility in developing land through the PDP process. Such requests allow for standards different from those appearing in the LUDRs that relate to the zoning district of the site in question and that may include area, dimensional, as well as other provisions. The City Council may approve one or more deviations within a PDP, provided the project demonstrates a unique and innovative design that would be enhanced by the approval of the deviation(s), and the public health, safety, and welfare would be served by the approval of the deviation(s).

LUDR, Section 4.2.4.K provides examples of unique and innovative design elements that may include but are not limited to the following:

1. Providing usable common space within the development to offset and compensate for decreases in typical lot sizes or yard requirements;
2. Applying different requirements than those found within the applicable zoning district in question to promote compatibility with surrounding uses;
3. Providing places for public assembly that are linked together and centrally located to ensure accessibility;
4. Locating buildings and dwelling units to provide optimum access to open space areas; and,
5. Providing for the integration and preservation of natural resources within development.

An earthen berm exists along the northern portion of the site Lee County utilizes for managing stormwater generated from the Veteran's Memorial Parkway ROW. The Developer seeks to remove this berm that is mainly on his property and install a wall. According to the Letter of Intent, the wall will serve as a retaining wall to allow stormwater to continue to be collected and treated within the County ROW. The applicant also states the wall will be an aesthetic enhancement to the site compared to the berm and existing vegetation that currently exists.

Staff agrees that the proposed wall will serve two important functions. One is to serve as a retaining wall to assist in capturing runoff generated by the Veteran's Memorial Parkway ROW to assist in treatment of runoff. Based on a comparison of elevations, staff estimates that the height of this wall when viewed front the front of this site will be around four feet. However, when viewed from Veteran's Memorial Parkway the wall will likely appear higher due to the elevation difference between the lowest point of the

detention area and the site. This wall will provide an aesthetic enhancement to this site as the wall and exterior sides of the convenience store will demonstrate consistency in color, materials, or finish textures.

While this project element does not explicitly address one of the five examples listed under LUDR, Section 4.2.4.K, staff considers this feature to constitute a unique and innovative design element in that the wall will assist Lee County with managing stormwater and provide an aesthetic benefit by defining the northern boundary of the site providing consistency in appearance with the sides of the convenience store. The deviation will promote the health, safety, and welfare of the community by serving these dual functions.

Recommendation

Staff recommends approval of the deviation with the following conditions:

1. The decorative wall along the northern property line shown on the Development Plan appearing in Exhibit "A" shall be constructed of one or more of the following materials: concrete block coated with stucco, textured concrete block, stone, brick, or formed, decorative, or precast concrete.
2. The decorative wall and the exterior sides of the convenience store shall provide consistency in a minimum of one of the following three design elements: color, materials, or finish textures.
3. Required landscaping adjacent to Veteran's Memorial Parkway shall be installed on the north side of the decorative wall.

D) Deviation requested to the EDS

Request

The Developer seeks a deviation to the Engineering and Design Standards (EDS) to allow a driveway along a Minor Arterial Street (Country Club Boulevard) to be about 45 feet from the southern property line of the parcel. The minimum separation required by the EDS between a driveway and a property line is 150 feet.

Analysis

The analysis and recommendation regarding this request is addressed by the Development Services Manager in a memo.

GENERAL STANDARDS AND REQUIREMENTS FOR PDPS

This project was also evaluated for compliance with general standards and requirements found in LUDR, Section 4.2 that is provided below.

- A. *Environmental control standards:* An Environmental Assessment and Protected Species Survey Report, dated February, 2016, was submitted by BearPaws Environmental Consulting, Inc. This report did not identify state or federally protected species on this site, nor were sensitive lands found. The project is compliant with the four standards in LUDR, Section 5.4.

- B. *Maintenance of improvements:* General landscape areas are shown on the development plan. Compliance with the City's landscaping regulations will be reviewed when a site plan for the project is submitted following PDP approval.
- C. *Consistency with Comprehensive Plan:* This project is consistent with several policies and goals contained within the Comprehensive Plan that are discussed in greater detail elsewhere in this report.
- D. *Financial Responsibility:* This standard is not applicable as the owner will not be required to provide a statement of financial responsibility for this project.
- E. *Dimensional requirements:* The project is compliant with dimensional requirements for the C-1 District. Deviations to LUDR, Section 3.9 is requested for relief from a wall setback requirement and EDS, Sheet D-5 for relief from a driveway spacing requirement from a property line.
- F. *Maximum density:* This project does not involve a residential use. As a result, this standard is not applicable.
- G. *Minimum parcel size:* The C-1 District lacks a minimum lot area requirement. In addition, the project is not in the City Urban Services Reserve Area.
- H. *Time limitation:* Substantial construction is required to commence within two years from the date of project approval or within one year for the last permit approval for all appropriate regulatory bodies, whichever is less.
- I. *Ownership requirements:* Estate of James E. Kinsey, Jr., is the sole owner of the property involved in this PDP application.
- J. *Special exceptions:* As discussed previously in this report, the Special Exception, with conditions recommended by staff, meets the five standards for evaluating this category of use.
- K. *Deviations:* One deviation to the LUDRs is sought to provide setback relief for a wall along the north property line; a deviation from a driveway spacing requirement from the EDS is also sought.
- L. *Underground Utilities:* This project will involve new construction. As a result, utilities will be placed underground.

CURRENCY REVIEW

The project will meet concurrency requirements for solid waste, drainage, potable water, sewer, and transportation. Details are provided in Table 3.

Table 3. Information on Design Capacity, Usage, and Concurrency Status for Various Services.

SERVICE	FACILITY DESIGN CAPACITY	USAGE	STATUS
Solid Waste ²	1,836 Tons	1,384 Tons	Capacity exists
Drainage ³	NA	NA	NA
Potable Water	30.1 MGD ⁴	9.4 MGD	Capacity exists
Sewer	28.4 MGD	12.8 MGD	Capacity exists
Roads			
Country Club Blvd	Level of Service D	9,900 AADT ⁵	Capacity exists
SE 26 th Street	Level of Service D	No data	Capacity exists

CONSISTENCY WITH THE COMPREHENSIVE PLAN

A list of Comprehensive Plan objectives and policies applicable to this request appears in Exhibit "A." This project was specifically reviewed for consistency with the following policies:

Conservation and Coastal Management Element

Policy 1.2.17. Protected species survey. An Environmental Assessment and Protected Species Survey Report was submitted for staff review as part of the PDP application.

Policy 1.7.9. Burrowing owl affidavit. An affidavit was filed by the Developer as part of the PDP application. The affidavit stated that no burrowing owls or gopher tortoises were present on the site.

Future Land Use Element

Policy 1.15. Densities and intensities associated with future land use classifications. The proposed C-1 Zoning is consistent with the Commercial/Professional Future Land Use of the parcel. This parcel is at the intersection of two major streets and has adequate depth for supporting a larger-scale development.

Policy 1.17. Buffering for protecting existing residential land uses. Larger trees and shrubs above minimum City requirements will be required along the eastern property line between the development and existing single-family homes east of Country Club Boulevard.

Objective 2. Location of new commercial development. The site is at the intersection of two major streets; Veteran's Memorial Parkway and Country Club Boulevard.

Policy 8.3. Minimize impacts on residential uses. In addition to buffering, air vacuum equipment near the northeast corner of the property will be relocated to the western side of the site, away from single-family residences. Delivery hours to the proposed establishment will be restricted.

² Solid waste services are provided by Lee County Government.

³ Projects are reviewed for compliance with South Florida Water Management District standards during site plan review.

⁴ MGD stands for millions of gallons per day.

⁵ AADT stands for average annual daily trips.

Intergovernmental Coordination Element

Policy 2.4. Communicate with Lee County on the effects of new development upon roadways serving both local governments. Lee County Department of Transportation staff reviewed the development and provided comments through the City of Cape Coral to the applicant.

Transportation Element

Policy 1.1.1. Level of service standards (LOS) for City streets. Veteran's Memorial Parkway has a LOS of E. Country Club Boulevard and SE 26th Street both have a LOS of D.

SUMMARY OF THE POSITIVE AND NEGATIVE ASPECTS OF THE PROJECT

POSITIVE ASPECTS OF THE PROJECT	
<ul style="list-style-type: none"> • The commercial site is at the intersection of two major streets and is highly visible. • The property has sufficient area and depth for supporting a commercial development. • Nonresidential uses are established immediately south and west of the site. • Nearest single-family homes are separated from the site by six and four-lane streets. 	
NEGATIVE ASPECTS OF THE PROJECT	
<ul style="list-style-type: none"> • Lighting and noise have the potential to affect residents to the east of the site. • Additional traffic on Country Club Boulevard resulting from this development will occur. 	
MITIGATING MEASURES	
<ul style="list-style-type: none"> • Lighting levels along the east property line will be limited, shielding and directional lighting on the site will be required, and LED sign area will be limited. • Air vacuum equipment will be relocated to the western part of the site. • Fuel and other major deliveries to the site will be restricted to specific hours. 	

PROJECT RECOMMENDATION

Staff finds that this PDP amendment with conditions is consistent with the City LUDRs and Comprehensive Plan. Staff supports all requests made by the applicant and recommends approval of this PDP amendment subject to the conditions contained within the development order of this project.

Staff Contact Information

Mike Struve, AICP, LEED Green Associate, Planning Team Coordinator

PH: 239-242-3255

Email mstruve@capecoral.net

**CIRCLE K PDP
EXHIBIT "A"**

Conservation and Coastal Management Element

Policy 1.2.17.

"The City shall require, as a condition of approval for Planned Development Projects and Site Plan Reviews, a protected species survey, which reflects the current conditions (at the time of the review) on the development site. If listed species are known to inhabit or use the site, the applicant shall prepare a protected species management plan."

Policy 1.7.9.

"The City will continue its policy of requiring all applicants for City building permits to complete an affidavit stating they have inspected the proposed building site for the presence of burrowing owl nests. The applicant shall be required to state whether state and federal permits to remove the owl burrows are needed or whether the development can be completed without removing the owl burrows, in which case the contractor shall accept full responsibility for protecting the owl burrows from actions of employees or sub-contractors."

Future Land Use Element

Policy 1.15.c.

"...The Pedestrian Commercial (C-1) District is designed to facilitate a broad variety of large or small commercial uses. Uses allowed in the C-1 District range from a variety of small or neighborhood-based commercial uses to large retail or service uses, which may serve a relatively large trade area and, which may be developed as major shopping facilities. As many commercial uses have the potential to generated relatively high levels of vehicular trips from customers and sometimes delivery vehicles, preferred locations for the C-1 District have direct access onto arterial or collector roads and adequate depth (a minimum of 250 feet) for larger-scale development..."

Policy 1.17

"Land development regulations, whether adopted or revised subsequent to the adoption of this plan, will address buffering and open space requirements, and will protect existing residential land uses from incompatible land uses."

Objective 2

"Location of New Commercial Development: New commercial development shall be so located to provide minimal vehicle trip lengths, at or near transportation nodes, and compatible with neighboring residential uses."

Policy 8.3

"Commercial developments shall be designed to minimize negative impacts on surrounding residential uses and the land development regulations shall provide for adequate buffering between commercial and residential uses. The design should ensure adequate screening of unsightly views of commercial development (such as loading docks, rooftop equipment, service entrances, trash containers, parking areas and exterior storage) through the extensive uses of landscaping, berms, fencing, concealment, architectural features, open space, setbacks, and/or building orientation. Ensure that the placement of any noise generating activities such as ingress/egress, parking, deliveries, air conditioning equipment

and dumpster collections are designed to minimize any adverse noise effects. Traffic and parking should not adversely affect neighborhood quality. Noise, safety and overall maintenance of commercial properties should be carefully monitored.”

Intergovernmental Coordination Element

Policy 2.4

“The City of Cape Coral will communicate with Lee County to discuss the effects of new development upon major roadways, such as County roads, that serve both communities.”

Transportation Element

Policy 1.1.1


“The City shall review professionally accepted studies and current traffic counts to determine levels of service standards within Cape Coral. The City hereby adopts the following peak hour, peak season Level of Service Standards for the following facilities:

- a) Del Prado Boulevard (Cape Coral Parkway to SR 78) – LOS E
Del Prado Boulevard (SR 78 to US 41) – LOS D*
- b) State Road 78 (Pine Island Road) West of Del Prado Boulevard – LOS C
State Road 78 (Pine Island Road) East of Del Prado Boulevard – LOS D*
- c) Pondella Road – LOS E*
- d) Hancock Bridge Parkway (City Limits to Del Prado Boulevard) – LOS E*
- e) Cape Coral Parkway (Cape Coral Bridge to Pelican Boulevard) – LOS E*
- f) Burnt Store Road/Veterans Parkway Corridor – LOS E*
- g) All other local, collector, and arterial roadways – LOS D*
- h) All other limited access facilities – LOS D*
- i) All other roads within City jurisdictions – LOS D”*

MEMORANDUM

CITY OF CAPE CORAL
DEPARTMENT OF COMMUNITY DEVELOPMENT

TO: Mike Struve, AICP, Planning Team Coordinator

FROM: David Hyyti, P.E., Development Services Manager 

DATE: October 17, 2016

PROJECT: PDP16-0001, Circle K

SUBJECT: Development Service's coordinated project review summary

Development Services has reviewed the subject project with respect to the Engineering Design Standards, EDS and the Land Use and Development Regulations, LUDR, as appropriate for the approval of the PDP Concept Plan for the requested development. Of particular concern were the potential traffic impacts on the adjacent roadways and the proposed driveway location on Country Club Blvd.

Specific concerns related to the potential impact to the intersections of Veterans Pkwy./Country Club Blvd. and SE 26th St./Country Club Blvd. As part of my intergovernmental coordination of projects which may impact other jurisdictions I contacted Lee County DOT to make them aware of the proposed project. The project does not generate sufficient traffic to warrant a full traffic impact analysis as required by the EDS Section K. City staff in conjunction with Lee County DOT requested that the applicant conduct a traffic study limited to the analysis of the impacts on the intersections mentioned above. Based on agreed methodology Raysor Transportation Consultants prepared the requested intersection analysis as documented in their technical memorandum of February 25th, 2016.

It was determined and acknowledged by City Staff and LDOT that the project with the proposed driveway connection and south bound right turn lane on Country Club Blvd. would have no appreciable impact on the roadway intersections mentioned above.

To accommodate the project traffic the developer would be required to lengthen the north bound left turn lane from Country Club Blvd. onto SE 26th St. by approximately 65 feet and construct the south bound right turn lane into the project both as depicted on the PDP plan.

While the proposed plan accommodates the anticipated traffic, the location of the proposed driveway on Country Club Blvd. does not meet the driveway separation requirements as provide in Section D of the EDS. The applicant requested a deviation from the required 150 foot separation between the driveway on Country Club Blvd. and SE 26th St. to allow the separation to be 45 feet. Deviations from EDS may be approved if they are based on acceptable engineering practice and meet or exceed the Standards. Traffic safety is the primary concern with driveway separation. The requested driveway was restricted to a right in only with a new right turn lane on Country Club Blvd. The right turn lane was extended to also serve SE 26th St. as well as Circle K. The addition of this right in only driveway in close proximity to the SE 26th St. removes most south bound right turns onto SE 26th St. reducing congestion and conflicts allowing for better north bound left turn access to SE 26th St. This condition allows more efficient and safer flow of traffic into the SE 26th St. and Circle K. Based on adequate engineering justification I recommended approval of the deviation to the Director of Public Works who in turn recommended approval pending approval by the Hearing Examiner.

In addition the proposed plan also depicts the road widening along SE 26th St. as required by LUDR section 3.17.

NOTICE OF PUBLIC HEARING

CASE NUMBER: PDP16-0001

REQUEST: The owner, Estate of James E. Kinsey, Jr., is seeking Planned Development Project (PDP) approval for a project entitled "Circle K" for property located at 819 SE 26th Street. Within this PDP, the owner is requesting the following: a rezoning of the subject property from the Professional Office (P-1) to the Pedestrian Commercial (C-1) Zone; a special exception for an Automotive Service Station, Limited Use in a C-1 Zone, a deviation from the Land Use and Development Regulations, Section 3.9, for the location of a wall, and a deviation from the Engineering and Design Standards, Sheet D-5, for the location of a driveway.

LOCATION: 819 SE 26th Street. Located at the southwest corner of the intersection of Veteran's Memorial Parkway and Country Club Boulevard.

CAPE CORAL STAFF CONTACT: Mike Struve, AICP, LEED Green Associate, Planning Team Coordinator, 239-242-3255, mstruve@capecoral.net
PROPERTY OWNER(S): Estate of James E. Kinsey, Jr.

AUTHORIZED REPRESENTATIVE: Neal Montgomery, Esq., Pavese Law Firm

UPCOMING PUBLIC HEARING: Notice is hereby given that the Hearing Examiner will hold a public hearing at 9:00 AM on Tuesday, November 1, 2016 on the above mentioned case. The public hearing will be held in the Nicholas Annex, Green Room A200, 815 Nicholas Parkway, Cape Coral, FL.

After Hearing Examiner has made a written recommendation, the case will be scheduled for a public hearing before the City Council who will review the recommendation and make a final decision. You will receive another public hearing notice when this case is scheduled for a City Council hearing.

All interested parties are invited to appear and be heard. All materials presented before the Hearing Examiner will become a permanent part of the record. The public hearing may be continued to a time and date certain by announcement at this public hearing without any further published notice. Copies of the staff report will be available 5 days prior to the hearing. The file can be reviewed at the Cape Coral Community Development Department, Planning Division, 1015 Cultural Park Blvd., Cape Coral, FL.

DETAILED INFORMATION: The case report and colored maps for this application are available at the City of Cape Coral website, www.capecoral.net/publichearing (Click on 'Public Hearing Information', use the case number referenced above to access the information); or, at the Planning Division counter at City Hall, between the hours of 7:30 AM and 4:30 PM

HOW TO CONTACT: Any person may appear at the public hearing and be heard, subject to proper rules of conduct. You are allowed sufficient time to write or appear at the public hearing to voice you objections or approval. Written comments filed with the Director will be entered into the record. Please reference the case number above within your correspondence and mail to: Department of Community Development, Planning Division, P.O. Box 150027, Cape Coral, FL 33915-0027. The hearings may be continued from time to time as necessary.

ADA PROVISIONS: In accordance with the Americans With Disabilities Act, persons needing a special accommodation to participate in this proceeding should contact the Human Resources Department whose office is located at Cape Coral City Hall, 1015 Cultural Park Boulevard, Cape Coral, Florida; telephone 1-239-574-0530 for assistance; if hearing impaired, telephone the Florida Relay Service Numbers, 1-800-955-8771 (TDD) or 1-800-955-8770 (v) for assistance.

by order of
Rebecca van Deutekom, MMC
City Clerk
REF # PDP16-0001
PUBLISH AD: Saturday, October 22

NP-0000173053

Department of Community Development
Planning Division

AFFIDAVIT

IN RE: APPLICATION OF: Circle K

APPLICATION NO: PDP16-0001

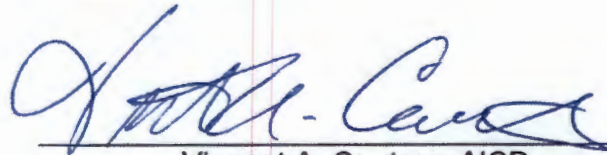
STATE OF FLORIDA)
) §
COUNTY OF LEE)

I, Vincent A. Cautero, AICP having first been duly sworn according to law, state on my oath the following:

That I am the Director of the Department of Community Development and responsible in performing duties as required for the City of Cape Coral.

That pursuant to City of Cape Coral code. Section 8.3.2A and Section 8.11.3.A all required written notice and publication has been provided. Also posting of a sign has been done when applicable per Section 8.3.2A.

DATED this 24 day of October, 2016.




Vincent A. Cautero, AICP

STATE OF FLORIDA
COUNTY OF LEE

The foregoing instrument was acknowledged before me this 24 day of Oct., 2016, by Vincent A. Cautero, AICP, who is personally known to me and who did not take an oath.

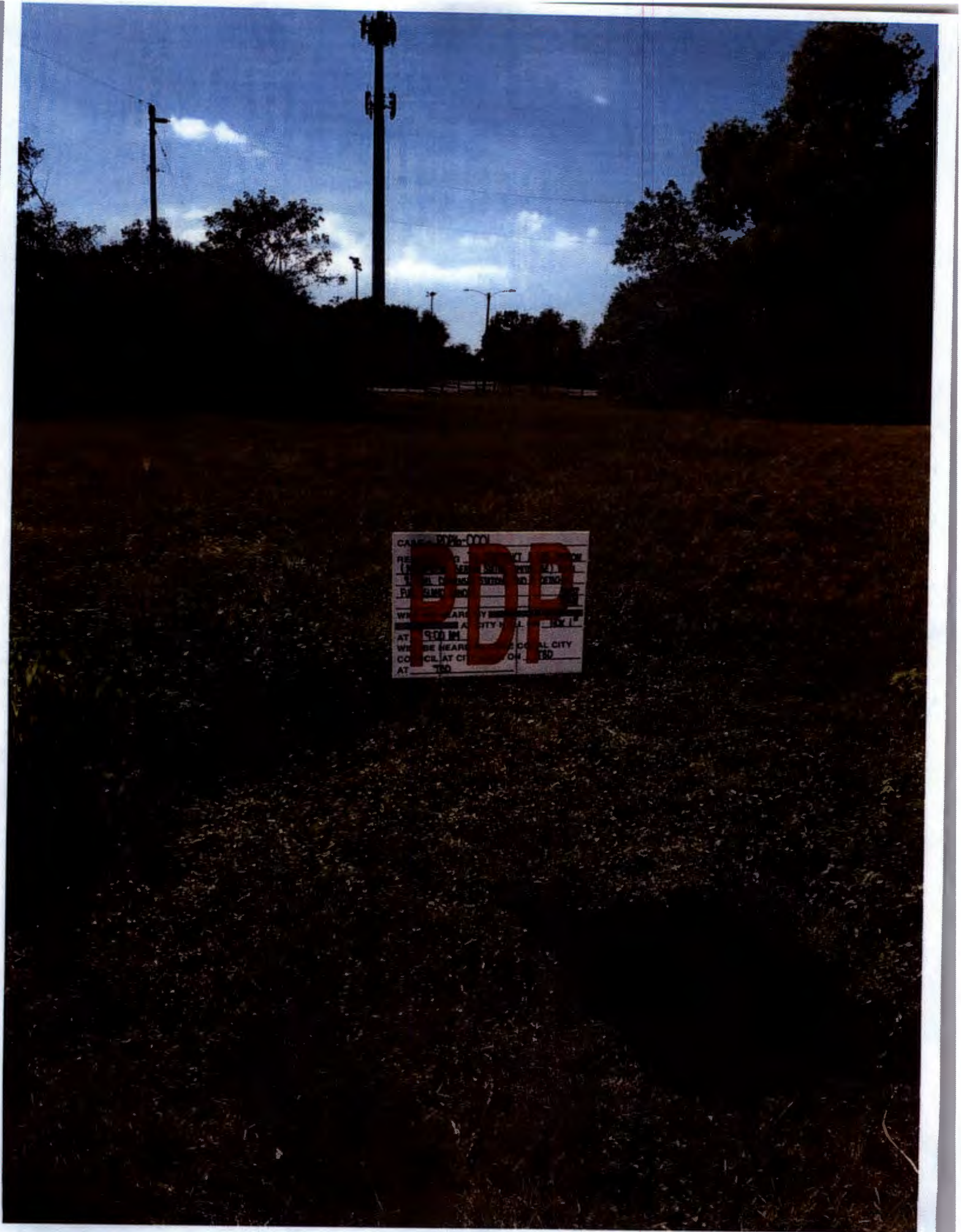


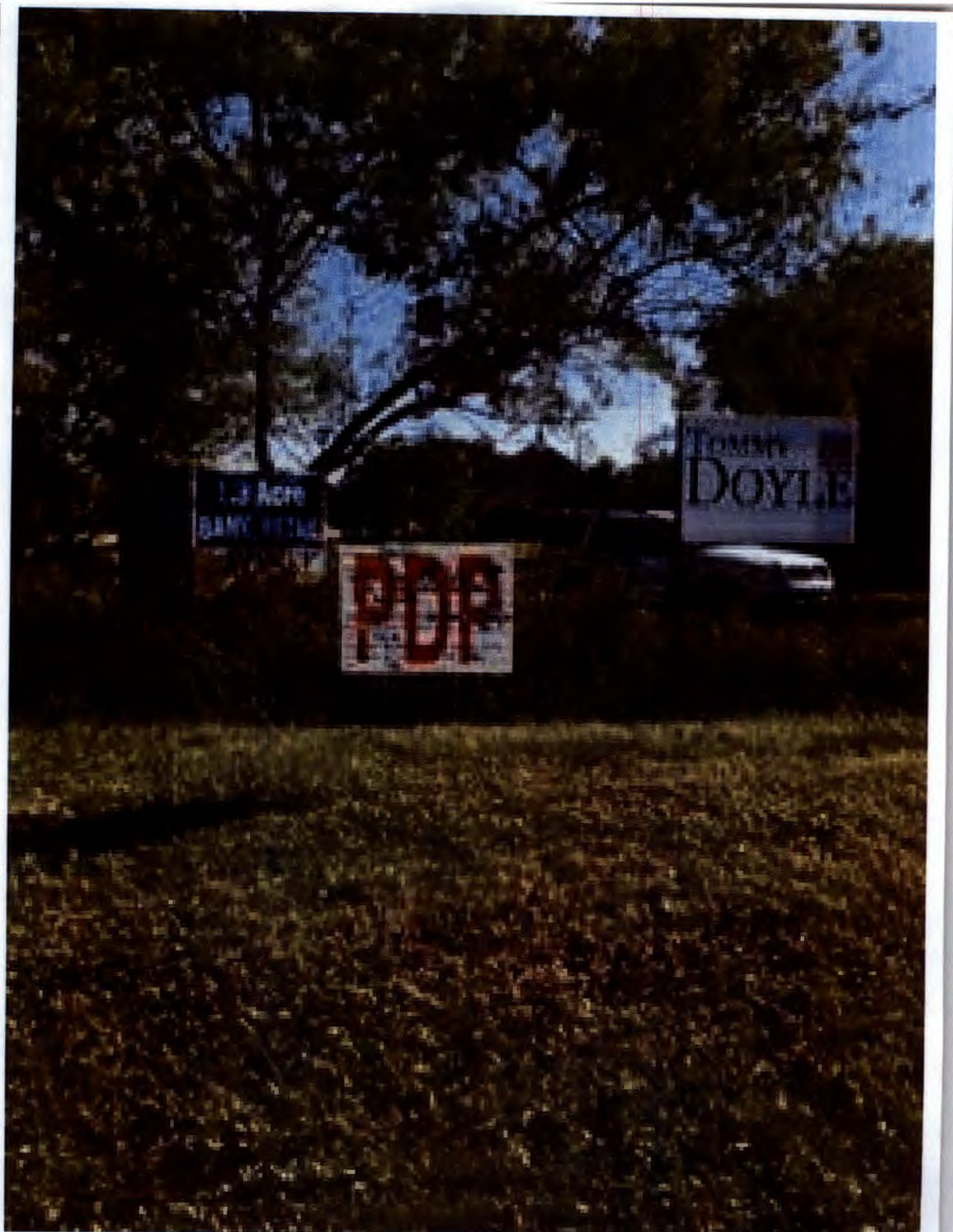
Exp. Date 11/30/17 Commission # FF060852



Signature of Notary Public

Michelle Miller
Print Name of Notary Public





CITY OF CAPE CORAL

Department of
Community Development
Planning Division

ZONING MAP 500 Proximity Boundary

Case No. PDP16-0001

Legend

-  Subject Parcel
-  500' Boundary
-  P-1
-  R-1B
-  W



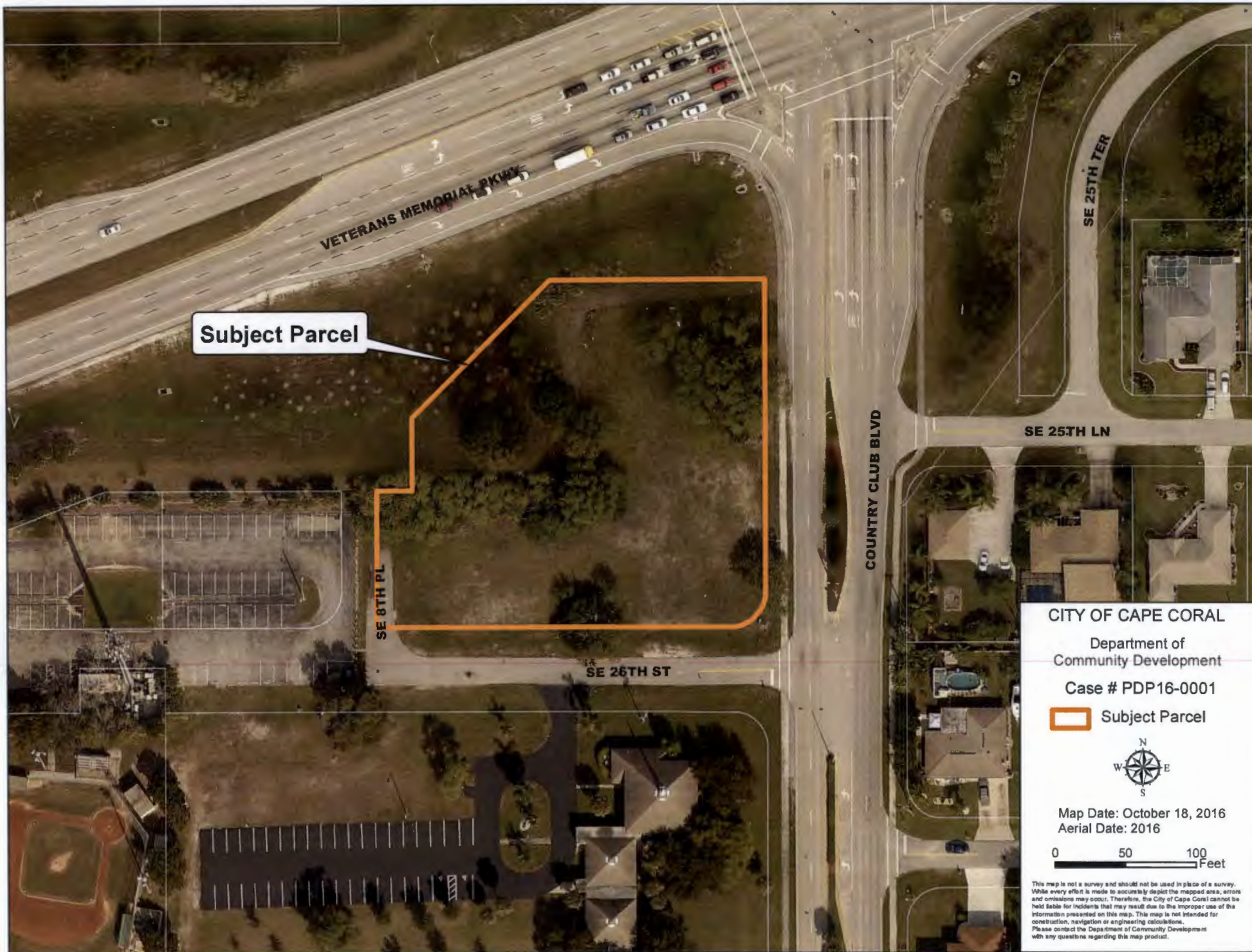
OCTOBER 18, 2016

0 80 160 240 320 Feet

This map is not a survey and should not be used in place of a survey. While every effort is made to accurately depict the mapped area, errors and omissions may occur. Therefore, the City of Cape Coral cannot be held liable for incidents that may result due to the improper use of the information presented on this map. This map is not intended for construction, navigation or engineering calculations. Please contact the Department of Community Development with any questions regarding this map product.

KRKA





CITY OF CAPE CORAL

Department of
Community Development

Case # PDP16-0001

 Subject Parcel



Map Date: October 18, 2016
Aerial Date: 2016

0 50 100
Feet

This map is not a survey and should not be used in place of a survey. While every effort is made to accurately depict the mapped area, errors and omissions may occur. Therefore, the City of Cape Coral cannot be held liable for incidents that may result due to the improper use of the information presented on this map. This map is not intended for construction, navigation or engineering calculations. Please contact the Department of Community Development with any questions regarding this map product.

MEMORANDUM

To: Director
Department of Community Development,
Planning Division,
P.O. Box 150027,
Cape Coral, FL 33915-0027

From: Nancy Maddy
2535 Retunda Pkwy E.
Cape Coral, FL 33904

Re: Case Number PDP16-0001

Date: 1 November 2016

Re: Case Number PDP16-0001, proposed Circle K gas station at Veterans Parkway and Country Club, there are numerous concerns regarding this project. Construction of an around the clock retail operation at this corner will lead to increased traffic, additional noise from vehicles at the gas station, and a dramatic increase in criminal activity in this quiet residential corridor.

The study compares the addition of a gas station (an around the clock retail operation) to an athletic field (sporadic use benefitting the community) and churches (typically viewed as positive assets). Also, with the construction of a gas station, there will be no more "zero turning on SE 26th Street" as the study states. It will become another traffic accident magnet, and further tax city traffic control assets.

There is no mention whatsoever of increased criminal activity/loitering that accompanies every business of this type. I do not recognize the majority of resident names listed in the study, and noticed many are either snowbirds or don't even reside in the area in question. I can assure you every neighbor I spoke with is dead set against this proposal, as it threatens the integrity of our residential area.

Rezoning from a P-1 to a C-1 is of no benefit to our community, and will result in diminished home values, additional noise to an already noisy intersection, increased traffic and criminal activity.

Please direct any questions or concerns to Nancy Maddy, 2535 Retunda Pkwy E., Cape Coral, FL 33904, 417-882-2090.

Mike Struve

From: bill kurth <bill.kurth@lakemasters.com>
Sent: Sunday, October 30, 2016 9:56 AM
To: Mike Struve
Cc: ctk8@aol.com
Subject: PDP16-0001

Mike,

I have become aware of the fact that a developer plans to build a service station at the corner of Veterans Parkway and Country Club Blvd. Since I will be out of town for the hearing on Tuesday, I wanted to email my strong objection to this project. I have lived on SE 26th Terrace for over 25 years, and the history of our neighborhood allows me to understand the impacts this will have on our neighborhood better than most.

Points that I believe should be considered:

- 1) There is nothing commercial on Country Club from close to the Police station to close to Cape Coral Pkwy. We, and many others chose to live off of Country Club because we did not want to live near a major thoroughfare, or commercial properties. Businesses can and should be kept on Del Prado and Santa Barbara.
- 2) The look of a service station would be completely inconsistent with the residential neighborhood look we currently enjoy
- 3) Traffic at this intersection is already heavy enough, and dangerous enough. It is especially difficult for those on foot, and the addition of a high traffic service station will only complicate this, and make it more dangerous. Our nephew, Richard Auginbaugh was killed on Veterans 3 years ago because he chose to cross it a distance west of the intersection to avoid having to cross at the intersection itself, and was struck by a vehicle moving at a high rate of speed.
- 4) I would like to know the planned entrances and exits for this service station. I can't imagine that the City would allow direct access to Veterans so close to an intersection. It is difficult enough to get on Veterans eastbound from Country Club, a long acceleration lane is needed. With a short distance before the intersection, it would be difficult and dangerous.
- 5) With that being said, assuming the entrances will be on Country Club, this will create a traffic nightmare. The stretch of Country Club between Veterans and Archer Pkwy has most of the median blocking turns across it. If you are heading south, there is no left turn or u turn until Archer. The history of traffic down all of the streets that run between Archer and Retunda Pkwy and Country Club for more than a decade was horrific. Originally it was because the bridge on SE 26th Terrace over the canal was the only way to get from Del Prado to Country Club from Cape Coral Pkwy to Viscaya. So our residential street had thousands of cars going down it. And this led to the death of a young child on 26th Terrace 10 or so years ago. This situation was worsened when Veterans was under construction. The City at one point, blocked of the intersection of SE 26th Terrace and Archer Pkwy to try to alleviate the traffic flow on our street. Now the median is blocked at Country Club and 26th Terrace so going west you cannot turn south, and if you are heading south on Country Club, you can't turn east on to 26th Terrace, also an effort to keep undue traffic off of our street. This is an inconvenience, I have made more u turns in my life than I would have ever thought possible, however, the efforts to diminish traffic have worked and our street is finally livable. Now, I fear that the addition of a service station where it is proposed will severely impact our well being and safety in our residential neighborhood.
- 6) The traffic on Country Club will be impacted significantly. A turn light will have to be added at Country Club and Archer to facilitate the huge number of u turns that will be made in an effort for vehicles to get back to Veterans. Vehicles leaving this station would have to exit to the right only because of the median. There are already too many vehicles performing u turns at this intersection, with a service station added the number will be overwhelming.

7) There are numerous school bus stops on Country Club between Veterans and Archer. It is already a dangerous road for the children. Adding a lot more traffic will only make it worse.

8) The difficulty when trying to make a u turn will cause drivers to seek alternate solutions. Our narrow residential streets are not safe for heavy traffic, but that will be the result.

9) A service station will impact home values in the neighborhood. We already have service stations at Santa Barbara and Veterans and very close to Del Prado and Veterans. There is no need for another in a non commercial area. So, why would you approve this in a residential neighborhood? Just so someone can make a profit? Or to increase the tax base? There are still commercial areas where a gas station could be constructed. Please leave Country Club Blvd as it is.

10) If this moves forward, I will be at the City Council hearing, vigorously defending my position, which is consistent with all of the neighborhood. I also am disturbed because I was not sent notice of this hearing, even though I am less than 1030 ft. from the proposed service station. I will not be able to see the station from my house, but I will certainly see and feel the impacts of it.

Please consider my words. I was just presented the notice and have had little time to consider the impacts this may have. I am certain I will have even more objections as time goes on.

Sincerely,

Bill Kurth
1011 SE 26th Terrace
Cape Coral FL 33904
239-772-9356

Mike Struve

From: swartzgt@comcast.net
Sent: Monday, October 31, 2016 4:04 PM
To: Mike Struve
Subject: RE: PDP16-0001

Mike,

I live at 3911 SE 10th Place. I was just informed about a developer who wants to put a service station on the corner of Country Club and Veterans Parkway. I strongly object to this project. I moved to Cape Coral fifteen years ago and love it here. I bought my house fifteen years ago in a very nice and quiet neighborhood. Now it seems like my quiet neighborhood is going in a wrong direction considering the service station will be at the end of Country Club road. I moved to this location because I was not near any commercial properties. Putting a service station will only cause more traffic and accidents. Let's not forget about crime as well. We already have enough traffic flying down our streets from people cutting through from Del Prado to Country Club.

With all the commercial properties on Del Prado and Santa Barbara I don't see why we would put another service station in between those two main streets. Not to mention there is not one service station directly off of veterans parkway.. Why would we want to change that since the traffic is already heavy on Veterans as it is. This will only make things worse for the people in my neighborhood as well as the adjacent neighborhoods.

Thank you for your time.

Sincerely,

George Swartz

Mike Struve

From: jim dougherty <jim.dougherty@lakemasters.com>
Sent: Monday, October 31, 2016 3:31 PM
To: Mike Struve
Subject: PDP16-0001

Mike,

I live at 1012 SE 25th lane. I was just informed about a developer who wants to put a service station on the corner of Country Club and Veterans Parkway. I strongly object to this project. I moved to Cape Coral three years ago and love it here. I bought my house two years ago in a very nice and quiet neighborhood. Now it seems like my quiet neighborhood is going in a wrong direction considering the service station will be at the end of my road. I moved to this location because I was not near any commercial properties. Putting a service station will only cause more traffic and accidents. Let's not forget about crime as well. We already have enough traffic flying down our streets from people cutting through from Del Prado to Country Club.

With all the commercial properties on Del Prado and Santa Barbara I don't see why we would put another service station in between those two main streets. Not to mention there is not one service station directly off of veterans parkway.. Why would we want to change that since the traffic is already heavy on Veterans as it is. This will only make things worse for the people in my neighborhood as well as the adjacent neighborhoods.

Thank you for your time.

Sincerely,

Jim Dougherty
1012 SE 25th Lane
Cape Coral, Florida 33904
(941) 232-0490

Mike Struve

From: Jeff Maddy <jeff.maddy@sbcglobal.net>
Sent: Monday, October 31, 2016 10:26 AM
To: Mike Struve
Subject: CASE NUMBER: PDP16-0001
Attachments: PDP16-0001 WEB.pdf

Mr. Struve,

Just checking that the hearing for this case is still scheduled for tomorrow morning, Nov. 1st, at 9:00 a.m. City Hall building. Could you please verify room number and if there is anything I need to do to speak publicly in opposition to this change in zoning. I only intend to speak, not include anything for the agenda or records, (outside of my public comments).

Thank you in advance for your time and assistance.

Jeff S. Maddy

Sent from my iPad

City of Cape Coral
Dept of Community Development

PO Box 150027

CAPE CORAL, FL 33915-0027 ~~CASE~~ NO PDP16-0001

RE: 819 SE 26th ST

314424 C1008210160

TO WHOM IT MAY CONCERN

As A RESIDENT on 26th TER

I object to the development of a gas station and
convenience store at 819 SE 26th ST.

I object for the following reasons

It will impede traffic flow at
an already busy intersection Veterans and County Club Blvd

It will CAUSE traffic routing
through a residential neighborhood and end quiet
time for the residents

It will cause concern about health
issues for children and adults being exposed to
fuel fumes when using the Juan Verduz Memorial
Fields.

It will CAUSE INCREASED traffic on
County Club which already has bus stops and
school bus stops.

Please consider my objection as well
as the objections of our neighbors in determining
future use of this property

16 OCT 31 AM 9:00

City of Cape Coral
Dept of Community Development

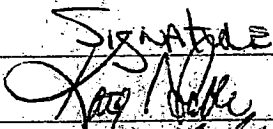


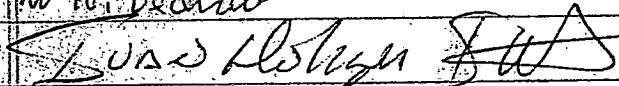
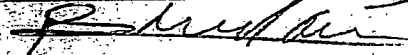
PO Box 150027

Cape Coral FL 33915-0027

CASE PDP16-0001

re: 919 SE 26th ST

314424 C1008240160

NAME	SIGNATURE	ADDRESS
KATHY GILTE		905 SE 26th TER CC 33904
Theresa Lawrence		913 SE 26th TER CC 33901
Courtney Bodine		929 SE 26th TER 33904
W H. Dedrow		1004 SE 26TH TER 33904
Laura H. Hight		1024 SE 26th TER
		1028 SE 26TH TER

CITY OF CAPE CORAL, FLORIDA
OFFICE OF THE HEARING EXAMINER

PDP HEX Recommendation 2-2016
Rendered November 21, 2016

CIRCLE K PDP
DCD Case # PDP 16-0001

**SECTION I. RECOMMENDATION OF APPROVAL OF
CIRCLE K PLANNED DEVELOPMENT PROJECT**

Pursuant to City of Cape Coral Land Use and Development Regulations ("LUDRs") Article IV, §4.2, Planned Development Project Procedure, the Applicant has requested the Hearing Examiner's recommendation of approval to the City Council regarding the Circle K Planned Development Project, including: (a) a request for approval for rezoning the subject property from the Professional Office (P-1) Zoning District to the Pedestrian Commercial (C-1) Zoning District; (b) a request for the granting of a special exception to allow an automotive service station, limited use in a C-1 Zoning District; (c) a request for granting of a deviation from LUDR § 3.9 for relief from a setback requirement; (d) a request for granting of a deviation from sheet D-5 of the City Engineering and Design Standards that requires a 150 foot minimum separation distance between a driveway and the property line located along a minor arterial street, to allow the project to develop with a separation distance of 45 feet; and (e) development plan approval pursuant to Section 4.2 of the LUDRs (collectively referred to herein as "the Project").

