WHEREAS, an application was filed by the property owner, Florida Conference Association of Seventh-Day Adventists, to rezone a 12.08± acre parcel from Agricultural (AG-2) to Commercial Planned Development (CPD) in reference to Orange River Boulevard CPD; and

WHEREAS, a public hearing was advertised and held on October 16, 2008, before the Lee County Zoning Hearing Examiner, Richard A. Gescheidt, who gave full consideration to the evidence in the record for Case #DCI2007-00065; and

WHEREAS, a second public hearing was advertised and held on February 2, 2009, before the Lee County Board of Commissioners, who gave full and complete consideration to the recommendations of the staff, the Hearing Examiner, the documents on record and the testimony of all interested persons.

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

SECTION A. REQUEST

The applicant filed a request to rezone a 12.08± acre parcel from AG-2 to CPD, to allow a maximum of 95,000 square feet of commercial uses with up to 30,000 square feet of retail uses and 30,000 square feet of medical offices; or, 30,000 square feet of commercial uses with an assisted living facility with up to a maximum of 70 units; or, a hotel with a maximum of 166 units with a maximum height of 55 feet/3 stories. Water and sanitary sewer services will be provided by Lee County Utilities. No blasting is proposed as part of this development. The property is located in the Central Urban Land Use Category and is legally described in attached Exhibit A. The request is APPROVED, SUBJECT TO the conditions and deviations specified in Sections B and C below.

SECTION B. CONDITIONS:

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

1. Master Concept Plan/Development Parameters

The development of this project must be consistent with the 2-page Master Concept Plan entitled “Orange River Blvd. CPD,” date-stamped “RECEIVED Dec 10 2008 Community Development,” and attached hereto as Exhibit C (Option A) and Exhibit D (Option B), except as modified by the conditions below.

2. Compliance with LDC

This development must comply with all requirements of the LDC at the time of local development order approval, except as may be granted by deviation as part of this planned
development. If changes to the Master Concept Plan are subsequently pursued, appropriate approvals will be necessary.

3. **Uses and Site Development Regulations**

Development of the subject property is limited to a maximum of 95,000 square feet of commercial uses as follows:

- **Master Concept Plan (Option “A”)** - 95,000 square feet of commercial uses, of which a maximum of 30,000 square feet may be retail and 30,000 square feet may be medical offices.

- **Master Concept Plan (Option “B”)** - 95,000 square feet of commercial uses, of which 30,000 square feet may be retail uses in conjunction with an assisted living facility with a maximum of 70 units wherein each unit has its own cooking facilities;

**OR**

- 95,000 square feet of commercial uses, of which 30,000 square feet may be retail in conjunction with a hotel consisting of a maximum of 166 units, as follows:
  
  114 units with a floor area of less than 425 square feet;
  40 units with a floor area ranging from 426-725 square feet; and
  12 units with a floor area greater than 725 square feet.

a. **Schedule of Uses***

Accessory Uses and Structures, reflective of the architectural style of the principal buildings

