

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

WHEREAS, an application was filed by the property owner, Robert Ball, to rezone 0.75± acres parcel from Residential (RS-1) to Commercial Planned Development (CPD), in reference to Ball Minor CPD;

WHEREAS, a public hearing was advertised and held on December 15, 2010, before the Lee County Zoning Hearing Examiner, who gave full consideration to the evidence in the record for Case #DCI2010-00009; and

WHEREAS, a second public hearing was advertised and held on March 7, 2011, before the Lee County Board of Commissioners, who gave full and complete consideration to the recommendations of the staff, the Hearing Examiner, the documents on record and the testimony of all interested persons.

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

SECTION A. REQUEST

The applicant filed a request to rezone 0.75± acres from RS-1 to CPD to allow up to 5,700 square feet of office, medical and commercial uses or an assisted living facility with a maximum standard density not to exceed 7 dwelling units with a maximum building height of 35 feet. Potable water and sanitary sewer services will be provided. No development blasting is proposed. The property is located in the Central Urban Future Land Use Category and is legally described in attached Exhibit A. The request is APPROVED, SUBJECT TO the conditions and deviations specified in Sections B and C below.

SECTION B. CONDITIONS:

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

1. Master Concept Plan/Development Parameters:
 - a. The development of this project must be in substantial compliance with the single-page Master Concept Plan (MCP) entitled "Ball Property CPD," date-stamped "RECEIVED MAR 08 2011,"

COMMUNITY DEVELOPMENT,” attached as Exhibit C, except as modified by the conditions below.

- b. Approval is limited to a maximum of 5,700 square feet of office, medical, and commercial uses OR an assisted living facility with a maximum standard density not to exceed seven dwelling units or the density equivalent. If the property is used as an assisted living facility, any office, medical or commercial uses must be accessory and secondary to the assisted living facility use.
- c. A local development order must be applied for within 90 days of zoning approval for all site related improvements and construction of all building additions. Prior to approval of a local development order, the existing building, all building additions and site-related improvements are required to meet the applicable commercial land development and building code regulations.
- d. This development must comply with all requirements of the LDC at time of local development order approval, except as may be granted by deviations as part of this planned development. If changes to the MCP are subsequently pursued, appropriate approvals will be necessary.

2. Uses and Site Development Regulations:

The following conditions apply to the project and uses:

a. Schedule of Uses

Accessory Uses and Structures
Assisted Living Facility
Business Services, Group I only
Community Residential Home
Contractors and Builders, Group I only
Essential Services
Medical Office
Parking Lot, Accessory
Personal Services, Groups II and IV (excluding health clubs or spas,
massage parlors, steam or Turkish baths, escort services,
and tattoo parlors)
Repair Shops, Groups I and II (excluding gunsmiths and taxidermists)
Signs, in accordance with LDC Chapter 30

b. Site Development Regulations

Minimum Lot Area		0.75± acres
Minimum Width		240± feet
Minimum Depth		136.13± feet
Minimum Building Setbacks:	Street	25 feet
	Side	15 feet
	Rear	25 feet
Minimum Building Separation		25 feet
Maximum Building Height		35 feet
Maximum Lot Coverage		40 percent
Minimum Open Space		30 percent

Minimum setbacks for accessory uses must comply with the LDC at time of development.

3. Open Space:

Prior to local development order approval the local development order plans must provide a minimum of 30 percent common open space in substantial compliance with the approved MCP site design.

4. Buffers:

Prior to local development order approval, the landscape plans must include:

- a. trees installed or retained within the northeast buffer width, along the north property line, must have an appropriate canopy and size in mature form so that there will be no conflicts with any existing overhead power lines;
- b. any shrub material used to meet requirements of the buffer hedge row adjacent to the parking area and Type F buffer must be of specific species which are cold hardy and can be maintained as a dense, opaque hedge row for the full length and height of the required buffer; and
- c. any existing buffer vegetation that does not meet size specification requirements as required by the LDC and committed to on the MCP must be removed or relocated and replaced to meet the screening requirements.