The Hearing Examiner hereby recommends approval of the Project, subject to the terms and conditions set forth below. This recommendation of approval is inclusive of the Applicant's plan set, titled "Circle K", Sheets 1-2, dated September 29, 2015, and also bearing a revision date of July 11, 2016, prepared by Florida Engineering and Environmental Services, Inc.; "Boundary and Topographic Survey", dated September 21, 2015, prepared by AFN Consulting, Inc.; and "Building Exterior Elevations", Sheet A-2, dated December 10, 2015, and "Fuel Canopy Elevations", Sheet CA-6, dated March 8, 2016, both elevation sheets prepared by Greenberg Farrow. All five sheets appear in composite Exhibit "A," which is attached hereto and hereby incorporated by reference.

SECTION II. REVIEW OF LUDR REQUIREMENTS

1. Authority. The Hearing Examiner has the authority (i) to recommend to the City Council approval or denial of an application for those planned development projects which are set forth in LUDR §4.2.5.F2, as amended by Cape Coral Ordinance 24-16, and (ii) if the recommendation is for approval, to recommend

the establishment of appropriate conditions and safeguards (LUDR §4.2.5.F2, as amended by Ordinance 24-16).

2. Specific Authority Regarding Rezoning Recommendations. F.S. § 163.3194 and Cape Coral Ordinance 24-16 require the Hearing Examiner to review and make a recommendation to City Council about consistency of a rezoning application to the City's adopted Comprehensive Plan and whether the requested rezoning should be granted.

3. Standard of Review of Evidence; Hearsay Evidence. The Hearing Examiner's decision is based on whether the Application meets all applicable requirements of the Comprehensive Plan, the City Code of Ordinances, and the LUDRs, upon review of the entirety of the record. In rendering this Recommendation, the Hearing Examiner gave full and complete consideration to the request of the Applicant, the recommendations of staff, the documentary evidence presented at the hearing, the documentary evidence submitted by Applicant post-hearing in accordance with the HEX Interim Order of November 1, 2016, for Filing Post-Hearing Written Submittal, and the testimony of all interested persons.

Hearsay evidence may be used to supplement or explain other evidence, but it shall not be sufficient by itself to support a finding unless it would be admissible over objection in court.

In rendering her decision, the Hearing Examiner must consider all competent substantial evidence in the record as defined in City Ordinance 23-16.

4. Notice of Hearing, Participants, Submission of Documentary Evidence, and Hearing Examiner's Interim Order for Filing Post-Hearing Written Submittal. Based on testimony of City Staff Michael Struve at the beginning of the Hearing on November 1, 2016, the Hearing Examiner finds that proper notice of this hearing was provided, in accordance with the requirements of LUDR Article VIII, §8.3, Public Hearings.

The Hearing participants were City Staff Michael Struve, AICP, City Staff David Hyyti, P.E., City Clerk Representative Elisabeth Delgado; Applicant's Representatives Neale Montgomery, Esquire, Ryan Plate (Real Estate Manager Circle K Stores), Mark Sullivan P.E., Civil Engineer, FL Engineering, and Brandon Kinsey (Representative of the Estate of James E. Kinsey).

The following members of the public testified: Debra Parenteau, John Karpinski, Nancy Maddy, and Caron Cosden. Staff also received several emails from members of the public, all of which were provided by staff to the Clerk for inclusion in the Hearing Examiner's record in this matter, and are documented below.

Except for the Applicant's Response to the Interim Order for Filing Post-Hearing Written Submittal, discussed *infra*, all documentary evidence considered by the Hearing Examiner was submitted prior to the Hearing, in accordance with City requirements.

Several emails from Cape residents were received by staff within 48 hours prior to the November 1, 2016 HEX Hearing and forwarded immediately upon receipt to the Hearing Examiner. The Hearing Examiner considered these emails in her deliberations regarding this Recommendation, as an exception to the hearsay rule as allowed by City Ordinance. These emails are of record with the Clerk.

Since it was unclear at the Hearing whether Applicant had had an opportunity to review these public comments prior to the Hearing, the Hearing Examiner entered an Interim Order for Filing Post-Hearing Written Submittal on November 1, 2016, to allow Applicant to submit its post-hearing response, if any, to the following emailed and submitted comments from the public:

- Bill Kurth email, dated Sunday, October 30, 2016;
- George Swartz email, dated Monday, October 31, 2016;
- Jim Dougherty email, dated Monday, October 31, 2016;
- Jeff Maddy email, dated Monday, October 31, 2016; and
- Nancy Maddy, Memorandum dated Tuesday, November 1, 2016 and delivered immediately prior to the Hearing on that date.

In the Interim Order, the Hearing Examiner required Applicant's response, if any, to be filed with the Clerk with copies to the Hearing Examiner and DCD Planning Manager no later than 5:00 pm on Tuesday, November 8, 2016 (seven days later). Applicant did provide such a response in timely fashion via email to the City Clerk and the Hearing Examiner, with a copy to the DCD Planning Director. The Hearing Examiner has taken Applicant's Response into consideration in making the recommendations set forth below.

SECTION III. RECOMMENDED GENERAL FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Legal Description of PDP Property. The legal description of the property is as follows: a parcel of land situated in Lots 12 through Lot 23, Block 821, Cape Coral Subdivision, Unit 21, as recorded in Plat Book 13 at Pages 149 through 173, of the Public Records of Lee County, Florida, and a portion of former County Road No. 884 (Veterans Memorial Parkway) right of way, and a portion of vacated SE 8th Place right of way, said parcel being more particularly described as follows:

Beginning at the northeast corner of said Lot 22, Block 821, Cape Coral Subdivision, Unit 21; Thence S00°00'11"W for 192.01 feet along the westerly right of way of Country Club Boulevard (100.00 feet wide) to the point of curvature of a curve to the right having a radius of 25.00 feet, a central angle of 89°58'20"; Thence southerly, southwesterly, and westerly along the arc of said curve for 39.26 feet to the point of tangency and a point on the northerly right of way line of SE 26th Street (60.00 feet wide); Thence S89°58'31"W for 250.01 feet along said northerly right of way line to the centerline of SE 8th Place (50.00 feet wide); Thence N00°00'11"E for 97.00 feet along said centerline; Thence N89°58'31"E for 25.00 feet to an intersection with the easterly right of way line of SE 8th Place; Thence N00°00'11"E for 52.00 feet along the westerly line of said Lots 14 and 15, and the easterly right of way line of SE 8th Place; Thence N45°00'11"E for 138.66 feet; Thence N89°58'31"E for 151.95 feet to the westerly right of way line of Country Club Boulevard; Thence S00°00'11"W for 30.00 feet along said westerly right of way line to the Point of Beginning.

Bearings mentioned herein are based on the plat of Cape Coral Subdivision, Unit 21, as recorded in Plat Book 13, at Pages 149 through 173, of the Public Records of Lee County, Florida. The subject property consists of 1.36 acres.

2. Legal and Equitable Owner of Subject Property. The legal and equitable owner of the subject property is the Estate of James E. Kinsey, Jr.
3. Current Zoning District and Future Land Use Designation. The subject property is currently located in the Professional Office (P-1) Zoning District. Its Future Land Use Designation is Commercial/Professional (CP).
4. Description of Property Contained in the PDP. The Applicant testified that this 1.36-acre parcel has frontage along three streets: Veteran's Memorial Parkway (classified as a Principal Arterial) to the north, Country Club Boulevard (classified as a Minor Arterial) to the east, and SE 26th Street (classified as a Local Street) to the south. Veteran's Memorial Parkway is a County-maintained street which is managed as a limited access street. Accordingly, direct access from the subject property to the Parkway is not available.

This property is irregular in shape and is undeveloped. An earthen berm exists along the northern property line. This berm, that includes several palm trees, was constructed by Lee County when Veteran's Memorial Parkway was built. The berm detains stormwater runoff generated by Veteran's Memorial Parkway that collects in the swale on the south side of this street.

5. Previously Approved Entitlements and Nullification Issues. Staff testified that a PDP for this property had been approved in 2008 for a project entitled "Kinsey Veterans – Country Club Corner Development." The PDP approved a three-

story building containing 18,600 square feet of office uses. Ordinance 23-08 granted the following:

- Rezoning of the property from Single Family Residential (R-1B) to Professional Office (P-1);
- A deviation of 12 feet from the front setback requirement of 25 feet for a retaining wall;
- A Special Exception for a Bank and Financial Institution, Group I use in the P-1 Zoning District;
- A vacation of right-of-way for a portion of SE 8th Place; and
- A vacation of all interior lot lines and easements of the subject property.

Substantial construction did not occur within two years from the date of PDP approval as required by LUDR Section 4.2.4.H and the PDP was voided. The rezoning and the vacations remain in effect. All other entitlements granted by Ordinance 23-08 were rendered null and void, pursuant to the requirements of LUDR Section 4.2.4.H.

6. Description of the Proposed Project. Applicant wishes to construct a 4,968 square foot convenience store/gas station on the subject property. This use is classified as an Automotive Service Station Limited Use. As part of the project, a detached fuel island canopy would be constructed parallel to County Club Boulevard, with the fuel island having eight fueling dispenser stations. This would allow refueling of a maximum of 16 vehicles simultaneously. The convenience store would be located on the western portion of the site, closest to Jason Verow Memorial Park and away from the residential properties in the area. No access would be obtained from Veteran's Memorial Parkway. Vehicular access would consist of a right-in traffic lane from Country Club Boulevard and also via two driveways to be constructed on SE 26th Street.

7. Summary of Applicant's Requests. Staff's summary of Applicant's requests is as follows:

Category	Request	Staff Recommendation
Rezoning	Rezone parcel from P-1 to C-1	Approve
Special Exception	Special exception to allow an Automotive Service Station Limited Use	Approve with conditions
Deviation, LUDR, § 3.9.2.B	Deviation to allow a wall to be located forward of the forward-most part of the side of the principal structure	Approve with conditions
Deviation, EDS, Sheet D-5	Deviation to allow a driveway off Country Club Boulevard about 45 feet from the southern property line of the property	Approve

SECTION IV. RECOMMENDED FINDINGS OF FACT AND CONCLUSIONS OF LAW: APPLICATION FOR REZONING FROM P-1 TO C-1

Rezoning Application. The Applicant has requested the rezoning of the subject parcel from P-1 to C-1. In reviewing this rezoning application for consistency with the Comprehensive Plan of the City of Cape Coral (including the Future Land Use Map and its accompanying text), the Hearing Examiner is required to apply the general standards set forth in LUDR Section 8.7.3, in conjunction with the requirements of LUDR Section 2.7.7 (C-1 Pedestrian Commercial District).

A. Consistency with the Comprehensive Plan. LUDR Section 8.7.3.A

This requirement is addressed in Standard B.10., below

B. Application of General Standards. LUDR Section 8.7.3.B.

- 1. The extent to which the value of the property is diminished by the proposed land use restriction or zoning of the property.*

Staff testified that the requested rezoning should increase the value of the property, in that it will allow a larger number of uses (92 combined Permitted and Special Exception Uses) than the current P-1 Zoning District (39 combined Permitted and Special Exception Uses). The Applicant concurred. Brandon Kinsey testified that his late father, James E. Kinsey, had attempted to market the property under the currently existing zoning (and the prior PDP prior to its expiration) and there had been no significant commercial interest in it, which led the Estate to request the current rezoning. There was no other public testimony concerning whether the value of the subject property would be diminished by the proposed land use restriction or zoning of the property.

The Hearing Examiner recommends that City Council find that **the value of the subject property would not be diminished by the proposed rezoning.**

- 2. The extent to which the removal of a proposed land use restriction or change in zoning depreciates the value of other property in the area.*

The subject property is at the intersection of two major Cape streets. The property to the west contains a Zoning District classification of Single Family and a Future Land Use classification of Single Family. It therefore could be developed with residential uses in the future. However, its current use is as a City parking lot for the nearby Jason Verdow Memorial Park, which contains three (3) baseball diamonds. City staff and a

member of the public testified that approximately 500 baseball games are played there annually.

The Hearing Examiner recommends a finding that the proposed rezoning **would not depreciate the value of the property to the west.**

The property to the south contains the SE 26th Street Right-of-Way (ROW)/ Worship (W) Zoning District, a Future Land Use classification of SE 26th Street ROW/Public Facilities, and an existing use of SE 26th Street ROW and two churches. A representative of one of the churches testified as to the negative impact of the proposed rezoning on church functions but such testimony was more applicable to Standard 4 and the proposed special exception use and is therefore addressed below.

The Hearing Examiner recommends a finding that the proposed rezoning **would not depreciate the value of the property to the south.**

Residential uses lie to the north and east and are separated from the subject property by rights-of-way at least 100 feet wide. None of the residential uses are contiguous to the property. Both staff and the applicant testified that the proposed rezoning would not depreciate the value of these properties, due to the ROW separation. Several residents testified, either in person or via email, regarding the negative effects of the proposed rezoning. However, such testimony was more applicable to Standard 4 below and is therefore addressed below.

The Hearing Examiner recommends a finding that **the proposed rezoning would not depreciate the value of the property to the north and east.**

In summary, the Hearing Examiner recommends that the City Council find **the proposed rezoning is not anticipated to depreciate the value of other properties in the area.**

3. *The suitability of the property for the zoning purpose or land use restriction imposed on the property as zoned.*

The Applicant testified that the prior PDP approval in 2008 rezoned the property to P-1 and allowed a bank and financial institution use by special exception. Although the special exception was declared null and void through passage of time, the underlying P-1 rezoning (and vacations granted as part of that process) remains in place. Neither the Applicant nor staff testified that the property is no longer suited for continuation of the current Zoning District. There was public testimony that the property should not have been rezoned to P-1, but that zoning district is

grandfathered in and that matter is beyond the scope of this Recommendation.

Staff testified that the subject property has depth of 250 feet or greater for over half its length, which comports with the requirements of Policy 1.15 of the Future Land Use Element of the Comprehensive Plan.

Policy 1.15 also states a preference for direct access onto aerial or collector roads for C-1 Zoning Districts, since "many commercial uses have the potential to generate relatively high levels of vehicular trips from customer and sometimes delivery vehicles". Staff testified that the property would have direct access to a minor arterial (Country Club Boulevard), and SE 26th Street (a collector street) and further testified that SE 26th Street would accommodate two driveways on the south side of the subject property to provide access for deliveries and traffic flow, subject to consideration of the EDS deviation request specified below. This testimony shows that the Application is in compliance with Policy 1.15.

The Hearing Examiner recommends that City Council find **the property is suitable for the zoning purpose/land use restriction imposed on the property as currently zoned but is also well suited for the proposed rezoning.**

4. *The character of the neighborhood, existing uses, zoning of nearby and surrounding properties, and compatibility of the proposed land use restriction or zoning.*

Staff presented the table embedded immediately below to show the zoning of nearby and surrounding properties.

Subject Parcel	Zoning	Future Land Use (FLU)	Existing Use
Current:	Professional Office (P-1)	Commercial/Professional	Undeveloped
Proposed:	Pedestrian Commercial (C-1)	Commercial/Professional	Gas Station
	Surrounding Zoning	Surrounding FLU	Surrounding Existing Uses
North:	Veteran's ROW/Single Family Residential (R-1B)	Veteran's ROW/Single-Family	Veteran's ROW/Single-Family Homes
South:	SE 26 th Street ROW/Worship (W)	SE 26 th Street ROW/ Public Facilities	SE 26 th Street ROW/Church
East:	County Club Blvd ROW/Single Family Residential (R-1B)	Country Club Blvd ROW/Single-Family	County Club Blvd ROW/Single-Family Homes
West:	Single Family	Single Family	City Parking Lot

Staff testified that the range of uses available by right or special exception under this proposed rezoning should be compatible with the surrounding area, due to the nonresidential uses to the south and west and also that the residential uses to the north and east are separated by a substantial ROW.

Staff testified that the Land Use Development Regulations (LUDRs) applicable to the C-1 Zoning District would require a minimum 10-foot wide landscaped area along the north, east and south property lines, as well as a Buffer "C" (consisting of a 15 foot wide landscaped area with a wall) along the west property line of Lots 16 and 17 at the rear of the site.

Staff further testified that the uses permitted as of right (as well as those permitted by special exception) for the proposed district could meet these requirements, and those requirements would help to shield the residential neighborhood from the uses available under the C-1 Zoning District.

Staff also testified that the structures on-site would be able to comply with the City's nonresidential design standards.

The City's Development Services Manager was accepted by the Hearing Examiner as an expert witness on behalf of the City. He testified that he had reviewed the project with respect to the Engineering Design Standards (EDS) and the LUDRs, with a particular focus on potential traffic impacts on adjacent roadways and the proposed driveway location on Country Club Boulevard. He testified that, as part of his inter-governmental coordination of projects which impact, or could impact, other governing entities, he contacted Lee County Department of Transportation (LDOT). While it appeared that the proposed project would not generate sufficient traffic to warrant a full traffic impact analysis (TIS) as required by EDS Section K, it was the consensus of the Development Services Manager, in consultation with LDOT, that the Applicant should conduct a traffic study limited to the analysis of the impacts, if any, on the intersections of Veteran's Memorial Parkway, Country Club Boulevard and SE 26th Street/Country Club Boulevard. As conditioned below, it was the testimony of staff that the Project would have no appreciable impact on the roadway intersections.

The Applicant testified that the rezoning was compatible for three reasons: the lack of contiguous residential uses; the fact that the ROW surrounds the site on three sides; and that the current traffic generation on Country Club Boulevard exceeds 15,000 per day, more than Applicant's anticipated trip generation or customer count.

There was substantial in-person and email testimony from the public regarding the character of the neighborhood, existing uses, zoning of nearby and surrounding properties, and compatibility of the proposed land use restriction or zoning. This testimony was applicable to both the proposed rezoning and the requested special exception use, and is partially summarized below:

- At an earlier point in time, City representatives apparently told the residents that they would try to make the subject property part of an expanded Park.
- The athletic fields and the churches are uses that benefit the surrounding residential community but the 24/7 retail use which would be possible as a special exception under the proposed rezoning would lead to a “dramatic increase in criminal activity” and loitering.
- The rezoning/special exception use would cause increased traffic and noise and generally pose a threat to the integrity of the residential area.
- Commercial development should be confined to Del Prado Boulevard and Santa Barbara Boulevards and not allowed on this section of Country Club Boulevard.
- The traffic generation data is inaccurate in that it is too low.

A representative of the Church directly across the street from the proposed use testified that her church membership had unanimously voted to oppose the rezoning/proposed special exception for the following reasons:

- The church opposes the sale and use of alcohol and tobacco products, both of which would be sold by the commercial facility.
- Trespassing, illegal alcohol consumption and littering on church property would increase.
- Accidents on church property caused by this behavior would increase the church's liability and its insurance premiums.
- Concerns were expressed about the potential for traffic accidents on SW 26th Street.
- Concerns were expressed about the potential for Circle K traffic blocking of church driveways.
- The neighborhood is peaceful and that peace would be destroyed by the proposed rezoning/use.

The representative of the Owner (the Estate of James E. Kinsey) testified during public comment that the character of the area near Veterans Memorial Parkway was generally in transition and, accordingly, commercial growth along that corridor was to be expected.

The Hearing Examiner notes that the Applicant's post-hearing written response of November 8, 2016, contained a reference to a meeting with representatives of a neighboring church (presumably not the one whose representative testified at the Hearing). Since that part of Applicant's response was outside of the parameters of the Hearing Examiner's Interim Order for Written Submission, it has not been considered as part of this Recommendation.

Other than as noted above, Applicant's post-hearing written response primarily focused on the traffic issues. Since that response pertains primarily to the proposed special exception, it will be reviewed under that section of the Recommendation.

The Hearing Examiner greatly respects the efforts of the public to attend the hearing as well as the testimony from the public, both in person and/or via email. However, much of the testimony in opposition to the rezoning was based upon opinion rather than facts. In making her recommendation, the Hearing Examiner is required to review and make recommendations based on facts. While such testimony was admissible under the City's hearsay provisions, the Hearing Examiner was unable to place much weight on it.

The property has been zoned P-1 for the past eight (8) years, allowing for a wide spectrum of commercial uses by right (such as social services uses, business offices, and veterinary and animal clinics), and additional uses such as restaurants and hobby, toy and game shops, pharmacies and specialty retail shops through the special exception process.

After considering the testimony of all participants as summarized above, and being required to place greater weight on the testimony of staff and the Applicant as set forth above, the Hearing Examiner opines that the proposed rezoning, when combined with the recommended conditions set forth elsewhere herein, will not negatively affect the character of the neighborhood, existing uses, the zoning of nearby and surrounding properties, and compatibility of the proposed rezoning.

Accordingly, the Hearing Examiner recommends that City Council find the **proposed rezoning is compatible with the character of the neighborhood, existing uses, and zoning of nearby and surrounding properties.**

5. *The relative gain to the community as compared to the hardship, if any imposed, by the proposed land use restrictions or from rezoning said property.*

The Applicant testified that the special exception use which would be made possible through the rezoning to a C-1 Zoning District would be the only convenience store within a one-mile radius. In addition, Applicant testified that there are no convenience stores or fuel offerings on Veterans Memorial Parkway, a principal arterial, over seven (7) miles. Further, the Applicant testified that there are no convenience stores on Country Club Boulevard (a Minor Arterial) over a five (5) miles stretch, north and south.

Finally, Applicant testified that Veterans Memorial Parkway is one of a handful of hurricane evacuation routes within Cape Coral.

The Hearing Examiner recommends that City Council find that the existence of easy on-easy off refueling and convenience food sites in juxtaposition with a primary hurricane evacuation route is of major importance to the safety and health of Cape Coral residents and outweighs any hardship attendant upon such rezoning.

The Hearing Examiner recommends that City Council find **the proposed rezoning would create more gains than hardships to the community.**

6. *Community need for the use proposed by the zoning or land use restriction.*

Staff testified that the P-1 and C-1 Zoning Districts are both consistent with the Commercial/Professional Future Land Use classification of the site. As a result, development of this property under either zoning designation would assist in a small way in addressing the City's imbalance of commercial development.

In addition, the Hearing Examiner incorporates the discussion under Standard 5 above by reference.

The Hearing Examiner recommends that City Council find **the community needs the use proposed by the applicant.**

7. *Length of time the property proposed to be rezoned has been vacant, as zoned, when considered in the context of the City of Cape Coral Comprehensive Land Use Plan for the development of the proposed property and surrounding property.*

Brandon Kinsey, Representative of the Owner (the Estate of James E. Kinsey) testified that the late Mr. Kinsey had actively attempted for years to develop the property under the uses allowed by right or special

exception in the existing P-1 Zoning District which was created via PDP in 2008. He further testified that such efforts had been wholly unsuccessful.

The Hearing Examiner recommends that City Council find **the subject property has been undeveloped for at least eight (8) years under its current Zoning District classification.**

8. *The extent to which the proposed land use restriction or zoning promotes the health, safety, morals, or general welfare of this community.*

During public testimony at the Hearing, various speakers raised concerns about illegal activity, littering, trespass, and related impediments to safety and/or morals of the community. The Hearing Examiner admitted this testimony but is unable to put a great deal of weight upon it, as such testimony presented hypotheticals and/or unsubstantiated beliefs rather than factual information.

The Hearing Examiner recommends that the City Council find that both the P-1 and C-1 Zoning Districts would promote the health, safety, and general welfare of the community by allowing uses appropriate for the location, area, and configuration of this site and would be harmonious with existing development in the area.

The Hearing Examiner recommends that City Council find that **this rezoning will promote the health and general welfare of the community.**

9. *The extent to which the proposed land use, land use restriction, or zoning will impact the level of service standards for public facilities as specified in the Comprehensive Plan.*

Staff testified that potable water, sewer, and irrigation services are available to the site. Based on information provided by the applicant, the project, if approved as a special exception use in the proposed rezoning, is estimated to generate approximately 254 trips per PM peak hour. In addition, the Development Services Manager's expert testimony under Standard 4 above is incorporated by reference herein.

While limited off-site roadway improvements would be required, staff testified that the number of trips generated by this project would not adversely affect level of service standards for County Club Boulevard.

The Hearing Examiner recommends that City Council find that **the impact of the proposed rezoning on level of service standards for public**

facilities will be manageable through the betterment program and City regulations.

10. *Whether the proposed land use restriction, removal of a restriction, or zoning is consistent with the City of Cape Coral Comprehensive Land Use Plan.*

Policy 1.14 of the Future Land Use Element of the City's Comprehensive Plan states that "preferred locations for commercial properties are in the vicinity of major intersections (i.e., intersections of two or more arterial and/or collector roadways)." Staff testified that the subject property is located at the intersection of a principal arterial (Veteran's Memorial Parkway) and minor arterial (Country Club Boulevard), which complies with this Policy.

In addition, the Hearing Examiner notes that the current P-1 Zoning District and the proposed rezoning to the C-1 Zoning District share the same Future Land Use classification, Commercial/Professional, as outlined within Policy 1.15 of the Future Land Use Element of the Comprehensive Plan.

This rezone request is also consistent with Policy 2.2.7 of the Transportation Element that states "The City shall discourage new strip style development through efforts to promote the concentration of commercial development at the nodes of major intersections."

For all of the above reasons, the Hearing Examiner recommends that the City Council find the proposed rezoning to be **compatible with the future land use classification that currently exists for the subject property and the proposed rezoning to be consistent with the goals and objectives of the Comprehensive Plan.**

Recommendation Regarding Rezoning from P-1 to C-1. For all the reasons set forth above, the Hearing Examiner recommends that the City Council **grant** the rezoning of the subject property from the P-1 Zoning District to the C-1 Zoning District.

SECTION V. RECOMMENDED FINDINGS OF FACT AND CONCLUSIONS OF LAW: APPLICATION FOR SPECIAL EXCEPTION USE

1. Applicant's Request for a Special Exception Use. Applicant is requesting a Special Exception Use to establish an Automotive Service Station, Limited Use. This use is defined in the LUDRs as "an establishment primarily engaged in the retail sale of motor fuel and lubricants, but which may also include facilities for

washing, waxing, detailing, polishing, greasing, tire repair (no recapping or vulcanizing) and other minor incidental repairs.”

2. Special Exception Standards and Regulations. The Application has been reviewed pursuant to the requirements of LUDR §2.7.7, the Pedestrian-Commercial (C-1) Zoning District requirements, and the five (5) standards set forth in LUDR §8.8.5a-e.

a. *Generally: Zoning District Requirements (LUDR §8.8.5 a)*

The C-1 Zoning requested for the parcel is consistent with the Commercial/Professional Future Land Use of this property. Automotive Service Station, Limited Use is allowed as a Special Exception in the C-1 Zoning District.

Staff testified that this property has 1.36 acres. The C-1 Zoning District lacks a minimum area requirement for this use. Staff testified that the area and shape of this site is suitable for a gas station based on the City staff's recent history of permitting similar establishments.

As conditioned below, it is recommended that City Council find that the requested Special Exception **does** comply with all requirements of the Zoning District(s) in which the property is located, this ordinance, and all other applicable law.

b. *Compatibility (LUDR §8.8.5 b)*

The Applicant has proposed placing the convenience store structure on the western side of the subject property, as far away from the residential uses as is possible. As noted above, much of the public testimony about the Project is applicable to the analysis of compatibility for purposes of consideration of the Special Exception Use herein. Accordingly, said prior analysis is incorporated in this section.

Staff testified that width of the Country Club Boulevard ROW directly adjacent to this site ranges from 100 to 175 feet and the width of the Veteran's Memorial Parkway ROW directly north of the site is about 300 feet. While single-family homes exist to the north and east, staff testified that these ROWs provide adequate separation between the site and these single-family homes.

Staff further testified that there are eight (8) single family residences within three hundred (300) feet of the subject property, with seven (7) of them located across Country Club Boulevard, to the east of the property. Staff

further testified that the compatibility issues with these residents would primarily concern lighting, noise, site aesthetics and traffic.¹

Lighting. Staff testified that current sources of background illumination levels at the subject site, prior to any development, includes street lights at the Veteran's/Country Club intersection, passing traffic, and to a lesser degree, lighting from night baseball at Jason Verdow Memorial Park.

Staff testified that illumination levels at gas stations can be minimized based on the placement and design of the fuel canopy.

The Hearing Examiner recommends the conditions below as suggested by staff to mitigate light intrusion from the proposed project. The Applicant is in agreement with these conditions.

Noise. Staff testified that the location of the subject property at the intersection of two major streets means that background noise exists at this site independent of any development permitted on the property. Additional sources of noise pollution would consist of vehicular traffic ingressing and egressing the subject property.

The Hearing Examiner recommends that City Council approve Staff's three recommendations to mitigate the noise issues. First, staff recommends the placement of the dumpster near the western property line behind the convenience store, away from the residential properties; secondly, staff recommends the relocation of the air vacuum equipment from the northeast corner to the western side of the site, to increase the distance between this equipment and the homes east of Country Club Boulevard; thirdly, staff recommends the prohibition of deliveries by semi-tractor trailer trucks and similar vehicles from late evening through early morning.²

Applicant is in agreement with all of these conditions except for the condition of relocation of the air vacuum. The Hearing Examiner has considered Applicant's objection, on the grounds of inconvenience of such relocation, and is recommending that City Council find that the noise mitigation represented by such relocation outweighs the potential for inconvenience to Applicant.

Site aesthetics. The Applicant has agreed to strive for a visually integrated project as recommended by Staff, as manifested by consistency in materials

¹ While the residents and the church representative testified as to additional concerns regarding crime, littering and on-site insurance liability due to trespassing, the Hearing Examiner cannot consider such additional concerns due to a lack of factual basis for such testimony.

² The Red Box Vending Machine proposal has been withdrawn by Applicant and will not be addressed herein.

and colors for the convenience store and fuel canopy. The Applicant has agreed to install larger trees and shrubs, beyond minimum City requirements, along the eastern and southern property lines to provide for enhanced buffering and a higher degree of visual appeal. The Hearing Examiner recommends that the City Council approve the conditions set forth below regarding site aesthetics and, in so doing, make a finding that such conditions mitigate potential harm to residents.

Traffic. Staff and the Applicant estimated PM peak hour trips generated by the proposed use are estimated at 254. This is lower than the 300 trip threshold that automatically triggers a Traffic Impact Study. The Applicant's Post-Hearing Submittal stated that the majority of traffic generated by a convenience store and gas station use would already be on the road (from work to home, for example) rather than being new trips.

Staff testified that the information provided to the City showed that of the total number of PM peak hour trips for this project, 34% represented new external trips, with the remaining 66% constituting pass-by trips.

Several residents expressed concerns about problems of increased traffic which could be occasioned by the approval of this special exception use. Particular focus was placed on the implications of increased traffic on SE 26th Street, where the Applicant has proposed two (2) driveways. Applicant's Post-Hearing Submittal stated that, based upon a quantitative traffic study, the subject intersection is anticipated to operate at levels of service ranging from A to C, inclusive of the proposed use, and that such levels are within the limits of acceptable traffic conditions. Another concern was the possibility of significant U-turns along Country Club Boulevard; the Applicant's Post-Hearing Submittal stated that 26th Street would have a full median opening which would obviate U-turns.

The Hearing Examiner recommends that the City Council make the findings of fact set forth above and as submitted by the Applicant's Post-Hearing Submittal in determining that Applicant's mitigation of traffic issues through creation of a right-in lane on Country Club and two (2) driveways on SE 26th Street are appropriate.

Given the aforementioned factors and proposed conditions, the Hearing Examiner recommends that City Council find this use, as conditioned, is **compatible** with the surrounding area.

c. *Minimum Lot Frontage and Access. (LUDR §8.8.5c)*

Staff testified that the site has over 200 feet of frontage along Veteran's Memorial Parkway, Country Club Boulevard and SE 26th Street. Applicant has

proposed creation of a right-in turn/limited access from Country Club Boulevard into the subject property. There is no median at SE 26th Street where it intersects with Country Club Boulevard. Accordingly, there is no impediment to vehicles turning either left or right out of that street.

Applicant's development plan shows a 4,968 square foot convenience store and 25 parking spaces, which meets the City's minimum parking requirement for this use.

Based on the foregoing findings, the Hearing Examiner recommends that the City Council finds that, in conjunction with granting the deviation set forth below, (i) the minimum lot frontage on the street **is** sufficient to permit properly spaced and located access points designed to serve the type of special exception use proposed; and (ii) wider spacing between access points and intersecting street right-of-way **is not** being required; and (iii) all access points **are** specifically approved.

d. *Building Location and Setbacks.* (LUDR §8.8.5d)

Staff testified that structures on the site are required to meet a 25-foot front setback from the east property line, a 10-foot side setback from the north and south property lines, and a 10-foot rear setback from the west property line. The Applicant testified that it would be in compliance with this requirement.

Based on the foregoing, the Hearing Examiner recommends that the City Council find that this standard **has been met**.

e. *Screening and Buffering* (LUDR §8.8.5e)

Staff testified that a 15-foot wide Buffer "C" is required along the west property lines of Lots 16 and 17. This buffer will include a six-foot wall, with trees and shrubs on the outside of the wall. Landscaping is also required along the north, east, and south property lines adjacent to the three streets. A landscaping area containing trees and shrubs with a minimum width of 10 feet along each property line is required. To provide for more effective buffering between the gas station and the residential and church properties, staff testified as to their recommendation of larger trees and shrubs along the east and south property lines.

Applicant has agreed to Staff's recommendation and the Hearing Examiner recommends that the City Council approve these requirements.

The Hearing Examiner recommends that the City Council find that this standard **has been met**.

3. Recommended Conditions for Approval of Special Exception.

The Hearing Examiner recommends **approval** of the application for a special exception use as described elsewhere herein, subject to the following terms and conditions. Except as specifically noted, the Applicant testified that all of these conditions were acceptable.

1. To minimize light trespass on surrounding properties and to reduce glare from on-site lighting, the following conditions are prescribed:
 - a. Lighting levels along the eastern property lines of Lots 20-23 shall not exceed 0.5 foot-candles. Lighting levels along the eastern property lines of Lots 18 and 19, and the southern property lines of Lots 17 and 18 shall not exceed 1.0 foot-candles. The Applicant shall submit a lighting plan for staff review that demonstrates compliance with this requirement prior to site plan approval for the project.
 - b. Lighting trespass and glare shall be limited to a reasonable level through the use of shielding and directional lighting methods. All free-standing lights on the site shall be aimed downward and away from the property lines.
 - c. Light fixtures mounted under the canopy shall be completely recessed into the canopy with flat lenses that are translucent and completely flush with the bottom surface of the canopy.
 - d. Lights shall not be mounted on the exterior sides or face of the fuel canopy and the sides of the canopy shall not be illuminated.
2. The total area of an Electronic Message Center (EMC) or sign shall not exceed 24 sq. ft. for the development. For the purposes of this development order, an EMC is any electrically changeable sign whose variable message or graphic presentation capability can be electronically programmed by computer from a remote location. Except for the 24 sq. ft. of sign area allowed within this subsection for an EMC, signage on the site is prohibited that blinks, fluctuates, moves, or changes message, characters, or background.
3. Air vacuum equipment, if utilized on the site, shall be placed north of the convenience store. Applicant disagrees with this condition, as set forth above.
4. Any vending machines, automated teller machines (ATMs), or similar equipment or display items shall be placed inside the store or adjacent to the walkway in front of the store.

5. The outdoor storage of products and materials is prohibited. This provision, however, shall not apply to propane tanks, and ice machines that are used solely to store ice.
6. Materials, finishes, and colors utilized for the convenience store and fuel canopy shall be consistent with those shown on the elevations for each structure produced by GreenbergFarrow appearing in Exhibit "A" of the development order. Modifications to either structure may be approved by the DCD Director or his designee provided the changes do not result in a diminution in aesthetic appeal or durability in either structure.
7. Deliveries to the site made by Class 7 and 8 Heavy Duty Trucks shall be limited to the hours beginning at 6:00 am and ending at 11:00 pm.
8. Landscaped buffers shall be installed along the east and south property lines in accordance with the minimum standards provided in the table below. Bald cypress and slash pine are prohibited along both property lines. Palms shall not be substituted for either canopy or accent trees. Areas of the project occupied by visibility triangles are exempt from these planting requirements.

Category of planting	Spacing	Minimum Size at time of planting
Shrubs	One shrub for every three linear feet of frontage	32 inches in height; 7 gallon container size
Accent Trees	One accent tree for every 20 feet of frontage	10 feet in height; caliper of 2 inches
Canopy Trees	One canopy tree for every 20 linear feet of frontage	14 feet in height; 3.5 caliper of 3.5 inches

SECTION VI. RECOMMENDED FINDINGS OF FACT AND CONCLUSIONS OF LAW: DEVIATION FOR PLACEMENT OF WALL, LUDR §3.9.2.B.1.d

1. Request

The Applicant seeks a deviation to LUDR, Section 3.9.2.B.1.d, which limits placement of fences and walls in front yards of commercial, professional, and mixed-use Zoning Districts.

More specifically, this section states that *"No part of a fence shall be located forward of the forward-most part of the side of the principal structure to which the fence is closest. In no instance shall a fence enclose any portion of the front façade of the principal structure."*

The City defines the principal building or structure in Article XI of the LUDRs as *"The building or structure in which is conducted the principal use of the lot on which it is situated."*

The Applicant seeks to have an Automotive Service Station, Limited Use on the site as a special exception use. The definition of this use emphasizes the retail sale of motor fuel and lubricants. Staff testified that the fuel canopy constitutes the principal structure of the proposed development.

The requested deviation would allow the wall to extend about 39 feet in front of the fuel canopy to within 10 feet of the eastern property line.

2. Analysis

Staff provided an analysis of this request based on LUDR, Section 4.2.4.K. "Deviations." Deviations to the LUDRs provide flexibility in developing land through the PDP process.

The City Council has the legal authority to approve one or more deviations within a PDP, provided the project demonstrates a unique and innovative design that would be enhanced by the approval of the deviation(s), and the public health, safety, and welfare would be served by the approval of the deviation(s).

LUDR, Section 4.2.4.K provides examples of unique and innovative design elements that may include but are not limited to the following:

1. Providing usable common space within the development to offset and compensate for decreases in typical lot sizes or yard requirements;
2. Applying different requirements than those found within the applicable Zoning District in question to promote compatibility with surrounding uses;
3. Providing places for public assembly that are linked together and centrally located to ensure accessibility;
4. Locating buildings and dwelling units to provide optimum access to open space areas; and,
5. Providing for the integration and preservation of natural resources within development.

Staff and the Applicant testified that an earthen berm exists along the northern portion of the site that Lee County utilizes for managing stormwater generated from the Veteran's Memorial Parkway ROW. The Applicant seeks to remove this berm, located mainly on the subject property and install a wall. According to the Letter of Intent, the wall will serve as a retaining wall to allow stormwater to

continue to be collected and treated within the County ROW. The Applicant also states the wall will be an aesthetic enhancement to the site compared to the berm and existing vegetation that currently exists.

Staff testified that the proposed wall will serve two important functions. One is to serve as a retaining wall to assist in capturing runoff generated by the Veteran's Memorial Parkway ROW to assist in treatment of runoff. Based on a comparison of elevations, staff estimates that the height of this wall when viewed from the front of this site will be around four feet. However, when viewed from Veteran's Memorial Parkway the wall will likely appear higher due to the elevation difference between the lowest point of the detention area and the site. Staff testified that the wall will provide an aesthetic enhancement to this site as the wall and exterior sides of the convenience store will demonstrate consistency in color, materials, or finish textures.

While this project element does not explicitly address one of the five examples listed under LUDR, Section 4.2.4.K, staff testified that this feature constitutes a unique and innovative design element, in that the wall will assist Lee County with managing stormwater and provide an aesthetic benefit by defining the northern boundary of the site providing consistency in appearance with the sides of the convenience store.

It is recommended that the City Council find that **the deviation will promote the health, safety, and welfare of the community** by serving these dual functions.

3. *Recommendation of Approval of Deviation with Conditions*

Based upon the testimony of Staff and the Applicant, the Hearing Examiner recommends **approval** of this deviation by City Council, **with the following conditions:**

1. The decorative wall along the northern property line shown on the Development Plan appearing in Exhibit "A" shall be constructed of one or more of the following materials: concrete block coated with stucco, textured concrete block, stone, brick, or formed, decorative, or precast concrete.
2. The decorative wall and the exterior sides of the convenience store shall provide consistency in a minimum of one of the following three design elements: color, materials, or finish textures.
3. Required landscaping adjacent to Veteran's Memorial Parkway shall be installed on the north side of the decorative wall.

**SECTION VII. RECOMMENDED FINDINGS OF FACT AND CONCLUSIONS OF
LAW: DEVIATION FOR PLACEMENT OF DRIVEWAY PER
SECTION D, ENGINEERING DESIGN STANDARDS (EDS).**

1. Request

Development Services Manager David Hyyti, P.E. testified³ that to accommodate traffic generated by the Project, the Applicant would be required to lengthen the north bound left turn lane from Country Club Boulevard onto SE 26th Street by approximately 65 feet and construct the southbound right turn lane into the project as depicted on the PDP Plan.

He further testified that, in so doing, the location of the proposed driveway on Country Club Boulevard would not meet the driveway separation requirements as set forth in Section D of the Engineering Design Standards (EDS).

The Applicant has requested a deviation from the required 150 foot separation between the driveway on Country Club Boulevard and SE 26th Street to allow the separation to be reduced to 45 feet.

2. Analysis

Staff testified that a deviation from the EDS may be approved if (a) the request is based on acceptable engineering practices and (b) it either meets or exceeds the EDS.

Traffic safety is the primary concern with driveway separation. Staff testified that the reduction in the driveway separation will facilitate reduction in traffic congestion, thereby allowing more efficient and safer flow of traffic into the SE 26th Street driveways and thus into the Circle K parking lot.

3. Recommendation of Approval of Deviation.

Based upon Staff's analysis and recommendation, the Hearing Examiner recommends that the City Council make a finding of fact that the proposed deviation **will facilitate** traffic safety at the intersection of Country Club Boulevard and SE 26th Street and **approve the requested Deviation.**

**SECTION VIII. RECOMMENDED FINDINGS OF FACT AND CONCLUSIONS OF
LAW: GENERAL STANDARDS AND REQUIREMENTS SET
FORTH IN LUDR §4.2.4**

³ This testimony was also presented as part of the Hearing packet via memo of October 17, 2016 from Mr. Hyyti to Mike Struve, AICP, Planning Team Coordinator.

1. *Compliance with General Standards and Requirements Set Forth in LUDR §4.2.4* All planned development projects must conform to the general standards and requirements set forth in LUDR § 4.2.4. For the reasons set forth in this Recommendation, the Hearing Examiner recommends that the City Council **make the following findings of fact and conclusions of law and thereby determine that the Project is in conformance with all applicable standards and requirements, as follows:**

A. Environmental Control Standards (LUDR §4.2.4A)

An Environmental Assessment and Protected Species Survey Report, dated February, 2016, was submitted by BearPaws Environmental Consulting, Inc. on behalf of Applicant. This report did not identify state or federally protected species on this site, nor were sensitive lands found. Accordingly, this Standard **has been met**.

