

SEMINOLE COUNTY GOVERNMENT
AGENDA MEMORANDUM

SUBJECT: Appeal of the Board of Adjustment's decision to deny a special exception to establish an alcoholic beverage establishment (package liquor store) located on the northwest corner of the intersection Red Bug Lake Road and Oviedo Crossing Terrace; (John Kelly, appellant/applicant).

DEPARTMENT: Planning & Development **DIVISION:** Planning

AUTHORIZED BY: Dan Matthys **CONTACT:** Kathy Fall **EXT.** 7389

Agenda Date <u>06/27/06</u> Regular <input type="checkbox"/> Consent <input type="checkbox"/> Work Session <input type="checkbox"/> Briefing <input type="checkbox"/> Public Hearing – 1:30 <input checked="" type="checkbox"/> Public Hearing – 7:00 <input type="checkbox"/>
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MOTION/RECOMMENDATION:

1. **OVERTURN** the Board of Adjustment's decision to deny a special exception to establish an alcoholic beverage establishment (package liquor store) located on the northwest corner of the intersection Red Bug Lake Road and Oviedo Crossing Terrace in the Oviedo Marketplace (John Kelly, appellant/applicant); or
2. **UPHOLD** the Board of Adjustment's decision to deny a special exception to establish an alcoholic beverage establishment (package liquor store) located on the northwest corner of the intersection Red Bug Lake Road and Oviedo Crossing Terrace in the Oviedo Marketplace (John Kelly, appellant/applicant); or
3. **CONTINUE** the request to a time and date certain.

Commission District #1- Dallari

Kathy Fall, Principal Planner

BACKGROUND:

At its July 25, 2005 regular meeting, the Board of Adjustment denied a special exception to establish an alcoholic beverage establishment (package liquor store). The Board found the proposed use is incompatible in size and type with the current approved uses in the Oviedo Marketplace. On August 8, 2005, the applicant appealed the Board of Adjustment's decision to the Board of County Commissioners.

On 9/27/05 the Board of County Commissioners upheld the Board of Adjustment decision to deny the request for the package liquor store and the applicant appealed the decision to the Circuit Court of Appeals for the Eighteenth Judicial Circuit in Seminole County. On April 5, 2006 the Circuit Court rendered a decision quashing

Reviewed by:	
Co Atty:	<u>[Signature]</u>
DFS:	
Other:	<u>[Signature]</u>
DCM:	<u>[Signature]</u>
CM:	<u>[Signature]</u>
File No.	<u>ph130pdp05</u>

the decision of the Board of County Commissioners citing that no evidence was presented to support the conclusion of the Board that this special exception would adversely affect the public interest. The effect of the Circuit Court Order is as if the Board of County Commissioners never issued an order upholding or overturning the decision of the Board of Adjustment.

The Board must render a new decision in the appeal from the Board of Adjustment. The Board may further question staff or reopen the public hearing, if it is the pleasure of the Board, regarding the impact of a special exception to establish an alcoholic beverage establishment (packaged liquor store), located on the northwest corner of the intersection of Red Bug Lake Road and Oviedo Crossing Terrace.

The staff report containing the findings and recommendations from the September 27, 2005 Board of County Commissioner hearing has been included for your reference.

Attachments:

Staff report (September 27, 2005)
Circuit Court Writ of Certiorari (April 5, 2006)
Special Exception Application
Letter of Appeal (August 8, 2005)
Zoning, land use and location maps
Property Appraiser Information
Oviedo Crossings (Marketplace) Developer Commitments
BOA meeting minutes (July 25, 2005)
BCC meeting minutes (September 27, 2005)
Administrative Order

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AUTHORIZED BY: Dan Matthys **CONTACT:** Kathy Fall **EXT.** 7389

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STAFF RECOMMENDATION:

Overturn the Board of Adjustment's decision to deny a special exception to establish an alcoholic beverage establishment (package liquor store).

Reviewed by: <u>KR</u> Co Atty: _____ DFS: _____ Other: _____ DCM: _____ CM: _____ File No. <u>ph130pdp05</u>
--

Attachments: Special Exception Application
Letter of Appeal (8/8/05)
BOA meeting minutes (7/25/05)
Property Appraiser Information
Zoning, land use and location maps
Oviedo Crossings (Marketplace) Developer Commitments