- Administrative Offices
- Assisted Living Facility, maximum of 70 units, wherein each unit has its own cooking facility
- ATM (Automatic Teller Machine)
- Auto Parts Store (with no installation service)
- Banks and Financial Establishments, Group I
- Broadcast Studios
- Business Services, Group I
- Caretaker’s Residence, only in conjunction with Warehouse, Mini
- Car Wash
- Cleaning & Maintenance Services, with no fleet parking
- Clubs, Fraternal, Membership Organizations or Private
- Consumption on Premises, limit of 2, in conjunction with a Group III or IV restaurant or Clubs, Fraternal, Membership Organizations or Private
- Cultural Facilities, excluding Animal or Reptile exhibits, Zoological gardens and Zoos
- Day Care Center, Adult, Child
- Emergency Operations Center
- Essential Services
Essential Service Facilities, Group I
Farm Equipment Sales, Storage, Rental or Service
Fences, Walls, reflective of the architectural style of the principal buildings
Food Stores, Group I, excluding supermarket
Funeral Home
Gift and Souvenir Shop
Hardware Store
Health Care Facilities, Groups I, II and III
Hobby, Toy and Game Shop
Home Care Facility
Hospice
Hotel, in accordance with the LDC, §§ 34-1801 through 34-1802
Insurance Company
Laundry or Dry Cleaning, Group I
Lawn and Garden Supply
Library
Medical Office
Non-store Retailers, Group I
Paint, Glass and Wallpaper
Parks, Group I
Personal Services, Groups I, II, III and IV, excluding Massage Parlors, Turkish
Baths, Escort Services, Fortune Tellers, Tattoo Parlors and Palm Readers
Pharmacy
Place of Worship
Plant Nursery
Post Office, limited to 1,500 square feet, with no fleet parking
Printing/Publishing
Real Estate Sales Office
Recreational Facilities, Commercial, Group IV, Private On-Site
Rental/Leasing Establishments, Groups I, II
Repair Shops, Groups I, II, III
Research and Development Laboratories, Groups II, IV
Restaurants, Groups I, II, III, IV
Schools, Commercial
Sheriff's Office
Signs, in accordance with the LDC, Chapter 30
Social Services, Groups I, II, III, IV
Specialty Retail Shops, Groups I, II, III, IV
Storage (indoor only)
Studios
Temporary Uses, in accordance with the LDC, §§ 34-3041 through 34-3050
Warehouse, Mini, excluding outdoor storage for mobile homes, recreational
vehicles, automobiles and trucks. The warehousing units must be used for
indoor storage and warehouse use only. No commercial business, industrial
business or similar activities may be conducted within the units. Open
storage is not permitted.

*Outdoor storage or outdoor display of merchandise for sale is prohibited in conjunction
with any permitted use.
b. **Site Development Regulations**

- Minimum Lot Size: 20,000 square feet
- Minimum Lot Width: 100 feet
- Minimum Lot Depth: 100 feet
- Minimum Street Setback (arterial): 25 feet
- Minimum Street Setback (local): 25 feet
- Minimum Street Setback (private): 20 feet
- Minimum Street Setback (internal): 20 feet
- Minimum Rear Setback: 20 feet
- Minimum Indigenous Setback: 20 feet
- Minimum Wetland Setback: 25 feet
- Minimum Accessory Uses Setback: Per the LDC
- Minimum Building Separation: 20 feet
- Maximum Lot Coverage: 40%
- Minimum Open Space: 30%
- Maximum Building Height: 35 feet/2 stories for Commercial/Retail uses
- Maximum Building Height: 55 feet/3 stories (including architectural features) for Assisted Living Facility or Hotel

4. **Environmental Conditions:**

Prior to issuance of a local development order, the following must be provided:

a. The development order plans must delineate a minimum of 3.68 acres as open space;

b. The development order plans must delineate a minimum of 2.23 acres as indigenous open space, 2.34 acres with credits;

c. A heritage tree survey for the project;

d. The applicant must design parking islands and dry detention to incorporate native trees into the project. Any heritage trees that are proposed to be impacted must be replaced with a tree a minimum of 20-foot in height per LDC §10-415(b)(1)b.4;

e. The development order plans must depict a Type “D” right-of-way buffer in a portion of the 0.53-acre indigenous preserve. If additional plantings are necessary to meet the intent of the Type “D” buffer, then the trees and shrubs must be installed on the south side to prevent impacts to the indigenous preserve.

f. The development order plans must depict plantings in the dry detention area consisting of general trees a minimum of 10 feet in height and one gallon shrubs planted 3-foot on center.
5. **Transportation Condition:**

If, at the time of application for a local development order, the cumulative project trip generation estimate exceeds one hundred (100) P.M. peak hour trip ends, the applicant must conduct an operational analysis of the intersection of Orange River Boulevard and Lakeside Club Boulevard with the existing geometry. As an alternative, the intersection may be evaluated with a roundabout. Future operational deficiencies at the build out of the project will be addressed as follows:

a. Operational improvements to the intersection such as modifying signs and pavement markings will be considered site-related improvements.

b. Construction of improvements to accommodate project traffic to and from the intersection will be considered site-related improvements.