B. Maintenance of Improvements (LUDR §4.2.4B)

General landscape areas are shown on the development plan. Compliance with the City's landscaping regulations will be reviewed when a site plan for the project is submitted following PDP approval. Accordingly, this Standard **has been met**.

C. Consistency with the Comprehensive Plan (LUDR §4.2.4C)

As discussed elsewhere in this Recommendation, the Hearing Examiner recommends that the Project, as conditioned, **is consistent** with the Comprehensive Plan.

D. Financial Responsibility (LUDR §4.2.4D)

The Applicant **should not be** required to provide a statement of financial responsibility to the City.

E. Dimensional Requirements (LUDR §4.2.4E)

The project is **compliant** with dimensional requirements for the C-1 District. Deviations to LUDR, Section 3.9 have been requested for relief from a wall setback requirement and EDS, Sheet D-5 for relief from a driveway spacing requirement from a property line, as discussed elsewhere in this Recommendation. The Hearing Examiner recommends that the City Council **grant the requested deviations**.

F. Maximum Density (LUDR §4.2.4 F)

This Standard **does not apply** to this nonresidential Project.

G. Minimum Parcel Size (LUDR §4.2.4 G)

The C-1 Zoning District does not require a minimum lot area requirement. Accordingly, this Standard **does not apply**.

H. Time Limitation(LUDR §4.2.4.H)

Substantial construction is required to commence within **two (2) years** from the date of project approval or within **one (1) year** from the last permit approval for all appropriate regulatory bodies, **whichever is less**.

I. Ownership Requirements(LUDR §4.2.4.I)

The Applicant **does** hold title to 100% of the subject property.

J. Special Exceptions (LUDR §4.2.4.J)

As conditioned, the Application **does** meet the requirements of all applicable provisions of the LUDRs for a special exception to be granted.

K. Deviations (LUDR §4.2.4.K)

Both deviations **should be granted** for the reasons set forth above.

L. Underground Utilities (LUDR §4.2.4.L)

New construction is contemplated by this Application, so utilities **will be** placed underground.

2. *Concurrency.* The Hearing Examiner recommends that the City Council make a finding of fact that the Project will meet all concurrency requirements for solid waste, drainage, potable water, sewer and transportation, in accordance with Staff testimony in this regard.
3. *Consistency with All Applicable Law, Ordinances and Regulations.*
The Hearing Examiner recommends that the City Council find that the Project, as conditioned, **is consistent** with the requirements of the Zoning District(s) in which the property is located, the Comprehensive Plan, the Land Use Development Regulations, City ordinances, and all other applicable local, state, and federal law.

**SECTION IX. LEGAL EFFECT AND LIMITATIONS OF THIS RECOMMENDED
DEVELOPMENT ORDER; ADMINISTRATIVE REQUIREMENTS**

1. This is a Recommendation by the Cape Coral Hearing Examiner to the City Council of Cape Coral, in response to the Planned Development Project Application filed for the Circle K PDP.
2. If this Project is approved by City Council, it is recommended that Council's Development Order be binding on the Applicant.
3. If this Project is approved by City Council, it is recommended that the terms and conditions set out in the City Council's approved Development Order constitute a

basis upon which the Applicant and City may rely in future actions necessary to implement fully the final development contemplated by such Order.

4. If this Project is approved by City Council, it is recommended that the City Council find that the proposed development does not unreasonably interfere with the achievement of the objectives of the adopted State Land Development Plan applicable to the area.
5. If this Project is approved by City Council, it is recommended that the City Council declare that all conditions, restrictions, stipulations, and safeguards contained in Council's approved Development Order may be enforced by either party hereto by action at law or equity, and all costs of such proceedings, including reasonable attorney's fees, shall be paid by the defaulting party.
6. If this Project is approved by City Council, it is recommended that any references by the City Council to any governmental agency shall be construed to mean to include any future instrumentality which may be created and designated as successor in interest to, or which otherwise possesses any of the powers and duties of, any referenced governmental agency in existence on the effective date of Council's Development Order, if any.
7. If this Project is approved by City Council, it is recommended that approvals granted by City Council's Development Order are limited and that any such approval shall not be construed to obviate the Applicant's duty to comply with all applicable local or state review and permitting procedures, except where otherwise specifically provided. It is further recommended that such approval, if any, shall also not obviate the duty of the Applicant to comply with any City Ordinance or other regulations adopted after the effective date of this Development Order.
8. If this Project is approved by City Council, it is recommended that the physical development authorized under the City Council's Development Order terminate in six (6) years from the date of adoption of a Development Order, if any, unless an extension is approved by the appropriate governing body. Such body may grant an extension if the project has been developing substantially in conformance with the original plans and approved conditions, and if no substantial adverse impacts not known to Cape Coral at the time of their review and approval, or arising due to the extension, have been identified. For purposes of determining when the buildout date has been exceeded, the time shall be tolled during the pendency of administrative and judicial proceedings relating to development permits. It is recommended that all conditions imposed on the subject development shall remain in full force and effect throughout the life of the development unless rescinded or amended by the City and shall not be affected by any termination of the authorization for physical development.

9. If this Project is approved by City Council, it is recommended that the Director of the Cape Coral Department of Community Development or his/her designee ("Director"), shall be the local official responsible for assuring compliance with this Development Order and that, upon reasonable notice by the City and at all reasonable times, the Applicant shall allow the City of Cape Coral, its agents, employees, and/or representatives, access to the project site for the purpose of assuring compliance with this Development Order.
10. If this Project is approved by City Council, it is recommended that the Applicant, or its successors in title to the undeveloped portion of the subject property, be required to submit a report annually to the Director and all affected permit agencies. This report shall describe the state of development and compliance as of the date of submission.
11. Within thirty (30) days of the effective date of an Order, if any, entered by the City Council, it is recommended that Council require such Development Order to be recorded with the Office of the Lee County Clerk of the Circuit Court by the City of Cape Coral and the Applicant to be responsible for reimbursing the City for all recording fees within 30 days of being notified by the City thereof.

SECTION X. EFFECTIVE DATE

1. This Recommendation takes effect on the date specified below.
2. Permits issued prior to the City Council consideration of this Application are obtained solely at the risk of the Applicant.

SECTION VII. ATTACHMENT OF EXHIBIT

The following Composite Exhibit "A" is attached hereto and hereby incorporated by reference:

- Applicant's plan set, titled "Circle K", Sheets 1-2, dated September 29, 2015, and also bearing a revision date of July 11, 2016, prepared by Florida Engineering and Environmental Services, Inc.; and
- "Boundary and Topographic Survey", dated September 21, 2015, prepared by AFN Consulting, Inc.; and
- "Building Exterior Elevations", Sheet A-2, dated December 10, 2015, as prepared by Greenberg Farrow; and

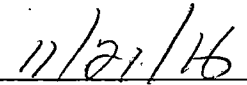
PDP HEX RECOMMENDATION 2-2016
CIRCLE K PDP
DCD CASE # PDP 16-0001
NOVEMBER 21, 2016

- "Fuel Canopy Elevations", Sheet CA-6, dated March 8, 2016, prepared by Greenberg Farrow.

HEARING EXAMINER OF THE CITY OF CAPE CORAL, FLORIDA



ANNE DALTON, ESQUIRE



DATE

ATTESTED TO AND FILED IN MY OFFICE IN THIS 28th DAY OF November 2016:



CITY CLERK

COMPOSITE EXHIBIT "A"

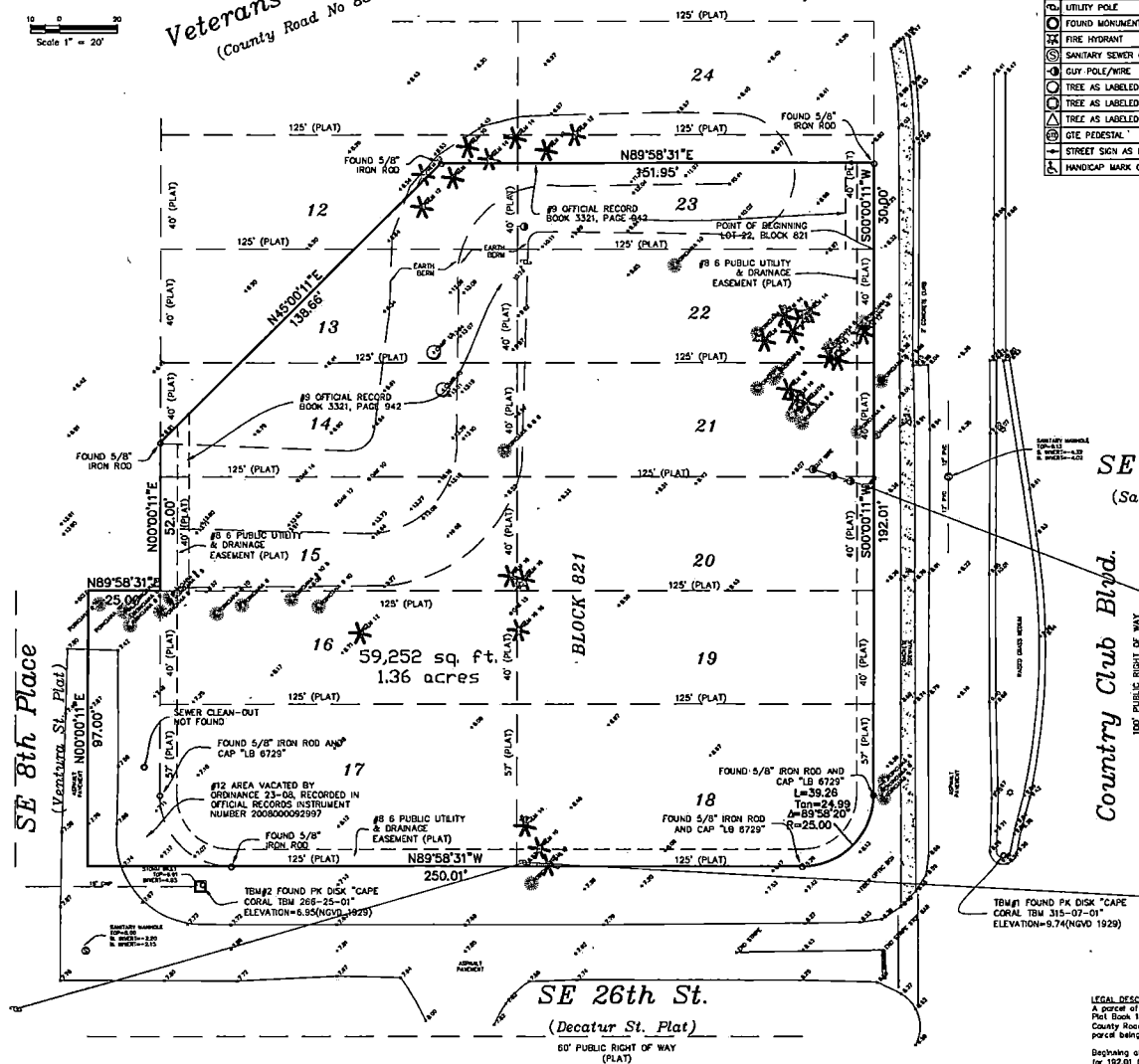
PDP HEX Recommendation 2-2016

Circle K PDP, DCD Case # PDP 16-0001

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- "Building Exterior Elevations", Sheet A-2, dated December 10, 2015, prepared by Greenberg Farrow and
- "Fuel Canopy Elevations", Sheet CA-6, dated March 8, 2016, prepared by Greenberg Farrow.



Veterans Parkway
(County Road No 884)



SYMBOL LEGEND	
WATER VALVE	WATER METER
UTILITY POLE	UTILITY POLE
FOUND MONUMENT AS NOTED	FIRE HYDRANT
SANITARY SEWER OR MARKER	GUY POLE/WIRE
TREE AS LABELED	TREE AS LABELED
TREE AS LABELED	GITE PEDESTAL
STREET SIGN AS LABELED	HANDICAP MARK ON PAVEMENT

SURVEYOR'S NOTES

1. BEARINGS AS SHOWN HEREON ARE FROM THE DEEDS AND FIELD MEASUREMENTS BASED ON FLORIDA STATE PLANE COORDINATES, WEST ZONE NAD 83, BASIS OF BEARINGS IS THE WEST RIGHT OF WAY LINE OF COUNTRY CLUB BLVD., S00D0711°W (GRD). ELEVATIONS SHOWN ARE NAVD 83.

2. THIS SURVEY WAS PREPARED WITH THE BENEFIT OF A TITLE SEARCH PROVIDED BY: CHICAGO TITLE INSURANCE COMPANY, ORDER NO. 5429137, EFFECTIVE JULY 14, 2015 @ 11:00AM.

3. DEFECTS, LIENS, ENCUMBRANCES, ADVERSE CLAIMS OR OTHER MATTERS, IF ANY, CREATED, FIRST APPEARING IN THE PUBLIC RECORDS OR ATTACHED SUBSEQUENT TO THE EFFECTIVE DATE HEREOF BUT PRIOR TO THE DATE THE PROPOSED INSURED ACQUIRES FOR VALUE OF RECORD THE ESTATE OR INTEREST OR MATTER THEREON COVERED BY THIS COMMITMENT, AFFECTS SUBJECT PROPERTY BUT NOT ABLE TO PLOT.

4. TOSES AND ENCUMBRANCES FOR THE YEAR 2015 AND SUBSEQUENT YEARS, WHICH ARE NOT YET DUE AND PAYABLE, AFFECTS SUBJECT PROPERTY BUT NOT ABLE TO PLOT.

5. STANDARD EXCEPTIONS:

A. Any encroachment, encumbrance, variation, violation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land, NONE.

B. Rights or claims of parties in possession not shown by the public records, AFFECTS SUBJECT PROPERTY BUT NOT ABLE TO PLOT.

C. Any lien, or right to a lien, for services, labor, or materials heretofore or hereafter furnished, imposed by law and not shown by the public records, NOT PLOTTED.

D. Toes or encumbrances which are not shown as existing liens in the public records, AFFECTS SUBJECT PROPERTY BUT NOT ABLE TO PLOT.

E. Any lien provided by County Ordinance or by Chapter 159, Florida Statutes, in favor of any city, town, village or port authority for unpaid service charges for water, sewer or gas system supplying the insured land, AFFECTS SUBJECT PROPERTY BUT NOT ABLE TO PLOT.

6. Subject property lies within the boundaries of the City of Cape Coral and may be subject to the levying of Special Assessments therefor, AFFECTS SUBJECT PROPERTY BUT NOT ABLE TO PLOT.

7. Subject land lies within the boundaries of Cape Coral Dual Water/Sewer Assessment District(s) and is subject to any rate and/or assessments thereof, liability under this Commitment/Policy up to the City of Cape Coral Assessments and Fees is hereby limited to only that which the City of Cape Coral has filed in the Public Records of Lee County, Florida, which contains the property description, name of owner and amount of fee, AFFECTS SUBJECT PROPERTY BUT NOT ABLE TO PLOT.

8. Lee County Ordinances 159-14 and 159-26 providing for mandatory add-on water collection and the imposition of special assessments for solid collection services, The special assessments for the current ten year are payable with the ad valorem taxes, AFFECTS SUBJECT PROPERTY BUT NOT ABLE TO PLOT.

9. Restrictions, conditions, reservations, easements, easement dedications, and other matters contained on the Plat of Cape Coral Unit 21, as recorded in Plat Book 13, at Pages 149 through 173, inclusive, as affected by Ordinance 23-06 recorded in Official Record Number 200800002997, PLOTTED.

10. Easements and restrictions contained in County Deed recorded in Official Record book 3321, Page 942, PLOTTED.

11. All right, title and interest of Lee County, a Political Subdivision of the State of Florida, Contain in the County Deed recorded in Official Record Book 3321, Page 942, in an undivided three-fourths interest in, and title in and to an undivided one-half interest in all of the petroleum that may be in, on, or under said land with the bridge to mine and develop the same, which interest may have been reserved under Section 270.11, Florida Statute, NOTE: Florida Form 9 coverage is not applicable or extended to this Exception, AFFECTS SUBJECT PROPERTY BUT NOT ABLE TO PLOT.

12. Ordinance 23-06 of the City of Cape Coral, recorded in Official Records Instrument Number 200800002997, This commitment/policy does not have over the consequences of non-compliance with the terms and conditions set forth in said Ordinance, AFFECTS SUBJECT PROPERTY BUT NOT ABLE TO PLOT.

13. Rights of public and quasi-public utilities in and to the continued use of and maintenance of facilities within those areas created by Ordinance 23-06, recorded in Official Records Instrument Number 200800002997, PLOTTED IN A VACATION FOR A PORTION OF SE 8th PLACE.

14. Terms, conditions, and other matters contained in any unrecorded Lease(s) and all rights thereunder of the Lessee(s) and of any person claiming by, through or under the Lessee(s), AFFECTS SUBJECT PROPERTY BUT NOT ABLE TO PLOT.

15. THIS SURVEYOR IS NOT RESPONSIBLE FOR EASEMENTS, RIGHT-OF-WAYS, OR ENCUMBRANCES OF RECORD NOT SHOWN HEREON THAT HAVE NOT BEEN FURNISHED TO THIS SURVEYOR OF THAT HE HAS NO KNOWLEDGE THEREOF.

ALTA TABLE NOTES:

1. MONUMENTS MARKED.

2. ADDRESS: 819 SE 25TH ST CAPE CORAL, FL.

3. FLOOD ZONE: THE PROPERTY SHOWN HEREON APPEARS TO BE IN FLOOD ZONE X ACCORDING TO THE FLOOD INSURANCE RATE MAP, COMMUNITY NUMBER 120704054F, SUFFIX F, EFFECTIVE 8/29/2004, FOR LEE COUNTY, FLORIDA.

4. GROSS LAND AREA: 59,252 SQ. FT. 1.36 ACRES.

5. VERTICAL RELIEF, SHOWN: ELEVATIONS SHOWN ARE NAVD 83.

6. (A) CURRENT ZONING: PL.

7. (A) SETBACKS: __SIDE__, __FRONT__, __REAR__, __BUILDING HEIGHT__.

7. (A) EXISTING BUILDING DIMENSIONS, SHOWN.

7. (C) SQUARE FOOTAGE OF BUILDING: N/A.

7. (C) BUILDING NEGATIVELY.

8. SUBSTANTIAL FEATURES, SHOWN.

9. STRIPPING, N/A.

11. UTILITIES, SHOWN.

12. ADJOINING OWNERS, SHOWN.

14. DISTANCE TO NEAREST INTERSECTION: 0'.

16. NO EVIDENCE OF EARTH MOVING, BUILDING CONSTRUCTION OR BUILDING ADDITIONS.

18. EVIDENCE OF SITE USE AS A SOLID WASTE DUMP, SUMP OR SANITARY LANDFILL, NONE.

19. LOCATION OF WETLAND AREAS AS DELINEATED BY APPROPRIATE AUTHORITIES, NONE.

20. (A) LOCATE IMPROVEMENTS WITHIN ANY OFFSITE EASEMENTS OR SERVITUDES BENEFITTING THE SURVEYED PROPERTY THAT ARE DISCLOSED IN THE RECORD DOCUMENTS PROVIDED TO THE SURVEYOR AND THAT ARE OBSERVED IN THE PROCESS OF CONDUCTING THE SURVEY, SHOWN.

20. (B) NONWARRANT PLACED (OR A REFERENCE MONUMENT OR WITNESS TO THE CORNER) AT ALL MAJOR CORNERS OF ANY OFFSITE EASEMENTS OR SERVITUDES BENEFITTING THE SURVEYED PROPERTY AND DISCLOSED IN RECORD DOCUMENTS PROVIDED TO THE SURVEYOR, SHOWN.

LEGAL DESCRIPTION

A portion of land situated in Lots 12 through Lot 23, Block 821, Cape Coral Subdivision, Unit 21, as recorded in Plat Book 13 at Pages 149 through 173, of the Public Records of Lee County, Florida, and a portion of former County Road No. 884 (Veterans Parkway) right of way, and a portion of vacated SE 8th Place right of way, said parcel being more particularly described as follows:

Beginning at the northwest corner of said Lot 22, Block 821, Cape Coral Subdivision, Unit 21; Thence S00D0711°W for 192.01 feet along the westerly right of way of Country Club Boulevard (100.00 feet wide) to the point of curvature of a curve to the right having a radius of 25.00 feet and an angle of 89°55'27"; Thence southeasterly, westerly and westerly along the arc of said curve for 30.26 feet to the point of tangency and a point on the northerly right of way line of SE 26th Street (50.00 feet wide); Thence S89°58'31"W for 250.01 feet along said northerly right of way line to the centerline of SE 8th Place (50.00 feet wide); Thence N00D0711°E for 97.00 feet along said centerline; Thence N00D0711°E for 25.00 feet to an intersection with the westerly right of way line of SE 8th Place; Thence N00D0711°E for 52.00 feet along the westerly line of said Lot 14 and 15, and the westerly right of way line of SE 8th Place; Thence N45°00'11"E for 138.66 feet; Thence N00D0711°E for 151.65 feet to the westerly right of way line of Country Club Boulevard; Thence S00D0711°W for 30.00 feet along said westerly right of way line to the Point of Beginning.

Bearings mentioned herein are based on the plat of Cape Coral Subdivision, Unit 21, as recorded in Plat Book 13, at Pages 149 through 173, of the Public Records of Lee County, Florida.

SURVEYOR'S CERTIFICATE

THIS IS TO CERTIFY THAT THIS MAP ON PLAT AND THE SURVEY ON WHICH IT IS BASED WERE MADE IN ACCORDANCE WITH THE 2011 ANNUAL STANDARD REQUIREMENTS FOR ALTA/ACSM LAND TITLE SURVEYS, DILIGENTLY OBTAINED AND ADAPTED BY ALTA AND ACMA, AND INCLUDES ITEMS 1-9, 11, 13, 14, 15, 18, 19, 20 OF TABLE A PRESENT. THE FIELD WORK WAS COMPLETED ON 3/2/2018.

NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL BASED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER, DAVID P. DAVIES, PLS. 00237.

ALTA/ACSM CONSULTING, INC. #87726

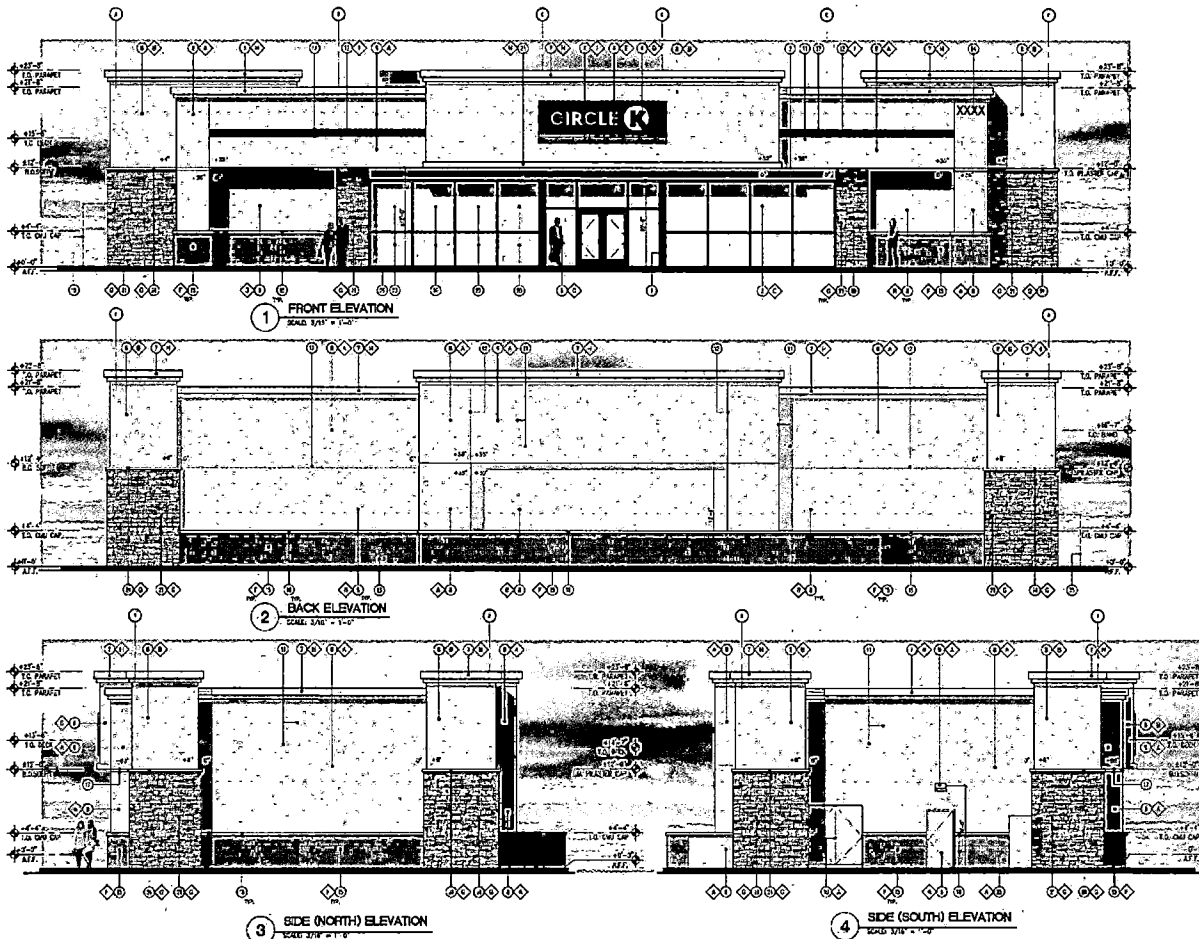
DATE: 3/18/2018

CERTIFICATE

I HEREBY CERTIFY TO CIRCLE K STORES, INC. Chicago Title Insurance Company AN ACTUAL FIELD SURVEY OF THE PREMISES COMPLETED UNDER MY SUPERVISION ON 3/2/2018, THAT IT IS CORRECT, AND THE REQUIRED ALTA/ACSM LANGUAGE.

CIRCLE K STORES, INC.
12911 N. TELECOM PARKWAY
TAMPA, FL 33617

BOUNDARY AND TOPOGRAPHIC SURVEY



KEY NOTES

1. SEE GENERAL AND SPEC NOTES
2. SEE OF CONSTRUCTION
3. SEE GENERAL AND SPEC NOTES
4. SEE GENERAL AND SPEC NOTES
5. SEE GENERAL AND SPEC NOTES
6. SEE GENERAL AND SPEC NOTES
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23. SEE GENERAL AND SPEC NOTES

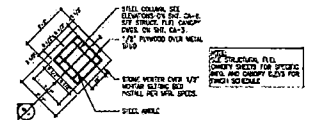
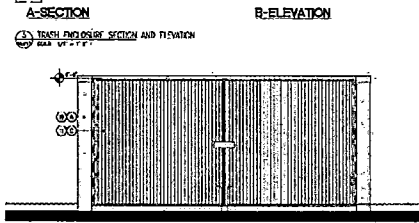
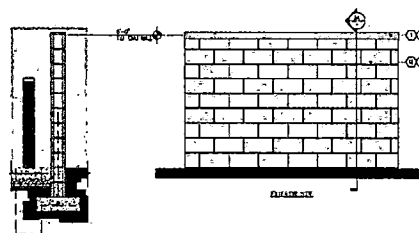
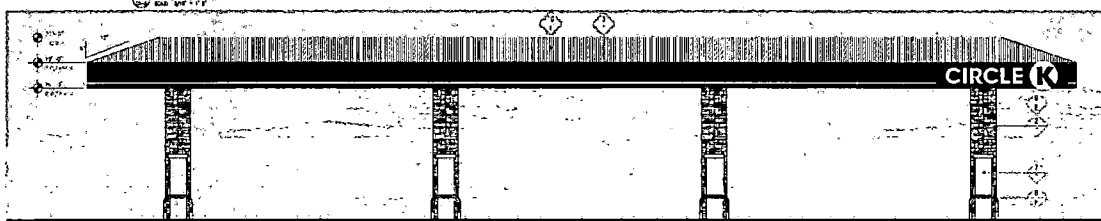
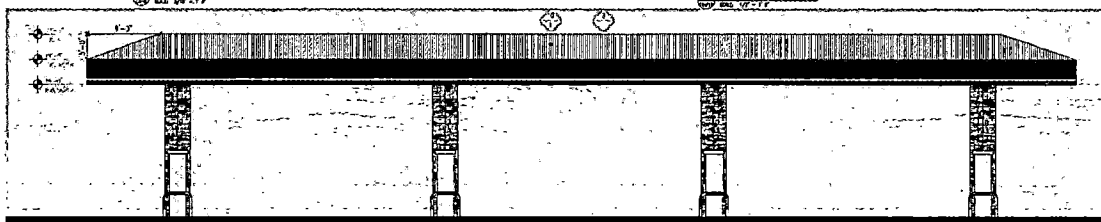
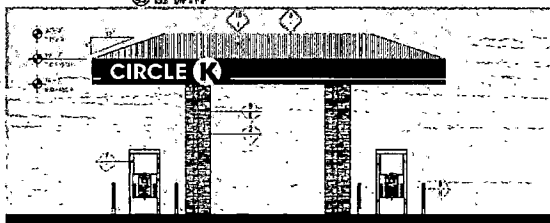
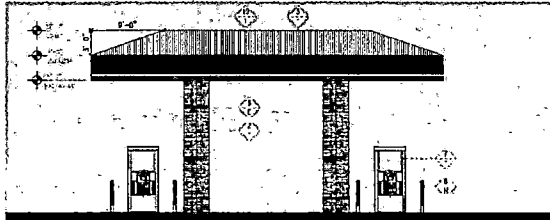
FINISH SCHEDULE

- 1. SEE GENERAL AND SPEC NOTES
- 2. SEE GENERAL AND SPEC NOTES
- 3. SEE GENERAL AND SPEC NOTES
- 4. SEE GENERAL AND SPEC NOTES
- 5. SEE GENERAL AND SPEC NOTES
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- 18. SEE GENERAL AND SPEC NOTES
- 19. SEE GENERAL AND SPEC NOTES
- 20. SEE GENERAL AND SPEC NOTES
- 21. SEE GENERAL AND SPEC NOTES
- 22. SEE GENERAL AND SPEC NOTES
- 23. SEE GENERAL AND SPEC NOTES

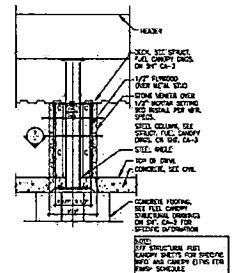
GreenbergFarrow
18000 Massachusetts Blvd., Suite 200
Irvine, CA 92618
P: 949 226 0600 F: 949 226 0437

CIRCLE K ENTERPRISES INC.
1120 W. Warner Road, Building B
Troy, AL 36064
P: (205) 725-4530 F: (205) 377-4530

CIRCLE K
819 SE 26TH ST
CAPE CORAL, FLORIDA
20150000
BUILDING EXTERIOR ELEVATIONS - 4968
SCALE: AS NOTED
A-2



COLUMN PLAN FUEL CANOPY TYP
SCALE: 1/4" = 1'-0"



COLUMN SECTION FUEL CANOPY TYP
SCALE: 1/4" = 1'-0"

FINISH SCHEDULE

ITEM MATERIAL	FINISH SCHEDULE
1. FLOOR SLAB	A. POLISHED
2. EXTERIOR WALLS (CONCRETE)	B. POLISHED
3. EXTERIOR WALLS (BRICK)	C. POLISHED
4. ROOF SLAB	D. POLISHED
5. ROOF SLAB	E. POLISHED
6. ROOF SLAB	F. POLISHED
7. ROOF SLAB	G. POLISHED
8. ROOF SLAB	H. POLISHED
9. ROOF SLAB	I. POLISHED
10. ROOF SLAB	J. POLISHED

1. Circle K logo is shown above the entrance door. The logo is shown in the center of the entrance door.

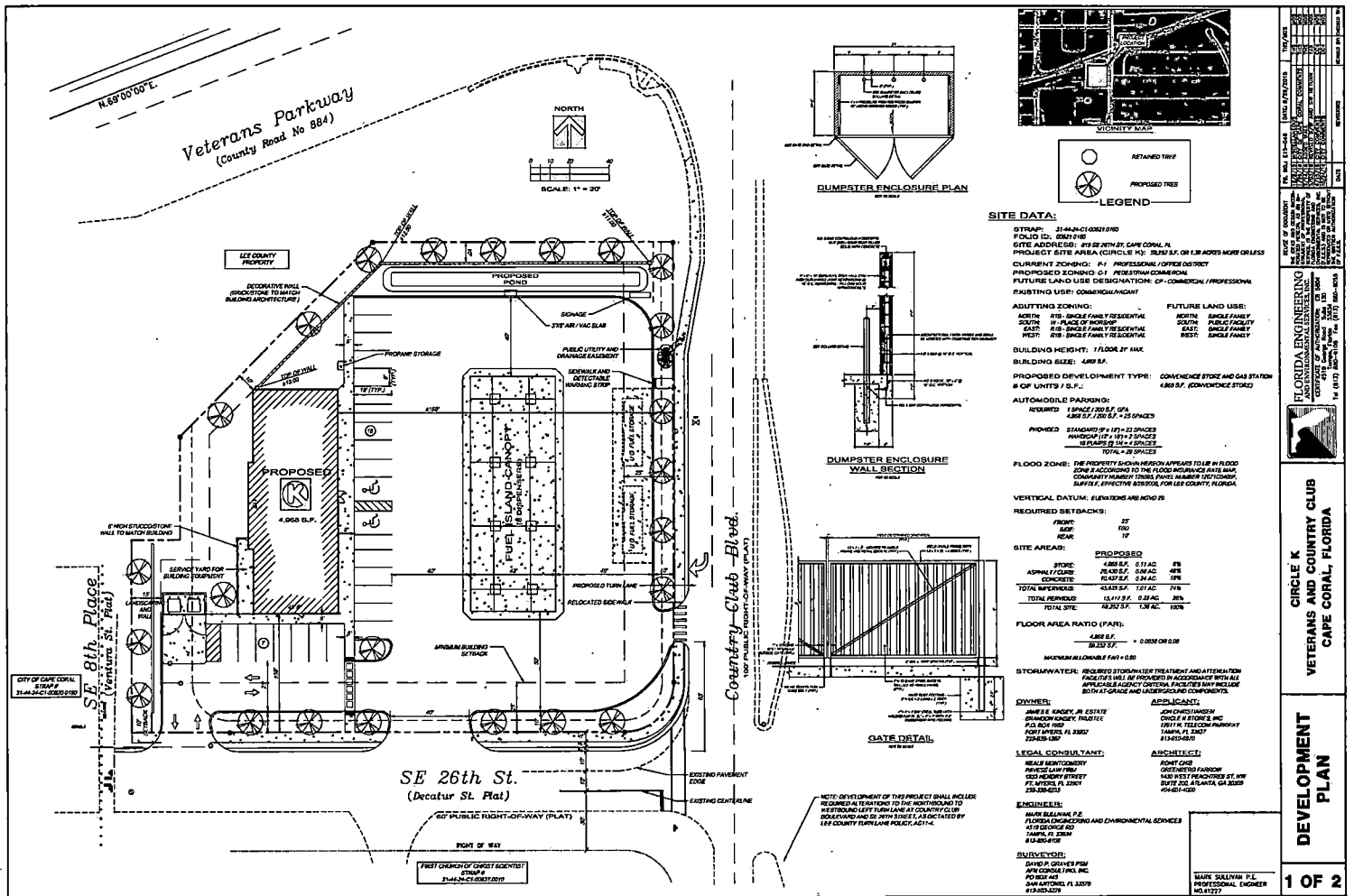
2. The logo is shown above the entrance door. The logo is shown in the center of the entrance door.

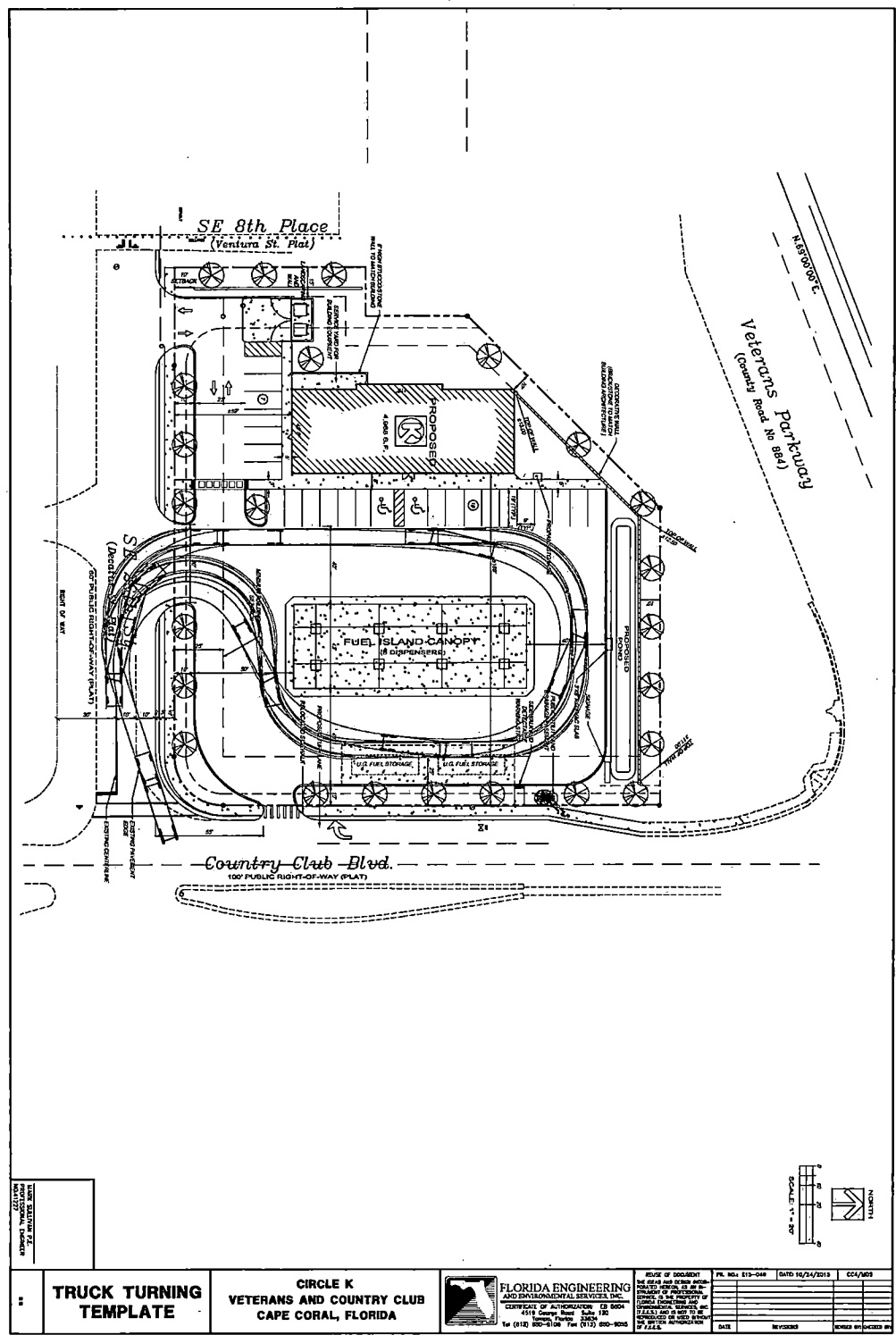
GreenbergFarrow
1433 W. Peachtree St. NW, Suite 200
Atlanta, GA 30309
P: 404 501 4000 F: 404 501 9900

CIRCLE K STORES INC.
1130 W. Warner Road, Building D
Tampa, Arizona 83264
P: (802) 728-4200 F: (802) 307-4200

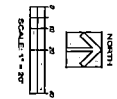
CIRCLE K
819 SE 26TH ST
CAPE CORAL, FLORIDA
33914

FUEL CANOPY ELEVATIONS
SCALE: AS NOTED
CA-6





THIS DRAWING IS THE PROPERTY OF THE ENGINEER AND SURVEYOR. IT IS NOT TO BE REPRODUCED OR COPIED IN ANY MANNER WITHOUT THE WRITTEN PERMISSION OF THE ENGINEER AND SURVEYOR.



TRUCK TURNING TEMPLATE	CIRCLE K VETERANS AND COUNTRY CLUB CAPE CORAL, FLORIDA	 FLORIDA ENGINEERING AND ENVIRONMENTAL SERVICES, INC. CERTIFICATE OF AUTHORIZATION: FE 5004 4519 Country Road, Suite 100 Cape Coral, Florida 33914 Tel (941) 592-5100 Fax (941) 592-8005	REVISIONS			
			PR. NO. ETS-046	DATE 10/24/2012	CDR/MSR	

REVISION
JAN 23 2017
RESUBMIT

Department of Community Development
Planning Division

AFFIDAVIT

IN RE: APPLICATION OF: Circle K Stores, Inc.

APPLICATION NO: PDP16-0001

STATE OF FLORIDA)
) §
COUNTY OF LEE)

I, Vincent A. Cautero, AICP having first been duly sworn according to law, state on my oath the following:

That I am the Director of the Department of Community Development and responsible in performing duties as required for the City of Cape Coral.

That pursuant to City of Cape Coral code. Section 8.3.2A and Section 8.11.3.A all required written notice and publication has been provided. Also posting of a sign has been done when applicable per Section 8.3.2A.

DATED this 23 day of January , 2017 .



Vincent A. Cautero, AICP

STATE OF FLORIDA
COUNTY OF LEE

The foregoing instrument was acknowledged before me this 23 day of January, 2017, by Vincent A. Cautero, AICP, who is personally known to me and who did not take an oath.

Exp. Date 11/30/17 Commission # FF060852



Signature of Notary Public

Michelle A Miller
Print Name of Notary Public

Classified Ad Receipt
(For Info Only - NOT A BILL)

Customer: CITY OF CAPE CORAL CLERKS OFF

Ad No.: 0001854024

Address: 1015 CULTURAL PARK BLVD
CAPE CORAL FL 33990
USA

Net Amt: \$507.53

Run Times: 1

No. of Affidavits: 1

Run Dates: 01/13/17

Text of Ad:

NOTICE OF PUBLIC HEARING

CASE NUMBER: PDP16-0001

ORDINANCE/TITLE: ORDINANCE 5 -17;
AN ORDINANCE APPROVING A PLAN-
NED DEVELOPMENT PROJECT IN THE
CITY OF CAPE CORAL, FLORIDA EN-
TITLED "CIRCLE K" FOR CERTAIN PROP-
ERTY DESCRIBED AS A PARCEL OF
LAND SITUATED IN LOTS 12 THROUGH
LOT 23, BLOCK 821, CAPE CORAL SUB-
DIVISION, UNIT 21, AND A PORTION OF
FORMER COUNTY ROAD NO. 884
(VETERANSPARKWAY) RIGHT OF WAY,
AND A PORTION OF VACATED SE 8th
PLACE RIGHT OF WAY, AS MORE PAR-
TICULARLY DESCRIBED HEREIN; PROP-
ERTY LOCATED AT 819 SE 26th STREET;
REZONING THE SUBJECT PROPERTY
FROM PROFESSIONAL OFFICE (P-I) TO
THE PEDESTRIAN COMMERCIAL (C-I)
ZONE; GRANTING A SPECIAL EXCEP-
TION TO ALLOW AN AUTOMOTIVE
SERVICE STATION, LIMITED USE IN A
PEDESTRIAN COMMERCIAL (C-I) ZONE;
GRANTING A DEVIATION FROM THE
CITY OF CAPE CORAL LAND USE AND
DEVELOPMENT REGULATIONS, SEC-
TION 3.9, FOR RELIEF FROM A SETBACK
REQUIREMENT; GRANTING A DEVI-
ATION FROM SHEET D-5 OF THE ENGI-
NEERING AND DESIGN STANDARDS,
THAT REQUIRES A 150-FOOT MINIMUM
SEPARATION DISTANCE BETWEEN A
DRIVEWAY ON A MINOR ARTERIAL
STREET AND THE PROPERTY LINE LO-
CATED ALONG A LOCAL ROAD TO AL-
LOW THE PROJECT TO DEVELOP WITH
A SEPARATION DISTANCE OF 45 FEET;
GRANTING DEVELOPMENT PLAN AP-
PROVAL PURSUANT TO SECTION 4.2 OF
THE CITY OF CAPE CORAL LAND USE
AND DEVELOPMENT REGULATIONS;
PROVIDING FOR FINDINGS OF FACT
AND CONCLUSIONS OF LAW; PROVID-
ING FOR ACTION ON REQUEST AND
CONDITIONS OF APPROVAL; PROVID-
ING FOR LEGAL EFFECT AND LIMITA-
TIONS OF THIS PDP DEVELOPMENT OR-
DER AND ADMINISTRATIVE REQUIRE-
MENTS; PROVIDING SEVERABILITY AND
AN EFFECTIVE DATE.