STAFF REPORT

GENERAL INFORMATION	John Kelly, P.E., Dyer, Mills, & Precourt, Inc. ABC at Oviedo Marketplace	Alcoholic Beverage Establishments; LDC section 30.1353(b)(2)&(3)																									
BACKGROUND / REQUEST	<ul style="list-style-type: none"> • The applicant requests a special exception to establish a packaged liquor store. • The proposed 9,200 square foot packaged liquor store will be located on a 1.25 acre parcel located in the Oviedo Marketplace (aka Oviedo Crossing) Planned Unit Development (PUD). • The PUD's master plan allows for the permitted uses in the C-1 (Retail Services) zoning classification. Conditional uses, such as alcoholic beverage establishments, are allowed if approved by the Board of Adjustment per the Oviedo Marketplace Development Order. 																										
ZONING & FLU	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr style="background-color: black; color: white;"> <th style="text-align: center;">Direction</th> <th style="text-align: center;">Existing Zoning</th> <th style="text-align: center;">Existing FLU</th> <th style="text-align: center;">Use of Property</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">Site</td> <td style="text-align: center;">PUD</td> <td style="text-align: center;">HIP</td> <td style="text-align: center;">vacant</td> </tr> <tr> <td style="text-align: center;">North</td> <td style="text-align: center;">PUD</td> <td style="text-align: center;">HIP</td> <td style="text-align: center;">vacant</td> </tr> <tr> <td style="text-align: center;">South</td> <td style="text-align: center;">C-2</td> <td style="text-align: center;">Commercial</td> <td style="text-align: center;">commercial</td> </tr> <tr> <td style="text-align: center;">East</td> <td style="text-align: center;">PUD</td> <td style="text-align: center;">HIP</td> <td style="text-align: center;">restaurant</td> </tr> <tr> <td style="text-align: center;">West</td> <td colspan="2" style="text-align: center;">City of Oviedo</td> <td style="text-align: center;">vacant</td> </tr> </tbody> </table>			Direction	Existing Zoning	Existing FLU	Use of Property	Site	PUD	HIP	vacant	North	PUD	HIP	vacant	South	C-2	Commercial	commercial	East	PUD	HIP	restaurant	West	City of Oviedo		vacant
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South	C-2	Commercial	commercial																								
East	PUD	HIP	restaurant																								
West	City of Oviedo		vacant																								
STANDARDS FOR GRANTING A SPECIAL EXCEPTION; LDC SECTION 30.43(b)(2)	<p>The Board of Adjustment (BOA) shall have the power to hear and decide special exceptions it is specifically authorized to pass under the terms of the Land Development Code upon determination the use requested:</p> <p><u>Is not detrimental to the character of the area or neighborhood or inconsistent with trends of development in the area:</u></p> <p>The Oviedo Marketplace master plan allows for 175.5 acres of retail services. The existing retail services in the immediate area consist of a regional mall, restaurants, large and small retail stores.</p> <p><u>Does not have an undue adverse effect on existing traffic patterns, movements and volumes:</u></p> <p>Staff believes the proposed use would not significantly affect traffic volumes beyond that of other uses permitted in the C-1 zoning classification.</p> <p><u>Is consistent with the Seminole County Vision 2020 Comprehensive Plan:</u></p>																										

	<p>The Seminole County Vision 2020 Comprehensive Plan describes the High Intensity Planned Development – Transitional (HIP-TR) as a land use within the urban area that allows for the medium and high density commercial uses along major roadways.</p> <p><u>Meets any additional requirements specified in the code section authorizing the use in a particular zoning district or classification:</u></p> <p>The proposed use and site plan meets the setbacks, building size and lot size requirements of the Oviedo Marketplace master plan.</p> <p><u>Will not adversely affect the public interest:</u></p> <p>Section 30.1353(b)(2) of the Land Development Code (LDC) requires a special exception for the establishment of any business selling alcoholic beverages in the C-1 district, either for on-premise or off-premise consumption, where the sale of alcoholic beverages is not incidental to other products sold.</p> <p>The LDC further applies minimum separation requirements between any business selling alcoholic beverages as a primary use and like establishments, churches, schools and properties with residential land use or zoning. Staff has determined the following:</p> <ul style="list-style-type: none"> ○ There is no school or church that occupies properties located within 1000 feet of the proposed package liquor store, as measured at the shortest distance within public rights-of-way from the entrance of the package liquor store. ○ The proposed package liquor store meets minimum separation requirements from like establishments (500 ft), residential properties (500 ft), and residential buildings (100 ft).
<p>STAFF RECOMMENDATION</p>	<p>Based on the stated findings, staff recommends approval of the request, subject to the following conditions:</p> <ul style="list-style-type: none"> ○ The on-premise consumption of alcoholic beverages shall be prohibited.

IN THE CIRCUIT COURT FOR THE EIGHTEENTH JUDICIAL CIRCUIT,
IN AND FOR SEMINOLE COUNTY, FLORIDA

JOHN C. KELLY, individually and as
Representative of ABC LIQUORS, INC.,
and ABC LIQUORS, INC.

APPELLATE DIVISION
CASE NO.: 05-127-AP

Petitioners,

vs.

SEMINOLE COUNTY BOARD OF
COUNTY COMMISSIONERS,

Respondent.

COPY

WRIT OF CERTIORARI

Petitioners John Kelly and ABC Liquors, Inc. seek review of a decision by the Seminole County Board of County Commissioners to deny a special exception for conditional use for establishment of a store for retail sale of alcoholic beverages for consumption off site.

The decision of whether to grant a special exception is quasi-judicial in nature. *Florida Power & Light v. City of Dania*, 761 So.2d 1089 (Fla. 2000). Once the local agency has ruled on the special exception application, a party may seek certiorari review in Circuit Court. *Id* at 1092. The government must show by competent evidence that the denied application does not meet the published criteria. *See Broward County v. G.B.V. International, Ltd.*, 787 So.2d 838, 842 (Fla. 2001.)

“Where a party is entitled as a matter of right to seek review in the circuit court from administrative action, the circuit court must determine: (1) whether procedural due process is accorded; (2) whether the essential requirements of the law have been observed; and (3) whether the administrative findings and judgment are supported by competent, substantial evidence.” *Broward County*, 787 So.2d at 843.

Petitioners met the criteria for granting an exception, as evidenced by the County staff’s recommendation to grant the exception. “After the rezoning applicant meets his initial burden, the

burden shifts to the planning commission to show that the rezoning request is inconsistent with the comprehensive plan and 'adverse to the public interest.'" *Snyder v. Board of County Commissioners of Brevard County*, 595 So.2d 65, 80 (Fla. 5th DCA 1991)(overruled on other grounds).