5. Access:
 - a. The driveway to the parking lot from Lee Boulevard is limited to right-in/right-out only.
 - b. When the adjacent property to the west is developed with non-residential uses, the Applicant will be provided a cross access for vehicular connection.
 - c. Prior to Certificate of Compliance for the site, all, or a portion of the driveway to the structure must be removed to allow for the installation of the landscape buffer as depicted on the MCP.
6. Vehicular/Pedestrian Impacts: Approval of this zoning request does not address mitigation of the project's vehicular or pedestrian traffic impacts. Additional conditions consistent with the LDC may be required to obtain a local development order.
7. Lee Plan Consistency: Approval of this zoning request does not guarantee local development order approval. Future development order approvals must satisfy the requirements of the Lee Plan Planning Communities Map and Acreage Allocation Table, Map 16 and Table 1(b), be reviewed for, and found consistent with, the retail commercial standards for site area, including range of gross floor area, location, tenant mix, and general function, as well as all other Lee Plan provisions.
8. Concurrency: This project is deemed exempt from the transportation concurrency requirements set forth in LDC Chapter 2 and the Lee County Comprehensive Plan to the extent allowed by the Certificate of Concurrency Exemption issued by Lee County pursuant to the Stipulation and Settlement Agreement dated June 9, 1992, in *Lehigh Corporation v. Lee County*, Case No. 91-2482 CA in the Circuit Court of the Twentieth Judicial Circuit in and for Lee County, Florida. The exemption only vests the subject property with transportation concurrency for a level of service equivalent to or less than the requirement for the RM-2 (residential multiple-family) zoning district. Any additional amount of concurrency necessary for the development must be met pursuant to LDC Chapter 2 and the Lee County Comprehensive Plan.
9. Solid Waste Management:
 - a. The commercial can toter(s) must be stored in such a manner that they are fully shielded from public view, from Lee Boulevard and surrounding properties. An outdoor storage area, with landscaped screening, must be depicted on the local development order prior to approval.

- b. Prior to local development order approval for any building additions to the existing 2,430± square-foot structure, an on-site space for the placement of garbage containers or receptacles, and sufficient space for recycling materials collection containers, in accordance with LDC §10-261(a) and Ordinance #08-10, or as otherwise approved, must be depicted on the local development order plans.
10. Connection to Public Water and Sewer: Development of this project must connect to both public water and public sewer in accordance with LDC Chapter 10. At time of local development order, the developer must also demonstrate there is adequate water and sewer capacity to handle level of development as proposed in the development order submittal.

SECTION C. DEVIATIONS:

1. Intersection Separation: Deviation (#1) seeks relief from the LDC §10-285(a) requirement to provide a minimum 660-foot connection separation on an arterial road, to allow a minimum 385-foot connection separation from the existing parking lot driveway to Sixth Court, a local road intersecting with Lee Boulevard. This deviation is APPROVED, SUBJECT to Condition 5 hereinabove.
2. Buffer Abutting Residential Use: Deviation (#2) seeks relief from the LDC §10-416(d)(4) requirement to provide a minimum buffer width of 30 feet for a Type F buffer, where proposed commercial abuts a single-family residential use, to allow a reduced 26-foot-wide buffer with Type F buffer plantings, where the existing pool deck and screen enclosure encroach into that minimum required buffer width. This deviation is APPROVED.
3. Buffer and Wall: Deviation (#3) seeks relief from the LDC §10-416(d)(6) requirement to provide a solid wall and a minimum 30-foot-wide Type F buffer when parking areas are located less than 125 feet from existing single-family residential lots, to allow no wall and a minimum 15-foot-wide buffer on the northwest side of the parking lot and a 24-foot-wide buffer on the east side of the parking lot. This deviation is APPROVED, SUBJECT to Condition 4 hereinabove.
4. Curbside Trash/Recycling Pickup Permitted: Deviation (#4) seeks relief from the LDC §10-261(a) requirement to provide a commercial business between 5,000 and 10,000 square feet to provide a minimum of 80 square feet for garbage collection and 48 square feet for recycling collection, to allow curbside pick-up via a commercial toter. This deviation is APPROVED, SUBJECT to Condition 9 hereinabove.

SECTION D. EXHIBITS

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

- Exhibit A: Legal description of the property
- Exhibit B: Zoning Map (with the subject parcel indicated)
- Exhibit C: The Master Concept Plan

SECTION E. FINDINGS AND CONCLUSIONS:

1. The applicant has proven entitlement to the rezoning by demonstrating compliance with the Lee Plan, the LDC, and any other applicable code or regulation.
2. The rezoning, as approved:
 - a. meets or exceeds all performance and locational standards set forth for the potential uses allowed by the request;
 - b. is consistent with the densities, intensities and general uses set forth in the Lee Plan;
 - c. is compatible with existing or planned uses in the surrounding area;
 - d. will not place an undue burden upon existing transportation or planned infrastructure facilities and will be served by streets with the capacity to carry traffic generated by the development; and
 - e. will not adversely affect environmentally critical areas or natural resources.
3. The rezoning satisfies the following criteria:
 - a. the proposed use or mix of uses is appropriate at the subject location;
 - b. the recommended conditions to the concept plan and other applicable regulations provide sufficient safeguard to the public interest; and
 - c. the recommended conditions are reasonably related to the impacts on the public interest created by or expected from the proposed development.
4. Urban services, as defined in the Lee Plan, are, or will be, available and adequate to serve the proposed land use.