LOCATION: 819 SE 26th Street

CAPE CORAL STAFF CONTACT: Mike
Struve, AICP, LEED Green Associate,
Planning Team Coordinator, 239-242-
3255, mstruve@capecoral.net

PROPERTY OWNER(S): Estate of James
E. Kinsey, Jr.

AUTHORIZED REPRESENTATIVE: Neal
Montgomery, Esq., Pavese Law Firm

UPCOMING PUBLIC HEARING: Notice is
hereby given that the City Council will
hold a public hearing at 4:30 PM on
Monday, January 23rd, 2017 on the
above mentioned case. The public
hearing will be held in the City of Cape
Coral Council Chambers, 1015 Cultural
Park Boulevard, Cape Coral, FL.

All interested parties are invited to ap-
pear and be heard. All materials pre-
sented before the City Council will be-
come a permanent part of the record.
The public hearing may be continued
to a time and date certain by an-
nouncement at this public hearing
without any further published notice.
Copies of the staff report will be avail-
able 5 days prior to the hearing. The

file can be reviewed at the Cape Coral Community Development Department, Planning Division, 1015 Cultural Park Blvd., Cape Coral, FL.

DETAILED INFORMATION: The case report and colored maps for this application are available at the City of Cape Coral website, www.capecoral.net/publichearing (Click on 'Public Hearing Information', use the case number referenced above to access the information); or, at the Planning Division counter at City Hall, between the hours of 7:30 AM and 4:30 PM

HOW TO CONTACT: Any person may appear at the public hearing and be heard, subject to proper rules of conduct. You are allowed sufficient time to write or appear at the public hearing to voice your objections or approval. Written comments filed with the Director will be entered into the record. Please reference the case number above within your correspondence and mail to: Department of Community Development, Planning Division, P.O. Box 150027, Cape Coral, FL 33915-0027. The hearings may be continued from time to time as necessary.

ADA PROVISIONS: In accordance with the Americans With Disabilities Act, persons needing a special accommodation to participate in this proceeding should contact the Human Resources Department whose office is located at Cape Coral City Hall, 1015 Cultural Park Boulevard, Cape Coral, Florida; telephone 1-239-574-0530 for assistance; if hearing impaired, telephone the Florida Relay Service Numbers, 1-800-955-8771 (TDD) or 1-800-955-8770 (v) for assistance.

by order of Rebecca van Deutekom, MMC City Clerk REF # PDP16-0001 AD#1854024	1/13/2017
--	-----------

1.3 Acre
BANK, RETAIL
KINSEY

CARRA 1544-0001 CDD 9-B
REQUESTING TO CONSTRUCT A GAS
STATION WITH RETAIL AND CONVENIENCE
STORES ON THE N.E. CORNER OF
KINSEY AND 15TH AVE. SEE MAP
WILL BE HEARD BY PLANNING & ZONING
COMMISSION AT CITY HALL ON
AT 4:30 P.M.
WILL BE HEARD BY CORAL CITY
COUNCIL AT CITY HALL ON JAN. 23rd
AT 4:30 P.M.

CASE # PDP16-0001 ORD 5-17
REQUESTING TO CONSTRUCT A GAS
STATION (AUTOMOTIVE SERVICE STATION
PERMITTED USE) W/ 8 FUEL DISPENSERS
AND A DETACHED FUEL ISLAND CANOPY
WILL BE HEARD BY PLANNING & ZONING
COMMISSION AT CITY HALL ON N/A
AT N/A
WILL BE HEARD BY CAPE CORAL CITY
COUNCIL AT CITY HALL ON JAN 23rd
AT 4:30 PM

CASE # DDPK-0001 ORD 5-17
REQUESTING TO CONSTRUCT A GAS
STATION (AUTOMOTIVE SERVICE STATION
PERMITTED USE) w/ 8 FUEL DISPENSERS
AND A DETACHED FUEL ISLAND CANOPY
WILL BE HEARD BY PLANNING & ZONING
COMMISSION AT CITY HALL ON N/A
AT N/A
WILL BE HEARD BY CAPE CORAL CITY
COUNCIL AT CITY HALL ON JAN 23rd
AT 4:30 PM

Item Number:	A.(3)
Meeting Date:	1/23/2017
Item Type:	ORDINANCES/RESOLUTIONS - Public Hearings

**AGENDA
REQUEST FORM**
CITY OF CAPE
CORAL



TITLE:

Ordinance 6-17 Public Hearing

REQUESTED ACTION:

Approve or Deny

STRATEGIC PLAN INFO:

1. Will this action result in a Budget Amendment? No
2. Is this a Strategic Decision? No
 - If Yes, Priority Goals Supported are listed below.
 - If No, will it harm the intent or success of the Strategic Plan? No

PLANNING & ZONING/HEARING EXAMINER/STAFF RECOMMENDATIONS:

SUMMARY EXPLANATION AND BACKGROUND:

An ordinance approving a Lease Agreement between the City of Cape Coral and SalusCare, Inc., for the lease of property owned by the City of Cape Coral located at 1105 Cultural Park Boulevard for the continuing operation of a substance abuse treatment facility and counseling center.

LEGAL REVIEW:

Brian R. Bartos, Assistant City Attorney

EXHIBITS:

Memo
Ordinance 6-17
Quarterly Summary handout at the meeting

PREPARED BY:

Division- Department- City
Attorney

SOURCE OF ADDITIONAL INFORMATION:



ATTACHMENTS:

Description	Type
▢ Memo	Backup Material
▢ Ordinance 6-17	Ordinance
▢ Quarterly Summary handout at meeting	Backup Material

MEMORANDUM

CITY OF CAPE CORAL
CITY MANAGER'S OFFICE

TO: Mayor Sawicki and Council Members

FROM: John Szerlag, City Manager 
Kelley Fernandez, Business Manager 

DATE: December 27, 2016

SUBJECT: SalusCare Lease Agreement

SalusCare contacted the City Manager's Office to request an extension of the current lease of City property located at 1105 Cultural Park Boulevard which is set to expire in February 2018. The extension request is due to the need to expand the number of offices and make a significant financial investment in renovations within the current building in an effort to meet the demand and serve more patients from this location.

City staff met with the Stacy Cook-Hawk, President/CEO of SalusCare, and SalusCare Board Member Larry Hart to discuss the current services provided by SalusCare and the continued operation of the substance abuse treatment facility and counseling center. Staff has reviewed the future use for this property and determined the property is not currently identified as required for any upcoming projects or City facility expansions.

The significant change to the current lease is the term extension for an additional ten (10) years through 2027 with automatic one (1) year renewal terms thereafter. A term sheet has been attached for your convenience and contains the key elements of the lease agreement. Also, attached is a letter from Mr. Hart outlining the services provided by SalusCare. Representatives of SalusCare will be in attendance to answer questions at the Public Hearing.

Staff recommends approval of the requested lease extension.

Should you have any questions, please feel free to contact my office.

JS/KF

Attachments: Term Sheet and Letter from Larry Hart

C: Dolores Menendez, City Attorney
Brian Bartos, Assistant City Attorney
Dawn Andrews, Property Broker

CITY MANAGER

2016 NOV 18 PM 12:21



November 14, 2016

Mr. John Szerlag, City Manager
City of Cape Coral
1015 Cultural Park Boulevard
Cape Coral, FL 33990

Dear City Manager Szerlag:

It has been my pleasure to serve on the Board of Directors for SalusCare for more than 25 years. As you know, SalusCare is the largest not for profit behavioral health provider in Lee County. SalusCare provides mental health and substance abuse treatment and counseling for more than 16,000 adults and children each year. From February 2016 until July 2016, more than 76,000 units of service were provided to residents of Cape Coral. SalusCare saw a 30% increase in patients served at the Cape Coral office from July 2014 to July 2015 and a 20.3% increase from 2015 to 2016.

We are thankful for your support of SalusCare through the renewal of our long-term land lease. Renewal of this lease will allow us to begin renovations to accommodate eight (8) additional offices, which will allow us to effectively double the number of patients served in the Cape Coral community. Our intention is to add additional Psychiatry, Therapy, and Case Management services/appointments for our patients and expand pharmacy services provided by Genoa Pharmacy. Our intention is not to expand the space beyond the current bones of the building but to create efficiencies within the existing space.

SalusCare is grateful for the partnership with the City of Cape Coral, and pleased to bring these much needed services to the city. It is our hope that we can continue to work together to ensure that the services stay in the city. We invite all Council members for a tour of the facility and look forward to resolving this matter with favorable conditions to all parties.

Sincerely,

A handwritten signature in black ink, appearing to read "Larry D. Hart".

Larry D. Hart, Lee County Tax Collector
Tax Collector

cc: Mayor Marni Sawicki, City of Cape Coral
Stacy Cook-Hawk, Director - SalusCare

SALUSCARE LEASE TERM SHEET

Initial Term	10 years
Commencement Date	January 23, 2017
Termination Date	January 22, 2027
Earliest Termination Date	any time after January 23, 2020 with 10 months prior notice if City decides to redevelop leased premises
Renewals	Automatic 1-year terms
Non-renewals	60-days prior to commencement of any renewal term
Rent	\$10.00 per year, payable annually, in advance
Taxes & Utilities	by SalusCare
Building Improvements	by SalusCare

ORDINANCE 6 - 17

AN ORDINANCE AUTHORIZING AND DIRECTING THE MAYOR AND THE CITY CLERK TO ENTER INTO A LEASE AGREEMENT WITH SALUSCARE, INC., FOR THE LEASE OF PROPERTY OWNED BY THE CITY OF CAPE CORAL LOCATED AT 1105 CULTURAL PARK BOULEVARD FOR THE OPERATION OF A SUBSTANCE ABUSE TREATMENT FACILITY AND COUNSELING CENTER; A COPY OF THE LEASE AGREEMENT IS ATTACHED HERETO AND INCORPORATED HEREIN BY REFERENCE; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, the City of Cape Coral owns the property located at 1105 Cultural Park Boulevard upon which the SalusCare building is located; and

WHEREAS, the City Council desires to enter into a lease agreement with SalusCare, Inc., for the operation of a substance abuse treatment facility and counseling center under the terms and conditions as set forth in the attached agreement.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CAPE CORAL, FLORIDA, AS FOLLOWS:

SECTION 1. That the Mayor and City Clerk are hereby authorized and directed to enter into a lease agreement between the City of Cape Coral and SalusCare, Inc., for the lease of property located at 1105 Cultural Park Boulevard for the operation of a substance abuse treatment facility and counseling center. A copy of the lease agreement is attached hereto as Exhibit 1 and incorporated herein by reference.

SECTION 2. Severability. In the event that any portion or Section of this ordinance is determined to be invalid, illegal or unconstitutional by a court of competent jurisdiction, such decision shall in no manner affect the remaining portions or Sections of this ordinance which shall remain in full force and effect.

SECTION 3. Effective Date. This ordinance shall become effective immediately after its adoption by the Cape Coral City Council.

ADOPTED BY THE CITY COUNCIL OF THE CITY OF CAPE CORAL AT ITS REGULAR COUNCIL SESSION THIS _____ DAY OF _____, 2017.

MARNI L. SAWICKI, MAYOR

VOTE OF MAYOR AND COUNCILMEMBERS:

SAWICKI	_____	LEON	_____
BURCH	_____	ERBRICK	_____
CARIOSCIA	_____	WILLIAMS	_____
STOUT	_____	CODDEN	_____

ATTESTED TO AND FILED IN MY OFFICE THIS _____ DAY OF _____, 2017.

REBECCA VAN DEUTEKOM,
CITY CLERK

APPROVED AS TO FORM:



DOLORES D. MENENDEZ
CITY ATTORNEY
Ord/Lease Agreement-SalusCare

LEASE AGREEMENT

This Lease Agreement ("Lease") is made and entered into this ____ day of _____, 2017, by and between the CITY OF CAPE CORAL, a Florida municipal corporation ("CITY"), and SalusCare, Inc. ("SalusCare"), a Florida not for profit corporation ("TENANT").

CITY hereby leases to TENANT, and TENANT hereby leases from CITY, certain real property, as more particularly described in Exhibit "A" which is attached hereto and incorporated herein by reference ("Premises"), subject to the terms, covenants, agreements and conditions set forth in this Lease.

1. **TERM.** The initial term of this Lease shall be for ten (10) years and shall commence on _____, 2017 and, unless sooner terminated or extended as provided in this Lease, shall terminate on _____, 2027. Thereafter, this Lease shall automatically be extended for successive one (1) year renewal terms unless either party notifies the other of its intention not to renew at least sixty (60) days prior to the commencement of any renewal term. Notwithstanding the foregoing, CITY may terminate this Lease Agreement at any time after the expiration of the first three (3) years of the term, upon ten (10) months prior written notice to TENANT if CITY decides, for any reason, to redevelop the Leased Premises in a manner inconsistent with continued use of the Leased Premises by TENANT.

2. **RENT.** TENANT shall pay to CITY as rent for the Premises the sum of Ten and no/100 Dollars (\$10.00) per year, payable annually, in advance.

3. **TAXES.** TENANT agrees to pay all ad valorem and personal property taxes, if any, levied or assessed upon or against the Premises during the Lease Term, or any taxes arising from the Premises as a result of the improvement or other activity of Tenant on the Premises.

4. **UTILITY CHARGES.** TENANT shall pay or cause to be paid in a timely manner upon receipt of a bill or invoice, all charges for water, gas, electricity, sewer, and any and all other utilities used upon the Premises throughout the Lease Term, including any connection fees.

5. **USE OF PREMISES.** TENANT shall have the right to use the Premises solely and exclusively for the operation of a substance abuse treatment facility and counseling center and related activities. TENANT may sublet the premises to a similar organization with the written consent of CITY. For purposes of this section, "similar organization" shall mean a governmental or not-for-profit agency which provides social services to residents of the City of Cape Coral and other Southwest Florida communities. The facilities operated on the subject property may include, but are not limited to, the following: mental health services, community-based social services, substance abuse treatment services, youth services, and aging and adult services.

6. HOURS OF OPERATION. The operating hours for the facility, grounds, and parking lot shall be from 6:00 A.M. to 11:30 P.M. In extraordinary cases, the TENANT's director may authorize limited use outside normal operating hours if the director determines that such use is necessary and is in a client's best interest.

7. BUILDINGS AND IMPROVEMENTS. All buildings, fixtures and improvements of every kind and nature whatsoever that were installed by TENANT shall remain the property of TENANT who may remove the same upon termination of this lease, provided that such removal is accomplished in a manner which does not damage the Leased Premises. Should TENANT fail to remove said buildings, fixtures or improvements as provided herein, TENANT agrees to assign, transfer and set over to CITY all of TENANT's right, title and interest in and to said buildings, fixtures, improvements and any personal property not removed by TENANT, for the sum of Ten Dollars (\$10.00). TENANT further agrees that, should CITY remove said buildings, fixtures, and improvements, TENANT will pay to CITY, upon demand, the actual cost of such removal, plus the cost of transportation and disposition thereof.

8. COMPLIANCE WITH LAWS, ORDINANCES, POLICIES, RULES AND REGULATIONS. TENANT, its clients, licensees and invitees, while on the Premises, shall abide by and comply with all ordinance of the City of Cape Coral, laws of the State of Florida, laws of the United States, and ordinances, policies rules or regulations of the City of Cape Coral, as the same may be amended from time to time.

9. SIGNAGE. TENANT shall neither erect nor maintain upon the Premises any signs of any nature whatsoever, without prior written approval of CITY which approval shall not be unreasonably withheld, conditioned or delayed.

10. REPAIRS AND MAINTENANCE. TENANT represents that TENANT has inspected and examined the Leased Premises and accepts it in its present condition, and agrees that CITY shall not be required to make any improvements or repairs whatsoever in or upon the property hereby leased; and agrees to keep said premises clean and safe at all times during the term of this Lease.

11. ASSIGNMENT AND MORTGAGE. Except as provided in paragraph five (5) herein with respect to sublease of the Premises, neither the Leased Premises or any portion thereof shall be assigned, hypothecated or mortgaged by TENANT, and any attempted assignment, hypothecation or mortgaging of this Lease shall be of no force and effect, and shall confer no rights upon any assignee, mortgagee or pledgee.

12. INSURANCE AND INDEMNITY. TENANT shall maintain, throughout the term of this Lease, a policy of general liability insurance with combined single limits of coverage in an amount not less than One Million Dollars (\$1,000,000) per occurrence from an insurance company licensed to do business in the State of Florida and approved by CITY. The general liability insurance shall insure and protect TENANT and CITY as named insureds, from any and all liability and damages arising from TENANT's occupancy or use of the Leased Premises. A copy of the general liability insurance policy

shall be provided to CITY and a certificate of insurance shall be supplied to CITY's Risk Manager on an annual basis. In addition, TENANT shall indemnify and hold CITY harmless from any and all claims, causes of action, demands, suits, or other actions which any person may pursue against CITY by reason of any action, condition or occurrence arising out of the use or occupancy of the premises by TENANT, which any said person may make or prosecute against the CITY by reason of any act or omission by TENANT, including costs and a reasonable attorney's fee. This agreement to indemnify shall not be subject to technical defenses.

13. MECHANICS' LIENS. TENANT agrees that, not later than thirty (30) days prior to any construction work, labor or materials are used or expended by TENANT or on TENANT's behalf by any person, firm or corporation or by any contractor, TENANT will post and record, or cause to be posted or recorded, as provided by law, a notice of nonresponsibility on behalf of CITY, giving notice that CITY is not responsible for the cost of any work, labor or materials used or expended or to be used or expended on the Leased Premises.

14. DEFAULT, ATTORNEY FEES, AND COSTS. In the event that TENANT shall be in default of any payment of any rent or in the performance of any of the terms or conditions herein agreed to be kept and performed by TENANT, then, in that event, CITY may terminate and end this Lease forthwith, and may bring legal action to enforce any of the terms hereof, or to obtain possession of the Leased Premises by reason of any default of TENANT. The prevailing Party in any legal action against the other Party concerning this Lease shall be entitled to its reasonable attorney fees and costs connected to such action.

15. EMINENT DOMAIN. If the whole or any substantial part of the Leased Premises shall be taken under the power of eminent domain, then this Lease shall terminate as to the part so taken from the date when possession of that part is taken for any public purpose, and from that day, TENANT shall have the right to either cancel this Lease or to continue in possession of the remainder of the Leased Premises under the terms herein provided. All damages that may be awarded for such taking shall belong to and be the property of CITY, with the exception of business damages and damages related to any improvements belonging to TENANT.

16. NOTICES. Any notices which are required hereunder, or which either CITY or TENANT may desire to serve upon the other, shall be in writing and shall be deemed served when delivered personally, or when deposited in the United States Mail, postage prepaid, return receipt requested, addressed to TENANT at:

Ms. Stacey Cook-Hawk
SalusCare, Inc.
3763 Evans Avenue
Fort Myers, Florida 33901

or addressed to CITY at:

City of Cape Coral
Real Estate Division
PO Box 150027
Cape Coral, FL 33915-0027

17. Waiver by CITY of any default in performance by TENANT of any of the terms, conditions, or covenants contained herein, shall not be deemed a continuing waiver of the same or of any subsequent default by TENANT.

18. SEVERABILITY. The invalidity or unenforceability of any provision of this Lease shall not affect other provision of this Lease Agreement and the Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted.

19. SUCCESSORS IN INTEREST. Each and every covenant, condition, and restriction contained in this Lease Agreement shall inure to the benefit of and shall be binding upon the successors in interest of TENANT and CITY.

20. RELATIONSHIP OF PARTIES. Nothing contained in this Lease Agreement shall be deemed or construed by the parties or by any third person to create the relationship of principal and agent, or of partnership, joint venture, or of any association between CITY and TENANT, and neither the method of computation of rent nor any other provisions contained in this Lease Agreement nor any acts of the parties shall be deemed to created any relationship between CITY and TENANT, other than the relationship of Lessor and Lessee.

21. MODIFICATION. The terms of this Lease Agreement may only be modified in writing and signed by both parties.

(REMAINDER OF PAGE INTENTIONALLY LEFT BLANK)

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be executed on the date set forth below.

Signed, sealed and delivered
in the presence of:

CITY OF CAPE CORAL, a Florida
municipal corporation

Print: _____

BY: _____
Marni Sawicki, Mayor

Date: _____

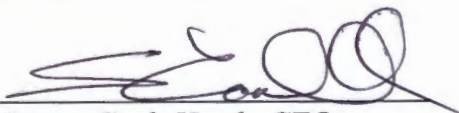
Print: _____

APPROVED AS TO FORM

Dolores Menendez, City Attorney

SALUSCARE, INC., a Florida not for profit
corporation

Michelle Sutherland
Print: Michelle Sutherland

BY: 
Stacey Cook-Hawk, CEO

Date: 14 November 2016

April Dorber
Print: April Dorber

EXHIBIT "A"

Commence at the northwest point of intersection of Block 833B, Cape Coral Unit 24, according to Plat Book 14, Pages 56 through 77 of the Public Records of Lee County, Florida; thence along the south right-of-way line of S.E. 11th Street, S89°29'40"E, 25.17 feet to the Point of Beginning; thence continue along said south right-of-way line, S89°29'40"E, 369.53 feet; thence S00°30'20"W, 190.00 feet; thence N89°29'40"W, 393.38 feet, to the east right-of-way line of S.E. 6th Court; thence along said east right-of-way line, N00°06'22"E, 164.83 feet to the beginning of a curve concave to the southeast, having a radius of 25.00 feet, a central angle of 90°23'58", a chord distance of 35.48 feet and a chord bearing of N45°18'21"E; thence along the arc of said curve, 39.44 feet to the Point of Beginning.



QUARTERLY SUMMARY

Cape Coral Campus

Month	Number of individuals served	New patients/ Assessment	Outpatient Psychiatry Medication Management <i>Includes Mental Health & Substance Abuse</i>	Therapy Talking & Processing Include Mental Health & Substance Abuse Patients	Case Management
October 2016	1440	123	614	835	189
November 2016	1384	110	591	799	121
December 2016	1202	60	513	685	117
Total	4026	293	1718	2319	427

Item Number:	B.(1)
Meeting Date:	1/23/2017
Item Type:	ORDINANCES/RESOLUTIONS - Introductions

**AGENDA
REQUEST FORM**
CITY OF CAPE
CORAL



TITLE:

Ordinance 2-17 Set Public Hearing date for February 6, 2017

REQUESTED ACTION:

STRATEGIC PLAN INFO:

1. Will this action result in a Budget Amendment?
2. Is this a Strategic Decision?
If Yes, Priority Goals Supported are listed below.
If No, will it harm the intent or success of the Strategic Plan?

PLANNING & ZONING/HEARING EXAMINER/STAFF RECOMMENDATIONS:

P&Z recommendation:

At the January 4, 2017 meeting, the Planning and Zoning Commission/Local Planning Agency voted (7-0) to recommend approval of Ordinance 2-17. There was one speaker during public hearing.

Staff Recommendation:

Planning Division Staff recommends approval of the requested amendment.

SUMMARY EXPLANATION AND BACKGROUND:

WHAT THE ORDINANCE ACCOMPLISHES:

An ordinance amending Article VIII, Administration, of the City of Cape Coral Land Use and Development Regulations, creating Section 8.14, Reasonable Accommodation Procedures, to implement a procedure for reasonable accommodation with respect to Zoning and Land Use Regulations, Ordinances, rules and policies for persons with disabilities; providing severability and an effective date.

LEGAL REVIEW:

EXHIBITS:

Ordinance 2-17
Staff Presentation

PREPARED BY:

Division- Department- City
Attorney

SOURCE OF ADDITIONAL INFORMATION:

Vince Cautionero, DCD Director

ATTACHMENTS:

Description	Type
▣ Ordinance 2-17	Ordinance
▣ Staff Presentation	Backup Material

ORDINANCE 2 - 17

AN ORDINANCE AMENDING ARTICLE VIII, ADMINISTRATION, OF THE CITY OF CAPE CORAL LAND USE AND DEVELOPMENT REGULATIONS, CREATING SECTION 8.14, REASONABLE ACCOMMODATION PROCEDURES, TO IMPLEMENT A PROCEDURE FOR REASONABLE ACCOMMODATION WITH RESPECT TO ZONING AND LAND USE REGULATIONS, ORDINANCES, RULES, AND POLICIES FOR PERSONS WITH DISABILITIES; PROVIDING SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, the Federal Fair Housing Act (42 U.S.C. 3601 et seq.) ("FHA") has as one of its principal aims, the prevention of discrimination against persons with handicaps, in the use or enjoyment of a dwelling; and

WHEREAS, Title II of the Americans with Disabilities Act (42 U.S.C. 12131 et seq.) ("ADA") prohibits state and local governments from discriminating against individuals with disabilities; and

WHEREAS, the Department of Community Development recommends a text amendment to the Cape Coral Land Use and Development Regulations to allow reasonable accommodation to the City's zoning and land use regulations, rules, ordinances, policies, and procedures for persons with disabilities, in compliance with federal law; and

WHEREAS, the Cape Coral City Council hereby finds that this ordinance is in the best interest of the public health, safety, and welfare.

NOW, THEREFORE, THE CITY OF CAPE CORAL, FLORIDA, HEREBY ORDAINS THIS ORDINANCE AS FOLLOWS:

SECTION 1. The City of Cape Coral Land Use and Development Regulations, Article VIII, Administration, is hereby amended to create a new Section 8.14, Reasonable Accommodation Procedures, as follows:

§ 8.14 Reasonable Accommodation Procedures.

.1 Purpose and general provisions. This section implements the policy of the city regarding requests for reasonable accommodation to its zoning and land use regulations, rules, ordinances, policies, and procedures for persons with disabilities to use and enjoy housing, as provided by the Federal Fair Housing Act (42 U.S.C. 3601 et seq.) ("FHA") and Title II of the Americans with Disabilities Act (42 U.S.C. 12131 et seq.) ("ADA").

A. For purposes of this section, a "disabled" individual or person is an individual who qualifies as disabled and/or handicapped under the FHA and/or ADA. Any person who is disabled (or qualifying entities) may request reasonable accommodation with respect the city's zoning and land use regulations, rules, ordinances, policies, and procedures as provided by the FHA and the ADA pursuant to the procedures set out in this section. For purposes of this section, a "qualifying entity" shall mean, a licensed service provider of the state of Florida as defined by Section 397.311, Florida Statutes, as amended from time to time. All qualifying entities shall submit as part of an application for a reasonable accommodation, proof of the licensable service component the qualifying entity holds pursuant to Chapter 397, Florida Statutes, as amended from time to time.

B. The following general provisions shall be applicable:

1. The city shall display a notice on the city's webpage (and shall maintain copies available for review in the City Clerk's Office) advising the public that disabled individuals (and qualifying entities) may request reasonable accommodation as provided herein.
2. A disabled person may apply for a reasonable accommodation on his/her own behalf or may be represented at all stages of the reasonable accommodation process by a person designated in writing by the disabled person.
3. The city shall provide assistance and accommodation as is required pursuant to the FHA and ADA in connection with a disabled person's request for reasonable accommodation, including without limitation, assistance with reading application questions, responding to questions, completing the

necessary forms, filing an appeal, and appearing at a hearing to ensure the process is accessible.

.2 Reasonable accommodation request form. A request by an applicant for reasonable accommodation under this section shall be made in writing by completion of a reasonable accommodation request form and submitted to the Department of Community Development. The reasonable accommodation request form is maintained by the Department of Community Development and shall contain such questions and requests for information as are necessary for processing the reasonable accommodation request. The reasonable accommodation request form shall, at a minimum, require the following information:

- A. Name and contact information for applicant;
- B. Address of housing or other location at which accommodation is requested;
- C. Name and mailing address of subject property owner;
- D. Description of reasonable accommodation requested;
- E. Description of the specific regulation(s) and/or procedure(s) from which accommodation is sought;
- F. Reasons the reasonable accommodation may be necessary for the individual(s) with disabilities to use and enjoy the housing or other service;
- G. Name and contact information for applicant's authorized representative, if applicable; and
- H. Signature of applicant, or authorized representative.

.3 Medical information; confidentiality. Should the information provided by the disabled person to the city include medical information or records, including records indicating the medical condition, diagnosis or medical history of the disabled person, such individual may, at the time of submitting such medical information, request that the city, to the extent allowed by law, treat such medical information as confidential information of the disabled person. The city shall thereafter endeavor to provide written notice to the disabled person, and/or their representative, of any request received by the city for disclosure of the medical information or documentation which the disabled person has previously requested be treated as confidential by the city. The city will cooperate with the disabled person, to the extent allowed by law, in actions initiated by such individual to oppose the disclosure of such medical information or documentation, but the city shall have no obligation to initiate, prosecute, or pursue any such action, or to incur any legal or other expense (whether by retention of outside counsel or allocation of internal resources) in connection therewith, and may comply with any judicial order without prior notice to the disabled person.

.4 Determination process. The city manager, or designee, shall have the authority to consider and act on requests for reasonable accommodation. When a reasonable accommodation request form has been completed and submitted to the Department of Community Development, it shall be referred to the city manager, or designee, for review and consideration.

- A. The city manager, or designee, shall issue a written determination within forty-five (45) days of the date of receipt of a completed application, except as provided in paragraph C. below, and may, in accordance with federal law, (1) grant the accommodation request, (2) grant a portion of the request and deny a portion of the request and/or impose conditions upon the grant of the request, or (3) deny the request, in accordance with federal law. If the request is denied, the determination shall state the grounds therefore. All written determinations shall give notice of the right to appeal.
- B. The notice of determination shall be sent to the requesting party (i.e., the disabled individual or authorized representative) by certified mail, return receipt requested.
- C. If reasonably necessary to reach a determination on the request for reasonable accommodation, the city manager, or designee, may, prior to the end of said forty-five (45) day period, request additional information from the requesting party, specifying in detail what information is required. Such additional information may include, but not be limited to, additional medical information from the requesting party. The requesting party shall have fifteen (15) days after the date of the request for additional information to provide the requested information. In the event a request for additional information is made, the forty-five (45) day period to issue a written determination shall no longer be applicable, and the city manager, or designee, shall issue a written determination within thirty (30) days after receipt of the additional information. If the requesting party fails to provide the requested additional information within said fifteen (15) day period, the city manager, or designee, shall issue a written notice advising that the requesting party had failed to

timely submit the additional information and therefore the request for reasonable accommodation shall be deemed abandoned and/or withdrawn and no further action by the city with regard to said reasonable accommodation request shall be required.

.5 Criteria for determination. In determining whether the reasonable accommodation request shall be granted or denied, the requesting party shall be required to establish that they are protected under the FHA and/or ADA by demonstrating that they are handicapped or disabled, as defined in the FHA and/or ADA. For purposes of this section, the disabled individual must demonstrate to the city:

- A. (i) A physical or mental impairment which substantially limits one (1) or more major life activities; (ii) a record of having such impairment; or (iii) that they are regarded as having such impairment; and
- B. That the proposed accommodation being sought is reasonable and necessary to afford handicapped/disabled persons equal opportunity to use and enjoy housing.

.6 Required findings. A request for reasonable accommodation pursuant to this section shall be approved, with or without conditions, if the city manager, or designee, finds, based upon all of the evidence presented, that all of the following findings are made:

- A. The property or dwelling that is the subject of the request for reasonable accommodation will be occupied by a disabled person;
- B. The requested accommodation is necessary to provide a disabled person with an equal opportunity to use and enjoy a dwelling;
- C. The requested accommodation will not impose an undue financial or administrative burden on the city; and
- D. The requested modification will not require a fundamental alteration in the nature of a city program or law.

.7 Conditions of approval. In granting a request for reasonable accommodation, the city manager, or designee, may impose conditions of approval deemed reasonable and necessary to ensure that the reasonable accommodation would comply with the findings of this section, including, but not limited to the following:

- A. Inspection of the property periodically, as specified, to verify compliance with this section and any conditions of approval.
- B. Recordation of a deed restriction requiring removal of the improvements when the need for which the accommodation was granted no longer exists, except where the city manager, or designee, finds that removal would constitute an unreasonable financial burden and/or is physically integrated with the structure and cannot feasibly be removed. If applicable, the restrictive covenant shall provide that the reasonable accommodation does not run with the land and shall terminate upon any sale, transfer, lease, or other conveyance of the property.
- C. Time limits and/or expiration of the approval, if the need for which the accommodation was granted no longer exists.
- D. Measures to reduce the impact on surrounding uses.
- E. Measures in consideration of the physical attributes of the property and structures.
- F. Other conditions necessary to protect the public health, safety, and welfare.

.8 Appeal of determination. Within thirty (30) days from the date of the city manager's, or designee's, determination on a reasonable accommodation request or a revocation or modification of a reasonable accommodation, the applicant may appeal the decision. All appeals shall contain a written statement containing sufficient detail of the grounds for the appeal. Appeals pursuant to this section shall be to the City Council who shall, after public notice and a public hearing, render a written determination as soon as reasonably practicable, but in no event later than sixty (60) days after an appeal has been filed. Notice of any public hearing hereunder shall be provided to the applicant at least ten (10) days in advance of the public hearing.

.9 Fees. There shall be no fee imposed by the city in connection with a request for reasonable accommodation under this section or an appeal of a determination on such request to the City Council, and the city shall have no obligation to pay a requesting party's (or an appealing party's, as applicable) attorneys' fees or costs in connection with the request, or an appeal.

.10 Stay of enforcement. While an application for reasonable accommodation, or appeal or a determination of same, is pending before the city, the city will not enforce the subject zoning ordinance, rules, policies, and procedures against the applicant. However, should the applicant proceed with any property purchase, building, construction, or other work associated with establishing a project or residence housing individuals covered by the FHA or the ADA while an application or appeal for reasonable accommodation is pending, the applicant understands that any of these actions are done at the applicant's own risk because the application or appeal may be denied.

.11 Revocation of reasonable accommodation. Any reasonable accommodation received shall be subject to revocation or modification if the holder of the reasonable accommodation or the property upon which the accommodation is granted is found in violation of any provision of the written determination granting the reasonable accommodation by a court of law or by the special magistrate hearing code enforcement cases, and the holder of the reasonable accommodation has failed to correct such violation. The city shall send a notice of hearing on a proposed revocation or modification of a reasonable accommodation by certified mail, return receipt requested, to the holder of the reasonable accommodation at least thirty (30) days prior to the date of the hearing. The city manager, or designee, shall have the authority to consider and act on a revocation or modification of a reasonable accommodation, after notice and hearing during which the reasonable accommodation holder shall have the opportunity to present evidence and be heard.

SECTION 2. Severability. In the event that any portion or Section of this ordinance is determined to be invalid, illegal or unconstitutional by a court of competent jurisdiction, such decision shall in no manner affect the remaining portions or Sections of this ordinance which shall remain in full force and effect.

SECTION 3. Effective Date. This ordinance shall become effective immediately after its adoption by the Cape Coral City Council.

ADOPTED BY THE COUNCIL OF THE CITY OF CAPE CORAL AT ITS REGULAR SESSION THIS _____ DAY OF _____, 2017.

MARNI L. SAWICKI, MAYOR

VOTE OF MAYOR AND COUNCILMEMBERS:

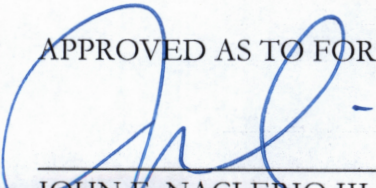
SAWICKI _____
BURCH _____
CARIOSCIA _____
STOUT _____

LEON _____
ERBRICK _____
WILLIAMS _____
COSDEN _____

ATTESTED TO AND FILED IN MY OFFICE THIS _____ DAY OF _____, 2017.

REBECCA VAN DEUTEKOM
CITY CLERK

APPROVED AS TO FORM:



JOHN E. NACLERIO III
ASSISTANT CITY ATTORNEY
ORD/Reasonable Accommodation
DRAFT: 12/9/16

Ordinance 2-17

Purpose and Background

- **Implements reasonable accommodation procedures in the Land Use and Development Regulations**
- **Federal Fair Housing law prevents discrimination against persons with handicaps in the use of a dwelling**
 - **Applicable to zoning and land use, ordinances, rules, and policies**
- **ADA prohibits state and local governments from discriminating against individuals with disabilities**

Ordinance 2-17

Summary and Recommendation

- **Defines a “disabled” individual/person and “Qualifying Entity”**
- **Provisions for the following:**
 - **Application**
 - **Medical Information and Confidentiality**
 - **Determination Process**
 - **Conditions**
 - **Appeals**
 - **Enforcement/Revocation**
- **Effective upon adoption**
- **Staff recommends APPROVAL**

Item Number:	B.(2)
Meeting Date:	1/23/2017
Item Type:	ORDINANCES/RESOLUTIONS - Introductions

**AGENDA
REQUEST FORM**
CITY OF CAPE
CORAL



TITLE:

Ordinance 3-17 Set Public Hearing date for February 6, 2017

REQUESTED ACTION:

STRATEGIC PLAN INFO:

1. Will this action result in a Budget Amendment?
2. Is this a Strategic Decision?
If Yes, Priority Goals Supported are listed below.
If No, will it harm the intent or success of the Strategic Plan?

PLANNING & ZONING/HEARING EXAMINER/STAFF RECOMMENDATIONS:

P&Z recommendation:

At the January 4, 2017 meeting, the Planning and Zoning Commission/Local Planning Agency voted (5-1 with 1 abstention) to recommend approval of Ordinance 3-17. There were no speakers during public hearing.

Staff Recommendation:

Planning Division Staff recommends approval of the requested amendment.

SUMMARY EXPLANATION AND BACKGROUND:

WHAT THE ORDINANCE ACCOMPLISHES:

An ordinance amending the City of Cape Coral Comprehensive Plan by Amending the Future Land Use element; providing for severability and an effective date.

LEGAL REVIEW:

EXHIBITS:

Memo from DCD to CM
Ordinance 3-17
FLU Policy 1.15.n Staff Summary TXT16-0001

Staff Presentation

PREPARED BY:

Division- Department- City
Attorney

SOURCE OF ADDITIONAL INFORMATION:

Wyatt Daltry, Planning Team Coordinator

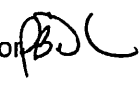
ATTACHMENTS:


Description	Type
▣ Memo from DCD to CM	Backup Material
▣ Ordinance 3-17	Ordinance
▣ FLU Policy 1.15.n Staff Summary TXT16-0001	Backup Material
▣ Staff Presentation	Backup Material

MEMORANDUM

CITY OF CAPE CORAL
DEPARTMENT OF COMMUNITY DEVELOPMENT

TO: John Szerlag, City Manager

THRU: Vincent A. Cautero, Community Development Director 

FROM: Robert H. Pederson, Planning Manager 

DATE: January 17, 2017

SUBJECT: Flexibility in the CAC Comprehensive Plan Text Amendment (TXT16-0001)

Per your request, this memo provides additional information on the additional flexibility that will be created if this Comprehensive Plan amendment is approved by Council.

Background

The CAC Comprehensive Plan Text Amendment was developed by staff in response to Council direction in mid-2016 to improve flexibility within the CAC Future Land Use Classification. Since the CAC category was created and mapped in 2004, there has been little market acceptance and almost no new development in areas designated CAC. Several owners, real estate professionals, and developers have noted that the inflexible nature of the CAC category has thwarted development opportunities in several locations around the City.

This memo will identify how flexibility will be improved with the proposed changes.

CAC Flexibility

Efforts to improve CAC flexibility include the following changes:

1. Permit development of multi-family residential uses, including duplexes, for properties isolated from commercial development opportunities (see "detached properties"). Currently such development is not permitted.
2. Permit properties between 5 to 20 acres to develop multi-family residential projects, in addition to the existing commercial and mixed use opportunities. Currently, 20 acres is the minimum parcel for multi-family.
3. Removes the requirement for all development in CAC to be approved through a PDP. This requirement has especially stymied small-scale development opportunities.
4. Removes the 20% minimum compound use component requirement and permits stand alone commercial or compound use projects on parcels 10 acres or larger.

If there are any questions or additional concerns, please do not hesitate to contact me.

VAC/RHP:wd (Memo CACflex.docx)

C: Dolores Menendez, City Attorney
Rebecca vanDeutekom, City Clerk

ORDINANCE 3 - 17

AN ORDINANCE AMENDING THE CITY OF CAPE CORAL COMPREHENSIVE PLAN BY AMENDING THE FUTURE LAND USE ELEMENT; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

NOW, THEREFORE, THE CITY OF CAPE CORAL, FLORIDA, HEREBY ORDAINS AS FOLLOWS:

Section 1. The City of Cape Coral hereby adopts Comprehensive Plan amendments necessary to update the Comprehensive Plan as follows:

The amendment to Policy 1.15 of the Future Land Use Element provides for greater development flexibility within the Commercial Activity Center (CAC) Future Land Use Classification. The amendment to the Future Land Use Element is described in Exhibit A, attached hereto and incorporated herein by reference.

Section 2. Severability. In the event that any portion or section of this Ordinance is determined to be invalid, illegal or unconstitutional by a court of competent jurisdiction, such decision shall in no manner affect the remaining portions or sections of this Ordinance which shall remain in full force and effect.

SECTION 3. Effective Date. The effective date of this plan amendment shall be thirty-one (31) days after the state land planning agency notifies the City that the plan amendment package is complete, or if timely challenged, the date a final order is issued by the Administration Commission finding the amendment to be in compliance in accordance with Chapter 163.3184(3)(c)4., F.S., whichever is applicable.

ADOPTED BY THE COUNCIL OF THE CITY OF CAPE CORAL AT ITS REGULAR SESSION THIS _____ DAY OF _____, 2017.

MARNI L. SAWICKI, MAYOR

VOTE OF MAYOR AND COUNCILMEMBERS:

SAWICKI _____
BURCH _____
CARIOSCIA _____
STOUT _____

LEON _____
ERBRICK _____
WILLIAMS _____
COSDEN _____

ATTESTED TO AND FILED IN MY OFFICE THIS _____ DAY OF _____, 2017.