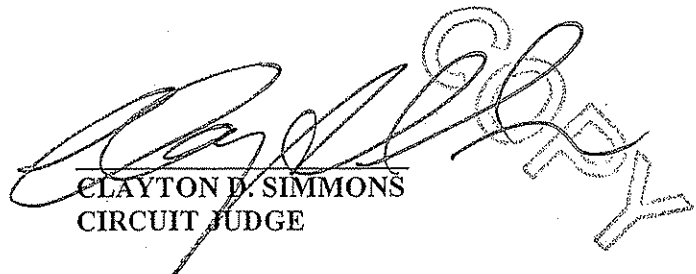
The decision of the Board of County Commissioners to deny the exception was not supported by substantial, competent evidence. The Board's position is that the denial was on the basis that the proposed use would adversely affect the public interest, but no evidence has been presented to substantiate this conclusion.

While the public interest standard is certainly an appropriate standard, "the mere parroting of this standard, without sufficient specific reasons supported by findings of fact, is 'as a matter of law, arbitrary and unreasonable and judicially reviewable and reversible.'" *ABG Real Estate Development Co. of Florida v. St. John's County*, 608 So.2d 59, 63 (Fla. 5th DCA 1992), quoting *Snyder, supra* at 82. More importantly, opinions of residents are not factual evidence and not a sound basis for denial of a zoning change application. *Pollard v. Palm Beach County*, 560 So.2d 1358, 1360 (Fla. 4th DCA 1974).

The only evidence presented here by the County was opinion testimony, primarily from two members of the Red Bug Residential Coalition that they "do not favor allowing this special exemption." The Board's position is that the denial was on the basis that the proposed use would adversely affect the public interest, but no evidence was presented to substantiate this conclusion.

IT IS ADJUDGED THAT certiorari is GRANTED, and the order of the Seminole County Board of County Commissioners denying the conditional use exception is QUASHED.

DONE AND ORDERED at Sanford, Seminole County, Florida, this 5 day of April, 2006.


CLAYTON D. SIMMONS
CIRCUIT JUDGE

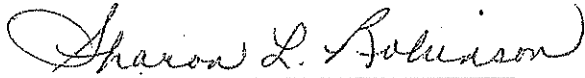
Copies to:

John F. Bennett, Esq.
170 East Washington St.
Orlando, FL 32801-2397

Robert McMillan, Esq.
Kimberly Laucella, Esq.
1101 East 1st St.
Sanford, FL 32771

Carlton D. Henley, Chairman
J. Kevin Grace, County Manager
Seminole County Board of County
Commissioners
1101 East 1st St.
Sanford, FL 32771

this 5 day of April, 2006.


Sharon L. Robinson
Judicial Assistant



SEMINOLE COUNTY PLANNING & DEVELOPMENT DEPARTMENT
 PLANNING DIVISION
 1101 EAST FIRST STREET (ROOM 2201)
 SANFORD, FL 32771
 (407) 665-7444 PHONE (407) 665-7385 FAX

Appeal

APPL. NO. BS 2005-008

APPLICATION TO THE SEMINOLE COUNTY BOARD OF ADJUSTMENT

Applications to the Seminole County Board of Adjustment shall include all applicable items listed in the Board of Adjustment Process Checklist. No application will be scheduled for Board of Adjustment consideration until a complete application (including all information requested below) has been received by the Planning & Development Department, Planning Division. Applications for SPECIAL EXCEPTION shall only be received for processing following pre-application conference.

APPLICATION TYPE:

N/A **VARIANCE**

SPECIAL EXCEPTION for establishment of a store for retail sales of alcoholic beverages for consumption off-site only in a PUD parcel designated for Commercial (Retail Services) use.
 The proposed use is permitted under the Master Plan, but is a Conditional Use, requiring BoA approval.

N/A **MOBILE HOME SPECIAL EXCEPTION**

EXISTING (YEAR _____) PROPOSED (YEAR _____)

REPLACEMENT (YEAR _____) SIZE OF MOBILE HOME _____

ANTICIPATED TIME MOBILE HOME IS NEEDED _____

PLAN TO BUILD YES NO IF SO, WHEN _____

MEDICAL HARDSHIP YES (LETTER FROM DOCTOR REQUIRED) NO

N/A **APPEAL FROM DECISION OF THE PLANNING MANAGER**

PROPERTY OWNER		AUTHORIZED AGENT *
NAME	James T. Barnes/Jambarco LLC	John C. Kelly, P.E. / DRMP
ADDRESS	1031 W. Morse Blvd., #300 Winter Park, FL 32789	1505 E. Colonial Drive Orlando, FL 32803
PHONE 1	407-628-8700 ext. 125	407-896-0594
PHONE 2		
E-MAIL		jkelly@drmp.com

PROJECT NAME: ABC at Oviedo MarketPlace

SITE ADDRESS: address not yet available; NW cnr of Red Bug Lake Rd. & Oviedo Crossing Terrace

CURRENT USE OF PROPERTY: vacant

LEGAL DESCRIPTION: see attached

SIZE OF PROPERTY: 1.2 acre(s) PARCEL I.D. 17-21-31-509-0000-0020

UTILITIES: WATER WELL SEWER SEPTIC TANK OTHER _____

KNOWN CODE ENFORCEMENT VIOLATIONS none

IS PROPERTY ACCESSIBLE FOR INSPECTION YES NO

This request will be considered at the Board of Adjustment regular meeting on 7 / 25 / 05 (mo/day/yr), in the Board Chambers (Room 1028) at 6:00 p.m. on the first floor of the Seminole County Services Building, located at 1101 East First Street in downtown Sanford, FL.