5. The approved deviations, as conditioned, enhance achievement of the planned development objectives, and preserve and promote the general intent of LDC Chapter 34, to protect the public health, safety and welfare.

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

John E. Manning	Aye
Brian Bigelow	Aye
Ray Judah	Aye
Tammara Hall	Absent
Frank Mann	Absent

DULY PASSED AND ADOPTED this 7th day of March, 2011.

ATTEST:
CHARLIE GREEN, CLERK

BY: Marcia Wilson
Deputy Clerk

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

BY: Frank Mann
Frank Mann, Chair

Approved as to form by:

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



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METRON

SURVEYING & MAPPING, LLC

LAND SURVEYORS • PLANNERS

LEGAL DESCRIPTION
OF A PARCEL LYING IN
SECTION 29, TOWNSHIP 44 SOUTH, RANGE 26 EAST,
LEE COUNTY, FLORIDA

A TRACT OR PARCEL SITUATED IN THE STATE OF FLORIDA, COUNTY OF LEE, BEING A PART OF LEHIGH ACRES, UNIT 6, AS RECORDED IN PLAT BOOK 15, PAGE 80 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA, LYING IN SECTION 29, TOWNSHIP 44 SOUTH, RANGE 26 EAST, BEING FURTHER DESCRIBED AS FOLLOWS:

LOTS 6, 7 AND 8, OF BLOCK 48, LEHIGH ACRES, UNIT 6 AS RECORDED IN PLAT BOOK 15, PAGE 80 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA

PARCEL CONTAINS 32,671 SQUARE FEET, MORE OR LESS.

METRON SURVEYING & MAPPING, LLC
FLORIDA CERTIFICATE OF AUTHORIZATION LB# 7071

DENIS J. O'CONNELL, JR.
PROFESSIONAL SURVEYOR AND MAPPER
FLORIDA CERTIFICATE NO. 5430

APPROVED
LEGAL

65J 5/12/10

COMMUNITY DEVELOPMENT

2010-06009

SHEET 1 OF 2

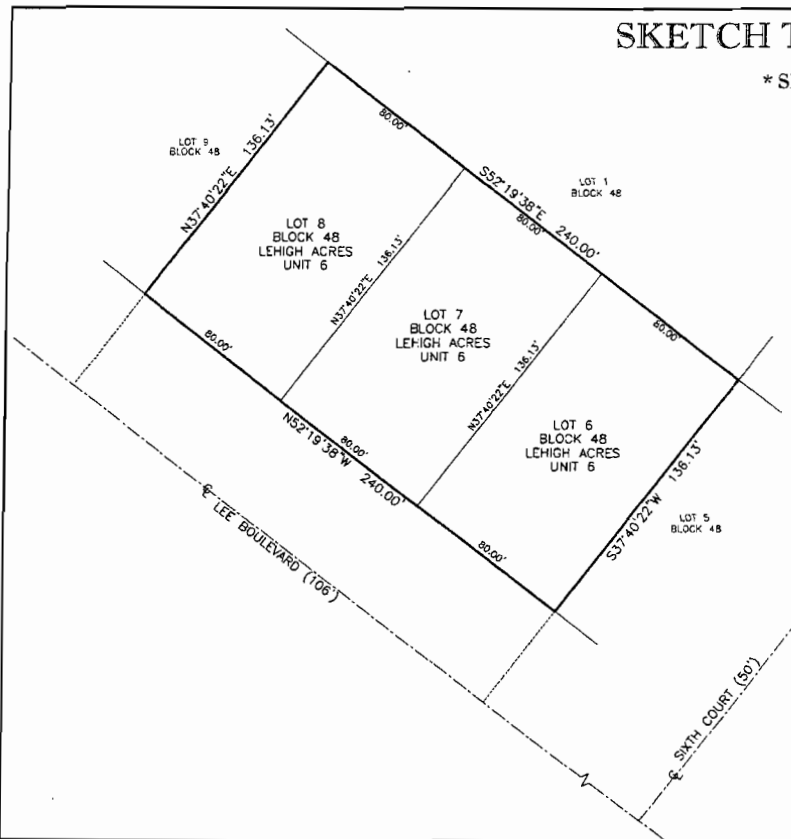
11691DESC.doc

10970 S. CLEVELAND AVE., SUITE #605 • FORT MYERS, FLORIDA 33907 • PHONE (239) 275-8575 • FAX (239) 275-8457
www.metronfl.com

EXHIBIT "A"
(Page 1 of 2)