REBECCA VAN DEUTEKOM
CITY CLERK

APPROVED AS TO FORM:

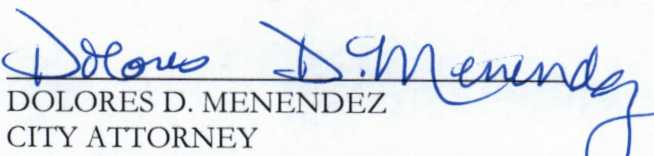

DOLORES D. MENENDEZ
CITY ATTORNEY
Comp Plan Amendment-CAC Detached Properties

EXHIBIT A

FUTURE LAND USE ELEMENT

GOAL: TO PROTECT THE PUBLIC INVESTMENT BY ENCOURAGING THE EFFICIENT USE OF COMMUNITY INFRASTRUCTURE AND NATURAL RESOURCES; ASSURE THE ORDERLY, EFFICIENT GROWTH OF THE CITY BY ENCOURAGING DEVELOPMENT IN THOSE AREAS WHICH ARE BEST SERVED BY INFRASTRUCTURE AND COMMUNITY SERVICES; PROMOTE NEW LAND USES WHICH CREATE THE LEAST POSSIBLE DISRUPTION TO EXISTING USES; CREATE A STRATEGY WHICH ANTICIPATES FUTURE COMMUNITY NEEDS BY ACQUIRING AND ASSEMBLING PLATTED LANDS; AND PROTECT THE RIGHTS OF INDIVIDUAL PROPERTY OWNERSHIP, CONSISTENT WITH PUBLIC NEEDS.

OBJECTIVE 1: Managing Future Growth and Development: The City of Cape Coral will manage future growth and land development by adopting, implementing, and enforcing new regulatory vehicles. All land development regulations called for in this Plan shall be adopted and implemented in accordance with the provisions of S. 163.3202, Florida Statutes. The short-term planning timeframe shall be established as up to the year 2020, while the long-term planning horizon shall be the year 2035.

...

Policy 1.15: Land development regulations adopted to implement this comprehensive plan will be based on, and will be consistent with, the standards for uses and densities/intensities as described in the following future land use classifications. In no case shall maximum densities allowable by the following classifications conflict with Policy 4.3.3 of the Conservation and Coastal Management Element regulating density of development within the Coastal High Hazard Area.

...

- n. **Commercial Activity Center (CAC):** The purpose of this future land use classification is to promote non-residential and mixed-use development at key locations, within close proximity to major corridors throughout the City of Cape Coral in areas where a mix of uses may be developed. The Commercial Activity Center classification is a mixed-use classification designed to minimize the need for vehicle trips through the development of both residential and non-residential uses in a single project. Furthermore, the purpose of the Commercial Activity Center is to integrate all uses through landscape, site, and architectural design standards. In addition, the Commercial Activity Center land use classification is intended to provide locations that offer employment opportunities and daily goods and services to the local community and, in some instances, attract patrons from the region. Commercial Activity Centers are intended to be pedestrian friendly and interconnected with adjacent projects – whether residential or non-residential.

Pre-Existing Single Family Residences Allowed

It is the desire of the City of Cape Coral to protect the rights of owners of single family homes located within a Commercial Activity Center (CAC), which homes had either:

- a) Been lawfully constructed, or had applied for or received a building permit at their current locations prior to the designation of the subject as part of a CAC future land use classification; or,
- b) Been lawfully constructed, or had applied for or received a building permit at their current locations under a former CAC future land use classification.

~~The Commercial Activity Center Future Land Use Classification shall specifically acknowledge that such~~ In this classification single family residences that meet the

criteria stated above may continue to be maintained, remodeled, expanded, or rebuilt, and that the owners of such properties may continue to enjoy all of the rights, privileges and responsibilities of home ownership, including the ability to sell or rent their homes to other parties. In and of themselves, pre-existing single family residences do not necessarily constitute **Free-Standing Residential** development, unless they otherwise meet the criteria for such development, as discussed under **Use Area Allocations**, below. If pre-existing single family residences, as defined in this section, are included as part of a larger approved development project, the preexisting status of the residences is lost, and such residences become subject to the City Land Use and Development Regulations regarding non-conforming structures.

Detached Properties

Development of duplex and multi-family residential uses in the Commercial Activity Center is permitted for properties that are deemed to be detached, in order to promote compatibility and continuity of existing development. Detached properties are those that share specific features that constitute obstacles to non-residential development, such as physical or topographical constraints, significant residential development patterns in the vicinity, relatively small property area, and lack of viable access to collector or arterial roads. Criteria used to determine whether a property is a detached property shall be defined in the Land Use and Development Regulations.

If deemed a detached property, the property shall be identified as such in the City's records. Owners of such properties may continue to enjoy all of the rights, privileges, and responsibilities of home ownership, including the ability to sell or rent their homes to other parties. Development of duplex or multi-family uses within detached properties shall be permitted with a maximum density of 16 units per acre.

Density, Intensity, and Use Area Allocations

As an incentive for land assembly, the allowable densities, intensities, and use area allocations within a Commercial Activity Center vary with the land area within the development project. The land area within a development project is determined by the land area encompassed by a single application for development project approval. A development project approval can consist of one or more properties that are the subject of a single application for development including, but not limited to, a Planned Development Project or Site Plan. Amendment of an approved development project to expand or contract the land area does not alter its status as a single application for development project approval. If an application for development consists of properties that are not contiguous, the application must demonstrate that the properties function as a unified development. If the application for development approval is a Planned Development Project that includes a request for vacation of right-of-way, then that portion of the vacated area of right-of-way, which would be owned or controlled by the project developer, can be included in the development project size calculation.

Density: In development projects that qualify for residential uses (see below), the baseline residential density shall be 4.4 dwelling units per acre. The baseline density is the maximum density available to projects that are not eligible to receive density exceeding the baseline density, or to projects that are eligible but that do not participate in the Development Incentive Program (DIP) and/or Transfer of Development Rights (TDR) Program.

In order to be eligible to receive density exceeding the baseline density through the Transfer of Development Rights (TDR) Program and/or the Development Incentive Program (DIP), a development project within a Commercial Activity Center (CAC) must consist of at least 5 acres of contiguous platted lots, or platted or unplatted tract(s), or any combination thereof.

If the above criterion has been met, the project becomes eligible to seek density exceeding the baseline density through the TDR Program, the DIP, or a

combination of the two programs. To derive density exceeding the baseline density through the TDR Program or DIP, an applicant must complete the processes identified within the City of Cape Coral Land Use and Development Regulations.

If the applicant for density exceeding the baseline density opts to participate in the City of Cape Coral's Development Incentive Program (DIP), the applicant would be required to contribute to the City of Cape Coral's Public Improvement Fund (PIF) in an amount sufficient to qualify for 25% (or between 25% and 50% for projects that meet the criteria to provide up to 50% of the differential between the baseline and maximum permitted density and/or intensity in any DIP category) of the credit points necessary to attain the density exceeding the baseline density. Such contribution to the PIF category shall be counted as a creditable activity required to support the application for increased density. Administration, collection, and disbursement of monies within the fund are set forth in the Land Use and Development Regulations.

Intensity: The baseline intensity of non-residential uses shall be a Floor Area Ratio (FAR) of 0.5, regardless of the size of the development. The baseline intensity is the maximum intensity available without participation in the Development Incentive Program (DIP) and/or Transfer of Development Rights (TDR) Program. Increases above the baseline intensity may be permitted, up to the maximum Floor Area Ratio (FAR) of 2.0, regardless of the size of development, through participation in the Development Incentive Program (DIP) and/or Transfer of Development Rights (TDR) Program. Note that, if the CAC project developer is only seeking an intensity increase (and not a density increase), said developer is not subject to the eligibility requirement, as referenced above under **Density**, and is neither required to participate nor prohibited from participation in the Public Improvement Fund (PIF).

Limitations on Density and Intensity within CACs

In the Urban Services Reserve Area, where central water and sewer are not available, residential uses are restricted to 4.4 dwelling units per acre and non-residential uses are limited to uses that do not generate an estimated flow of more than 1,320 gallons of sewage per acre per day. Estimated flows shall be based on 64E-6.008 Florida Administrative Code, as may be amended from time to time.

Use Area Allocations: All land areas within a CAC shall be categorized as one of the three following use areas:

- 1) Free-standing Non-Residential;
Free-standing non-residential areas include the footprint and land areas associated with buildings that contain no residential units.
- 2) Free-standing Residential;
Free-standing residential areas include the footprint and land areas associated with buildings that contain residential units and buildings that contain nonresidential floor area usage that is less than thirty (30) percent of the building's floor area. In calculating the floor area of the building, the total floor area of the building is the floor area of the building remaining after the area of any structured parking is excluded. Also, any pre-existing single family residences do not necessarily constitute Free- Standing Residential development, unless such residences otherwise meet the criteria for such development.
- 3) Compound Use.
Compound use areas include the footprint and land areas associated with compound use buildings that, for the purposes of this section, are defined as

buildings with at least thirty percent (30%) of their floor areas allocated to non-residential uses. In calculating the floor area of the building, the total floor area of the building is the floor area of the building remaining after the area of any structured parking is excluded.

The land area that may be allocated to any of the 3 use area allocations varies with the size of the development project, with generally increasing flexibility as a function of the total land area of the development. Densities and intensities associated with any of the three use area categories apply only to the land area of the project that is allocated to that specific use. In determining the land area within any of the three use area allocations, the area of any common areas, including, but not limited to, areas for surface water management, parking, landscaping, and circulation, shall be apportioned among the three use area allocations in the same proportion as the non-common areas relate to the area of the development project, excluding common areas.

Use of the PDP Process

~~Every development project, regardless of size or use area allocations, is required to be approved through the PDP process. Pre-existing single family residences, as defined within this future land use classification, which are being maintained, remodeled, expanded, or rebuilt, are not required to be reviewed through the PDP process.~~

Development Projects Less Than 5 Acres in Area

Free-standing Non-Residential:

Free-standing non-residential areas are not required but may constitute up to 100 percent of the development project area. Increases above the baseline intensity of 0.5 may be permitted, up to the maximum Floor Area Ratio (FAR) of 2.0, regardless of the size of development, through participation in the Development Incentive Program (DIP) and/or Transfer of Development Rights (TDR) Program.

Compound Use:

Compound Use areas are not required but may constitute up to 100 percent of the development project area. No increases above the baseline density of 4.4 units per acre may be permitted.

Free-standing Residential:

Free-standing residential areas are not allowed, except on sites identified as a "detached property".

Development Projects 5 acres or larger, but less than 10 acres

Free-standing Non-Residential:

Free-standing non-residential areas are not required but may constitute up to 100 percent of ~~the a~~ development project area. Increases above the baseline intensity of 0.5 may be permitted, up to the maximum Floor Area Ratio (FAR) of 2.0, regardless of the size of development, through participation in the Development Incentive Program (DIP) and/or Transfer of Development Rights (TDR) Program.

Compound Use:

Compound Use areas are not required but may constitute up to 100 percent of ~~the a~~ development project area. Increases above the baseline density of 4.4 units per acre may be permitted, up to the maximum density allowed (10 units per acre), through participation in the Development Incentive Program (DIP) and/or Transfer of Development Rights (TDR) Program. To be eligible for densities above the baseline density, the development project must meet the requirements contained under **Density**, above.

Free-standing Residential:

Free-standing residential areas are not ~~allowed~~ required, but may constitute up to 100 percent of a development project area. Only multi-family residential development shall be permitted as free-standing residential.

Development Projects 10 acres or larger, but less than 20 acres

Free-standing Non-Residential:

Free-standing non-residential areas are not required but may constitute up to ~~80~~ 100 percent of ~~the~~ a development project area. Increases above the baseline intensity of 0.5 may be permitted, up to the maximum Floor Area Ratio (FAR) of 2.0, regardless of the size of development, through participation in the Development Incentive Program (DIP) ~~and/or~~ Transfer of Development Rights (TDR) Program.

Compound Use:

Compound Use areas ~~shall constitute no less than 20 percent of the land area and are not required but~~ may constitute up to 100 percent of the land a development project area. Increases above the baseline density of 4.4 units per acre may be permitted, up to the maximum density of ~~12~~ 16 units per acre. To be eligible for densities above the baseline density, the development project must meet the requirements contained under **Density**, above.

Free-standing Residential:

~~Free-standing residential areas are not allowed. Free-standing residential areas are not required but may constitute up to 100 percent of a development project area. Only multi-family residential development shall be permitted as free-standing residential.~~

Development Projects 20 Acres or Larger

Free-standing Non-Residential:

Free-standing non-residential areas ~~shall constitute no less than 20 percent of the land area and may constitute a maximum of 80~~ are not required but may constitute up to 100 percent of the land a development project area. Increases above the baseline intensity of 0.5 may be permitted, up to the maximum Floor Area Ratio (FAR) of 2.0, regardless of the size of development, through participation in the Development Incentive Program (DIP) and/or Transfer of Development Rights (TDR) Program.

Compound Use:

Compound Use areas ~~shall constitute no less than 20 percent of the land area and may constitute 80~~ are not required but may constitute up to 100 percent of the land a development project area. Increases above the baseline density of 4.4 units per acre may be permitted, up to the maximum density of 20 units per acre. To be eligible for densities above the baseline density, the development project must meet the requirements contained under **Density**, above.

Free-standing Residential:

Free-standing residential areas ~~may constitute a maximum of 20~~ are not required but may constitute up to 50 percent of the land a development project area. ~~Increases above the baseline density of 4.4 units per acre may be permitted, up to the maximum density of 8 units per acre. To be eligible for densities above the baseline density, the development project must meet the requirements contained under **Density**, above.~~ Only multi-family residential development shall be permitted as free-standing residential.

Table of CAC Development Parameters				
	Land Area of Development Project			
	Less than 5 acres in area	5 acres or larger, but less than 10 acres	10 acres or larger, but less than 20 acres	20 or more acres
PDP Required	Yes	Yes	Yes	Yes
Free-Standing Non-Residential Area (not including Compound Use) Minimum	0%	0%	0%	20 0%
Maximum	100%	100%	80 100%	80 100%
Minimum Intensity	0.5 ²	0.5 ²	0.5 ²	0.5 ²
Maximum Intensity	2.0 ²	2.0 ²	2.0 ²	2.0 ²
Compound Use Minimum Area	0%	0%	20 0%	20 0%
Maximum Area	100%	100%	100%	80 100%
Baseline Density (dwelling units(DU)/acre)	4.4	4.4 ^{1,3}	4.4 ^{1,3}	4.4 ^{1,3}
Maximum Density DU/acre)	Not allowed	10.0 ^{1,3}	12.0 16 ^{1,3}	20.0 ^{1,3}
Free-Standing Residential Minimum Area	0%	0%	0%	0%
Maximum Area	0 100% ^a	0 100%	0 100%	20 50%
Baseline Density (DU/acre)	Not allowed	Not allowed	Not allowed	4.4 ^{1,3}
Maximum Density (DU/acre)	Not allowed 16 ^a	Not allowed 16 ³	Not allowed 16 ³	8.0 ^{1,3} 16 ³

- 1 Increases in density above the baseline density are permitted only through participation in the Development Incentive Program (DIP) and/or the City's Transfer of Development Rights (TDR) program, as described under **Density**, above.
- 2 Increases above the baseline intensity of 0.5 may be permitted, up to the maximum Floor Area Ratio (FAR) of 2.0, regardless of the size of development, through participation in the Development Incentive Program (DIP) and/or Transfer of Development Rights (TDR) Program.
- 3 In the Urban Services Reserve Area, where central water and sewer are not available, residential uses are restricted to 4.4 dwelling units per acre and non-residential uses are limited to uses that do not generate an estimated flow of more than 1,320 gallons of sewage per acre per day. Estimated flows shall be based on 64E-6.008 Florida Administrative Code, as may be amended from time to time.

^a Detached properties only

The City has adopted the Marketplace-Residential (MR) zoning district as consistent with the Commercial Activity Center Future Land Use Classification. Additional zoning districts may be developed in the future to implement this land use initiative.

Although, the Pedestrian Commercial (C-1) and Professional Office (P-1) zoning districts were formerly considered to be consistent with, but generally discouraged within, the Commercial Activity Center future land use classification,

these zoning districts are currently considered to be inconsistent with the CAC Future Land Use Classification.

The factors to consider during review of a rezoning petition are as follows:

~~The amount, type and location of existing zoned commercial and residential land, and developed commercial uses, within the Commercial Activity Center and along the corridor segment, as identified in the Commercial Corridor Study;~~

~~Market demand for the allowable uses within the requested zoning district;~~

~~Existing patterns of land use within the Commercial Activity Center and within two radial miles;~~

~~Adequacy of existing and planned infrastructure capacity, particularly roads, corresponding to the anticipated development of the proposed uses;~~

~~Compatibility of the proposed zoning with adjoining properties;~~

~~Natural or manmade constraints;~~

~~Rezoning criteria identified in the Land Use and Development Regulations;~~

~~The existence of an adopted Access Management Plan;~~

...

Review Date: December 14, 2016

Applicant: The City of Cape Coral

Authorized Agent: Planning Division, Department of Community Development

Case Staff: Wyatt Daltry, AICP, Planning Team Coordinator

Review Approval: Robert Pederson, AICP, Planning Manager

Request:

- To change the text of the Comprehensive Plan CAC Classification, (Future Land Use Element Policy 1.15.n) through the expedited state review process.

Purpose:

The purpose of the proposed amendment is to revise Policy 1.15.n of the Future Land Use Element, the Commercial Activity Center (CAC) Future Land Use Classification. The proposed revisions are intended to permit greater development flexibility within this land use classification.

This change is known as a text amendment, and is being processed through the “expedited state review process,” a process that takes approximately six (6) months to complete.

Positive Aspects of Application:	<ul style="list-style-type: none">• Provides development opportunities for isolated properties surrounded by improved parcels.• Provides further multi-family development opportunities within CAC.• Removes PDP requirement, thereby streamlines development timelines.• Removes the required development proportions and provides easier-to-understand development guidance.
Negative Aspects of Application:	<ul style="list-style-type: none">• Additional multi-family development opportunities may reduce mixed-use and commercial development on sites designated CAC.
Mitigating Factors:	<ul style="list-style-type: none">• The CAC classification has not seen any substantial development since it was established in 2004. The proposed changes may make this classification more viable.

Background:

In 2004, the City of Cape Coral identified a need for a mixed-use, light-commercial future land use map classification. This became known as the Commercial Activity Center (CAC) classification. Creating this classification was intended to reduce residential potential in CAC areas by mandating strict development proportions based on the size of a development site. Further revisions to the CAC classification in 2007 specified that all development be reviewed through the PDP process.

In 2010, there was a statewide amendment effort to require future land use map amendments be approved by the voters via referendum. This led the City of Cape Coral to review 31 future land use map amendments to commercial and mixed use classifications. 24 of these amendments were adopted, adding ±2,200 acres of commercial and mixed use land; 44% of which was to CAC.

The 2010 amendments resulted in multiple blocks of CAC with sporadic development patterns of existing single-family and duplex residences. Residential development is not permitted in CAC for sites less than 20 acres. For sites greater than 20 acres, the residential component may only constitute a maximum of 20% of the site.

Aside from a couple of model homes, the CAC classification has not resulted in any new development. Multiple developers have noted that the strict development proportions and PDP mandate make CAC properties much less valuable or desirable than other commercial land use classifications. As a result, some property owners have requested changes for their properties to a more amenable future land use classification, such as Commercial/Professional.

Earlier in 2016, two separate requests were presented to Council to change CAC to the Multi-Family residential classification. In each case, a vacant property was located between two existing duplexes and the applicants wished to develop a duplex in accordance with the established development pattern. In the late Spring of 2016, Council directed staff to review Policy 1.15.n to provide alternatives for these properties. In addition, staff has taken the opportunity to address other long-standing issues with the CAC classification.

Proposed Changes

This section address proposed changes to Policy 1.15.n. Proposed new language is indicated via underline; while language to be removed is identified by ~~strike through~~. Similar changes are proposed for the Marketplace-Residential zoning district in the future, which is the zoning counterpart to the CAC future land use.

Staff recommends the following changes to address Council's direction to permit limited multi-family development for areas where property assemblage is unlikely.

Detached Properties

Development of duplex and multi-family residential uses in the Commercial Activity Center is permitted for properties that are deemed to be detached, in order to promote compatibility and continuity of existing development. Detached properties

are those that share specific features that constitute obstacles to non-residential development, such as physical or topographical constraints, significant residential development patterns in the vicinity, relatively small property area, and lack of viable access to collector or arterial roads. Criteria used to determine whether a property is a detached property shall be defined in the Land Use and Development Regulations.

If deemed a detached property, the property shall be identified as such in the City's records. Owners of such properties may continue to enjoy all of the rights, privileges, and responsibilities of home ownership, including the ability to sell or rent their homes to other parties. Development of duplex or multi-family uses within detached properties shall be permitted with a maximum density of 16 units per acre.

The recommended change below will eliminate the PDP requirement for development within the CAC future land use map classification.

Use of the PDP Process

~~Every development project, regardless of size or use area allocations, is required to be approved through the PDP process. Pre-existing single family residences, as defined within this future land use classification, which are being maintained, remodeled, expanded, or rebuilt, are not required to be reviewed through the PDP process.~~

The following change below is proposed to permit multi-family residential development on detached properties.

Development Projects Less Than 5 Acres in Area

Free-standing Non-Residential:

Free-standing non-residential areas are not required but may constitute up to 100 percent of the development project area. Increases above the baseline intensity of 0.5 may be permitted, up to the maximum Floor Area Ratio (FAR) of 2.0, regardless of the size of development, through participation in the Development Incentive Program (DIP) and/or Transfer of Development Rights (TDR) Program.

Compound Use:

Compound Use areas are not required but may constitute up to 100 percent of the development project area. No increases above the baseline density of 4.4 units per acre may be permitted.

Freestanding Residential:

Free-standing residential areas are not allowed, except on sites identified as a "detached property."

This change below is intended to make the CAC classification more flexible; thereby providing additional opportunities for multi-family residential development, of which the City is deficient.

Development Projects 5 acres or larger, but less than 10 acres

Free-standing Non-Residential:

Free-standing non-residential areas are not required but may constitute up to 100 percent of ~~the~~ a development project area. Increases above the baseline intensity of 0.5 may be permitted, up to the maximum Floor Area Ratio (FAR) of 2.0, regardless of the size of development, through participation in the Development Incentive Program (DIP) ~~and/or~~ Transfer of Development Rights (TDR) Program.

Compound Use:

Compound Use areas ~~area~~ not required but may constitute up to 100 percent of ~~the~~ a development project area. Increases above the baseline density of 4.4 units per acre may be permitted, up to the maximum density allowed (10 units per acre), through participation in the Development Incentive Program (DIP) and/or Transfer of Development Rights (TDR) Program. To be eligible for densities above the baseline density, the development project must meet the requirements contained under **Density**, above.

Freestanding Residential:

Free-standing residential areas are not required but may constitute up to 100 percent of a development project area. Only multi-family residential development shall be permitted as freestanding residential ~~allowed~~.

Development Projects 10 acres or larger, but less than 20 acres

Free-standing Non-Residential:

Free-standing non-residential areas are not required but may constitute up to ~~80~~ 100 percent of the development project area. Increases above the baseline intensity of 0.5 may be permitted, up to the maximum Floor Area Ratio (FAR) of 2.0, regardless of the size of development, through participation in the Development Incentive Program (DIP) ~~and/or~~ Transfer of Development Rights (TDR) Program.

Compound Use:

Compound Use areas ~~shall constitute no less than 20 percent of the land area and are not required but~~ may constitute up to 100 percent of the land development project area. Increases above the baseline density of 4.4 units per acre may be permitted, up to the maximum density of ~~12~~ 16 units per acre. To be eligible for densities above the baseline density, the development project must meet the requirements contained under **Density**, above.

Freestanding Residential:

Free-standing residential areas are not required but may constitute up to 100 percent of a development project area. Only multi-family residential development shall be permitted as freestanding residential. ~~Free-standing residential areas are not allowed.~~

Development Projects 20 Acres or Larger

Free-standing Non-Residential:

Free-standing non-residential areas ~~shall constitute no less than 20 percent of the land area and may constitute a maximum of 80~~ are not required but may constitute up to 100 percent of ~~a the land~~ the development project area. Increases above the baseline intensity of 0.5 may be permitted, up to the maximum Floor Area Ratio (FAR) of 2.0, regardless of the size of development, through participation in the Development Incentive Program (DIP) ~~and/or~~ Transfer of Development Rights (TDR) Program.

Compound Use:

Compound Use areas ~~shall constitute no less than 20 percent of the land area and may constitute a maximum of 80~~ are not required but may constitute up to 100 percent of ~~a the land~~ the development project area. Increases above the baseline density of 4.4 units per acre may be permitted, up to the maximum density of 20 units per acre. To be eligible for densities above the baseline density, the development project must meet the requirements contained under **Density**, above.

Freestanding Residential:

Free-standing residential areas ~~may constitute a maximum of 20~~ are not required but may constitute up to 50 percent of a the land development project area. Only multi-family residential development shall be permitted as freestanding residential. Increases above the baseline density of 4.4 units per acre may be permitted, up to the maximum density of 8 units per acre. To be eligible for densities above the baseline density, the development project must meet the requirements contained under **Density**, above.

The CAC Development Parameter table below indicates the breadth of changes proposed for the CAC, affecting densities and development proportions.

Table of CAC Development Parameters				
	Land Area of Development Project			
	Less than 5 acres in area	5 acres or larger, but less than 10 acres	10 acres or larger, but less than 20 acres	20 or more acres
PDP Required	Yes	Yes	Yes	Yes
Free-Standing Non-Residential Area (not including Compound Use)				
Minimum	0%	0%	0%	20 0%
Maximum	100%	100%	80 100%	80 100%
Minimum Intensity	0.5 ²	0.5 ²	0.5 ²	0.5 ²
Maximum Intensity	2.0 ²	2.0 ²	2.0 ²	2.0 ²

Compound Use				
Minimum Area	0%	0%	20 0%	20 0%
Maximum Area	100%	100%	100%	80 100%
Baseline Density (dwelling units(DU)/acre)	4.4	4.4 ^{1,3}	4.4 ^{1,3}	4.4 ^{1,3}
Maximum Density DU/acre)	Not allowed	10.0 ^{1,3}	12 16 ^{1,3}	20.0 ^{1,3}
Free-Standing Residential				
Minimum Area	0%	0%	0%	0%
Maximum Area	0 100%^a	0 100%	0 100%	20 50%
Baseline Density (DU/acre)	Not Allowed	Not Allowed	Not Allowed	4.4 ^{1,3}
Maximum Density (DU/acre)	Not Allowed <u>16^a</u>	Not Allowed <u>16³</u>	Not Allowed <u>16³</u>	Not Allowed <u>16³</u>

1 Increases in density above the baseline density are permitted only through participation in the Development Incentive Program (DIP) and/or the City's Transfer of Development Rights (TDR) program, as described under **Density**, above.

2 Increases above the baseline intensity of 0.5 may be permitted, up to the maximum Floor Area Ratio (FAR) of 2.0, regardless of the size of development, through participation in the Development Incentive Program (DIP) ~~and/or~~ Transfer of Development Rights (TDR) Program.

3 In the Urban Services Reserve Area, where central water and sewer are not available, residential uses are restricted to 4.4 dwelling units per acre and non-residential uses are limited to uses that do not generate an estimated flow of more than 1,320 gallons of sewage per acre per day. Estimated flows shall be based on 64E-6.008 Florida Administrative Code, as may be amended from time to time.

^a Detached Properties only.

Finally, there are housekeeping changes that staff recommends to make the policy more user-friendly and less regulatory, as follows:

“Although, the Pedestrian Commercial (C-1) and Professional Office (P-1) zoning districts were formerly considered to be consistent with, but generally discouraged within, the Commercial Activity Center future land use classification, these zoning districts are currently considered to be inconsistent with the CAC Future Land Use Classification.

~~The factors to consider during review of a rezoning petition are as follows:~~

~~The amount, type and location of existing zoned commercial and residential land, and developed commercial uses, within the Commercial Activity Center and along the corridor segment, as identified in the Commercial Corridor Study;~~

~~Market demand for the allowable uses within the requested zoning district;~~

~~Existing patterns of land use within the Commercial Activity Center and within two radial miles;~~

December 14, 2016

TXT 16-0001

Page 7 of 7

~~Adequacy of existing and planned infrastructure capacity, particularly roads, corresponding to the anticipated development of the proposed uses;~~

~~Compatibility of the proposed zoning with adjoining properties;~~

~~Natural or man-made constraints;~~

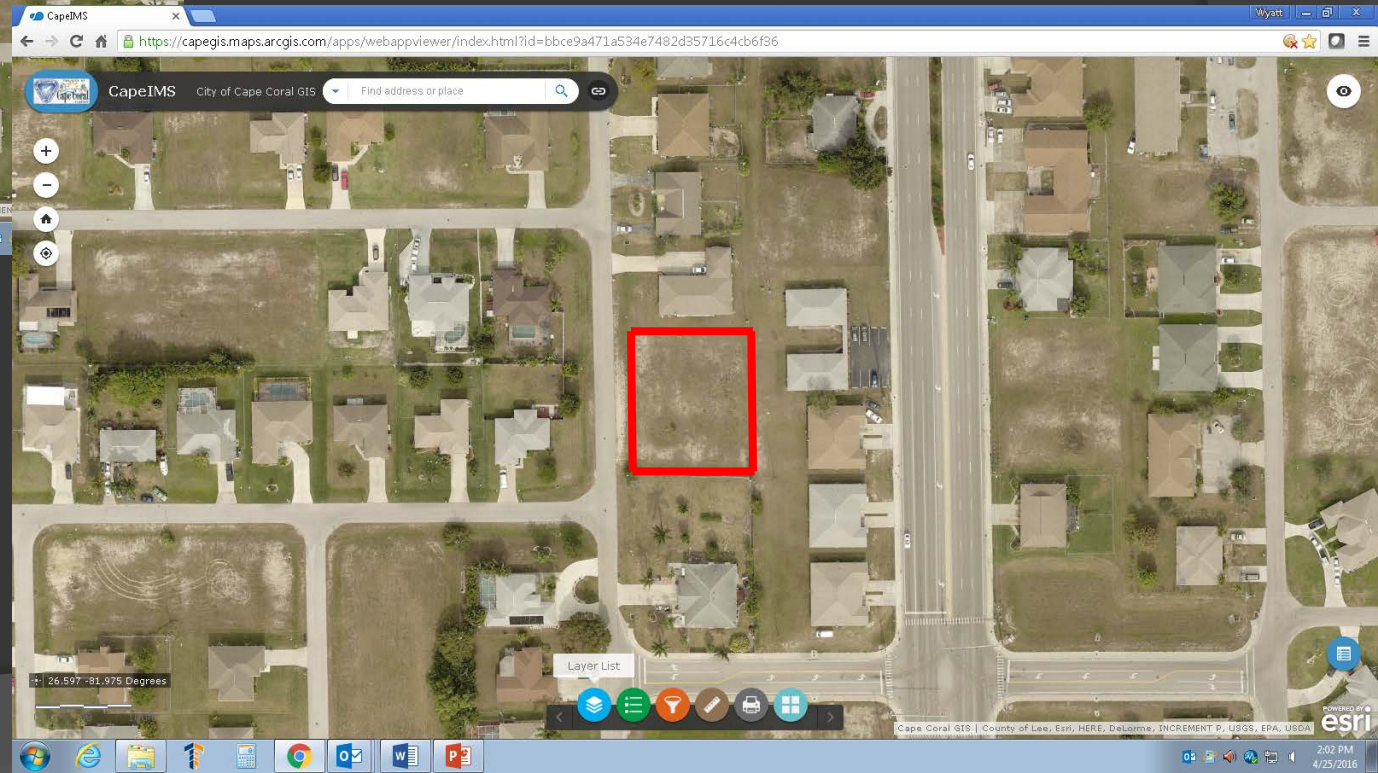
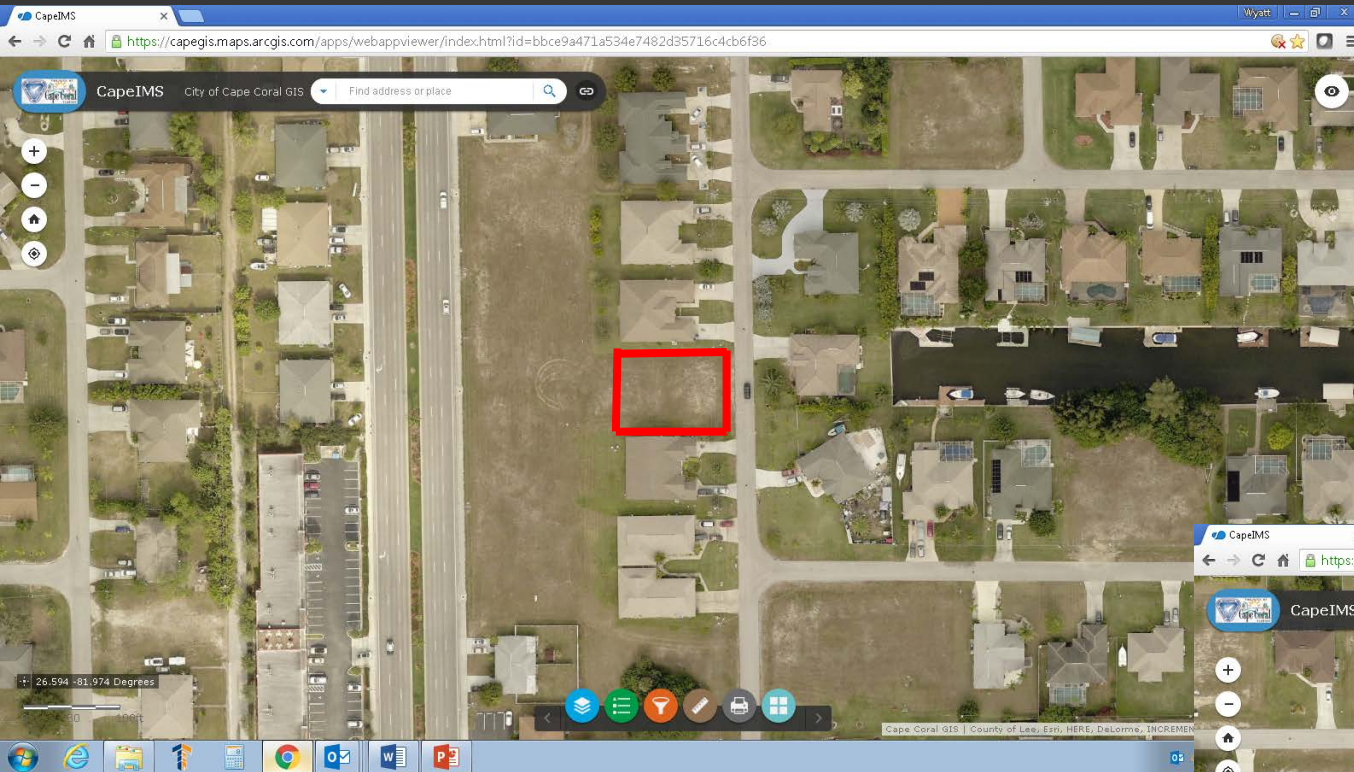
~~Rezoning criteria identified in the Land Use and Development Regulations;~~

~~The existence of an adopted Access Management Plan;"~~

Recommendation:

Planning Division staff recommends approval of the proposed text amendments.

ORDINANCE 3-17 TXT16-0001 CAC REVISIONS



Purpose

- **Provide flexibility in the Commercial Activity Center (CAC) FLU for properties detached from commercial potential, while minimizing the potential loss of mixed use and commercial development.**
- **Remove the PDP requirement.**
- **Revise the development allocations for projects in the CAC (e.g. reducing required percentages).**
- **Other changes to remove extraneous language.**

Background

- Many blocks designated CAC between 2004-2010 have a large number of residences.
- CAC does not allow new residences (<20 acres).
- Some undeveloped properties are located between existing duplexes and multi-family residences, limiting potential for commercial or mixed use projects.
- Staff recommends Approval

- Minimum allocations have been removed from Free Standing Non-Residential and Compound Use developments also to relax proscriptive regulations.

Table of CAC Development Parameters				
	Land Area of Development Project			
	Less than 5 acres in area	5 acres or larger, but less than 10 acres	10 acres or larger, but less than 20 acres	20 or more acres
PDP Required	Yes	Yes	Yes	Yes
Free-Standing Non-Residential Area (not including Compound Use)				
Minimum	0%	0%	0%	20 0%
Maximum	100%	100%	80 100%	80 100%
Minimum Intensity	0.5 ²	0.5 ²	0.5 ²	0.5 ²
Maximum Intensity	2.0 ²	2.0 ²	2.0 ²	2.0 ²
Compound Use				
Minimum Area	0%	0%	20 0%	20 0%
Maximum Area	100%	100%	100%	80 100%
Baseline Density (dwelling units(DU)/acre)	4.4	4.4 ^{1,3}	4.4 ^{1,3}	4.4 ^{1,3}
Maximum Density DU/acre)	Not allowed	10.0 ^{1,3}	12 16 ^{1,3}	20.0 ^{1,3}
Free-Standing Residential				
Minimum Area	0%	0%	0%	0%
Maximum Area	0 100% ^a	0 100%	0 100%	20 50%
Baseline Density (DU/acre)	Not Allowed	Not Allowed	Not Allowed	4.4 ^{1,3}
Maximum Density (DU/acre)	Not Allowed 16 ^a	Not Allowed 16 ³	Not Allowed 16 ³	Not Allowed 16 ³

Item Number:	B.(3)
Meeting Date:	1/23/2017
Item Type:	ORDINANCES/RESOLUTIONS - Introductions

**AGENDA
REQUEST FORM**
CITY OF CAPE
CORAL



TITLE:

Ordinance 7-17 Set Public Hearing date for February 6, 2017

REQUESTED ACTION:

Approve or Deny

STRATEGIC PLAN INFO:

1. Will this action result in a Budget Amendment? No
2. Is this a Strategic Decision? No
If Yes, Priority Goals Supported are listed below.
If No, will it harm the intent or success of the Strategic Plan? No

PLANNING & ZONING/HEARING EXAMINER/STAFF RECOMMENDATIONS:

SUMMARY EXPLANATION AND BACKGROUND:

An ordinance declaring a 1,175 square-foot triangular shaped parcel of property being a part of Highlander Canal right-of-way as unusable municipal surplus real property and deeding it to the property owner, subject to public utility, drainage, roadway, and bridge maintenance easements, and subject to the grantee constructing a seawall upon said property within 12 months of deed conveyance; property is located at 1935 SW 8th Court.

LEGAL REVIEW:

Brian R. Bartos, Assistant City Attorney

EXHIBITS:

Ordinance 7-17

PREPARED BY:

Division- Department- City
Attorney

SOURCE OF ADDITIONAL INFORMATION:

Dawn Andrews, Property Broker
Tom Chernesky, Survey Division Manager

ATTACHMENTS:

Description	Type
▫ Ordinance 7-17	Ordinance

ORDINANCE 7 - 17

AN ORDINANCE DECLARING A TRIANGULAR-SHAPED PARCEL OF PROPERTY BEING A PART OF HIGHLANDER CANAL RIGHT-OF-WAY ADJOINING LOTS 36 AND 37, BLOCK 4377, AS SHOWN ON THE PLAT OF CAPE CORAL UNIT 63, AS RECORDED IN PLAT BOOK 21 AT PAGES 48 THROUGH 81 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA, AS MORE PARTICULARLY DESCRIBED HEREIN, LOCATED AT 1935 SW 8TH COURT, AS UNUSABLE MUNICIPAL SURPLUS REAL PROPERTY NO LONGER NEEDED BY THE CITY; AUTHORIZING AND DIRECTING THE MAYOR AND CLERK TO EXECUTE A DEED CONVEYING THE AFOREMENTIONED SURPLUS REAL PROPERTY TO JASON S. MCHENRY SUBJECT TO THE GRANTEE HEREIN CONSTRUCTING A SEAWALL UPON SAID PROPERTY; A COPY OF THE PROPOSED DEED IS ATTACHED HERETO AS EXHIBIT "1"; RESERVING RIGHT-OF-WAY AND UTILITY EASEMENTS FOR THE CITY OF CAPE CORAL; PROVIDING SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, the City of Cape Coral Public Works Department and the City Manager have recommended that a parcel of land being a portion of Highlander Canal Right of Way adjoining Lots 36 and 37, Block 4377 as shown on the plat of Cape Coral Unit 63 as recorded in Plat Book 21 at Pages 48-81 of the Public Records of Lee County, Florida, is of no value and use to the City of Cape Coral, and would be of greater value to the City of Cape Coral if deeded to the property owner because of increased tax revenues; and

WHEREAS, after examination of the canal and after considering the recommendations of the Engineering Division of the Public Works Department and City Staff, it is evident that it would be in the best interest of the City to deed said parcel subject to right-of-way and utility easements for City of Cape Coral and Lee County in the future.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CAPE CORAL, FLORIDA HEREBY ORDAINS THIS ORDINANCE AS FOLLOWS:

Section 1. That the parcel of land being a portion of Highlander Canal Right of Way adjoining Lots 36 and 37, Block 4377 as shown on the plat of Cape Coral Unit 63, said parcel being near the intersection of SW 19th Lane and the bridge spanning the Highlander Canal, as more particularly described as follows:

A parcel of land being a portion of Highlander Canal Right of Way adjoining Lots 36 and 37, Block 4377 as shown on the plat of Cape Coral Unit 63 as recorded in Plat Book 21 at Pages 48-81 of the Public Records of Lee County, Florida; more particularly described as follows:

Begin the Southeast corner of Lot 36, Block 4377 as shown on the plat of Cape Coral Unit 63 as recorded in Plat Book 21 at Pages 48-81 of the Public Records of Lee County, Florida; Thence run N 00°12'55" E for a distance of 88.35 feet to a point on the Southerly Right of Way line of S.W. 19th Lane (60 feet wide), also being the Northeast corner of Lot 37, said Block 4377; Thence run N 89°34'44" E, along said Southerly Right of Way line for a distance of 26.60 feet to a point on the water-ward face of a concrete seawall; Thence run S 16°55'02" W, along said water-ward face of seawall, for a distance of 92.55 to Southeast corner said Lot 36, Block 4377, also being the Point of Beginning.

Said Parcel contains 1,175 square feet, more or less.

Reserving therefrom, the Northerly 25 feet as a Public Utilities, Drainage, Roadway and Bridge Maintenance Easement; and reserving therefrom the Easterly 6 feet as a Public Utilities and Drainage Easement.

Bearings are based on the recorded plat of the Cape Coral Unit 63, according to Plat Book 21, Pages 48 through 81, of the Public Records of Lee County, Florida.

Said parcel is hereby declared to be of no use to the City of Cape Coral because of its odd shape and location and as surplus property is no longer needed for municipal use or purposes that require retaining municipal ownership.

The above described property shall immediately revert to grantor herein should grantee, his successors or assigns, fail to apply for a seawall permit(s) within six (6) months of the date of the deed, and complete construction of the seawall upon the waterway portion of the above described property within twelve (12) months of the date of the deed.

Section 2. That upon the recommendations of the City staff, it is in the best interest of the City of Cape Coral to deed the above-described property to the owner of Lots 36 and 37, Block 4377, Cape Coral Subdivision, Unit 63, according to the plat thereof, as recorded in Plat Book 21, Pages 48-81, of the Public Records of Lee County, Florida, subject to any easements, restrictions and reservations of record because the City will receive additional tax revenues by this grant. Accordingly, the Mayor and the Clerk of the City of Cape Coral are hereby authorized to effectuate a quit claim deed granting the property described herein to Jason S. McHenry, the owner of property located at 1935 SW 8th Court, Cape Coral, Florida. Said grant shall be subject to the City retaining a right-of-way easement across the property as described herein granted for the purpose of, but not limited to, entering upon said property for the expansion of the canal system, including a right-of-way easement across said parcel for the maintenance, construction, and renovation of the canal or bridge system, and reserving an easement across said parcel for any utility lines including water, sewer, or electrical, and a drainage easement to enlarge the existing channel in the future; a copy of the quit claim deed is attached hereto as Exhibit "1."