I hereby affirm that all statements, proposals, and/or plans submitted with or contained within this application are true and correct to the best of my knowledge.

James T. Barnes
 SIGNATURE OF OWNER OR AGENT*

6/2/05
 DATE

* Proof of owner's authorization is required with submittal if signed by agent.

ADDITIONAL VARIANCES

VARIANCE 2: _____

VARIANCE 3: _____

VARIANCE 4: _____

VARIANCE 5: _____

VARIANCE 6: _____

VARIANCE 7: _____

RECEIVED

AUG - 9 2005

PLANNING DIVISION

APPEAL FROM BOA DECISION TO BCC

APPELLANT INFORMATION	
NAME	John C. Kelly, P.E. Vice President; Dyer, Riddle, Mills & Precourt, Inc.
ADDRESS	1505 E. Colonial Dr. Orlando, FL. 32803
PHONE 1	407.896.0594
PHONE 2	fax. 407.896.4836
E-MAIL	jkelly@drmp.com

NATURE OF THE APPEAL _____
 SEE LETTER ATTACHED

_____ APPELLANT SIGNATURE 
 AUG 09 2005

FOR OFFICE USE ONLY

PROCESSING:

FEE(S): _____ COMMISSION DISTRICT _____ FLU / ZONING _____

BCC HEARING DATE _____ (FOR APPEAL)

LOCATION FURTHER DESCRIBED AS _____

PLANNING ADVISOR _____ DATE _____

SUFFICIENCY COMMENTS _____

Application for Special Exception
for Seminole County Board of Adjustment
Approval
of Conditional Use

ABC Fine Wine & Spirits
Oviedo Marketplace

With the accompanying application, ABC Fine Wine & Spirits respectfully requests approval of Special Exception for Conditional Use, for
*establishment of a store for retail sales of alcoholic beverages
for consumption off-site only in a PUD parcel designated for
Commercial (Retail Services) use.*

The proposed use is a Conditional Use permitted under the Oviedo MarketPlace PUD Master Plan, requiring Board of Adjustment approval.

The Parcel within the Oviedo MarketPlace PUD is Parcel ID# 17-21-31-509-0000-0020.

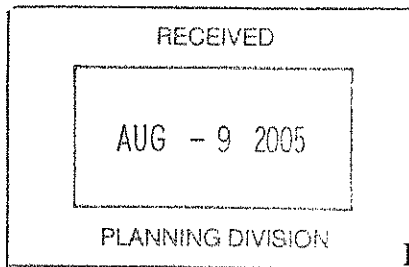
The proposed single-story 9000 square foot building will have the operating hours of 9:00 am to 10:00 pm Sunday through Thursday and 9:00 am to 12:00 Midnight Friday and Saturday. The store will have 3 employees per shift; two shifts a day. The store shall have the following amenities and services which are consistent with the surrounding Shoppe's in the Oviedo Marketplace and adjacent properties.

- Mediterranean Style Architecture
 - Earth Tone Colors on the Exterior and Interior
 - Expansive Storefront Windows for Increased Visibility
 - Brightly Illuminated Parking Area
 - Upscale Landscaping
 - Large Window Areas for "Open" Atmosphere Feeling
-
- Expanded Shopping Isles
 - Gourmet Foods and Cheeses
 - Large Selection of Domestic and Import Wines
 - Micro Brew Beers
 - Custom made Gift Baskets
 - Temperature Controlled Room for Select Wines
 - Cigar Humidor
 - Brightly Illuminated Sales Floor

Dyer, Riddle, Mills
& Precourt, Inc.

Principals

Wayne D. Chalifoux
Donaldson K. Barton, Jr.
Lucius J. Cushman, Jr.
Jon S. Meadows
Stephen L. Precourt
Lawrence L. Smith, Jr.



August 8, 2005

DRMP Job # 05-0392.000

Seminole County Board of Commissioners
1101 East First Street
Sanford, Florida 32771

**Re: ABC Liquors, Inc. – Petition for Special Exception
Case no. BS2005-008**

Gentlemen:

This letter is intended to constitute our Notice of Appeal from the adverse decision rendered by the Board of Adjustment at its meeting on July 25, 2005.

The basis for this appeal is that the only evidence presented clearly showed that the applicant met all of the criteria for the issuance of the special exception and that there was no evidence whatsoever upon which the special exception could be denied. Further, the Board made no findings whatsoever to support the denial.

Sincerely,
Dyer, Riddle, Mills & Precourt, Inc.