6. **Building Height:** The maximum permitted building height within this planned development is 35 feet (2 stories) for retail/office buildings and 55 feet (3 stories), including architectural features, for the assisted living facility or hotel. No additional building height may be sought with increased setbacks. Increased height may only be granted through a public hearing amendment of this planned development.

7. **Lighting:** Lighting of pedestrian and parking areas for any permitted use must be in substantial compliance with LDC §34-625.

8. **Waste Management:** All trash storage or dumpster areas must be in compliance with LDC §10-261 and Solid Waste Ordinance #08-10, including screening on at least three sides with a six-foot high, 100-percent opaque fence or wall with an opaque gate in an architectural style similar and complementary to the principal buildings.

9. **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.

10. **Architectural Standards:** Development of the subject property must be in substantial compliance with LDC §10-600 and consistent with the Lee County Comprehensive Plan Policy 21.1.2 that encourages vernacular Florida architectural styles for all commercial development within the Caloosahatchee Shores community.

11. **Lee County Comprehensive Plan Consistency:** Approval of this zoning request does not guarantee local development order approval. Future development order approvals must satisfy the requirements of the Planning Communities Map and Acreage Allocation Table, Map 16 and Table 1(b), be reviewed for, and found consistent with, the retail commercial standards for site area, including range of gross floor area, location, tenant mix and general function, as well as all other Lee County Comprehensive Plan provisions.

12. **Concurrency:** Approval of this rezoning does not constitute a finding that the proposed project meets the concurrency requirements set forth in LDC Chapter 2 and the Lee County Comprehensive Plan. The developer is required to demonstrate compliance with all concurrency requirements prior to issuance of a local development order.
13. **Parking:** The project must provide parking in compliance with LDC §34-2020 for all permitted uses in the Planned Development site. No reduction in parking is approved as part of this rezoning. Adequate parking must be substantiated prior to issuance of a local development order in accordance with proposed uses.

14. **Hurricane Preparedness Plan:** If the proposed Assisted Living Facility is constructed, prior to the issuance of a development order, the developer of the project must establish an Emergency Hurricane Preparedness Plan in accordance with LDC §2-485(b)(5)b and in cooperation with, and subject to, the approval of the Director of the Lee County Division of Emergency Management.

15. **Agricultural Uses:** Existing bona fide agricultural uses on this site are allowed only in strict compliance with the following:

a. Bona fide agricultural uses that are in existence at the time the application for this project was filed, and as shown on Exhibit E attached hereto, may continue until approval of a local development order for the area of the project containing those uses.

b. Additional clearing of trees or other vegetation in agricultural areas is prohibited. Existing areas of bona fide agricultural use may be maintained, i.e., mowed, but not cleared or expanded. This prohibition is not intended to preclude County approved requests for the removal of invasive exotic vegetation.

c. Prior to issuance of a local development order, the property owner must provide written proof, subject to approval by the County Attorney's Office, of the following:

i. Termination of all agricultural use on any portion of the property included in the development order application/approval. Proof must include a sworn affidavit from the person or entity holding title to the subject property that specifically provides:

   (1) the date the agricultural uses ceased;

   (2) the legal description of the property subject to the development order approval;

   (3) an affirmative statement that the owner acknowledges and agrees that all agricultural uses are illegal and prohibited on the property and that the owner covenants with the county that they will not allow any such uses on the property unless and until the property is re-zoned to permit such uses; and,

   (4) that the affidavit constitutes a covenant between the owner and the county that is binding on the owner and their assignees and successors in interest.

The covenant must be properly recorded in the public records of the county at the owner's expense.
ii. Termination of the agricultural tax exemption for any portion of the property included in the development order application/approval. Proof as to termination must include of a copy of the request to terminate the tax exemption provided to the Lee County Property Appraiser.