SKETCH TO ACCOMPANY DESCRIPTION

* SEE SHEET 1 OF 2 FOR LEGAL DESCRIPTION *



COUNTY OF HIGHLAND

DCI 2010-00009



APPROVED
LEGAL

BJ 5/12/10

* THIS IS NOT A SURVEY *

BY:
DENIS J. CONNELL JR.
PROFESSIONAL SURVEYOR AND MAPPER
FLORIDA CERTIFICATE NO. LS# 5430

DATE SIGNED: 4/29/10

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

TITLE: SKETCH OF DESCRIPTION			
		10970 S. CLEVELAND AVENUE UNIT #605 FORT MYERS, FLORIDA 33907 PHONE: (239) 275-8575 FAX: (239) 275-8457 www.metronfl.com	
FILE NAME: 11691SK.dwg	PROJECT NO: 11691	SHEET: 2 OF 2	
SKETCH DATE: 4-28-10	DRAWN BY: RY	SCALE: 1" = 50'	CHECKED BY: DJO

Zoning Map

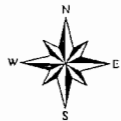
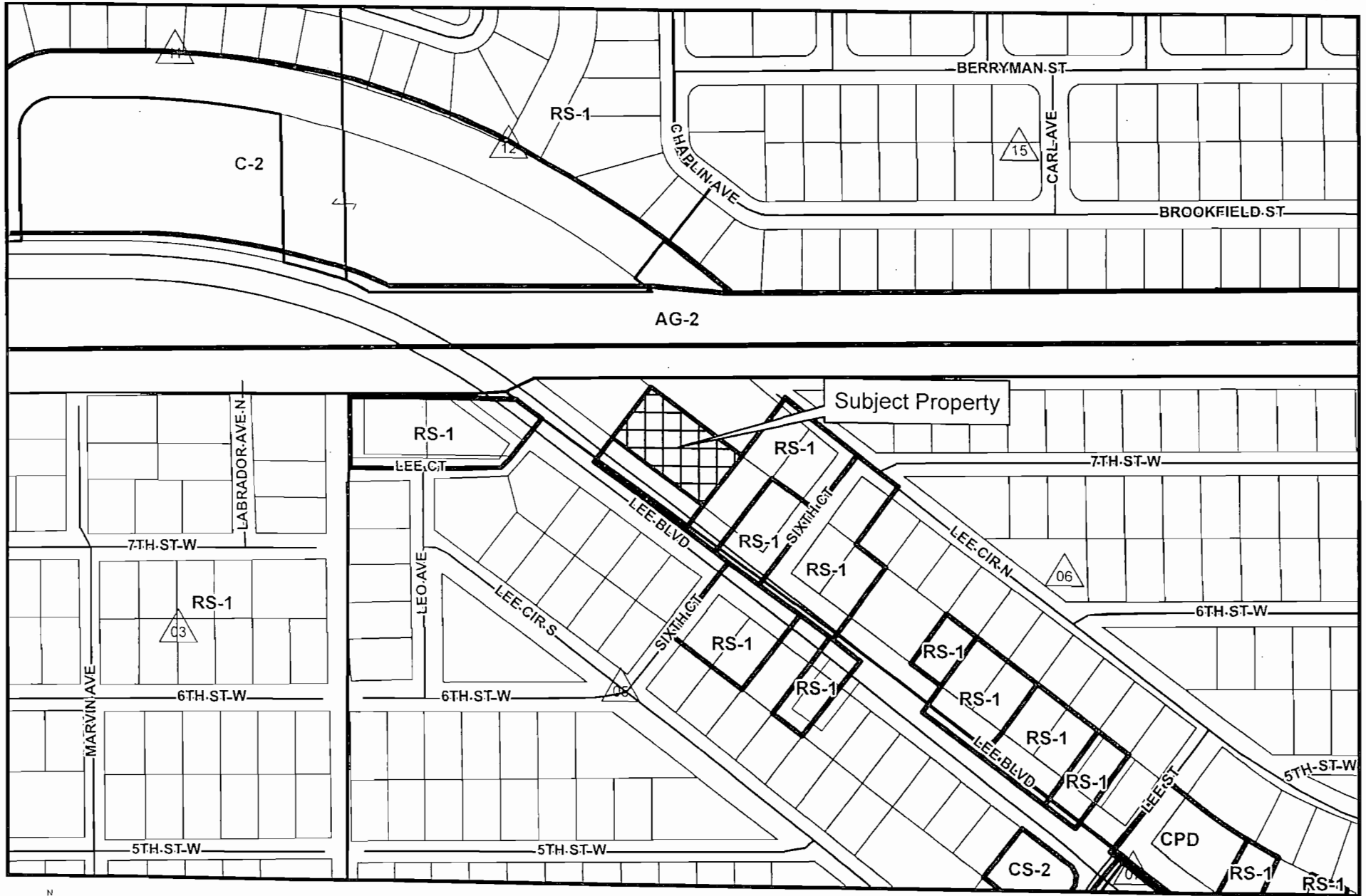


EXHIBIT "B"