John C. Kelly, P.E.
Vice President

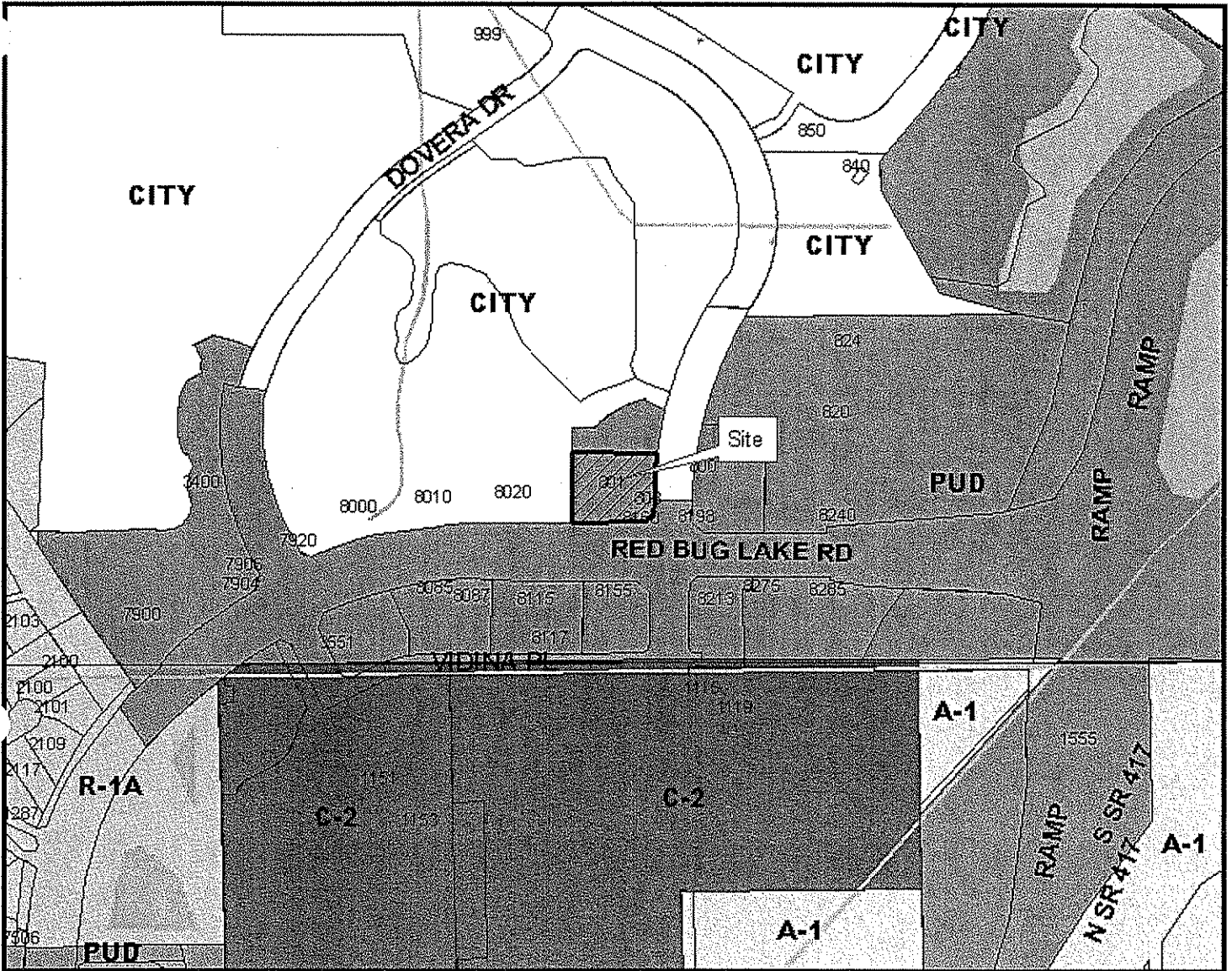
cc: Kathy Fall
Tom Hartmann
Rex Weeks
John F. Bennett

1505 East Colonial Drive
Orlando, Florida 32803
Phone: 407.896.0594
Fax: 407.896.4836

- Bartow, Florida
- Charlotte, North Carolina
- Chipley, Florida
- DeLand, Florida
- Ft. Myers, Florida
- Jacksonville, Florida
- Orlando, Florida
- Panama City Beach, Florida
- Tallahassee, Florida
- Tampa, Florida





1.800.375.3767
www.drmp.com

**John C. Kelly, P.E./DRMP
ABC at Ovideo Market Place**

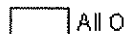






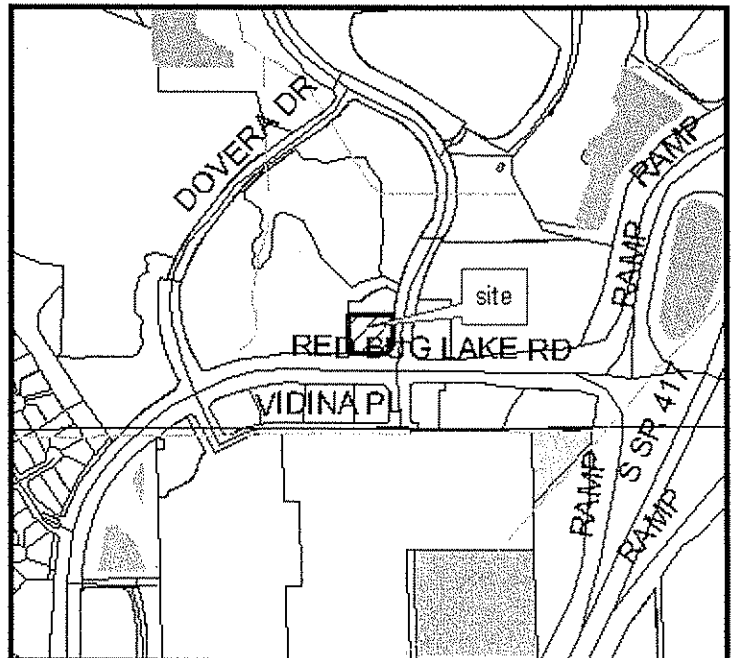
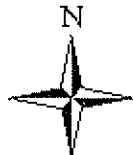
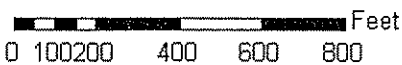
Seminole County Board of Adjustment
 July 25, 2005
 Case: BS2005-008
 Parcel No: 17-21-31-209-0000-0020