Section 3. Severability. In the event that any portion or section of this ordinance is determined to be invalid, illegal or unconstitutional by a court of competent jurisdiction, such decision shall in no manner affect the remaining portions or sections of this ordinance which shall remain in full force and effect.

Section 4. Effective Date. This ordinance shall become effective immediately upon its adoption.

ADOPTED AT A REGULAR COUNCIL MEETING THIS _____ DAY OF _____, 2017.

MARNI L. SAWICKI, MAYOR

VOTE OF MAYOR AND COUNCILMEMBERS:

SAWICKI _____
BURCH _____
CARIOSCIA _____
STOUT _____

LEON _____
ERBRICK _____
WILLIAMS _____
COSDEN _____

ATTESTED TO AND FILED IN MY OFFICE THIS _____ DAY OF _____, 2017.

REBECCA VAN DEUTEKOM
CITY CLERK

APPROVED AS TO FORM:



BRIAN R. BARTOS
ASSISTANT CITY ATTORNEY
ord/triprop-McHenry

QUIT-CLAIM DEED

Prepared by:
Brian R. Bartos
City of Cape Coral
PO Box 150027
Cape Coral, FL 33915-0027
Strap #:27-44-23-C2-04377.0360
City of Cape Coral Ordinance 7-17

THIS QUIT-CLAIM DEED, executed this _____ day of _____, 2017 by first party:

CITY OF CAPE CORAL, A FLORIDA MUNICIPAL CORPORATION

whose post office address is: Post Office Box 150027, Cape Coral, Florida 33915-0027

to second party **Jason S. McHenry**
whose post office address is: 310 S.E 31st Street
Cape Coral, Fl. 33904

WITNESSETH, that the said first party, for and in consideration of the sum of \$10.00, in hand paid by the said second party, the receipt whereof is hereby acknowledged, does hereby remise, release and quit-claim unto the said second party forever, all the right, title, interest, claim and demand which the said first party has in and to the following described lot, piece or parcel of land, situate, lying and being in the County of Lee, State of Florida to wit:

A parcel of land being a portion of Highlander Canal Right of Way adjoining Lots 36 and 37, Block 4377 as shown on the plat of Cape Coral Unit 63 as recorded in Plat Book 21 at Pages 48-81 of the Public Records of Lee County, Florida; being more particularly described in Exhibit "A" which is attached hereto and incorporated herein by reference.

Reserving therefrom, the Northerly 25 feet as a Public Utilities, Drainage, Roadway and Bridge Maintenance Easement (along S.W. 19th Lane); and reserving therefrom the Easterly 6 feet as a Public Utilities and Drainage Easement (along Highlander Canal).

THIS CONVEYANCE IS SUBJECT TO THE FOLLOWING CONDITIONS: Grantee, or his/her/their/its successors or assigns, shall apply for a seawall permit(s) within six (6) months of the date of this deed, and complete construction of the seawall upon the waterway portion of the above described property within twelve (12) months from the date of this deed. Grantee, or his/her/their/its successors or assigns, shall obtain the required permitting approval from all applicable Local, State, or Federal governmental agencies. The violation of the aforementioned conditional time frame to complete construction of said seawall shall result in the immediate reversion of title, of the above described property, to the Grantor or its successors and/or assigns.

TO HAVE AND TO HOLD the same together with all and singular the appurtenances thereunto belonging or in anywise appertaining, and all the estate, right, title, interest, lien, equity and claim whatsoever of the said first party, either in law or equity, to the only proper use, benefit and behoof of the said second party forever.

IN WITNESS WHEREOF, the said first party has signed and sealed these presents the day and year first above written.

Signed, sealed and delivered in presence of:

City of Cape Coral, a Florida municipal corporation

(Signature) _____
(Print)

Marni L. Sawicki, Mayor

(Signature) _____
(Print)

STATE OF: Florida §
COUNTY OF: Lee §

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgements, personally appeared Marni L. Sawicki, Mayor of the City of Cape Coral, a Florida municipal corporation, to me known to be the persons described in and who executed the foregoing instrument and they acknowledged before me that they executed the same. Witness my hand and official seal in the County and State aforesaid this _____ day of _____, 2017.

(seal)

Notary Public (Signature)

Signed, sealed and delivered in presence of:

City of Cape Coral, a Florida municipal corporation

(Signature) _____
(Print)

Rebecca van Deutekom, City Clerk

(Signature) _____
(Print)

STATE OF: Florida §
COUNTY OF: Lee §

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgements, personally appeared Rebecca van Deutekom, City Clerk of the City of Cape Coral, a Florida municipal corporation, to me known to be the persons described in and who executed the foregoing instrument and they acknowledged before me that they executed the same. Witness my hand and official seal in the County and State aforesaid this _____ day of _____, 2017.

(seal)

Notary Public (Signature)

Exhibit "A"

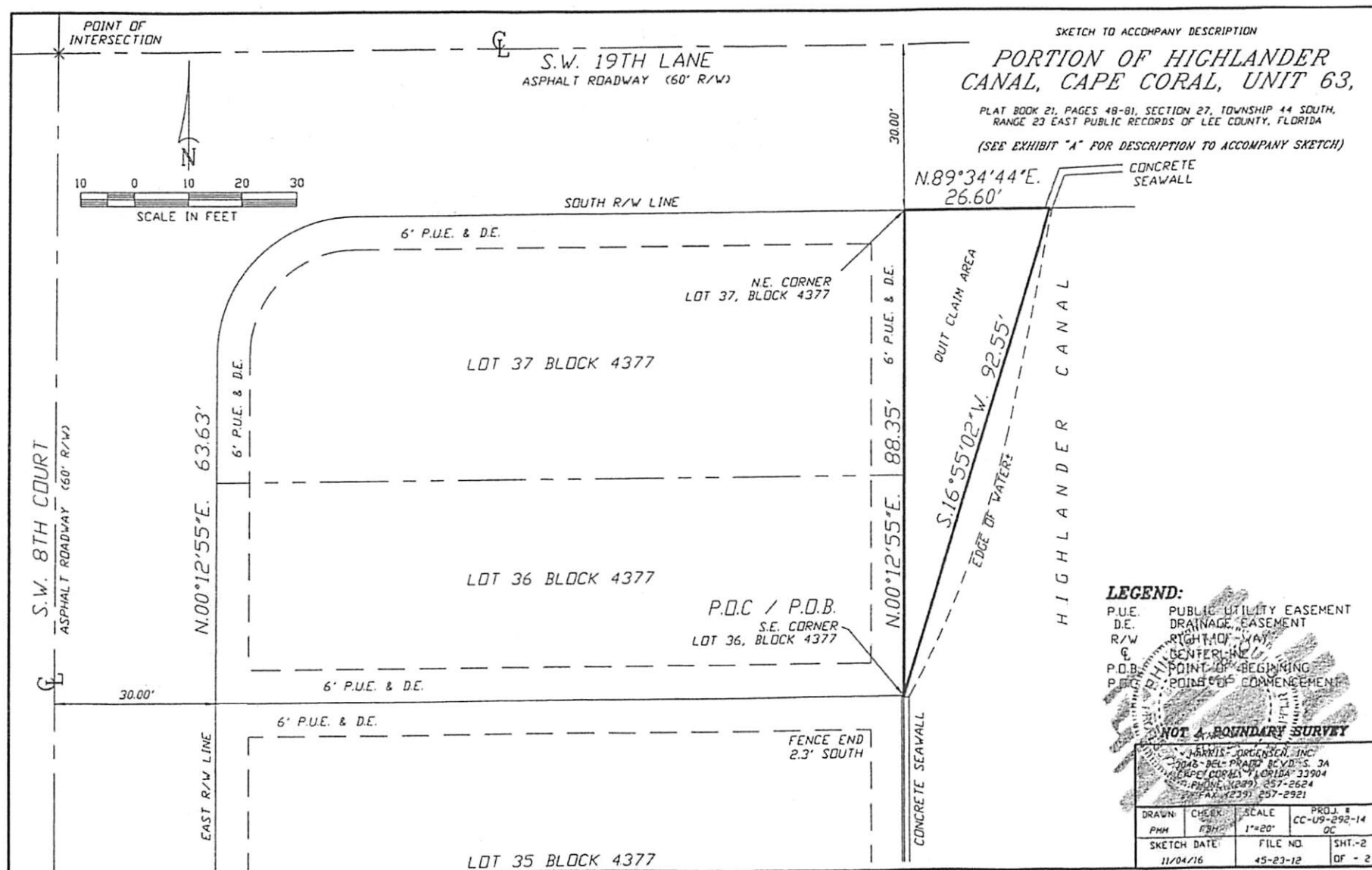
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Bearings are based on the recorded plat of the Cape Coral Unit 63, according to Plat Book 21, Pages 48 through 81, of the Public Records of Lee County, Florida,



Item Number:	B.(4)
Meeting Date:	1/23/2017
Item Type:	ORDINANCES/RESOLUTIONS - Introductions

**AGENDA
REQUEST FORM**
CITY OF CAPE
CORAL



TITLE:

ADDENDUM: Ordinance 8-17 Set Public Hearing Date for February 6, 2017

REQUESTED ACTION:

Approve or Deny

STRATEGIC PLAN INFO:

1. Will this action result in a Budget Amendment? No

2. Is this a Strategic Decision?

If Yes, Priority Goals Supported are listed below.

If No, will it harm the intent or success of the Strategic Plan?

ELEMENT E: INCREASE QUALITY OF LIFE FOR OUR CITIZENS BY DELIVERING PROGRAMS AND SERVICES THAT FOSTER A SAFE COMMUNITY

PLANNING & ZONING/HEARING EXAMINER/STAFF RECOMMENDATIONS:

SUMMARY EXPLANATION AND BACKGROUND:

An ordinance authorizing and directing the City Manager to enter into an Animal Shelter Ground Lease and Purchase Agreement with Cape Coral Animal Shelter Corporation, a not-for-profit corporation, for the lease of property owned by the City of Cape Coral located at 325 SW 2nd Avenue for the operation of an animal shelter and adoption facility.

LEGAL REVIEW:

Brian R. Bartos, Assistant City Attorney

EXHIBITS:

Memo to Mayor and City Council
Ordinance 8-17

PREPARED BY:

Division- Department- City
Attorney

SOURCE OF ADDITIONAL INFORMATION:

Steve Pohlman, Parks & Recreation Director

Dawn Andrews, Property Broker




ATTACHMENTS:

Description	Type
▣ Memo to Mayor and City Council	Backup Material
▣ Ordinance 8-17	Ordinance

MEMORANDUM

CITY OF CAPE CORAL
CITY MANAGER'S OFFICE

TO: Mayor Sawicki and Council Members

FROM: John Szerlag, City Manager 
Kelley Fernandez, Business Manager 
Dawn Andrews, Property Broker 

DATE: January 19, 2017

SUBJECT: Ord. 8 -17 – Animal Shelter Ground Lease and Purchase Agreement
Cape Coral Animal Shelter Corporation

Cape Coral Animal Shelter Corporation and city management recommend a 99-year ground lease for a no-kill animal shelter on City property. The request is for a 4.2 acre site adjacent and south of the Youth Center, north of SunSplash on SW 2nd Avenue. Staff has reviewed the future use for this property and determined the property is not currently identified as required for any upcoming projects. Staff also recognized an animal shelter would provide a valuable service for the community.

City staff met with President JoAnn Elardo and Board Member Gloria Tate to negotiate the various lease terms. Key elements of the lease are as follows:

- Term & Rent – 99 years for \$1.00 per year
- Use of Premises – No kill animal shelter and adoption facility with ancillary services
- Construction of Improvements – by Lessee after all construction funds have been obtained (no bond or letter of credit required)
- Earliest Termination Date – Upon Lessee's dissolution of the corporation or ceasing to operate as an animal shelter
- Right to Purchase Site – Lessee may purchase site at appraised land value
- Right of First Refusal – Lessee shall provide City the right of first refusal to purchase improvements at depreciated value if operations cease or corporation dissolves
- Rezoning & PDP Costs – City to bear costs
- Taxes and Utilities – Lessee to bear all costs

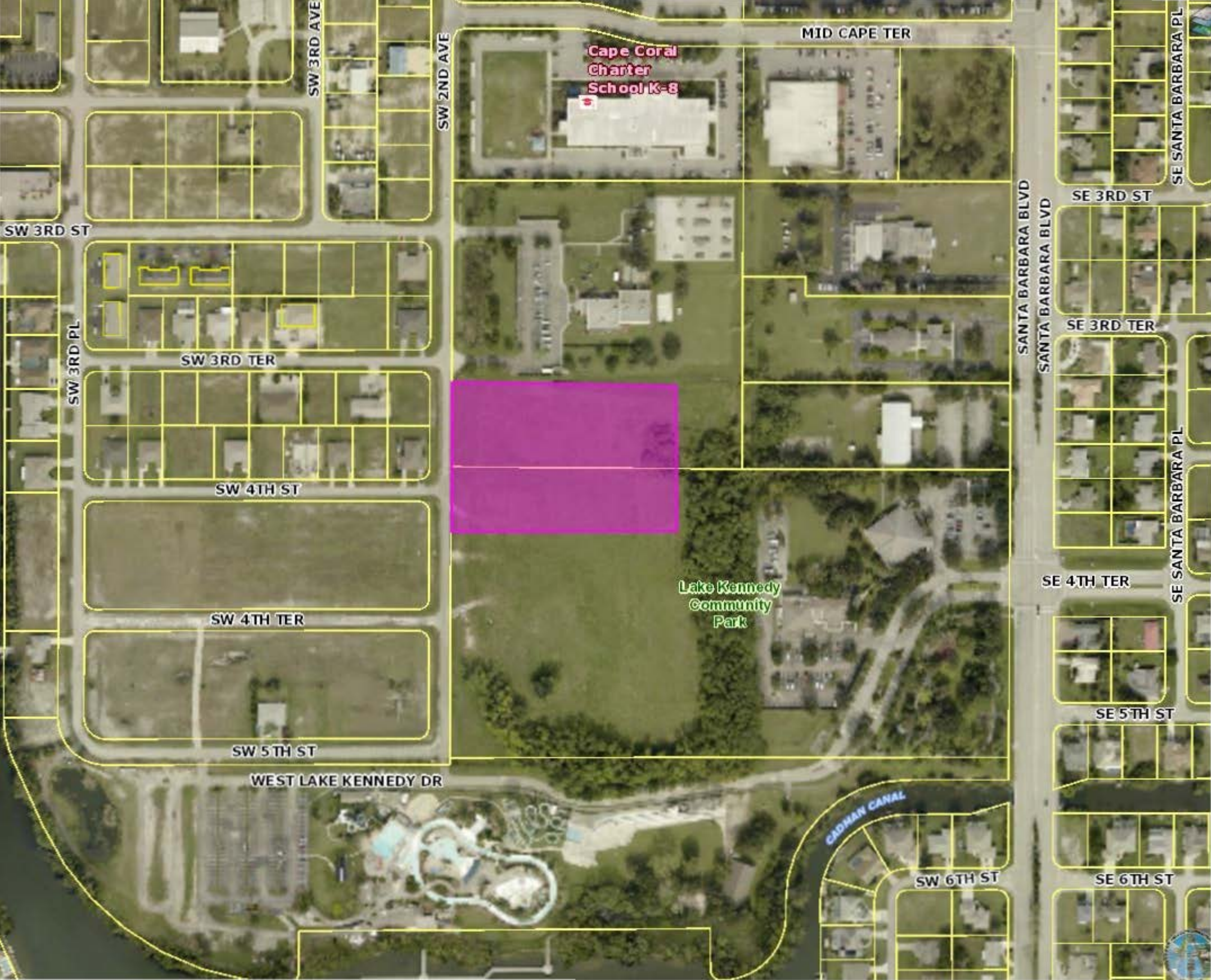
Staff recommends approval of the requested ground lease. Representatives of Cape Coral Animal Shelter Corporation will be in attendance to address any questions at the Public Hearing.

Should you have any questions, please feel free to contact my office.

JS/KF/da

Attachment: Location Map

C: Dolores Menendez, City Attorney
Brian Bartos, Assistant City Attorney
JoAnn Elardo, President, Cape Coral Animal Shelter Corporation
Gloria Tate, Board Member, Cape Coral Animal Shelter Corporation



Cape Coral
Charter
School K-8

Lake Kennedy
Community
Park

CADMAN CANAL

ORDINANCE 8 - 17

AN ORDINANCE AUTHORIZING AND DIRECTING THE CITY MANAGER TO ENTER INTO AN ANIMAL SHELTER GROUND LEASE AND PURCHASE AGREEMENT WITH CAPE CORAL ANIMAL SHELTER CORPORATION FOR THE LEASE OF PROPERTY OWNED BY THE CITY OF CAPE CORAL LOCATED AT 325 SW 2ND AVENUE FOR THE OPERATION OF AN ANIMAL SHELTER AND ADOPTION FACILITY; A COPY OF THE ANIMAL SHELTER GROUND LEASE AND PURCHASE AGREEMENT IS ATTACHED HERETO AND INCORPORATED HEREIN BY REFERENCE; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, the City of Cape Coral owns the property located at 325 SW 2nd Avenue; and

WHEREAS, the City Council desires to enter into an Animal Shelter Ground Lease and Purchase Agreement with Cape Coral Animal Shelter Corporation for the operation of an animal shelter and adoption facility, along with providing ancillary services associated with an animal shelter, such as veterinarian clinic services, animal grooming services, educational activities, or other animal related services and activities permitted within the zoning district under the terms and conditions as set forth in the attached agreement.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CAPE CORAL, FLORIDA, AS FOLLOWS:

SECTION 1. That the City Manager is hereby authorized and directed to enter into an Animal Shelter Ground Lease and Purchase Agreement between the City of Cape Coral and Cape Coral Animal Shelter Corporation for the lease of property located at 325 SW 2nd Avenue for the operation of an animal shelter and adoption facility under the terms and conditions as set forth in the agreement, attached hereto as Exhibit 1 and incorporated herein by reference.

SECTION 2. Severability. In the event that any portion or Section of this ordinance is determined to be invalid, illegal or unconstitutional by a court of competent jurisdiction, such decision shall in no manner affect the remaining portions or Sections of this ordinance which shall remain in full force and effect.

SECTION 3. Effective Date. This ordinance shall become effective immediately after its adoption by the Cape Coral City Council.

ADOPTED BY THE CITY COUNCIL OF THE CITY OF CAPE CORAL AT ITS REGULAR COUNCIL SESSION THIS _____ DAY OF _____, 2017.

MARNI L. SAWICKI, MAYOR


VOTE OF MAYOR AND COUNCILMEMBERS:

SAWICKI	_____	LEON	_____
BURCH	_____	ERBRICK	_____
CARIOSCIA	_____	WILLIAMS	_____
STOUT	_____	CODSEN	_____

ATTESTED TO AND FILED IN MY OFFICE THIS _____ DAY OF _____, 2017.

REBECCA VAN DEUTEKOM,
CITY CLERK

APPROVED AS TO FORM:



BRIAN R. BARTOS
ASSISTANT CITY ATTORNEY
Ord/Animal Shelter Ground Lease

ANIMAL SHELTER GROUND LEASE AND PURCHASE AGREEMENT

This Animal Shelter Ground Lease and Purchase Agreement ("Agreement"), made and entered into this _____ day of _____, 2017, by and between CAPE CORAL ANIMAL SHELTER CORPORATION, a not-for-profit corporation, hereinafter referred to as "LESSEE", and the CITY OF CAPE CORAL, a Florida municipal corporation, hereinafter referred to as "LESSOR."

WHEREAS, there exists an identified need in the City of Cape Coral for animal rescue, shelter, adoption, health and educational services in addition to what other entities are able to provide; and

WHEREAS, LESSEE is desirous of providing such services in exchange for a ground lease and purchase agreement in a manner anticipated to augment and improve the delivery of services by other entities; and

WHEREAS, LESSEE and LESSOR have mutually agreed on the terms and conditions set forth herein below, for the Lessee to lease from the LESSOR premises to construct buildings for Animal Control services such that the synergy created provides a greater benefit to the citizens of Cape Coral.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements hereinafter set forth, the LESSOR hereby demises and leases to the LESSEE the following described Premises, which lease agreement shall become effective on the dates as set forth herein on the following terms and conditions:

1. **Premises.** The LESSOR hereby leases to the LESSEE, and LESSEE hereby leases from the LESSOR, certain real property, as more particularly described in Exhibit "A" which is attached hereto and made a part hereof by reference, subject to the terms, covenants, agreements and conditions set forth below. LESSEE hereby acknowledges and agrees that pursuant to section 4.17 of the City of Cape Coral Charter, the conveyance or lease of any lands of the City shall be by ordinance adopted by the Cape Coral City Council.
2. **Term.** The term of this Agreement shall be for ninety-nine (99) years, commencing _____, 2017, and ending _____, 2116 if the premises has not been conveyed to LESSEE as provided for herein.
3. **Condition of Premises.** LESSEE has inspected and knows the condition of the Premises, and accepts the same in its present condition for the purposes set out in this lease.
4. **Rent.** LESSEE covenants and agrees to pay to LESSOR as Rent for the Premises One Dollar (\$1.00) per year for the entire term of the lease.
5. **Use of premises.** LESSEE shall only occupy or use the Premises for the primary purpose of operating an animal shelter and adoption facility. LESSEE may provide ancillary services associated with an animal shelter, such as veterinarian clinic services, animal grooming services, educational activities, or other animal related services and activities permitted within the zoning district.
6. **Zoning.** LESSEE acknowledges that the Premises is currently zoned R-1A (Single Family), a zoning designation that does not allow the Premises to be used for the purposes identified herein. LESSEE

shall submit an application to the LESSOR to rezone the Premises to an appropriate zoning district allowing for the uses contemplated by this Lease. LESSEE shall comply with all regulations within the zoning district, or other Federal, State, County, or City regulations, including, but not limited to, any requirements to proceed through the Planned Development Project process, obtaining approval for special exception uses, deviations, etc. LESSOR shall bear all costs associated with rezoning, PDP, Special Exceptions, or other such processes. Should the LESSEE's request to rezone the Premises be denied, this Lease shall be null and void.

7. **Construction of Lessee Improvements.** LESSEE shall commence construction on the Premises during the first twenty-four (24) months of the term of a facility suitable for providing animal shelter and adoption services including, but not limited to, a minimum five-thousand (5000) square foot animal shelter for the adoption of animals to the public, including veterinarian clinic services, educational activities indoors and outdoors, outdoor walking and interaction areas, together with accessory structures, parking areas, driveways, landscaping and other improvements (collectively "Lessee Improvements") as may be deemed appropriate by LESSEE for the use and operation of the Premises for such purposes. LESSEE agrees commencement of construction shall not begin until all construction funds have been obtained. LESSEE shall provide to LESSOR a Financial Statement, and a cost of construction statement from the general contractor, prior to the issuance of the building permit. Such construction shall meet City Code standards and all building permits shall be obtained. LESSEE shall have full control over the design, layout and materials used in the construction of the Lessee Improvements, subject to the aforementioned code standards. LESSEE will retain title to and rights of ownership of the Lessee Improvements during the Term and upon conveyance of title to the Premises to LESSEE, unless otherwise conveyed as stated hereinbelow. Notwithstanding the above, if LESSEE commences construction on the Premises and fails to complete the Lessee Improvement(s), so the Lessee Improvement(s) are left in a partially constructed state, the LESSEE acknowledges and agrees to convey the partially completed Lessee Improvement(s) to the LESSOR free of all encumbrances and acknowledges and agrees the LESSOR may take any action regarding the partially completed Lessee Improvement(s) as the LESSOR deems appropriate. In such event, the LESSEE shall be deemed in default of this Lease and this Lease shall be terminated. Factors determining whether the LESSEE has failed to complete the Lessee Improvement(s) include, but are not limited to, cessation of construction activity to the Lessee Improvement(s) on the Premises for a period of six (6) months, or the expiration of any permit(s) without the LESSEE applying for and receiving an extension of the permit(s).
8. **Sublease and Use of Premises.** LESSEE may not assign or sublease this Lease without the prior written consent of LESSOR. LESSEE may not sublease a portion of the facilities to businesses that assist in providing care and services ancillary to the uses stated in paragraph 5, above, such as, but not limited to, grooming services, training, and a gift shop, without the prior written consent of the LESSOR.
9. **Insurance and Indemnity.**
 - (A) LESSEE agrees to name LESSOR as an additional insured on (1) a policy covering premises liability up to One Million Dollars, and (2) a Fire and Extended Coverage Policy for each of the Premises sufficient to reconstruct the Lessee Improvements. LESSEE shall cause the company issuing such insurance to notify LESSOR at least thirty (30) days prior to any cancellation of the policy which shall be evidenced by a certificate of insurance providing for such notice. It is agreed and understood that the LESSEE shall not change the use of the Premises from that which is contemplated by the parties at the time this Agreement is signed. LESSEE shall also keep in full force and effect during the Term adequate liability insurance.

- (B) LESSEE agrees to defend, indemnify and hold harmless LESSOR, its officials, agents and employees from and against any and all claims of and liabilities (including attorney fees and costs of defense) actually imposed by law to any person, including officers, agents, employees, contractors, or invitees of the LESSEE and any other third persons or parties, for death, bodily injury or property damage or any other loss whatsoever arising from or connected with the LESSEE's use of the Premises, including but not limited to any such claims and liabilities from the allegedly dangerous condition of the Premises.
10. **Utilities and Taxes.** The LESSEE will pay for all utility services including electricity, water, gas, sewer and solid waste (garbage) removal. In addition, LESSEE agrees to pay all ad valorem, non-ad valorem and personal property taxes, if any, as well as all local government assessments, if any, levied or assessed against the Premises during the lease term, or any taxes arising from the Premises as a result of the improvement or other activity of LESSEE on the Premises.
11. **Maintenance and Repairs.**
- (A) **Lessee's Maintenance Obligations.** LESSEE shall at all times during the Term of this Lease maintain or cause any subtenant to maintain the Premises and the Lessee Improvements in good condition and repair, including without limitation all landscaping, parking areas, sidewalks, and driveways, the structure of the roof, all plumbing, lighting, heating, ventilation and air conditioning facilities, electrical wiring and equipment, walls, floors and ceilings, and including replacement of parts and equipment if necessary.
- (B) **Exterior and Grounds.** LESSEE shall be responsible for all mowing of grass and lawn care, and trash and garbage removal from the Premises.
- (C) **Lessor's Maintenance Obligations.** LESSOR shall have no obligation to maintain or repair the Lessee Improvements nor care for the exterior and grounds leased to LESSEE hereunder.
12. **Damage to Lessee's Improvements.** As soon as is reasonably possible after damage or destruction to any or all of Lessee's Improvements on the Premises, but no later than 18 months after such damage or destruction, LESSEE shall, at LESSEE's sole cost and expense, commence to either repair and restore the Lessee's Improvements as completely as possible to their condition immediately prior to the damage, or, in the alternative, replace the Lessee's Improvements. If the Premises have become wholly untenable due to the damage or destruction of the Lessee's Improvements, LESSEE may elect to not make the repairs or replacements and terminate this Lease thirty (30) days after serving LESSOR with written notice of LESSEE's intent to terminate the Lease. If LESSEE elects not to make repairs and to terminate this Lease, LESSEE shall remove all remaining improvements from the Premises and return the Premises to the LESSOR in its original condition at the time of entering into this Lease. In no case shall the LESSOR be obligated to make the repairs or replacements or otherwise rebuild the Lessee's Improvements, or to restore the Premises to its original condition, upon the LESSEE terminating this Lease.
13. **Condemnation of Premises.** In the event of condemnation or taking aforesaid, whether whole or partial, the award paid for such condemnation shall be apportioned equitably between the LESSOR and the LESSEE and the value of the Lessee Improvements shall be awarded first to the Lessee.
14. **Environmental Matters.** LESSOR warrants and represents to LESSEE that to the best of LESSOR's

knowledge as of the commencement of the Term of the Lease, the Premises do not have any underground storage tanks and are not subject to any environmental hazardous conditions.

15. **Right to Purchase During Term.** The parties acknowledge that LESSEE is providing a valuable service to the community and through its successful efforts will relieve the burden on the LESSOR through many of its services including, but not limited to, animal shelter for the adoption of animals to the public, veterinary clinic services, and pet owner education. The parties hereby agree that LESSEE may purchase the Premises at any time during the term of this lease for the appraised value, at such time, of the Premises (real property only, excluding improvements), as described in Exhibit "A" attached hereto and made a part hereof.
16. **Rights upon Lessee's dissolution of the corporation or ceasing the operation of an animal shelter; Right of Lessor's first refusal to purchase from Lessee.** Should LESSEE at any time during the term of this Lease decide to dissolve the corporation or cease operating the animal shelter, LESSEE shall notify the LESSOR ninety (90) days prior to the dissolution or cessation of the operation of the animal shelter. LESSEE shall arrange for alternative placement, or adoption, of all animals prior to the dissolution or cessation of the animal shelter operation. LESSEE hereby grants LESSOR a right of first refusal to purchase the Lessee Improvements after receiving written notice from LESSEE of its decision to sell Lessee's Improvements, at the original costs of the Lessee's Improvements less depreciation amortized over a forty (40) year period for structures, and a 10 year period for other property improvements. LESSEE agrees to accept said value. LESSEE shall provide LESSOR a complete accounting of the original costs to construct said facility(s) within 30 days of issuance of a certificate of use. Should LESSOR decide not to exercise the right of first refusal, LESSEE shall have the right to sell Lessee's Improvements to a third party subject to the third party operating the animal shelter and permitted ancillary uses, all other terms of this Lease, and upon LESSOR's approval. In the event LESSOR decides not to exercise the right of first refusal to purchase the Lessee's Improvements and the LESSEE has not conveyed the Lessee's Improvements to a third party within twelve (12) months of the LESSOR's right of first refusal, the LESSEE shall convey the Lessee's Improvements to the LESSOR, excluding any and all encumbrances.
17. **Right to Mortgage.** LESSEE shall have the right to use the term of the lease as collateral for a loan to construct the facility, provided it also engages in a capital campaign to raise funds for construction. In no event shall the LESSEE mortgage the Leased Premises, or otherwise encumber the Leased Premises.
18. **Liens.** LESSOR'S interest in the Premises shall not be subject to any lien for any construction, alterations, installations, improvements, or work as provided in section 713.10, Florida Statutes. LESSEE shall notify all persons and entities constructing improvements or performing work on the Premises, or supplying materials, equipment rental, or other services for the improvements or work, that this Lease does not allow any liens to attach to LESSOR's property. Further, LESSEE acknowledges and shall advise all such persons and entities that the Premises is governmental property not subject to any lien or right to claim a lien. LESSEE shall cause its contractor(s) to provide a final waiver and release of all claims, in the form approved by the LESSOR, upon completion of the improvements and before making final payment to LESSEE's contractor(s). Such final release shall certify that full and final payment was made to all of the contractor(s) subcontractors. If, notwithstanding the foregoing, and mechanic's, materialman's, laborer's, or any other lien, or any order or judgment for payment of money, shall be recorded against the Premises or any part thereof or against LESSOR's leasehold interest or otherwise asserted against LESSOR's interest (whether or not

legally effective), then LESSEE shall, at LESSEE's own cost and expense, cause the same to be satisfied, cancelled, and discharged of record and, further, shall indemnify and hold the LESSOR harmless from and against any and all costs, expenses, claims, losses or damages, including reasonable attorneys' fees and expert fees, through trial and appeal, resulting therefrom or by reason thereof.

19. **Default.** In the event of default by either party, each shall have such remedies as are available under the law. In case of default of any term herein, the party claiming default shall first send written notice to other party notifying them of the breach and providing ten (10) days to cure said breach.
20. **Entire Agreement.** This Agreement contains the entire agreement of the parties. No modification, amendment, or waiver of any of the provisions of this agreement shall be effective unless in writing specifically referring hereto, and signed by both parties.
21. **Notice.** All notices required or permitted hereunder and required to be in writing to the LESSOR may be given by first class mail addressed to the City Manager, P.O. Box 150027, Cape Coral, Florida 33915, and to LESSEE at 1217 Cape Coral Pkwy East, Suite 234, Cape Coral, Florida, 33904.
22. **Venue.** This Agreement and every question arising hereunder shall be construed or determined according to the laws of the State of Florida and venue for any lawsuit arising therefrom shall lie exclusively in Lee County, Florida.
23. **Severability.** In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof, except that Lessee may elect to declare the lease void in the event a provision that affects the value of the Tenant Improvements to Lessee is held invalid, and seek reimbursement for the value of such Improvements from Lessor.
24. **Compliance With Laws.** The parties hereby agree that they will comply with all applicable federal, state and local laws relating to the activities hereunder.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals on the day and year herein stated.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

Linda Biondi

Print: LINDA BIONDI

D. Hackworth

Print: Dennis Hackworth

CAPE CORAL ANIMAL SHELTER
CORPORATION

By: Joann Elardo

JOANN ELARDO, PRESIDENT

ATTESTED TO BY:

REBECCA VANDEUTEKOM
CITY CLERK

CITY OF CAPE CORAL, FLORIDA

By: JOHN SZERLAG
JOHN SZERLAG, CITY MANAGER

APPROVED AS TO FORM:

BRIAN R. BARTOS
ASSISTANT CITY ATTORNEY
Agmt/Leases/Animal Shelter Lease

EXHIBIT "A"

Parcel "A"

A Parcel of land lying in the Northwest Quarter (NW 1/4) of the Northeast Quarter (NE 1/4) of the Southeast Quarter (SE 1/4) of Section 14, Township 44 South, Range 23 East, City of Cape Coral, Lee County, Florida; being more particularly described as follows:

The Northwest Quarter (NW 1/4) of the Northeast Quarter (NE 1/4) of the Southeast Quarter (SE 1/4) of Section 14, Township 44 South, Range 23 East, City of Cape Coral, Lee County, Florida; **LESS** the North 460 feet thereof and **LESS** the East 177 feet thereof.

and

Parcel "B"

A Parcel of land lying in the Southwest Quarter (SW 1/4) of the Northeast Quarter (NE 1/4) of the Southeast Quarter (SE 1/4) of Section 14, Township 44 South, Range 23 East, City of Cape Coral, Lee County, Florida; being more particularly described as follows:

The North 162 feet of the Southwest Quarter (SW 1/4) of the Northeast Quarter (NE 1/4) of the Southeast Quarter (SE 1/4) of Section 14, Township 44 South, Range 23 East, City of Cape Coral, Lee County, Florida; **LESS** the East 177 feet thereof.

Parcels "A" & "B" combined contain 4.2 Acres +/-.

Item Number: 10.A.

Meeting Date: 1/23/2017

Item Type: UNFINISHED
BUSINESS

**AGENDA REQUEST
FORM**
CITY OF CAPE CORAL



TITLE:

Water Quality

REQUESTED ACTION:

STRATEGIC PLAN INFO:

1. Will this action result in a Budget Amendment?
2. Is this a Strategic Decision?
If Yes, Priority Goals Supported are listed below.
If No, will it harm the intent or success of the Strategic Plan?

PLANNING & ZONING/HEARING EXAMINER/STAFF RECOMMENDATIONS:

SUMMARY EXPLANATION AND BACKGROUND:

LEGAL REVIEW:

EXHIBITS:

Memo to Mayor and City Council

PREPARED BY:

Division- Department-

SOURCE OF ADDITIONAL INFORMATION:



ATTACHMENTS:

Description	Type
<input type="checkbox"/> Memo to Mayor and City Council	Backup Material

MEMORANDUM

**CITY OF CAPE CORAL
PUBLIC WORKS DEPARTMENT**

TO: Mayor Sawicki and Council Members

FROM: John Szerlag, City Manager 
Paul Clinghan, Public Works Director **PRC**
Connie Jarvis, Environmental Resources Manager 

DATE: January 20, 2017

SUBJECT: Lake Okeechobee Level and Release Information 1/20/2017

As of Thursday, January 19, 2017, the elevation of Lake Okeechobee was 13.97 feet. Inflows into the lake were 387 cfs, total outflows were not available. Current discharges at S-77 were 307 cfs, and 108 cfs at S-79.

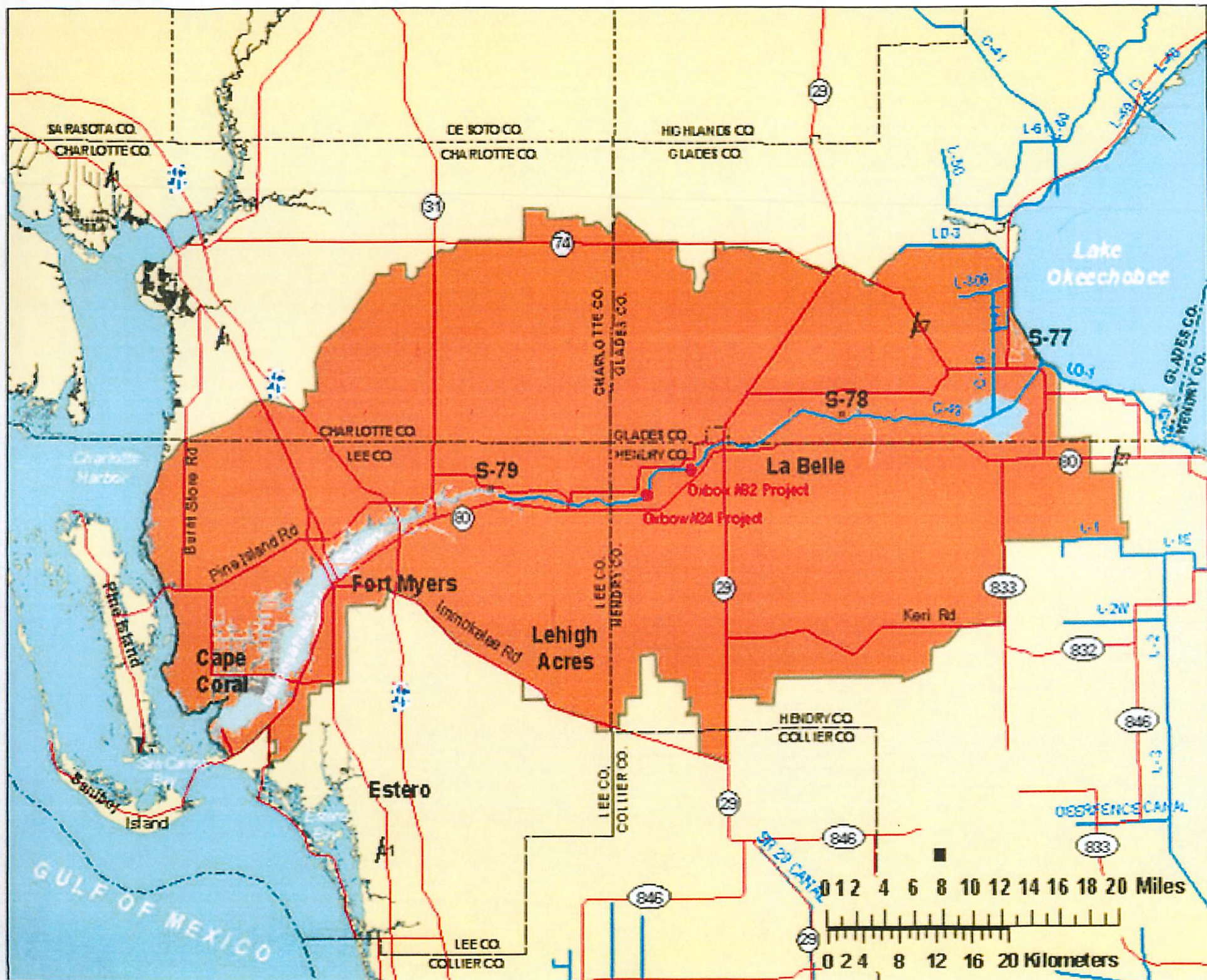
Salinities in the river near Fort Myers were 16 PSU. Salinities at Shell Point were 29 PSU. Red tide was either not present or at very low levels along the Charlotte, Lee and Collier coastlines.

In the Lee County weekly check, blue green algae was not present at any of the sampling locations.

The Corps is continuing with the targeted discharge amount of an average of 650 cfs for the week, which is the target dry season flow. Salinities in the upper portion of the river are at levels that could impact the freshwater grasses. A periodic scientist call is scheduled for Tuesday, January 24.

Attached is a map showing the position of Caloosahatchee River Locks.

PC/CJ:ol (Weekly Lake Okeechobee Level and Release Information (1/20/2017)
Attachment; Caloosahatchee River Locks map



Item Number: 10.C.

Meeting Date: 1/23/2017

Item Type: UNFINISHED
BUSINESS

**AGENDA REQUEST
FORM**
CITY OF CAPE CORAL



TITLE:

Discussion and selection of finalists for the City Auditor position

REQUESTED ACTION:

Staff Direction

STRATEGIC PLAN INFO:

1. Will this action result in a Budget Amendment? No

2. Is this a Strategic Decision? No

If Yes, Priority Goals Supported are listed below.

If No, will it harm the intent or success of the Strategic Plan?

PLANNING & ZONING/HEARING EXAMINER/STAFF RECOMMENDATIONS:

SUMMARY EXPLANATION AND BACKGROUND:

LEGAL REVIEW:

EXHIBITS:

Semifinalists Cape Coral Auditor

PREPARED BY:

PT Division- Department- Council
Offices

SOURCE OF ADDITIONAL INFORMATION:

ATTACHMENTS:

Description

Type

□ Semifinalists Cape Coral City Auditor

Backup Material



The Mercer Group, Inc.

**CITY
of
CAPE CORAL,
FLORIDA**

CITY AUDITOR

SEMI-FINALISTS

January 10, 2017

THE MERCER GROUP, INC.

W. D. Higginbotham, Jr.

Senior Vice President

Daytona Beach Shores, Florida 32118-8202

727-214-8673

WDHiggin@mercergroupinc.com

www.mercergroupincflorida.com

Cape Coral, Florida
City Auditor
January 10, 2017

Candidate	Education	CERT. Other	Employer	Current/Recent Position	Salary Base	Other
Andrea R. Butola Jamestown, RI	MS-Accounting	CPA; CFE;CGMA	State of RI; State of RI	Sr. Inter. Audit Mgr. Sr. Audit Manager	\$103,000	Extensive State Govt. Experience; Personnel mgt.; Vivacious personality; People person
Lisa D. Henry Columbia, SC	MBA;	CPA; CIA; CISA	BC/BS, South Car.; SC Dept of Employ.	IS Audit Mgr. Lead IT Auditor	\$ 95,000	Local Govt. exper. through State Govt. People skills & mgt. exper.
J. Bradley Simmons Palm Coast, FL	BS-Accounting	CIA; CGAP; CFE	St. Johns County Clerk & Compt.	Director of Audit Services	\$ 80,000	Extensive Audit experience paralleling Cape Coral.
Becky Thackery Ponte Vedra Beach, FL	BA-Bus. Adm.	CIA; CFSA; CRP	Acosta Sales/Mkt; FPIC Ins. Group	VP Internal Audit; VP/Dir Internal Audit	\$140,000	Solid private sector auditing and financial services experience largely in Florida.
T. Paul Tomoser Omaha, NE	BS-Accounting MBA-Candidate	CPA; CISA; CIA;CRMA; CGFM	Creighton Univ, NE	Inter. Audit Director	\$116,000	Well rounded auditing experience including mgt. of department.
Jeffrey Zeichner Saint Augustine, FL	BS-Accounting	CPA	RSM US, CPAs; Carr,Riggs&Ingram	Sr. Assurance Mgr.; Audit Manager	\$128,800	Solid local govt audit experience through private CPA employment.
<u>2nd TIER</u>	<u>2nd TIER</u>	<u>2nd TIER</u>	<u>2nd TIER</u>	<u>2nd TIER</u>	<u>2nd TIER</u>	<u>2nd TIER</u>
Anthony Pagliaro Hershey, PA	BS-Accounting	CIA	PA Gaming Board	Chief Auditor/Mgr.	\$107,000	Qualified professional but unfamiliar with local government.
Melinda Pensinger Fort Myers, FL	BS-Accounting; BA-Philosophy	CPA; CIA	Port Auth., Lee County Clerk	Sr. Internal Auditor; Senior Accountant	\$ 75,000	Related experience but Cape Coral far more extensive/larger
Michael Wollman Ottawa, Ontario	MBA	CPA; CIA; CMA	Canadian Federal Government	Several Related & substantive position	\$99,000 in US \$	Has broad and good experience but citizenship may be issue.