16. **Architectural Design:** The rear of the most southern building, adjacent to the existing residential community, must be designed with primary facade architectural features and all structures must share a common architectural theme as proposed in Condition 10 above.

**SECTION C. DEVIATIONS:**

**Landscape Buffer:** Deviation (1) seeks relief from the LDC §10-416(d)(3) requirement to provide a Type "C" landscape buffer with an 8-foot-high wall and landscaping on the residential side of the wall, to allow a landscaped buffer on the interior (commercial side) of the existing 6-foot-high wall located on the property line. This deviation is APPROVED.

**SECTION D. EXHIBITS AND STRAP NUMBER:**

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

- **Exhibit A:** Legal description of the property
- **Exhibit B:** Zoning Map (with the subject parcel indicated)
- **Exhibit C:** The Master Concept Plan (Option A)
- **Exhibit D:** The Master Concept Plan (Option B)
- **Exhibit E:** Agricultural Uses

The applicant has indicated that the STRAP number for the subject property is: 03-44-25-01-00056.0000

**SECTION E. FINDINGS AND CONCLUSIONS:**

1. The applicant has proven entitlement to the rezoning by demonstrating compliance with the Lee Plan, the LDC, and any other applicable code or regulation.

2. The rezoning, as approved:
   a. meets or exceeds all performance and locational standards set forth for the potential uses allowed by the request; and,
   b. is consistent with the densities, intensities and general uses set forth in the Lee Plan; and,
   c. is compatible with existing or planned uses in the surrounding area; and,
   d. will not place an undue burden upon existing transportation or planned infrastructure facilities and will be served by streets with the capacity to carry traffic generated by the development; and,
   e. will not adversely affect environmentally critical areas or natural resources.
3. The rezoning satisfies the following criteria:

   a. the proposed use or mix of uses is appropriate at the subject location; and

   b. the recommended conditions to the concept plan and other applicable regulations provide sufficient safeguard to the public interest; and

   c. the recommended conditions are reasonably related to the impacts on the public interest created by or expected from the proposed development.

4. Urban services, as defined in the Lee Plan, are, or will be, available and adequate to serve the proposed land use.

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

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

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

Duly passed and adopted this 2nd day of February 2009.

ATTEST:  
CHARLIE GREEN, CLERK

BY:  
Deputy Clerk

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

BY:  
Ray Judah, Chair

Approved as to form by:

Dawn E. Perry-Lehnert
County Attorney’s Office
SKETCH OF DESCRIPTION

THIS IS NOT A SURVEY
SEE 07-299
SHEET 1 OF 2
NOT VALID WITHOUT
SHEET 2

SURVEY DESCRIPTION:

LOTS 20, 21, 25, 26, 31 and 32, BLOCK 3, OF TERRY, TICE AND VANDAWALKER'S SUBDIVISION, PLAT BOOK I, PAGE 46, LEE COUNTY RECORDS, LESS RIGHT OF WAY OF INTERSTATE 75 AND LESS THE RIGHT OF WAY OF ORANGE RIVER BOULEVARD (66' WIDE); LESS AND EXCEPT THE LAND DESCRIBED IN OFFICIAL RECORDS BOOK 1760, PAGES 967 et seq., BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTH-EAST CORNER OF SAID LOT 20, BEING ALSO THE CENTERLINE INTERSECTION OF ORANGE RIVER BOULEVARD (66' wide) AND LAKESIDE CLUB BOULEVARD (100' wide); THENCE S 88 DEGREES 43' 53" E. FOR A DISTANCE OF 50.00 FEET TO THE WEST RIGHT OF WAY LINE OF SAID LAKESIDE CLUB BOULEVARD; THENCE S 00 DEGREES 54' 35" E. FOR A DISTANCE OF 686.66 FEET; THENCE S 89 DEGREES 09' 28" W. FOR A DISTANCE OF 81.06 FEET TO THE EAST RIGHT OF WAY LINE OF SAID ORANGE RIVER BOULEVARD; THENCE S 00 DEGREES 54' 35" E. FOR A DISTANCE OF 346.66 FEET; THENCE N 06 DEGREES 13' 05" E. ALONG SAID RIGHT OF WAY LINE FOR A DISTANCE OF 232.93 FEET; THENCE N 08 DEGREES 34' 23" E. ALONG SAID RIGHT OF WAY LINE FOR A DISTANCE OF 105.52 FEET TO THE SOUTH RIGHT OF WAY LINE OF SAID ORANGE RIVER BOULEVARD; THENCE N 88 DEGREES 43' 53" E. FOR A DISTANCE OF 744.4 FEET TO THE POINT OF BEGINNING.