Zoning

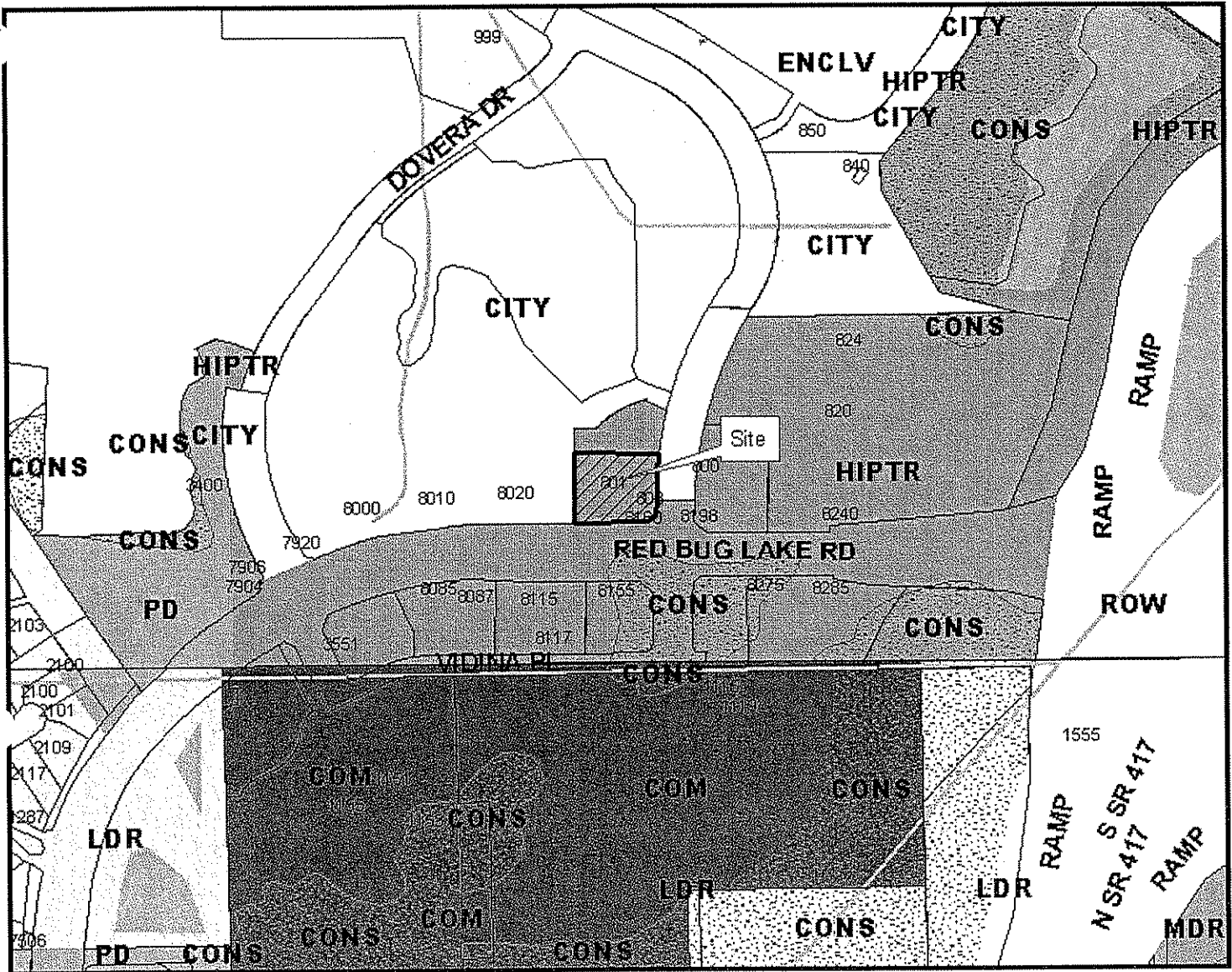
-  A-1 Agricultural-1Ac
-  R-1A Single Fam-9000
-  C-2 Retail Commercial
-  PUD Planned Unit Dev.

Parcel Use

-  All Other Values
-  Vacant Residential
-  Single Family Residential
-  Mobile Home
-  BS2005-008



John C. Kelly, P.E./DRMP
ABC at Ovideo Market Place

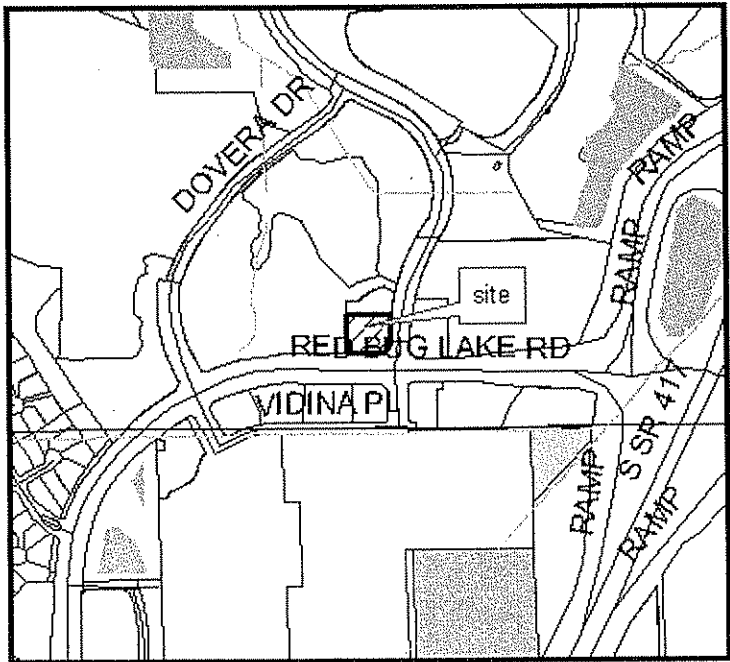


Seminole County Board of Adjustment
July 25, 2005
Case: BS2005-008
Parcel No: 17-21-31-209-0000-0020