The Mercer Group, Inc.

CAPE CORAL, FLORIDA

CITY AUDITOR

January 10, 2017

Summary
Andrea R. Butola

- **Master of Science - Accounting**
- **CPA; CFE; CGMA**
- **Senior Internal Audit Manager, Office of Internal Audit, State of Rhode Island; Senior Audit Manager, Rhode Island Dept. of Transportation; Audit Manager & Financial Consultant, MetLife; Supervising Auditor, Office of Auditor General, State of Rhode Island.**
- **Salary: \$103,000**
- **Internet Research**
 - Various business listings LinkedIn, CPA directories, Yellow pages
 - No news articles

THE MERCER GROUP, INC.

W. D. Higginbotham, Jr.
Senior Vice President
Daytona Beach Shores, Florida 32118-8202
727-214-8673

WDHiggin@mercergroupinc.com
www.mercergroupincflorida.com



The Mercer Group, Inc.

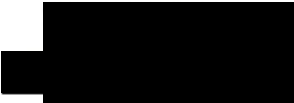
LETTER OF INTEREST & RESUME

THE MERCER GROUP, INC.

W. D. Higginbotham, Jr. Senior Vice President
Daytona Beach Shores, Florida 32118-8202
727-214-8673

WDHiggin@mercergroupinc.com
www.mercergroupincflorida.com

Andrea R. Butola, CPA, CFE, CGMA



W.D. Higginbotham, Jr.

Senior Vice President

The Mercer Group, Inc.

Daytona Beach Shores, FL

WDHiggin@mercergroupinc.com

January 3, 2017

Dear Mr. Higginbotham, Jr.:

I am writing to express interest in the position of City Auditor for the City of Cape Coral. I have attached my resume and letters of recommendation. I am extremely interested in the position and although I am currently located in RI, I am open to relocating to Florida.

I believe I am an excellent candidate for the position because I have fifteen plus years of audit experience with three of those years consisting of the administration of the department/ division. In addition, while at MetLife, I was responsible for administering the company's Sarbanes- Oxley program and was the Auditor in Charge for large and complex internal audits including all of MetLife's Auto & Home SOX program testing. Because of the nature of the duties of the SOX program coordinator I also had frequent dealings with teams across the country and internationally. MetLife fostered an attitude of continual improvement for efficiency and effectiveness in the business as well as in the audit department. While at Met I participated in training for Lean Six Sigma and earned my yellow belt.

Eventually the frequent and far travel necessary for the position at Met led me to apply for the position at the RI Department of Transportation (RIDOT). At RIDOT I was responsible for the administration of the External Audit Department that reported directly to the agency's CFO. When I started my career at DOT, the position had been vacant for over a year which resulted in virtually no audits being issued. While there I devised a plan to continue with current audit requirements and work through the significant audit back log. All outstanding final audits and Indirect Cost Rate audits were completed as of April of this year during the transition to the Office of Internal Audit (OIA).

After the consolidation and re-organization of the OIA, I have completely changed the way audits of RIDOT vendors are conducted from a project centered to vendor centered approach. I currently am responsible for the quarterly risk assessment and plan for all state vendor audits and oversee 6 auditors in the division (There are three positions in the division that are open due to a union law suit. The division fully staffed would be 9 auditors). I was also responsible for revising work paper templates for the vendor audits and incorporating my division's audit techniques into the electronic workpaper software in use by the OIA- Teammate.

While at the RI Office of the Auditor General (OAG), I worked on various state financial and Federal Single Audits, one of which was the State Medicaid Payable and Medicare Single Audit. The Medicare program at the time I was with the OAG was one of the single largest source of federal funding the State received. I was the auditor in charge on site for the audit and frequently had to make decisions without being able to consult with the audit manager at the time as he was concurrently running the state's financial audit. After running the Medicare Single audit I transitioned to the Department of Transportation Financial and Compliance audits. At one point due to retirement of the former manager, the new manager often said he relied on me and the senior auditor also assigned to help with the transition and the details of the DOT operation. In addition, while at the OAG I also ran smaller single audits including the Substance Abuse Program and RI National Guard. While running these audits I had the pleasure of working with Mr. Tim DiSano, who is currently employed by the City of Cape Coral and provided me with the job posting.

I believe that my planning and administration abilities, easy-going personality, ability to learn quickly and my experience in both internal and external and private and governmental audits make me an excellent candidate for the position of City Auditor. I look forward to discussing my attributes in further detail with you. I can be reached on my cell phone at [REDACTED]. Thank you for your consideration.

Respectfully,

A handwritten signature in dark ink, appearing to read 'Andrea R. Butola', with a long horizontal flourish extending to the right.

Andrea R. Butola

Experience

2/2016*- present Office of Internal Audit Providence, RI

Senior Internal Audit Manager

- Responsible for the oversight of the Continuous Audit Division of the Office of Internal Audit which conducts vendor compliance audits of the state's vendors
- Oversee audit staff in planning, completion and review of work
- Perform audit planning and risk assessment for the Division
- Ensure audit documentation complies with department Teammate software requirement
- Complete special projects, provide management advisory services as assigned

* February 2016, a budget article was passed to consolidate and re-organize the RIDOT audit office with the Office of Internal Audit

1/2014- 2/2016 RI Department of Transportation Providence, RI

Senior Audit Manager

- Plan, direct, supervise and perform final review of all design project and vendor indirect cost rate audits completed by the department
- Ensure staff is appropriately trained to adhere to acceptable audit and accounting principles
- Responsible for the overall direction of the audit office and audit projects and ensure professional standards are maintained by reviewing, evaluating and approving audit policies, procedures, methods and techniques
- Complete audit work for special projects or high risk auditees

2009- 1/2014 MetLife Internal Audit Warwick, RI

Audit Manager

- Complete and coordinate all required SOX testing for Auto & Home lines of business in accordance with MetLife corporate requirements
- Assist in the administration of the IA ICFR program for MetLife
- Supervise and complete audits in accordance with MetLife audit plan especially finance and financial reporting
- Review business processes and financial practices to ensure the use of compliant and best practices, procedural efficiency, and accuracy.
- Prepare reports of audit findings for business management, and propose recommendations for changes as needed.
- Participated in 6 month rotation with Finance Audit Team
- Assisted Finance Audit team with year-end financial statement reliance work for external auditors

2008- 2009 MetLife Financial Mgt & Reporting Warwick, RI

SOX Financial Consultant

- Review business processes and assess risks and controls as they relate to Sarbanes- Oxley requirements
- Develop and complete test plans for SOX processes
- Complete all required SOX testing in accordance with MetLife corporate requirements

2001- August 2008 Office of the Auditor General Providence, RI

Supervising Auditor

- Direct, supervise and review work of auditors in all phases of compliance and financial audits
- Conduct interim discussions with auditee and participate in entrance and exit conferences
- Perform audit fieldwork
- Participate and manage in financial, compliance and performance audits including: State Medicaid Payable and Medical Assistance Single Audit, Substance Abuse Single Audit, National Guard Single Audit, RI Department of Transportation Financial and Single Audit, Performance Audit of RI E-911 system, Performance Audit of RI Historical Society

1999-2001 Salve Regina University Newport, RI

Assistant Director Financial Aid

- Created financial aid packages for undergraduate, graduate, and part time university students.
 - Administered the Perkins and Nursing Loan program, including eligibility determination and compliance with federal regulations.
- Supervised work-study students.

1997-1999 Town of Jamestown Jamestown, RI

Assistant Director of Finance

- Administered enterprise funds including preparing and paying vouchers payable, preparing month end and year-end general ledger adjustments.
- Prepared quarterly Town water and sewer billings and oversaw collections.
- Assisted finance director with all facets of maintaining the General Fund for the Town.
- Assisted in preparation of budgets for Town General, Water and Sewer funds

Education and Activities

1992-1996 Salve Regina University Newport, RI

- B.S., Management concentration in Finance
 - Graduated Summa Cum Laude (2nd in class)

1996-1997 Salve Regina University Newport, RI

- M.S., Accounting
- 2001 Passed CPA exam, State of Rhode Island
- 2007 passed Certified Fraud Examiner exam
- Board of Directors 2007; July -Oct 2008 Treasurer RICFE
- Member of AICPA, RISCPA, ACFE, ACFE RI Chapter #33, IIA
- Active CPA licensed in State of RI
- Certified Fraud Examiner
- Lean Six Sigma Yellow Belt certified



Department of Transportation
Two Capitol Hill
Providence, RI 02903

Office: 401-222-2450
Fax: 401-222-3905
www.dot.ri.gov

December 30, 2016

To Whom It May Concern:

It is with great pleasure that I provide this letter of recommendation for Andrea Butola. Ms. Butola was part of my senior management for several years and demonstrated excellent leadership skills while managing the Audit Department of Rhode Island Department of Transportation.

Not only was Andrea's knowledge and experience invaluable to the Department, she has always displayed a high degree of integrity, responsibility, and ambition. She is definitely a leader rather than a follower. In addition, Andrea is organized, dedicated, and always quick on her feet, with sensible reactions in all circumstances I've seen her in. I feel confident in saying that she is capable of handling any situation with thoughtfulness and maturity.

Andrea would be an asset to any organization, and I am happy to give her my wholehearted endorsement.

If you have any further questions, please feel free to contact me by phone or email.

Sincerely,

Loren Doyle
Chief Financial Officer
Rhode Island Department of Transportation
Email: loren.doyle@dot.ri.gov
Phone: (401) 222-6590 X4524

Todd T. San Bento, CPA, CISA
Audit Manager
State of Rhode Island
Office of the Auditor General
33 Broad Street, Suite 201
Providence, Rhode Island 02903-4177

January 3, 2017

W.D. Higginbotham, Jr.
Senior Vice President
The Mercer Group, Inc.
Daytona Beach Shores, FL

Dear Mr. Higginbotham, Jr.,

I am writing to recommend Andrea Butola for the position of City Auditor for the City of Cape Coral, FL. I am currently an Audit Manager for the RI Office of the Auditor General (OAG). I have had the pleasure of working with Andrea for several years with the OAG while assigned as the manager to the RI Department of Transportation (RIDOT) financial statement and Single Audit. Andrea was instrumental in providing me with the information necessary to smoothly transition to the audit. Andrea has a very strong work ethic and was always courteous and respectful with her peers and department employees.

Andrea worked well with other team members and utilized the electronic workpaper software efficiently and in accordance with Office standards. Andrea was always cognizant of deadlines and performed the work needed to ensure her audit work was completed on time. It was a pleasure working with her.

Andrea's experience with the Office of the Auditor General has provided her significant exposure to multiple types of auditing and accounting issues. I've personally managed Andrea while she has conducted financial statement audits, compliance audits as well as performance audits, and believe that the knowledge obtained and skills developed during those assignments should translate exceptionally well to the duties required for the City Auditor position. For example, Andrea's responsibilities in conjunction with these audits included analyzing the effectiveness of internal control procedures, reviewing grant awards, contracts and transactions for compliance with laws and regulations, as well as, interacting with Department personnel and developing recommendations for improving fiscal and operational efficiency. In my opinion, this type of background is ideal preparation for successfully performing the essential functions of the City Auditor position.

I have no reservation you will be exceptionally pleased if you select her for the City Auditor position. If you have any questions, please feel free to contact me at the above address.

Sincerely,



Todd T. San Bento, CPA, CISA



The Mercer Group, Inc.

CAPE CORAL, FLORIDA
CITY AUDITOR

January 10, 2017

Summary
Lisa D. Henry

- Master of Business Administration – Economic Crime & Fraud Management
- CPA; CIA; CISA
- IS Audit Manager, Corporate Audit Division, Blue Cross/Blue Shield South Carolina; Lead IT Auditor, South Carolina Department of Employment & Workforce; Senior Examiner, Division of Local Government, Office of NY State Comptroller.
- Salary: \$ 86,000 plus 10% Bonus = \$ 95,000 +/-
- Internet Research
 - Various business listings LinkedIn
 - No news articles

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The Mercer Group, Inc.

LETTER OF INTEREST & RESUME

THE MERCER GROUP, INC.

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WDHiggin@mercergroupinc.com
www.mercergroupincflorida.com

Lisa D. Henry, CPA, CIA, CISA MBA

♦ ldhenry23@gmail.com

January 2, 2017

Mr. W. D. Higginbotham, Jr.
Senior Vice President
The Mercer Group, Inc.
Daytona Beach Shores, FL 32118

Dear Mr. Higginbotham:

You have likely received a multitude of letters of interest for the position of City Auditor for the beautiful city of Cape Coral, FL, however I think that you will find my background to be a unique fit for this role. As such, I have enclosed my resume for your consideration.

A review of my credentials will confirm a strong accounting and auditing background which has been progressive and varied. As an auditor for local governments in NY state, my work experience consisted of a thorough review of governance and policies, analysis of the unit's fiscal condition, determination of the effectiveness of internal controls over day to day financial operations as well as determining compliance with contractual provisions. This role provided opportunities to interact with all levels of staff and to communicate directly with municipal officials and Council members throughout the review.

In my current position, I manage a team of internal auditors in a complex and highly regulated environment. This role has allowed me to demonstrate leadership qualities within my team, as well as to build collaborative relationships with auditees across departments. Most recently I was recommended by division management and was fortunate to be selected to join a highly sought after leadership program which is a year-long program held by the local Chamber in Columbia, SC. I believe the recognition of leadership qualities speaks volumes with regard to interpersonal skills, and the ability to hold to your convictions yet convey recommendations in a positive manner.

At the end of the day, I have always had a heart for civil service and I believe I could bring a wealth of expertise while serving the city of Cape Coral as City Auditor.

Thank you most sincerely for your time and your consideration. I look forward to speaking to you soon.

Best regards,

Lisa D. Henry
Lisa D. Henry

Enclosure: LDH_Resume_17

OVERVIEW

Credentialed accountant and auditor with diversified expertise in the governmental, public and private sectors.

PROFESSIONAL EXPERIENCE

BlueCross BlueShield SC – Columbia, SC

2012 ~ present

IS Audit Manager, Corporate Audit Division

- Annual development of risk based IS audit plan in collaboration with operations/compliance teams
- Oversee performance of general controls and application audits across multiple system platforms
- Division liaison for annual external audits, including SOC I, SOC II, HIPAA Security
- Prepare departmental budget and allocation of resources

SC Department of Employment and Workforce – Columbia, SC

2011 ~ 2012

Lead IT Auditor

- Planned and lead all IS audits –includes Business Continuity/Disaster Recovery; application and network security; systems development life cycle; physical and logical security; z/OS mainframe
- Coordinated and assisted with external regulatory audits

Office of the NY State Comptroller – Albany, NY

2007 ~ 2011

Senior Examiner ~ Division of Local Government

- Planned and lead fiscal, performance, and IT audits as in charge – ensuring compliance with state and local regulations
- Prepared written audit reports; reported findings directly to government officials
- Hired and supervised audit team members
- Liaison with federal/state agencies (FBI, NYS Police) for cyber security trainings and briefings

Chittenden Corporation – Burlington, VT

2005 ~ 2007

Senior Internal Auditor- Operational and Information Technology

- Analyzed corporate banking operations; planned & conducted operational and technical audits
- Conducted IT audits within a complex banking environment across multiple platforms and data center systems
- Prepared written reports and reported audit findings to Executive Management

Bollam, Sheedy, Torani & Co. LLP, CPA's – Albany, NY

2003 ~ 2005

Financial Services Accountant

- Planned, administered and conducted financial and compliance audits
- Performed controllership responsibilities for non audit clients
- Assisted with Firm's peer review process

IWO ~ Sprint PCS Network Partner – Guilderland, NY

2000 ~ 2003

Accounts Payable Coordinator

- Developed departmental policies and procedural safeguards; tracked/analyzed capital expenditures
- Supervised administrative staff; responsible for over 2000 vendor accounts

COMPUTER SYSTEMS / AFFILIATIONS

- MS Office, ACL, TeamMate, QuickBooks, Oracle, PeopleSoft, AutoAudit- familiar w/fund accounting sys.
- Member ~ ACFE, AICPA, IIA, ISACA, SC Infragard Member Alliance
- Volunteer ~ SC Midlands Chapter of ISACA ~ Membership Director and Treasurer ~ 2011 to present

EDUCATION

- M.B.A. Economic Crime & Fraud Management ~ 2008, **3.96 GPA** ~ Utica College, Utica, NY
- B.B.A. Accounting ~ 2003, President's List ~ Siena College, Loudonville, NY
- Leadership Columbia ~ Class of 2016 ~ Greater Columbia Chamber, Columbia, SC



The Mercer Group, Inc.

CAPE CORAL, FLORIDA
CITY AUDITOR

January 10, 2017

Summary
J. Bradley Simmons

- Bachelor of Science - Accounting
- CIA; CGAP; CFE
- Director of Audit Services Division, St. Johns County Clerk & Comptroller (Florida)
- Salary: \$ 80,000
- Internet Research
 - Licensed Realtor – Inactive – License Expires 2018
 - Various business listings LinkedIn
 - No news articles

THE MERCER GROUP, INC.

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Senior Vice President
Daytona Beach Shores, Florida 32118-8202
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The Mercer Group, Inc.

LETTER OF INTEREST & RESUME

THE MERCER GROUP, INC.

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J. BRADLEY SIMMONS, CIA, CGAP, CFE

January 6, 2017

[REDACTED]
simmonsj413@bellsouth.net [REDACTED]

W. D. Higginbotham, Jr. Senior Vice President
The Mercer Group, Inc. Daytona Beach Shores, FL

Re: Chief Internal Auditor, as advertised at theiia.org

Dear Mr. Higginbotham:

I am enthusiastic to apply for your job posting of Chief Internal Auditor for the City of Cape Coral, Florida. Throughout the past 16 years of leading the internal audit operations at the Clerk and Comptroller's office for St. Johns County, I have demonstrated a forward-thinking approach and am recognized for providing insightful, independent perspectives to assist management in discharging its fiduciary responsibilities.

Your operation would benefit from my proven success in:

- Leading audit activities that seek to provide opportunities for improvement by incorporating lean management processes and total quality management principles
- Supervising and scheduling an audit team in order to provide assurance that risks and vulnerabilities are identified and mitigated
- Conducting and/or supervising contract compliance audits
- Conducting independent and objective operational audits that measure performance against operational procedures, compliance with applicable laws, ordinances, and contracts
- Testing effectiveness of system of internal control and making appropriate recommendations
- Having experience of developing and supervising the fraud, waste, and abuse program and conducting FWA investigations
- Delivering IA reports and consultative work that add value and reduce waste
- Holding credentials as Certified Internal Auditor (CIA), Certified Government Audit Professional (CGAP); and Certified Fraud Examiner (CFE); also, a member of The Institute of Internal Auditors and Association of Certified Fraud Examiners
- Having direct experience in working with elected officials, the judiciary, attorneys, the local State Attorney's office, and directors/management throughout St. Johns County
- Pursuing CPA credentials

I would appreciate the opportunity to discuss further my experience, determination, and qualifications. I can be reached at [REDACTED] and feel like I would be an exceptional asset to the City of Cape Coral and its residents by serving as Chief Internal Auditor. Thank you for your consideration.

Cordially,



J. Bradley Simmons, CIA, CGAP, CFE

Please find enclosed my resume and letter of recommendation from the St. Johns County Clerk of Court & Comptroller (recently retired).

J. BRADLEY SIMMONS, CIA, CGAP, CFE


simmonsj413@bellsouth.net 

QUALIFICATIONS PROFILE

Performance-driven, motivated Director of Audit Services Division and Fraud, Waste, and Abuse Investigation Unit with a proven ability to provide meaningful reports to management that assist in the development of cost-effective, streamlined processes with effective internal controls.

- Proven leadership and team-building skills
- Focused on long-range results, root-problem analysis, and creating synergistic approaches to problem solving
- Development and supervision of the fraud, waste, and integrity department
- Strong communication skills with the ability to provide meaningful presentations in the consideration of strategic outcomes

PROFESSIONAL EXPERIENCE

Director of Audit Services Division – St. Johns County Clerk & Comptroller

07/00 – present

Responsible for planning, supervising, and conducting performance / internal audits throughout St. Johns County operations, including vendors / contractors, and the office of the Clerk of Courts & Comptroller's functions. Strong leadership has been emphasized on fraud deterrence and investigation by promoting fraud awareness through education, internal controls, and internal reporting, via hotline, email, and other whistle-blowing relay mechanisms. Developed and annually updated the audit charter and audit plan to promote the department's independence and objectivity while providing assurance that the agency's objectives are accomplished effectively and efficiently.

Also, conduct tourist development tax account audits (hotels and other lodging establishments), compliance / performance reviews of social service agencies, audits of guardianship accountings, internal control assessments, and other internal audits and consultant work. Audits have been designed to add value to the organization through a collaborative approach with management so that issues may be resolved without having to wait on the final report. Investigations are conducted in a manner that seeks to contain issues promptly, minimize loss, and ultimately correct the breakdown of controls by involving the correct level of management and/or turning over the investigation to an appropriate responsibility center for enforcement. Findings and results are promptly reported to oversight, such as the Clerk of Court & Comptroller, County Administration, and the Board of County Commissioners.

Developed policies and procedures, implemented and supervised the fraud, waste, and abuse segment of the audit division, presented fraud awareness and reporting sessions at new-hire orientations, and scheduled audits and investigations according to risk assessment. Created statistical analyses, reports, and audit memorandums. Worked extensively with elected officials, judiciary, attorneys, the State Attorney's office, and directors/management throughout St. Johns County. Also, served multiple terms as an officer of the Florida Tourist Development Tax Association, Inc. www.FTDTA.org.

As an officer of a respected financial institution, I supervised the branch-level banking activities at Prosperity Bank. Major responsibilities included: conducting weekly meetings with tellers and customer service representatives, making daily decisions on NSF charge-backs, performing branch, ATM, and Cash Vault balancing, initiating quarterly teller function audits and cross training, purchasing and inventorying of bank / office supplies, reviewing time cards and employee scheduling, and documenting, projecting, and promoting branch market growth.

A “key” player in new branch start-up; trained several new employees, created electronic versions of branch balancing, teller-transactions charting and documenting branch goal achievement. Recognized for outstanding leadership by senior independent auditors for emphasis upon exceptional branch organization and internal control implementation. Additionally, received training in both lending and investment products. Recipient of the “Rising Star” award.

EDUCATION AND CREDENTIALS

Bachelor of Science Degree – Accounting, CPA Focused

PERU STATE COLLEGE—Peru, NE

Magna Cum Laude, Alpha Chi

Associates of Science – Business Administration

ST JOHNS RIVER STATE COLLEGE—St. Augustine, FL

Summa Cum Laude, Phi Theta Kappa

PROFESSIONAL CERTIFICATIONS

Certified Internal Auditor – CIA

THE INSTITUTE OF INTERNAL AUDITORS—Altamonte Springs, FL

Certified Government Audit Professional – CGAP

THE INSTITUTE OF INTERNAL AUDITORS—Altamonte Springs, FL

Certified Fraud Examiner – CFE

THE ASSOCIATION OF FRAUD EXAMINERS—Austin, TX

PROFESSIONAL AFFILIATIONS

The Institute of Internal Auditors – IIA (Membership)

The Association of Certified Fraud Examiners – ACFE (Membership)

Florida Tourist Development Tax Association – FTDTA

Vice-President and Regional Director (multiple terms)

REFERENCES – available upon request

Cheryl Strickland
Clerk of Courts



George Lareau
Chief Deputy

St. Johns County Clerk Of Courts
4010 Lewis Speedway, Saint Augustine, Florida 32084

To Whom It May Concern:

Please consider this recommendation for Mr. Brad Simmons, Audit Director, St. Johns County Clerk of Court.

Mr. Simmons has worked in this capacity for 15 years. He has proven himself to be a trusted, loyal, dependable, organized, and intelligent auditor. He has a stellar work ethic and can be relied on to represent the office in a professional manner while performing audits. These audits include tourist development tax accounts, guardianship audits, and any other areas of the county when there is a need for review. He has oversight of the Fraud, Waste & Abuse Auditor, and collaborates on those audits as well.

He is able to deal with very complex accounts and works quickly to resolve them. He is well respected by County Administration and the Judges that he works with.

If you have need of any further comments, please do not hesitate to contact me.

Sincerely,

Cheryl Strickland
Clerk of Court & Comptroller
St. Johns County, Florida



The Mercer Group, Inc.

CAPE CORAL, FLORIDA
CITY AUDITOR

January 10, 2017

Summary
Becky Thackery

- Bachelor of Arts – Business Administration and Management
- CIA; CFSA; CRP
- Vice President Internal Audit, Acosta Sales and Marketing; Consultant, Accretive Solutions & ICX Group; Vice President/Director of Internal Audit, FPIC Insurance Group, Inc.; Senior Manager-Enterprise Risk Services, Delotte & Touche, LLP
- Salary: \$ 140,000
- Internet Research
 - Various business listings LinkedIn
 - No news articles

THE MERCER GROUP, INC.

W. D. Higginbotham, Jr.

Senior Vice President

Daytona Beach Shores, Florida 32118-8202

727-214-8673

WDHiggin@mercergroupinc.com

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The Mercer Group, Inc.

LETTER OF INTEREST & RESUME

THE MERCER GROUP, INC.

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EXECUTIVE SUMMARY

COMMITMENT | LEADERSHIP | INTEGRITY

Motivated and results-oriented professional with over 20 years of experience in the financial services industry with extensive and progressive experience in the auditing, compliance and accounting functions. Acknowledged organizational value in reducing operating costs, increasing productivity, and assessing the overall effectiveness of control systems toward meeting the goals and objectives of management.

AREAS OF EXPERTISE

- | | | |
|---------------------------------|-----------------------------|----------------------|
| ▪ Internal Audit and Consulting | ▪ Risk Assessments | ▪ GRC |
| ▪ Risk and Controls | ▪ Sarbanes-Oxley Compliance | ▪ ERM |
| ▪ Regulatory Compliance | ▪ Strategic Leadership | ▪ Financial Services |

PROFESSIONAL EXPERIENCE

ACOSTA SALES & MARKETING – JACKSONVILLE, FL

July 2014 – Present

VICE PRESIDENT, INTERNAL AUDIT/SOX

- Manage the development and implementation of a strategically focused internal audit function of all financial, operational and information system activities.
- Plan and lead the Company's Sarbanes-Oxley readiness efforts including risk assessment, scope review, control design, process documentation and the evaluation of the effectiveness of the Company's internal control environment.
- Team member of the Project Management Office for an ERP implementation. Perform readiness assessments at key phases to assist in the success of the ERP deployment.

ACCRETIVE SOLUTIONS & ICX GROUP – JACKSONVILLE, FL

2013 – July 2014

CONSULTANT

- Provided consulting and outsourcing services in the areas of Accounting & Finance, Auditing, Governance & Compliance and Information Technology.

FPIC INSURANCE GROUP, INC. – (NOW THE DOCTORS COMPANY) JACKSONVILLE, FL

2004 – 2012

VICE PRESIDENT/DIRECTOR OF INTERNAL AUDIT

- Established and implemented a strategically focused internal audit function. Developed a systematic approach to assessing risk and execution of a risk-based internal audit plan.
- Managed all aspects of financial, operational, and compliance audits and investigation of suspected fraud.
- Evaluated effectiveness and adequacy of internal controls, measured compliance with policies and prepared audit reports including value added recommendations for improving processes.
- Assisted management in monitoring compliance with Sarbanes-Oxley including independent testing, review and updating of process documentation, gap identification, and monitoring progress of remediation steps on identified control deficiencies.
- Supported Audit Committee in the effective discharge of their corporate governance responsibilities.
- Effectively managed and reduced audit fees through auditing assistance to the external auditing firm and maximization of external audit's reliance on internal audit work.
- Maintained a system of quality control to promote consistency in the department's audit execution and achievement of compliance with the IIA International Standards for The Professional Practice of Internal Auditing.

DELOITTE & TOUCHE, LLP – JACKSONVILLE, FL

1998 – 2004

SENIOR MANAGER- ENTERPRISE RISK SERVICES

- Effectively managed client engagements with teams of audit professionals within the Enterprise Risk Services Practice of a Big Four CPA firm.
- Provided quality client services including internal audit; internal control/compliance reviews; quality assurance assessments; operational efficiency and effectiveness audits; enterprise risk management; and SOX implementations.
- Responsible for managing an engagement with an international mortgage banking company with a servicing portfolio over \$180 billion.
- Developed sales opportunities and exceeded sales goals satisfying the client's needs and exceeding their expectations.

AMERICAN NATIONAL BANK OF FLORIDA – JACKSONVILLE, FL

1993 – 1998

VICE PRESIDENT AND AUDIT MANAGER

- Directed a team of audit/compliance professionals in performing independent audits in accordance with acceptable auditing standards and improved productivity by 22%.
- Communicated to management and Audit Committee an appraisal of the adequacy and effectiveness of the control systems and operations within the bank and compliance with applicable laws and regulations.
- Chaired Cost Analysis Committee responsible for reducing discretionary spending by 18% and promoting business economics.
- Evaluated internal controls and provided management with recommendations for improvements to policies, procedures, and practices.
- Provided support to external auditors and regulatory agencies during examinations.

FIRST UNION NATIONAL BANK – JACKSONVILLE, FL

1992 – 1993

ACCOUNTING SUPERVISOR

- Prepared and filed financial reports and assuming bank certificates required by the Federal Deposit Insurance Corporation stemming from an Assistance Agreement.
- Maintained a system of controls and documentation to safeguard and support reports and assuming bank certificates.
- Collected and tracked loss and recovery information for a \$15 billion loan portfolio.

DANA FEDERAL CREDIT UNION – FORT WAYNE, IN

1990 – 1992

INTERNAL AUDITOR

- Performed independent audit examinations based on credit union trends and management objectives.
- Reported monthly to the Supervisory Committee, Management, and the Board of Directors on audit results and recommendations, significant exposures and control issues, including fraud risks.
- Functioned as liaison with the external accounting firm and regulatory agencies.

PROFESSIONAL AFFILIATIONS AND DESIGNATIONS

Certified Internal Auditor (CIA)

Certified Financial Services Auditor (CFSA)

Certified Risk Professional (CRP)

The Institute of Internal Auditors Northeast Florida Chapter Board of Governors

EDUCATION

THE BANK ADMINISTRATION INSTITUTE GRADUATE SCHOOLS OF BANKING – AUDIT MANAGEMENT

University of Wisconsin

BACHELOR OF ARTS IN BUSINESS ADMINISTRATION AND MANAGEMENT

Columbia College – Graduated with honors, GPA 4.0



The Mercer Group, Inc.

CAPE CORAL, FLORIDA
CITY AUDITOR

January 10, 2017

Summary
T. Paul Tomoser

- **Master of Business Administration Candidate (May 2017); Bachelor of Science - Accounting**
- **CPA; CIA; CISA; CRMA; CGFM**
- **Internal Audit Director, Creighton University, Omaha Nebraska**
- **Salary: \$ 116,000**
- **Internet Research**
 - Various business listings Linkedin, CPA Directories, Yellow Pages
 - No news articles

THE MERCER GROUP, INC.

W. D. Higginbotham, Jr.
Senior Vice President
Daytona Beach Shores, Florida 32118-8202
727-214-8673

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www.mercergroupincflorida.com



The Mercer Group, Inc.

LETTER OF INTEREST & RESUME

THE MERCER GROUP, INC.

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Daytona Beach Shores, Florida 32118-8202
727-214-8673

WDHiggin@mercergroupinc.com
www.mercergroupincflorida.com

W.D. Higginbotham

From: Paul Tomoser <ptomoser@gmail.com>
Sent: Friday, January 6, 2017 6:04 PM
To: WDHiggin@mercergroupinc.com
Subject: City Auditor Cape Coral Florida
Attachments: T. Paul Tomoser Resume January 2017.doc

Dear Mr.Higginbotham,

I have been selectively exploring new opportunities. I am an experienced audit executive and consultant with the qualifications and experience to further the work of the City Auditor Office. I offer the City Council and its Mayor a combination of external and internal audit experience and governance, risk management and internal control knowledge and expertise coupled with a demonstrated history of relationship building and value added results.

For nearly 20 years I have been the Internal Audit Director at Creighton University, a notable private university in Omaha, Nebraska. While in public practice as a CPA, my area of expertise was nonprofit and governmental clients providing audit and consulting services to municipalities (including the City of Omaha and Douglas County, Nebraska), nonprofits as well as universities, school districts and associated pension funds.

I have the experience and have demonstrated the required proficiencies for the position. I have completed and supervised a variety of assurance and consulting engagements including financial, compliance, operational, information technology and fraud investigations. I partner with management to address challenges and opportunities and have completed notable consulting engagements addressing enterprise risk management, business continuity and disaster recovery planning, and the implementation and oversight of a third-party anonymous hotline.

I lead a progressive department evidenced by completing a department strategic plan in March 2013; refreshing our vision and mission statements, and, identifying critical success factors to better meet the needs of our stakeholders. I routinely make presentations to the senior leadership team at Creighton and to the Risk Management, Audit and Compliance Subcommittee of the Board of Trustees.

Finally, I have experienced both sides of governance, being privileged to serve as Audit Committee Chairman for Douglas County, Nebraska for nine years. This was truly a valuable experience. I am also a graduate of the Omaha Chamber of Commerce's Leadership Omaha Program. I have a recent information technology auditing certification and will complete an MBA this spring. I understand the public sector environment and welcome the opportunity to visit with you about my qualifications and experience. The attached resume contains additional details.

I look forward to hearing from you.

Regards,

T. Paul Tomoser



T. Paul Tomoser, CPA, CIA, CISA, CRMA, CGFM

Objective Seeking an executive level position that will utilize my experience and expertise obtained as a career audit professional and allow for continued growth and increased responsibility.

Experience **Creighton University, Omaha Nebraska**
Comprehensive University and Academic Medical Center
NCAA® Division I Athletics (14 Sports)
June 1997 – Present

Internal Audit Director (Chief Audit Executive)

Partner and consultant with senior administration in fulfilling the mission of Creighton University. Plan and direct the internal audit function making recommendations and presentations to University leadership including the Risk Management, Audit and Compliance Subcommittee of the Board of Trustees. Assist leadership in the management of risk, maintenance of the internal control structure, governance practices, and efficient use of resources. Administer the department budget and other matters including personnel management, scheduling, and training.

- Develop and execute a risk-based annual service plan in accordance with the International Standards for the Professional Practice of Internal Auditing and the Code of Ethics promulgated by The Institute of Internal Auditors, Inc. (IIA). Ensure that continuing audit initiatives and other assurance and consulting engagements add value and meet the needs of University leadership.
- Function as an in-house consultant on risk, control, governance and compliance matters serving on various standing committees in an advisory capacity. Currently facilitating the enterprise risk management program (ERM) and assisting with the implementation of Business Continuity Disaster Recovery Planning (BCDRP).
- Coordinate 300 service hours provided to external auditors annually.
- Assisted in the development of a physician's billing compliance plan, research compliance plan, and associated internal controls designed to minimize the risk of noncompliance and maximize revenue opportunities. Execute audit programs and monitoring plans to ensure compliance with applicable laws and regulations.
- Adjunct professor teaching in the Heider College of Business (accounting and auditing courses) and frequent speaker at local, regional and national events.
- Developed student internship program with outstanding results.
- Successful completion of IIA External Quality Assessments in 2006, 2011, and 2016 (i.e. to assess compliance with IIA Standards and Code of Ethics).

Hayes & Associates, L.L.C., Omaha Nebraska
Certified Public Accountants and Consultants
November 1989 – June 1997

Director of Audit Services (July 1995 – June 1997)

Responsible for all aspects of the audit practice, including engagement planning, scheduling, and supervision; marketing, client relations, and retention; quality control and technical research, staff development, and general administration. Managed in excess of 10,000 hours of audit, attestation, and consulting services representing 50% of annual firm revenue. Supervised six professionals.

- Fifteen percent annual increase in billings
- Significant clients obtained and retained
- Key recommendations accepted leading to consulting services
- Increase in audit staff productivity and competency
- Successful completion of AICPA Peer Review 1996

Manager (July 1993 – June 1995)

Responsible for the efficient and effective use of firm resources. Managed all professional services (audit, accounting, tax, and consulting). Responsibilities included staff supervision and development, engagement management and quality control. Supervised five professionals.

Audit Supervisor (July 1991 – June 1993)

Primary responsibility was to plan, perform and supervise financial and compliance audit engagements including the preparation of financial statements, audit reports and related correspondence. Also responsible for the quality of work performed by assistants including written evaluations.

Staff Accountant (November 1989 – June 1991)

Compiled, reviewed and audited financial statements for commercial, governmental and nonprofit entities. Prepared corporate, organization exempt from tax, partnership, individual, personal property, pension plan, and payroll tax returns. Performed financial analysis, projections, research, and consulting projects.

Education

MBA Candidate (May 2017)
Creighton University, Omaha, Nebraska

Bachelor of Science – Accounting, April 1989
Marriott School of Management
Brigham Young University, Provo, Utah
Activities included Beta Alpha Psi, Beta Gamma Sigma, Debate, and Law Society

Professional Affiliations/ Certifications

American Institute of Certified Public Accountants (AICPA)
Nebraska Society of Certified Public Accountants (NSCPAs)
The Institute of Internal Auditors, Inc. (The IIA)
Information Systems Audit and Control Association (ISACA)
Certified Public Accountant – Active Nebraska Permit
Certified Internal Auditor – Active
Certified Information Systems Auditor – Active
Certified in Risk Management Assurance – Active
Certified Government Financial Manager – Active

Community Service

Board of Governors, Aksarben Chapter, The IIA
Lay Church Leader and Volunteer

Service History and Awards

Past Chair, Douglas County, Nebraska Audit Committee
Past Treasurer, Make-A-Wish Foundation of Nebraska, Inc.
Past Committee Member, NSCPAs - State and Local Government; NFP Committees
Past Officer, Aksarben Chapter, The IIA
Past Officer, Omaha Metro Chapter, Association of Government Accountants
Past Board Member, Prairie Lane Pool Association (Building Project)
Past President, Prairie Lane Community Club (Parent Teacher Organization)

Leadership Omaha Class 27 Graduate (2004-2005)
BSA Wood Badge Advanced Training for Adult Leaders C-06-08 (Completed 2010)
The IIA Aksarben Chapter President's Award to Creighton University for
Extraordinary Support (2005-2006)
The IIA Aksarben Chapter, Volunteer of the Year (2012)



The Mercer Group, Inc.

CAPE CORAL, FLORIDA CITY AUDITOR

January 10, 2017

Summary
Jeffrey Zeichner

- **Bachelor of Science - Accounting**
- **CPA**
- **Senior Assurance Manager, RSM US LLC, Jacksonville; Audit Manager, Carr, Riggs and Ingram, St. Augustine**
- **Salary: \$ 128,800**
- **Internet Research**
 - Various mentions Rotary articles
 - Various business listings Linkedin, CPA Directories
 - No news articles

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LETTER OF INTEREST & RESUME

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December 12, 2016

Dear Mr Higginbotham:

I am submitting my resume in response to the City Auditor position advertised on the Florida Government Finance Officers Association's website.

As my resume indicates I have been engaged in the practice of public accounting for over 16 years and I am currently employed by the national auditing firm of RSM. Although I have benefited greatly from my time as an auditor, I am currently exploring my options outside the field of public accounting.

For the past 12 years I have focused predominately on the public sector. I have performed audits of complex municipal entities much like Cape Coral. In performing these audits I have worked closely with internal auditors and I understand the complexities and sensitivities of working within a city council framework.

More specific to the City's needs, I have a great deal of experience with the accounting treatments for both the governmental and business type activities in which the City is involved. I have a strong understanding of GAAP as it applies to governments and have assisted our clients with the implementation of new GASB pronouncements. Additionally, I have particular expertise with grants and the requirements of both the Federal Uniform Grant Guidance and State Single Audit Act. I believe that my technical, business, and soft skills are a strong match for the attributes required for the position of City Auditor.

I am excited over the opportunity to apply for the position of City Auditor and I would welcome the opportunity to discuss the position further.

Sincerely,

Jeffrey Zeichner

Jeffrey Zeichner, CPA

Cell: [REDACTED]
Email: jeffzeichner@gmail.com

OBJECTIVE:

I am currently exploring my options within the field of accounting. My goals are to leverage the technical and managerial skills I have developed as a senior manager in an auditing practice to obtain a leadership position in government finance.

EXPERIENCE:

1/12-Present **RSM US LLC**
Senior Assurance Manager

Jacksonville, FL

- Alternately performed the roles of engagement leader and audit manager on complex governmental engagements
- Documented complex GAAP applications, researched alternative treatments, and worked with financial management to ultimately conclude on the appropriateness of the accounting applications.
- Examination of systems, processes and controls with the objective of making efficiency recommendations during risk management engagements.
- Assisted clients in the preparation of their CAFRs for submission to the GFOA
- Participated formally in the firm's goal setting and monitoring process ("Aspire")
- Mentored staff through RSM's career advisor program
- Delivered RSM's nationally developed continuing education programs

8/04-9/11 **Carr, Riggs and Ingram**
Audit Manager

St. Augustine, FL

- Managed the daily activities of the St. Augustine audit staff
- Responsibility for planning, supervising and reviewing engagements of:
 - Governmental entities (County, Municipal and Special Districts)
 - Not-for-profit organizations
 - Common interest realty associations
- Proficient in the development and maintenance of client relationships
- Strong understanding of governmental and commercial GAAP
 - Skilled in research of technical issues
- Expertise in compliance auditing under Federal and State Single Audit Acts
- Skilled in business development and promotion of firm within the community
- Preparation and presentation of continuing education classes

9/02-8/04 **Neral, Anzelone, and Company**
Audit Senior

Wall, NJ

- Supervisory role in the audits of manufacturers, advertising firms and housing entities
- Exposure to not-for-profit environment including compliance auditing
- Participation in special engagements to support litigation
- Assisted tax department in return preparation during non-peak times.

1/00-8/02 **Rimm, Lavinski, Horowitz and Pollard**
Staff Accountant

Ventnor, NJ

- Obtained position while completing education
- Preparation of personal and business tax returns
- Performed small business services
- Exposure to auditing through the audits of employee benefit plans

EDUCATION:

June 2000 Richard Stockton College of NJ, BS in Accounting

Pamona, NJ

MEMBERSHIPS AND ASSOCIATIONS:

Current licensure in Florida and New Jersey

St. Augustine Sunrise Rotary

- Board Member 2005 – 2008, 2011
- Presently serving on the Audit Committee of District 6970
- Service above Self Award 2006 & 2011
- Paul Harris Fellow

- FICPA, St Johns River Chapter
- FGFOA – Previously serving on the Technical Resources Advisory Committee
- AICPA
- Volunteer Participation with:
 - First Coast YMCA
 - Habitat For Humanity



The Mercer Group, Inc.