CONTAINING 12.29 ACRES; MORE OR LESS.

THE NORTH LINE OF SAID LOT 20 IS ASSUMED TO BEAR AS SHOWN.

REVISION:

REINSTATE AND AMENDED NOTE 6 TO COUNTY SPECIFICATIONS - AUGUST 15, 2008
DELETED NOTE 5, AUGUST 12, 2008
CHANGED CERTIFICATION WORDING AND ADDED COUNTY APPROVED NOTE (NOTE 5) - AUGUST 5, 2008
ADDED COUNTY ATTORNEY APPROVED NOTE (NOTE 6) - JUNE 7, 2008
AMENDED CERTIFICATION LANGUAGE - APRIL 8, 2008

FILE DISK: AUGUST 08-1

This survey is hereby certified to the persons and entities shown hereon as meeting the minimum technical standards as set forth by the Florida Board of Professional Land Surveyors in Chapter 61G17-5, Florida Administrative Code, pursuant to Section 472.027, Florida Statutes and is correct to the best of my knowledge and belief. This survey was prepared for mortgage and/or real estate purposes. This survey is not a certification of title.

Unless it bears the signature and the original raised seal of the Florida licensed Surveyor and Mapper this drawing, sketch, plat, map or copy of same is for informational purposes only and is not valid. No copies shall be made of this instrument without the written permission of the signing Surveyor.

L. Larry Gardner, Professional Surveyor and Mapper #4294.

Job Number 07-299.
AGRICULTURAL USES AT TIME OF ZONING APPLICATION

BEFORE ME this day appeared Glenn Carter, Vice President of the Florida Conference Association of Seventh-Day Adventists who, being first duly sworn, deposed and says:

1. He is the authorized representative of the property described and identified in the attached Sketch and Legal Description.

2. STRAP Number: 03-44-25-01-00056.0000

3. Legal Description: Lots 20, 21, 25, 26, 31, and 32, Block 3 of TERRY, TICE AND VANDAWALKER'S SUBDIVISION, according to the Plat thereof recorded in Plat Book 1, Page 46, Public Records of Lee County, Florida, LESS right-of-way of Interstate Road 75 and less right-of-way of Orange River Boulevard, and LESS AND EXCEPT the land described in Official Records Book 1760, Pages 967 and 968 a.k.a. Pine Ridge at Fort Myers Village Condominium.

4. The entire subject parcel (12 ± acres) is fenced and is currently being used as pasture for horse and cattle grazing. Please see the attached Sketch and Legal Description.

5. The property owner intends to continue the existing agricultural uses subsequent to the rezoning approval. However, any agricultural uses and/or purposes will cease upon approval of a local development order.

RECEIVED
OCt 19 2007

COMMUNITY DEVELOPMENT
STATE OF FLORIDA
COUNTY OF ORANGE

DCI 2007-00065

The foregoing instrument was sworn to (or affirmed) and subscribed before me this 15th day of October, 2007, by Glenn Carter, Vice President, who is personally known to me or who has produced a ____________________________ as identification and who did (did not) take an oath.

C. DUNCANSON
Notary Public - State of Florida
My Commission Expires Oct 18, 2009
Commission # DD454849
Bonded By National Notary Assn.