Future Land Use

	CONS, LDR		All Other Values
	CONS, MDR		Vacant Residential
	CONS, PD		Single Family Residential
	CONS, COM		Mobile Home
	CONS, HIPTR		BS2005-008
	LDR, NONE		
	MDR, NONE		
	PD, NONE		
	COM, NONE		
	HIPTR, NONE		

Feet
 0 100 200 400 600 800



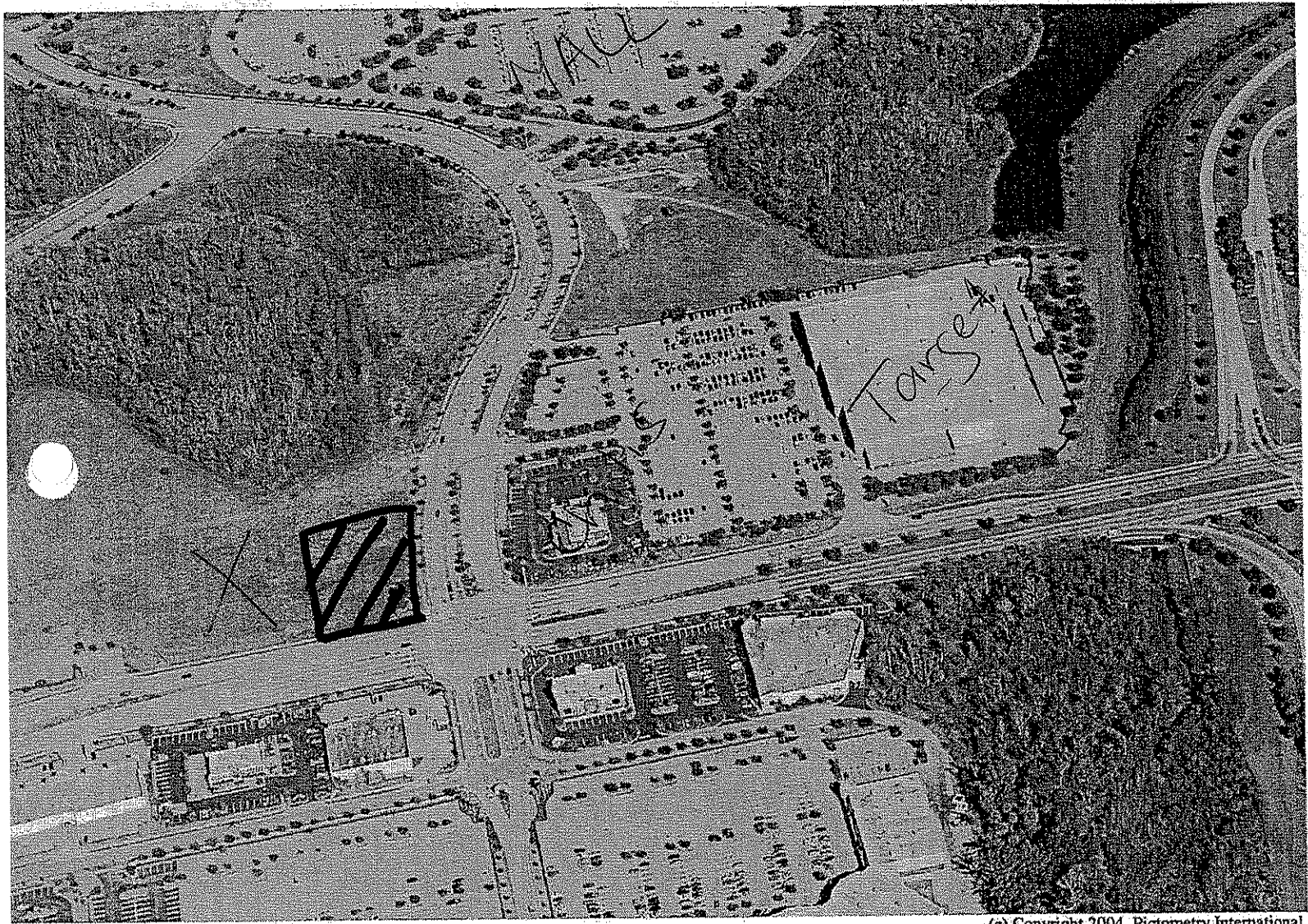
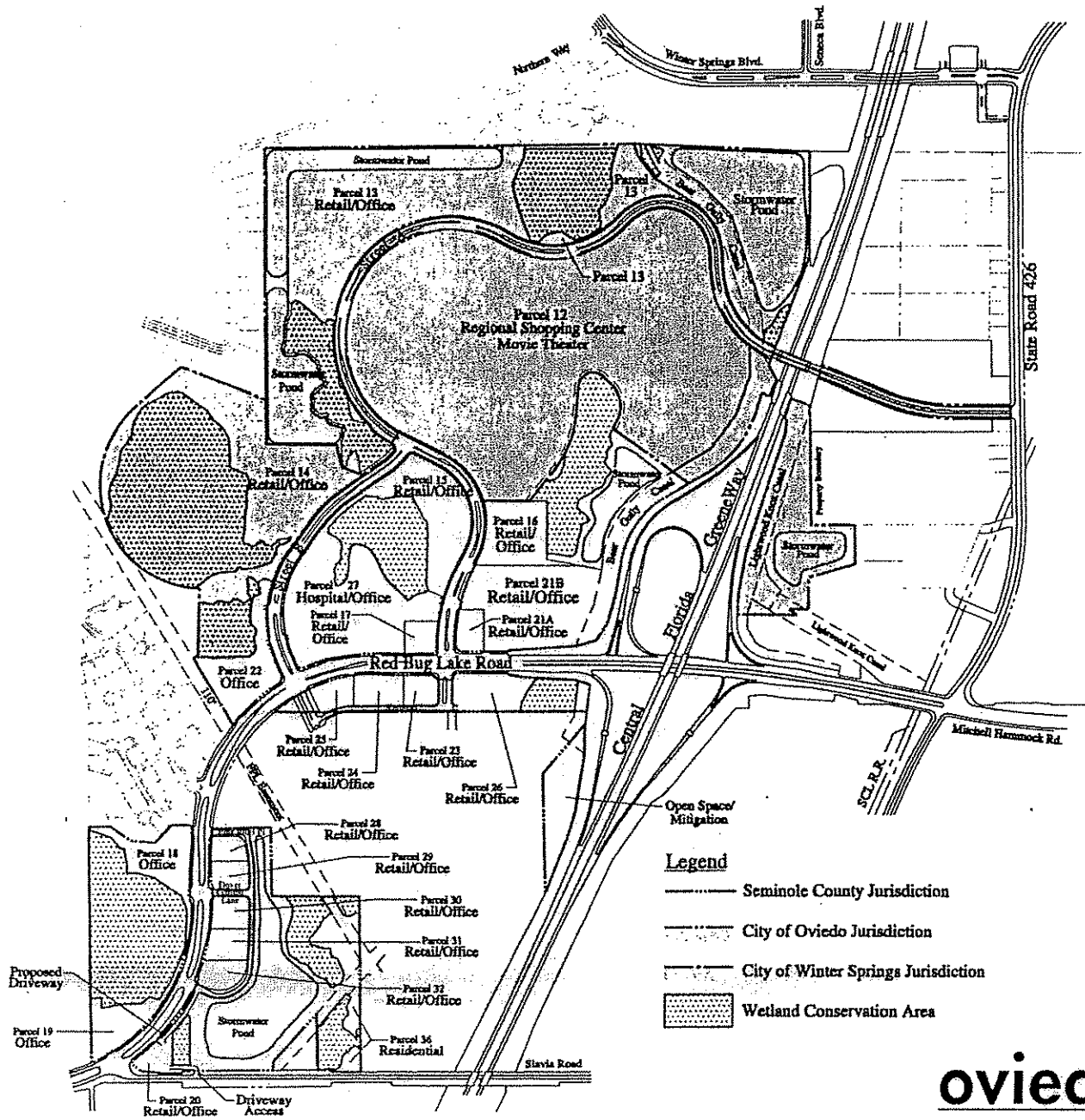