CAPE CORAL, FLORIDA
CITY AUDITOR

January 10, 2017

Summary
Anthony Pagliaro

- **Bachelor of Science - Accounting**
- **CIA**
- **Chief Auditor/Manager, Pennsylvania Gaming Control Board, Harrisburg, PA; Senior Internal Auditor and Interim Director, Santa Fe Health Care and AvMed., Miami**
- **Salary: \$ 107,000**
- **Internet Research**
 - Various business listings LinkedIn
 - No news articles

THE MERCER GROUP, INC.

W. D. Higginbotham, Jr.
Senior Vice President
Daytona Beach Shores, Florida 32118-8202
727-214-8673
WDHiggin@mercergroupinc.com
www.mercergroupincflorida.com



The Mercer Group, Inc.

LETTER OF INTEREST & RESUME

THE MERCER GROUP, INC.

W. D. Higginbotham, Jr. Senior Vice President
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City Auditor
Cape Coral, FL.

December 28, 2016

Director Human Resources:

This letter is to express my interest in the position of City Auditor with the city of Cape Coral, Florida.

I have a BS in Accounting and I am a Certified Internal Auditor (CIA) with 21 years of experience in internal audit departments with several Fortune 500 companies and the Commonwealth of Pennsylvania.

I am currently the Chief Auditor/Manager with the Pennsylvania Gaming Control Board (PGCB) where I was hired eight years ago to establish and implement the initial audit department for this governmental regulatory agency. I currently direct and manage this audit department.

I believe I am prepared for the position of City Auditor based on my experience as an audit professional with excellent interpersonal skills and an ethical commitment to my profession.

I would appreciate the opportunity to review my qualifications in more detail with you once you have reviewed my resume.

Thank you for your time and consideration and please do not hesitate to contact me with any questions you may have with regard to my experience.

Sincerely,

A handwritten signature in cursive script that reads "Anthony Pagliaro". The signature is written in dark ink and is positioned above the typed name.

Anthony Pagliaro, CIA

Anthony Pagliaro, CIA

Chief Auditor

SKILLS SUMMARY

Twenty-one (21) years of experience in financial, operational, and compliance audits, and reporting and examination and evaluation of internal controls.

- Eight years of experience as a Chief Auditor for the Commonwealth of Pennsylvania Gaming Control Board (PGCB) (\$3 billion annual revenue). Under my direction, the PGCB audit department was recognized and graded A+ by the Pennsylvania Auditor General
- Performed operational audits at Santa Fe Healthcare and AvMed Health Plans (annual revenue \$1 billion). Interim Director for one year
- Performed and supervised audits at Royal Caribbean Cruise Lines (annual revenue \$8 billion) over a six year period
- Evaluated operational control environments and performed operational and financial audits of the Company's business practices and business processes to identify, report, and correct significant weaknesses in the system of internal controls in healthcare, gaming, hospitality, and utility companies
- Prepared audit programs designed to test the business financial and operational environment to improve the efficiency and effectiveness of operations, safeguarding of assets, and regulatory compliance in healthcare, gaming, hospitality, and utility companies
- Planned, performed, and directed follow-up audits to ensure respective company's management took appropriate corrective actions to mitigate internal control weaknesses identified during all audits performed
- Supervised financial analysis and accounting as an audit and accounting supervisor

Certification

- Licensed CIA (Certified Internal Auditor)

Core Skills

- Managerial and supervisory experience
- Proficient in accounting and analysis
- Proficient in Sarbanes-Oxley (SOX) accounting standards
- Computer literate with proficiencies in Microsoft products and A/S accounting systems
- Experience with financial reporting and strategic planning
- Experience with audit and compliance software

EDUCATION

- University of LaVerne - LaVerne, CA. - Bachelor of Science Degree; Accounting

WORK EXPERIENCE

Gaming Control Board, Harrisburg, PA Chief Auditor/Manager

3/2009 to Present

- Established the initial audit department for the Pennsylvania Gaming Control Board (PGCB) including development of the mission statement and charter, risk assessment, and annual audit plan. Currently direct the operations of the audit department
- Assessed, planned, directed and managed 115 financial, operational, and compliance audits
- Develop a comprehensive annual risk assessment and annual audit program to monitor gaming operations in the Commonwealth of PA
- Plan, coordinate, develop, and manage audit department budget. Direct an audit staff engaged in the examination and evaluation (audits) of the financial, operational, fraud, and regulatory compliance audits
- Develop recommendations to ensure compliance with gaming control board regulations and internal control standards and to improve the efficiency and effectiveness of operations
- Prepare written reports for regulatory Board based on findings and recommendations
- Perform follow-up to ensure gaming operator took appropriate corrective actions to mitigate regulatory control violations and internal control weaknesses
- Hired and trained a competent audit staff and developed an auditor training manual to standardize audit procedures to provide adequate documented evidence to support audit findings

Santa Fe Healthcare and AvMed Inc., Miami, FL Sr. Internal Auditor and Interim Director

3/2007 to 3/2009

- Conducted and directed 10 audits designed to assess the design and operation of internal controls over financial reporting, information systems, operational efficiency, safeguarding of assets, and regulatory compliance for healthcare, assisted living, and durable medical supply business units
- Evaluated and documented high risk areas by identifying objectives, risks, and internal controls for Sarbanes-Oxley (Sox) requirements readiness and strategic planning
- Coordinated audit resources with external auditors and co-sourced audits with 3rd party auditors
- Prepared quarterly reports for presentation to the Board of Directors and Audit Committee

Royal Caribbean International, Miami, FL

1/2006 to 2/2007

Sr. Internal Auditor

- Provided independent and objective evaluation of the Company's internal control environment through audits focusing on reliability and integrity of financial and operational information; effectiveness and efficiency of operations; safeguarding of assets; and compliance with laws, regulations, and contracts for operations
- Prepared and presented reports to Company management noting findings and recommendations for audits performed that identified significant weaknesses in the system of internal controls.

Most notably identified point of sale (POS) commission rates applied by revenue partners were incorrectly coded resulting in estimated revenue loss to the Company of \$1 million.

- Assisted in ensuring the Company complied with Sarbanes-Oxley requirements including documenting Company processes; identifying internal controls; developing tests for key controls; and identification of areas in need of remediation

Southern California Edison, Rosemead, CA

1/2005 to 1/2006

Internal Controls Business Analyst III

- Conducted internal controls evaluations and audits of Customer Service Business Unit to ensure effectiveness and efficiency of operations; compliance with Company policies and procedures, laws and regulatory requirements; reliability of financial and operational data; and safeguarding of assets
- Recommend appropriate controls to assist Management in ensuring Key Performance Indicators (KPI) and goals were met. Counseled internal clients to strengthen internal controls and enhance management processes to meet organizational financial goals. Reported findings to management and made recommendations for correcting unsatisfactory conditions with an emphasis on cost savings of \$800K.

Royal Caribbean International, Miami, FL

6/2000 to 1/2005

Revenue Audit/Accounting Supervisor

- Performed User Authorization Testing for electronic revenue reporting system. Verified hardware operated properly, software had no defects, and implementation adhered to specifications
- Developed procedure and provided user training on an electronic workbook used by 29 casino bankers to maintain asset accountability and for revenue reporting
- Supervised asset appropriation (approximately \$35 million) for bank manager's; maintained, updated, and wrote applicable procedures and provided guidance on procedure compliance for banking operations
- Performed and supervised approximately 60 audits of gaming and banking operations for compliance with regulatory requirements, identified internal control weaknesses, and recommend corrective actions to remediate identified findings
- Prepared and delivered reports to Company management projecting and analyzing casino operating results, prepared and posted journal entries to general ledger, and reconciled general ledger balances

- Responsible for preparing financial reports, projecting and analyzing operating results, and reconciling general ledger balances
- Supervised an accounting and audit department staff

Carnival Corporation, Miami, FL
Sr. Internal Auditor

9/1999 to 5/2000

- Assessed the effectiveness of operational controls and operational efficiency for Carnival Corporation (\$16 billion annual revenue); performed annual risk assessment in preparation of annual audit plan; assisted external auditors with fiscal year financial review and testing for annual report
- Performed purchasing, contracts, and facilities audits and presented audit findings to Company management. Identified potential savings of \$2 million in the area of procurement contracts

Pacific Gas & Electric Corporation, San Francisco, CA
Internal Auditor

1/1995 to 4/1999

- Assessed the effectiveness of internal controls and performed audits for PG&E Corporation (\$14 billion annual revenue; \$50 billion in assets). Identified potential cost savings of \$4 million in the area of purchasing and \$1.5 million in the area of employee travel expenditures
- Conducted interviews and performed preliminary audit testing for fraud related audits

Quality Assurance Auditor & Inspector

11/1986 to 1/1995

- Planned, performed, and supervised operational and compliance audits and inspections to monitor operations. Identified issues for corrective action and performed root cause analysis to address areas of concern to prevent re-occurrence
- Participated in the reengineering of core processes and the implementation of Total Quality Management (TQM)



The Mercer Group, Inc.

CAPE CORAL, FLORIDA
CITY AUDITOR

January 10, 2017

Summary
Melinda Pensinger

- Bachelor of Science – Accounting; Bachelor of Arts - Philosophy
- CPA; CIA
- Senior Internal Auditor, Lee County Port Authority (Air Port), Lee County Clerk of Court, Ft. Myers.; Senior Accountant, Lee County Port Authority (Air Port), Lee County Clerk of Court, Ft. Myers.; Staff Accountant/Audit Manager, Stroemer Tuscan & Co/Tuscan & Co, CPAs, Ft. Myers
- Salary: \$ 75,000
- Internet Research
- June 22, 2012 – No Bond for Man on Murderous Crime Spree – stole Pensinger's car

<http://www.nbc-2.com/story/18856702/2012/06/22/fort-myers-police-searching-for-car?clienttype=print>

THE MERCER GROUP, INC.

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The Mercer Group, Inc.

LETTER OF INTEREST & RESUME

THE MERCER GROUP, INC.

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Melinda Pensinger

MPensinger@aol.com

January 6, 2017

W.D. Higginbotham, Jr.
Senior Vice President
The Mercer Group, Inc.
Daytona Beach Shores, FL 32118

Dear Mr. Higginbotham:

I learned of the City Auditor position that is available with the City of Cape Coral on ALGA's web site yesterday, and am forwarding my resume with this letter of interest for your consideration. I am very interested in this position as it offers what I am seeking: to expand my contribution to a local government and its citizenry, using the skills and experience I have gained as an internal auditor, external auditor, and senior accountant in the government arena. This position is especially appealing because of the emphasis on customer service. I previously owned a food service business that I opened to provide just that!

In my current position as Senior Internal Auditor for the Lee County Port Authority (as an employee of the Internal Audit/Inspector General Department of the Lee County Clerk of Courts), I work independently and cooperatively with management at the airport in performing audits and additional functions. I meet with department and division directors during the audit and at the conclusion of the audit to reach agreement about recommendations that are practical, useful, and are implementable in a timely and cost-efficient manner. Management seeks my input prior to implementing new procedures, or in reworking existing procedures that need update. They realize that my goal is to ensure the Port Authority is doing all it can to meet its objectives and to excel.

Upon transferring to Internal Audit from Finance, I was quickly made the "TeamMate Champion" due to my ability to effectively use the recently adopted audit management software. I have the ability to learn and demonstrate software quickly, which I attribute to my sense of logic and the experience of teaching computers to adult learners.

I maintain current knowledge of government accounting and auditing standards, required to maintain my CPA and CIA licenses, through attendance at FGFOA, SWFIIA, ALGA, AAIA, and FICPA conferences. I participate on ALGA's Survey Committee. Recently, I gained admittance to the Master of Public Administration program at Florida Gulf Coast University, and will begin classes next week.

Thank you for your time and consideration. I look forward to speaking with you about this opportunity to serve the citizens of Cape Coral.

Sincerely,

Melinda Pensinger
Melinda Pensinger

MELINDA PENSINGER, CPA, CIA

PHONE [REDACTED] • E-MAIL MPENSINGER@AOL.COM

SUMMARY OF QUALIFICATIONS/SKILLS & EXPERIENCE

Over 18 years of experience in public and government accounting, performing audit (internal and external), tax, and bookkeeping services and consulting with clients (governments, for-profit, nonprofit, and homeowner associations) in implementing internal controls, financial reporting, risk assessment, and operating/performance efficiencies.

- Ability to quickly learn operations, systems, and technology, and to research and recommend best practices.
- Skilled in all aspects of recording transactions, reconciling accounts, ensuring accuracy and completeness of data, and preparing concise, cross-referenced and self-explanatory supporting schedules.
- Expertise in developing and delivering monthly, quarterly, and annual financial and audit reports to management within tight deadlines.
- Current knowledge of International Standards for Internal Audit, GAAP, GASB standards, and GAAS. Understanding of compliance requirements for federal and state single audit. Well-versed in governmental, construction, and project accounting.
- Excellent computer skills: Microsoft Office, JD Edwards EnterpriseOne, TeamMate audit management software, various tax software packages, among others, and ability to learn proprietary systems/applications quickly and easily.
- Experience teaching Microsoft Office and other applications to adult learners.
- Ability to document, analyze and monitor effectiveness of internal controls.
- Managerial experience, in a public accounting firm and as a business owner with employees.

Skills/Proficiencies:

Financial Reporting Debt Management Superb Organizational Skills
Excellent Oral & Written Communication Skills
Policies & Procedures Development & Implementation
Internal Audit Procedures & Documentation
Aptitude for Research and Analysis

EDUCATION

Hodges University
B.S. Accounting, summa cum laude

Naples, FL

University of the South
B.A., Philosophy, magna cum laude, Phi Beta Kappa

Sewanee, TN

PROFESSIONAL EXPERIENCE

Lee County Clerk of Courts, Ft Myers FL

Senior Internal Auditor

March 2014 – Present

- Plan and perform operational, financial, and compliance audits for the Lee County Port Authority
- Prepare audit reports with recommendations that are implemented by management
- Prepare quarterly follow-up reports on audit recommendations
- Present audit findings and recommendations to senior management
- Researched, developed and presented a workshop on Enterprise-Wide Risk Management and Risk Assessment
- Prepare the Annual Audit Plan for approval by the Chief Audit Executive
- Assisted in the development of the Internal Audit/Inspector General Department policies and procedures manual to prepare the department for accreditation process and peer review
- Plan and facilitate the bi-weekly Internal Audit/Inspector General Collaboration Team meetings
- TeamMate Champion for the department; Prepared TeamMate Procedures Manual

Senior Accountant

2010 – March 2014

- Responsible for accounting oversight and internal financial statement preparation for the Port Authority of Lee County and the Water/Wastewater Department
- Prepared significant portions of the County's Comprehensive Annual Financial Report and provided support and responded to queries from the external auditors related to that report
- Prepared standalone financial statements for Lee County Port Authority to comply with bond requirements
- Prepared and later reviewed monthly financial report for submission to the Board of County Commissioners
- Long-term debt responsibilities included pre-issuance review of bond offering and loan documents, arbitrage rebate calculations, and post-issuance compliance duties, including reporting material events on EMMA
- Responsible for management functions in absence of the General Accounting Manager
- Developed procedures for more efficient year-end closing of accounts

Stroemer Tuscan & Co/Tuscan & Co, CPAs, Ft Myers FL

2001 – 2010

Staff Accountant / Audit Manager

- In-charge auditor for governments and nonprofit organizations; managed staff of six auditors on nonprofit and for-profit entities
- Prepared and reviewed tax returns including 1040, 1120, 1120-S, 1065, 1041, 990
- Prepared firm for 3-year peer review & assumed the role as in-charge of ongoing engagement monitoring
- Developed audit workpapers and tracking systems for updated standards
- Trained staff on audit procedures and tax preparation
- Maintained audit & tax research libraries and performed tax & audit research to provide answers to other tax & audit managers and partners

The L.A. Café and Coffee House, Lehigh Acres FL

2005 - 2008

Business Owner

Owned and operated a specialty fair trade coffee retail location, with a light food menu, live entertainment, and wifi in the community of Lehigh Acres, FL. I developed a business plan, designed the space, hired and supervised contractors in the remodel, hired and trained food service employees, and managed the store on a daily basis. The shop was a venue for music open mike nights, monthly writers association open mikes, comedy nights, game nights, business networking meetings, and special events such as showers.

Briant & Girardin, PA (acquired by Larson Allen), Naples FL

1998 - 2001

Staff Accountant

- Staff-in-charge for audits of for-profit, nonprofit, and homeowner organizations
- Prepared tax returns for individuals and various types of entities
- Consulted with clients on software, payroll, and other accounting issues



The Mercer Group, Inc.

CAPE CORAL, FLORIDA
CITY AUDITOR

January 10, 2017

Summary
Michael Wollman

- Master of Business Administration; Bachelor of Commerce
- CPA; CIA; CMA
- Audit Manager, Assurance Services Group, Canadian Federal Government; Financial Oversight Manager (CFO), Center for Grants and Contributions, Canadian Federal Government; Finance and Systems Manager (CFO) Seized Property Management, Canadian Federal Government; Audit Manager, Audit Services Canada, Canadian Federal Government.
- Salary: \$ 120,000, equivalent to \$ 99,000 United States currency
- Internet Research
 - Various business listings LinkedIn
 - No news articles

THE MERCER GROUP, INC.

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Senior Vice President
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727-214-8673

WDHiggin@mercergroupinc.com
www.mercergroupincflorida.com



The Mercer Group, Inc.

LETTER OF INTEREST & RESUME

THE MERCER GROUP, INC.

W. D. Higginbotham, Jr. Senior Vice President
Daytona Beach Shores, Florida 32118-8202
727-214-8673

WDHiggin@mercergroupinc.com
www.mercergroupincflorida.com

W.D. Higginbotham

From: Michael Wollman <Michael.Wollman@tpsgc-pwgsc.gc.ca>
Sent: Tuesday, December 13, 2016 3:14 PM
To: WDHiggin@mercergroupinc.com
Subject: City Auditor Position
Attachments: Michael Wollman Resume.doc

Dear Mr. Higginbotham:

I am a seasoned senior level audit manager looking to branch out and further develop in my career.

I have over 20 years of experience in the financial field and can bring a fresh perspective to your organization. I am strong in internal controls, internal audit, governance and risk management. I am also a highly committed results based manager that is not afraid to roll up his sleeves in order to get the job done. I am also an inspirational leader that can pull people together focusing on a common outcome.

I have the follow education, experience and knowledge:

- BCOM, MBA, CPA, CMA, CIA.
- 20+ years of experience in managing and conducting financial, operational, compliance and information technology audits.
- 9 years of progressive management experience
- Knowledge of internal audit standards, practices and procedures.
- Project management and leadership skills to ensure attention to detail and execute projects/ engagements to a successful conclusion. (took the 3 day project management course)
- Proven ability to multi-task, problem-solve and prioritize without compromising details to accuracy or work deadlines.
- Knowledge of and experience in managing external auditor/consultants.
- Knowledge of and experience in auditing financial, operational, compliance and information technology areas.
- Strong analytical skills to identify issues, potential risks and root causes, in order to suggest effective improvements.
- Excellent listening, writing and verbal communication skills that retains trust, gains buy-in and encourages ownership by relevant stakeholders to implement improvements.
- Excellent business acumen and strategic thinking skills.
- Solid customer service orientation

I look forward to having the opportunity to chat with you and your organization about the value I can offer to your organization.

Thank you for your consideration.

Sincerely,



Michael Wollman, MBA, CMA, CIA

[REDACTED]

[REDACTED]

Email: michael.wollman@sympatico.ca

PROFILE:

Senior Level Finance and Audit Manager with background in Financial, Systems, Operational Controls and relationship building with all Stakeholders

MANAGEMENT APPROACH: Collaborative, results driven, team player who harnesses the best out of employees and promotes a positive respectful learning environment that is always striving for excellence.

OBJECTIVE:

Seeking an Executive Level Audit and Oversight role that is results driven, constantly striving for excellence and innovation, and is always investing in its human capital.

LANGUAGES:

Fluency in English & French

PROFESSIONAL EXPERIENCE:

2015/.. Audit Manager, Assurance Services Group (PWGSC), Gatineau, Quebec

- Liaising with Large Defence Contracting executives on Cost audits.
- Resolving and negotiating audit issues with these contractors.
- Managing a multi-disciplinary team of auditors
- Managed time and financial budgets for multiple audit projects. Managed these projects as well.
- Approving staff requests for leave and handling other employee matters.
- Overseeing learning plans and performance reviews
- Reviewing audit workings papers and Audit Reports.

2012 - 2015 Financial Oversight Manager (Chief Financial Officer), Centre for Grants and Contributions (CGC), Ottawa Ontario

- Managing a multi-disciplinary team of financial professionals
- Overseeing contribution compliance work
- Managing Risk Based Audit Plan

- Oversight of Grant and Contribution activities at CGC from cradle to grave
- Overseeing payments to and receivables from Recipients
- Overseeing systems implementation of GSIMS with the Financial Oversight Group
- Forecasting Multi-year Payments and other budget related activities.
- Overseeing Business transformation and new systems implementations for the Centre

2011-2012 Finance and Systems Manager (Chief Financial Officer), Seized Property Management Directorate (PWGSC), Ottawa Ontario

- Managing a multi-disciplinary team of financial professionals
- Controllership Function

2007-2011 Audit Manager, Audit Services Canada (PWGSC), Ottawa Ontario

- Managing a multi-disciplinary team of auditors
- Managed time and financial budgets (MOUs) for multiple audit projects. Managed these projects as well.
- Approving staff requests for leave and handling other employee matters.
- Overseeing learning plans and performance reviews
- Prospecting for new business and meeting with these potential clients.
- Drafting MOUs for new clients
- Reviewing audit workings papers and Audit Reports.

2007 Senior Internal Auditor, Statistics Canada (Secondment), Ottawa Ontario

- Leading the Internal Audit for Capital Assets for all Phases (Planning, Conduct and Reporting)
- Currently drafting Audit methodology and Terms of Reference.

2006-2007 Senior Planning and Coordination Officer, AAFC, Ottawa Ontario

2005 - 2006 Senior Internal Auditor Bank of Canada, Ottawa Ontario

2004 - 2005 Audit Consultant Elections Canada, Ottawa Ontario

2003-2004 Senior Field Auditor AUDIT BUREAU OF CIRCULATIONS, Montreal Area

2000-2003 Field Auditor AUDIT BUREAU OF CIRCULATIONS, Montreal Area

1998-2000 Senior Business Analyst READERS DIGEST (CANADA) LTD, Montreal, Qc

1993 - 1997 Field Auditor CCAB Inc. (Div. of BPA International), Toronto, On

**1992 - 1993 Bilingual Accountant MAPLE LEAF FOOD SERVICE INC.,
Mississauga, On**

1991 Sales Representative LANIER (Div. of Harris/3M), Markham, On

EDUCATIONAL HISTORY:

- . 2007-2010 - CIA Certification
- . 2004-2007 - Masters in Business Administration (Accounting Sciences), Université du Québec à Montréal
- . 2004-2007 - CMA Executive Program
- . 2004-2005 - DESS (Accounting), Université du Québec en Outaouais
- . 1999-2000 - Graduate Certificate in Management, MCGILL UNIVERSITY
- . 1988-1991 - Bachelor of Commerce Degree, CONCORDIA UNIVERSITY

PROFESSIONAL DEVELOPMENT:

- Leadership Session (2 day course 2014)
- Yearly FMI conference (Most recent: November 2015)
- Essentials of Managing in the Public Service for New Executive (5 Days, 2011)
- Project Management in the Public Sector Course (3 days, 2006)
- member of Ottawa IIA (Institute of Internal Auditors)
- member of the Institute of Management Accountants

COMPUTER SOFTWARE/SYSTEMS:

- MacKinsight (Audit Software)
- Peoplesoft
- Team mate (Internal Audit Software)
- Paisley (Internal Audit Software)
- IDEA (Internal Audit Software)
- SAP
- IBM AS400/mainframe integrated with Windows Environment.
- Microsoft Excel/Word/PowerPoint & Lotus Notes.
- Lotus 1-2-3

REFERENCES: Available upon request.

Item Number: 11.A.
Meeting Date: 1/23/2017
Item Type: NEW BUSINESS

AGENDA REQUEST FORM
CITY OF CAPE CORAL



TITLE:

ADDENDUM: Resolution 19-17 Trust for Public Lands; Department: Parks and Recreation; Dollar Value: \$11,000; (Fund: TBD)

REQUESTED ACTION:

Approve or Deny

STRATEGIC PLAN INFO:

1. Will this action result in a Budget Amendment? No
2. Is this a Strategic Decision? Yes

If Yes, Priority Goals Supported are listed below.

If No, will it harm the intent or success of the Strategic Plan?

ELEMENT E: INCREASE QUALITY OF LIFE FOR OUR CITIZENS BY DELIVERING PROGRAMS AND SERVICES THAT FOSTER A SAFE COMMUNITY

PLANNING & ZONING/HEARING EXAMINER/STAFF RECOMMENDATIONS:

SUMMARY EXPLANATION AND BACKGROUND:

A resolution approving the waiver of procurement procedures to retain the services of The Trust for Public Land; approving the funding of the conservation finance research proposed by The Trust for Public Land; authorizing the Mayor to execute the letter requesting the services of The Trust for Public Land.

LEGAL REVIEW:

Dolores D. Menendez, City Attorney

EXHIBITS:

CM Memo - Trust for Public Land
Resolution 19-17
Conservation Finance Research Proposal
Abberger Trust Letter

PREPARED BY:

Steve

Parks and Recreation

Parks and




SOURCE OF ADDITIONAL INFORMATION:
Stephen Pohlman, Parks and Recreation Director

ATTACHMENTS:

Description	Type
▣ CM Memo Trust for Public Land	Backup Material
▣ Resolution 19-17	Resolution
▣ Conservation Finance Research Proposal	Backup Material
▣ Abberger Trust Letter	Backup Material

CITY OF CAPE CORAL
PARKS & RECREATION DEPARTMENT

TO: Mayor Sawicki and Council Members

FROM: John Szerlag, City Manager 
Kelley Fernandez, Business Manager 
Steve Pohlman, Parks and Recreation Director 

DATE: January 17, 2017

SUBJECT: Trust for Public Land

Parks and Recreation staff received a proposal from the Trust for Public Land that would engage their services for \$11,000 for feasibility research and program recommendations, including travel presentation. They would also do fundraising for a public opinion survey estimated at \$20,000. As part of their services, the Trust will do polling, and research to determine the viability of a referendum in November to fund the Parks Master Plan. We would like to engage the services of the Trust for Public Land and be waived from the purchasing process due to the time constraints. If approved, the services contained in the proposal attached are significant and in management's opinion, we are getting a great value for \$11,000. We have also attached the services that the Trust provides. It should be noted that their success rate for referendums is over 80%.

On January 10, 2017, the Stakeholders Group that has been assisting the City with the Parks Master Plan supported utilizing the services of the Trust for Public Land due to their expertise and success rate. After input and discussion with the Stakeholders Group, City Management recommends engaging the Trust for Public Lands.

If you have any questions, please contact Steve Pohlman at (239) 573-3110.

SP/tl(TrustforPublicLand1)

Attachments Trust for Public Land Proposal
Trust for Public Land Services

THE TRUST *for* PUBLIC LAND

LAND FOR PEOPLE



CREATING PUBLIC FUNDS FOR PARKS

The Trust for Public Land assists local and state governments in researching, designing, passing, and implementing ballot measures and legislation to dedicate new public funds for parks and land conservation. Since 1996, we have played a leading role in creating \$57 billion in new public funds. Our Conservation Finance services include:

DEVELOPING A CASE. We can help create a statement of needs, including projected costs for new and improved parks and forecasts of the fiscal and economic impacts.

FEASIBILITY RESEARCH. Our experts analyze the options for creating public funding for parks, exploring their legal, fiscal, and political constraints.

PUBLIC OPINION SURVEYS. We manage surveys by professional polling firms to test potential ballot measures and gauge voter support for funding sources, amounts, uses for funds, and campaign messages.

MEASURE DESIGN. For ballot measures, we recommend the optimal funding method, amount of funding, election timing, and ballot language to design a measure with the best chance for success. For legislative measures, we also advise on finance mechanisms, funding allocations, and best practices for implementation of funding programs.

CAMPAIGNS. The Trust for Public Land and its campaign affiliate, The Conservation Campaign (TCC), help community leaders and citizen groups develop and manage campaigns to win approval of ballot and legislative measures for parks. Campaign services may include planning, strategy, fundraising, selection and oversight of consultants, voter communications, and compliance with campaign finance reporting laws.

PROGRAM DESIGN AND EVALUATION. Our experts provide models and recommendations to guide cities and counties in developing accountable and effective parkland acquisition programs.

Using our services

Costs for a feasibility report range from \$5,000 to \$50,000. Public opinion surveys are in the \$20,000 to \$25,000 range. Feasibility research, polling, and measure design together typically add up to about \$40,000.

Costs are covered by government consulting contracts, local philanthropy, and national grants. The Trust for Public Land often finds partners such as local business councils or national conservation organizations that can pool resources. For ballot measure campaigns—which range from grassroots efforts costing as little as \$5,000 to million-dollar campaigns—governments and foundations cannot participate, so funds must be raised from individuals, businesses, and nonprofits.

Our Conservation Finance advantage

- **15+ YEARS OF EXPERIENCE** in developing, passing, and implementing funding measures for parks and conservation.
- **81 PERCENT SUCCESS RATE** in passing 470+ ballot measures generating \$57 billion for parks and conservation around the country.
- **NATION'S FOREMOST EXPERTS** on how local and state governments finance parks and conservation.
- **TRUSTED, NONPARTISAN ADVISORS** to elected officials and government agencies.
- **A 501(C)(4) AFFILIATE** and the only national organization dedicated solely to campaigns for parks and conservation funding.
- **POLITICAL EXPERTISE**, deploying the same techniques as top candidates for elected office and working with the nation's foremost political consultants.
- **COALITION BUILDING** that fosters broad-based, non-traditional alliances.
- **RESEARCH CAPABILITY** to develop and analyze data on funding options, economic benefits, and fiscal impacts.

THE
TRUST
for
PUBLIC
LAND



*The Trust for Public Land creates
parks and protects land for people,
ensuring healthy, livable communities
for generations to come.*

tpl.org

Where we have made a difference

Safe Neighborhood Parks bond in Miami-Dade County. Trust for Public Land polling, measure design, and campaign management resulted in voter approval of a \$200 million bond for parks and natural areas—when the local pundits said it couldn't be done.

St. Louis Confluence Greenway sales tax.

To create a corridor of recreational trails and parks at the confluence of the Mississippi and Missouri rivers, The Trust for Public Land worked with the state legislatures in Illinois and Missouri to establish enabling authority for a local option sales tax for the city of St. Louis and surrounding counties. Then TCC managed the Proposition C campaign to win voter approval for a sales tax generating \$400 million for the new regional park system.

Two park bonds for the Portland, Oregon, region.

In 1995, The Trust for Public Land assisted the regional government, Metro, in passing a \$135 million ballot measure to make its park system one of the best in the country. In 2006, TCC helped renew the funding with a \$227 million bond referendum.

Ormond Beach, Florida, Beachfront Park bond.

Working in close partnership with the City of Ormond Beach, we helped win voter approval for a \$5 million bond to acquire a new park for public beach access. We provided feasibility research and designed the measure and, with campaign affiliate TCC, planned and implemented the campaign.

For more information:

In the East:

WILL ABBERGER
850.222.7911, EXT. 23
WILL.ABBERGER@TPL.ORG

In the West:

DEE FRANKFOURTH
206.274.2920
DEE.FRANKFOURTH@TPL.ORG

RESOLUTION 19 - 17

A RESOLUTION OF THE CITY OF CAPE CORAL CITY COUNCIL APPROVING THE WAIVER OF PROCUREMENT PROCEDURES TO RETAIN THE SERVICE OF THE TRUST FOR PUBLIC LAND; APPROVING THE FUNDING OF CONSERVATION FINANCE RESEARCH PROPOSED BY THE TRUST FOR PUBLIC LAND; AUTHORIZING THE MAYOR TO EXECUTE THE LETTER REQUESTING THE SERVICES OF THE TRUST FOR PUBLIC LAND; PROVIDING AN EFFECTIVE DATE.

WHEREAS, on December 5, 2016, the City Council approved the Parks Master Plan; and

WHEREAS, the total cost of implementing the proposed Master Plan is \$56.71 million; and

WHEREAS, on January 10, 2017, the Stakeholders Group met to discuss implementation strategies; and

WHEREAS, The Trust for Public Land presented a Conservation Finance Research Proposal to provide the City with technical advice and assistance in developing and sustaining reliable, ongoing sources of funding to implement the adopted Parks Master Plan; and

WHEREAS, the scope of services to be provided by The Trust for Public Land includes conducting feasibility research at a cost of \$7,500; conducting a public opinion survey to be privately funded at a cost of \$20,000; and presenting its program recommendations at a cost of \$3,500; and

WHEREAS, the Stakeholders Group believes that the services proposed by The Trust for Public Land would be very valuable to the City in determining if a bond referendum to fund parks and recreation needs identified in the Parks Master Plan would be successful; and

WHEREAS, The Trust for Public Land has an 81 percent success rate working with communities to obtain voter support for proposed ballot measures; and

WHEREAS, Section 2-141(c) of the Code of Ordinances provides that the City Council may authorize the waiver of procurement procedures upon the recommendation of the City Manager that it is in the city's best interest to do so to obtain goods and services which cannot be acquired through the normal purchasing process due to insufficient time, the nature of the goods or services, or other factors. Purchases authorized by the waiver process shall be acquired with such competition as is practicable under the circumstances and only after a good faith review of all available sources and negotiation as to price, delivery and terms; and

WHEREAS, due to time constraints, the City Manager finds that it is in the City's best interest to waive the normal procurement procedures to engage the services of The Trust for Public Land for feasibility research and program recommendations and therefore recommends that the procurement procedures be waived in accordance with Section 2-141(c); and

WHEREAS, the City Manager requests City Council approval for funding in the amount of \$11,000 for the services proposed by The Trust for Public Land as described in the Memorandum Proposal attached hereto as Exhibit A; and

WHEREAS, the City Council desires to authorize the waiver of procurement procedures to engage the services of the Trust for Public Land, to approve the funding for the services proposed by The Trust for Public Land in the amount of \$11,000, and to authorize the Mayor to execute the letter requesting the services of The Trust for Public Land attached hereto as Exhibit B.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CAPE CORAL, FLORIDA:

Section 1. The City Council hereby authorizes the waiver of procurement procedures to engage the services of the Trust for Public Land

Section 2. The City Council hereby approves funding in the amount of \$11,000 for the services proposed by The Trust for Public Land in the Memorandum Proposal attached hereto as Exhibit A, and authorizes the Mayor to execute the letter requesting the services of The Trust for Public Land attached hereto as Exhibit B.

Section 3. Effective Date. This resolution shall take effect immediately upon its adoption by the Cape Coral City Council.

ADOPTED BY THE CITY COUNCIL OF THE CITY OF CAPE CORAL AT ITS REGULAR COUNCIL SESSION THIS _____ DAY OF _____, 2017.

MARNI L. SAWICKI, MAYOR


VOTE OF MAYOR AND COUNCILMEMBERS:

SAWICKI	_____	LEON	_____
BURCH	_____	ERBRICK	_____
CARIOSCIA	_____	WILLIAMS	_____
STOUT	_____	CODEN	_____

ATTESTED TO AND FILED IN MY OFFICE THIS _____ DAY OF _____, 2017.

REBECCA VAN DEUTEKOM
CITY CLERK

APPROVED AS TO FORM:



DOLORES D. MENENDEZ
CITY ATTORNEY
res/Approve Funding-Trust for Public Lands Feasibility Research

MEMORANDUM PROPOSAL

TO: Mr. Stephen H. Pohlman, Parks and Recreation Department Director
FROM: Will Abberger and Pegeen Hanrahan, The Trust for Public Land
DATE: January 3, 2017
RE: Conservation Finance Research Proposal

Adequate funding is a challenge for all parks and conservation-related activities. The Trust for Public Land's (TPL) Conservation Finance program helps communities and agencies identify and raise funds for conservation from state and local sources. TPL provides professional, technical assistance services to local governments that need to research and evaluate conservation finance options. Since 1996, TPL has been involved in more 500 successful ballot measures that have created more than \$61 billion in new funding for parks and conservation. Voters have approved 81 percent of the ballot measures supported by TPL.

Given the substantial investment of time and resources required to develop a funding strategy, preliminary research is essential to determine the feasibility of such an effort and to understand public opinion surrounding land conservation. Feasibility research provides the knowledge base that informs the development of effective public opinion surveys, including testing the funding mechanism, levels of funding, purposes and messages.

The Trust for Public Land uses feasibility research and polling information to work with the city to design the ballot measure with the very best chance for success. TPL will make specific recommendations as to the amount and duration of financing, expenditure priorities, election timing, public accountability, and ballot language for a ballot measure.

Scope of Work/Services

Feasibility Research

TPL will evaluate the feasibility of implementing a property tax and/or bonding authority in the City of Cape Coral to fund parks and recreation needs identified in the city's Parks Master Plan 2016. TPL will examine the legal framework, the revenue-raising capacity, the fiscal impact to government budgets and/or taxpayers, and how tax options are implemented (imposed by the City Council and by referral to the ballot). TPL also proposes to provide examples of where and how these mechanisms have been used by other jurisdictions.

The Trust for Public Land also proposes to research election results in order to examine whether the city electorate has supported or opposed spending public funds for parks and open space, or other priorities, in the past, as well as voter turnout trends.

This research provides a fact-based reference document to be used as a shared information source for the City of Cape Coral Parks and Recreation Department to evaluate available financing mechanisms from an objective vantage point.

Public Opinion Survey

After completing the Feasibility Study, TPL will contract with a qualified public opinion survey firm to conduct a professionally administered, statistically valid public opinion survey, through telephone interviews of randomly selected voters in the city. The public opinion survey can be funded either publicly or privately. Private funding of the poll provides TPL with the ability to keep results confidential if necessary.

The poll will be designed to test the following:

1. Specific ballot language and the level of voter support for a land conservation funding measure;
2. Alternative funding sources and amounts;
3. Purposes for the use of funds the voters find most compelling;
4. Timing, i.e., when is the best time to bring a measure to voters; and
5. Various accountability measures that may be incorporated into the measure.

TPL staff will make a presentation of key research findings and poll results to Department staff, the City Council, and interested partners.

Program Recommendations

TPL will provide recommendations for a public finance strategy to the Department to address the need to create reliable funding for parks, beaches and recreation facilities throughout the city. If the Department decides to move forward with a ballot measure, TPL will advise on the crafting of the ballot language, including state and local requirements, examples of successful ballot questions, and consultation with legal counsel as necessary.

This proposal does not include the costs associated with the voter education effort that would be necessary if a measure is referred to the ballot.

Feasibility Research	\$7,500
Public Opinion Survey (estimated, privately funded)	20,000
Program Recommendations, Including Travel Presentation:	<u>\$3,500</u>
Total, Including Private Funding	<u>\$31,000</u>



City of Cape Coral

Office of the Mayor and City Council

Mr. Will Abberger
Vice President
Director of Conservation Finance
The Trust for Public Land
306 N. Monroe Street
Tallahassee, FL 32301

Dear Mr. Abberger:

By this letter, the City of Cape Coral requests technical advice and assistance from The Trust for Public Land in connection with our efforts to develop and sustain reliable, ongoing sources of funding to implement our adopted Parks Master Plan. As part of your advice and assistance, I understand you may undertake feasibility research, including studying local laws and recent elections; conduct a public opinion survey; provide recommendations regarding program design, and assist with the development of strategies for supporting dedicated, ongoing sources of public funds for the Parks Master Plan or other designated purposes.

We are interested not only in the factual information that you can provide, but also your opinions and recommendations on public funding measures available to us and strategies to enact such measures. That would include understanding the public's priorities and attitudes regarding parks, recreational facilities, beach access, wildlife habitat, trails and bikeways or other designated purposes in Cape Coral.

Information provided to Cape Coral will be public record as a matter of law. This request does not in any way commit public funds to the efforts of The Trust for Public Land related to this request, nor does it require public disclosure of any confidential information of either organization.

This request will continue in effect for any advice you offer or presentations you submit for the use of this body related to such matters. In addition, we would like to take this opportunity to request that you continue to be available to provide technical advice and assistance in this area and on related matters in the future.

Thank you.

Sincerely,

Marni Sawicki
Mayor



www.tpl.org

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City of Cape Coral

Office of the Mayor and City Council

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Vice President
Director of Conservation Finance
The Trust for Public Land
306 N. Monroe Street
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Thank you.

Sincerely,

Marni Sawicki
Mayor

Item Number: 11.B.
Meeting Date: 1/23/2017
Item Type: NEW BUSINESS

AGENDA REQUEST FORM
CITY OF CAPE CORAL



TITLE:

ADDENDUM: Bryant Miller and Olive Invoices - Mayor Pro Tem Williams

REQUESTED ACTION:

STRATEGIC PLAN INFO:

1. Will this action result in a Budget Amendment?
2. Is this a Strategic Decision?
 - If Yes, Priority Goals Supported are listed below.
 - If No, will it harm the intent or success of the Strategic Plan?

PLANNING & ZONING/HEARING EXAMINER/STAFF RECOMMENDATIONS:

SUMMARY EXPLANATION AND BACKGROUND:

LEGAL REVIEW:

EXHIBITS:

Memo to Councilmember Williams, City Council Office Manager

PREPARED BY:

Division- Department-

SOURCE OF ADDITIONAL INFORMATION:

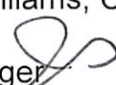


ATTACHMENTS:

Description	Type
<input type="checkbox"/> Memo to Council Member Rick Williams, City Council Office Manager	Backup Material

MEMORANDUM

CITY OF CAPE CORAL
CITY MANAGER'S OFFICE

TO: Council Member Rick Williams, City Council Office Manager

FROM: John Szerlag, City Manager 
Michael Ilczyszyn, Assistant City Manager 
Victoria Bateman, Finance Director 

DATE: January 18, 2018

SUBJECT: Legal Services Invoice for Extended Bar Hours

Earlier this month our accounts payable division in the Finance Department was sent an invoice from Bryant Miller and Olive for legal services related to developing a new revenue source to fund extended bar hours. This invoice was generated after a phone conference between a council member, the city attorney, and outside legal counsel as a result of a June 10th, 2016 consensus to work with staff on extended bar hours.

In this case, there were no administrative staff members involved in the discussion leading up to or during the phone conference with outside legal counsel regarding revenue sources. This is concerning because it was not clear if City Council intended on expending resources when they authorized a council member to work with staff on extended bar hours. With this in mind city administration needs direction on two points related to this matter:

1. Does the City Council authorize the payment for this work; from what account?
2. Will City Council encumber \$10,000 for future work completing the request to research and prepare legal opinions on extended bar hours?

If the answer to number one is yes, city administration recommends the City Council transfer \$15,000 from its Books, Publications, and Memberships account into a Legal Services account to cover this invoice, the expected remaining work, and any future work.

If the answer to number two is yes, administrative staff from the Finance Department will attend any future conference calls or meetings related to this matter.

JS:rm

C: Dolores Menendez, City Attorney
Kelley Fernandez, Business Manager