Signature of notary public

Printed name of notary public

(Updated 08/2006 - thru Ord. 05-29) P:\WEBPage\...\Public Hearing Submittal Requirements
SKETCH OF DESCRIPTION

THIS IS NOT A SURVEY
SEE 07-298
NOT VALID WITHOUT
SHEET 2

SURVEY DESCRIPTION:

LOTS 20, 21, 25, 26, 31 and 32, BLOCK 3, OF TERRY, TICE AND VANDAWALKERS'S SUBDIVISION, PLAT BOOK I, PAGE 49, LEE COUNTY
RECORDS. LESS RIGHT OF WAY OF INTERSTATE 75 AND LESS THE RIGHT-OF-WAY OF ORANGE RIVER BOULEVARD (66' WIDE) LESS AND EXCEPT
THE LAND DESCRIBED IN OFFICIAL RECORDS BOOK 1760, PAGES 957 et seq. BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:
COMING AT THE NORTHEAST CORNER OF SAID LOT 20, BEING ALSO THE CENTERLINE INTERSECTION OF ORANGE RIVER BOULEVARD,
(66' WIDE) AND LAKESIDE CLUB BOULEVARD 100' WIDE; THENCE S 00 DEGREES 54'35" W. FOR A DISTANCE OF 33.00 FEET; THENCE S 88 DEGREES
43'53" W. FOR A DISTANCE OF 50.00 FEET TO THE WEST RIGHT-OF-WAY LINE OF SAID LAKESIDE CLUB BOULEVARD; THENCE S 00 DEGREES 54'
35" W. FOR A DISTANCE OF 686.66 FEET; THENCE 8 89 DEGREES 09'28" W. FOR A DISTANCE OF 806.07 FEET TO THE EAST LIMITED ACCESS RIGHT-
OF-WAY OF INTERSTATE F-75 AS MONUMENTED BY AN EXISTING DEPARTMENT OF TRANSPORTATION FENCE; THENCE N 06 DEGREES 00'00" E.
ALONG SAID RIGHT-OF-WAY LINE FOR A DISTANCE OF 346.66 FEET; THENCE N 06 DEGREES 13'05" E. ALONG SAID RIGHT-OF-WAY LINE FOR A
DISTANCE OF 232.93 FEET; THENCE N 06 DEGREES 34'23" E. ALONG SAID RIGHT-OF-WAY LINE FOR A DISTANCE OF 105.52 FEET TO THE SOUTH
RIGHT-OF-WAY LINE OF SAID ORANGE RIVER BOULEVARD; THENCE N 88 DEGREES 43'53" E. FOR A DISTANCE OF 74.04 FEET TO THE
POINT OF BEGINNING.
CONTAINING 12.29 ACRES, MORE OR LESS.
THE NORTH LINE OF SAID LOT 20 IS ASSUMED TO BEAR AS SHOWN.

ATTORNEY'S
REAL ESTATE
LAND SURVEYING
INC.
1930 PARK MEADOW DRIVE
SUITE 9
FORT MYERS, FLORIDA
(239) 277-7332
JUNE 7, 2000

SURVEYORS NOTES:

THE SUBJECT PROPERTY IS ASSUMED TO BE AS SHOWN.

THIS SURVEY IS HEREBY CERTIFIED TO THE PERSONS AND ENTITIES
SHOWN HEREON AS MEETING THE MINIMUM TECHNICAL STANDARDS AS
SET FORTH BY THE FLORIDA BOARD OF PROFESSIONAL LAND SURVEYORS
IN CHAPTER 61G17-6, FLORIDA ADMINISTRATIVE CODE. PURSUANT TO
SECTION 472.027, FLORIDA STATUTES AND IS CORRECT TO THE BEST
OF MY KNOWLEDGE AND BELIEF. THIS SURVEY WAS PREPARED FOR
MORTGAGE AND/OR REAL ESTATE PURPOSES. THIS SURVEY IS NOT A
CERTIFICATION OF TITLE.

LARRY GARDNER, PROFESSIONAL SURVEYOR AND MAPP\#4294.
JOB NUMBER 07-298