Exhibit 2



LAND USE BY JURISDICTION

City of Oviedo			
Land Use	Parcel	Acres	Development Program
Retail	12	95.1	1,200,000 SF
Retail	13	20.1	200,000 SF
Total		115.2	1,400,000 SF

City of Winter Springs			
Land Use	Parcel	Acres	Development Program
Retail/Office	14	18.4	160,000 SF
Total		18.4	160,000 SF

Seminole County			
Land Use	Parcel	Acres	Development Program
Retail/Office	15	2.5	59,000 SF
Retail/Office	16	3.1	30,000 SF
Retail/Office	17	1.2	10,000 SF
Office	18	4.2	50,000 SF
Office	19	2.3	27,750 SF
Retail/Office	20	1.4	2,720 SF
Retail/Office	21A	1.6	5,683 SF
Retail/Office	21B	11.9	124,634 SF
Office	22	5.4	39,000 SF
Retail/Office	23	0.9	12,200 SF
Retail/Office	24	2.6	18,500 SF
Retail/Office	25	1.3	7,500 SF
Retail/Office	26	3.0	30,642 SF
Hospital/Office	27	15.4	104,941 SF
Retail/Office	28	1.1	11,200 SF
Retail/Office	29	1.3	8,682 SF
Retail/Office	30	4.4	7,000 SF
Retail/Office	31	1.6	15,000 SF
Retail/Office	32	1.6	6,700 SF
Residential	36	1.3	4 DU
TOTAL		71.7	580,978 SF 0-120 Beds 4 DU

Notes:

- (1) Includes, but is not limited to Office, Clinical Facilities, and up to a 120-bed Hospital. The office component within Parcel 27 will not exceed 75,000 SF or 7 acres.
- (2) The exact location of wetlands to be removed in Parcel 16 may change at the time of final site planning and permitting. In an case, however, will the acreage to be impacted exceed 1.0 acre.
- (3) A land use equivalency match allows for the exchange of retail and office uses between parcels.
- (4) Parcels 15 and 18 are located within the City of Oviedo and are subject to a separate City of Oviedo PUD. Parcel 14 is located within the City of Winter Springs jurisdiction.
- (5) Phasing dates changed in First Amended and Reamended Development Order dated December 17, 1997.
- (6) The number of parking spaces shown on the Master Development Plan are the minimum number to be provided. The City of Oviedo Parking Code will be adhered to.

LAND USE BY PHASE

Land Use	Parcel(s)	Acres	Development Program	Parking Spaces
PHASE 1a and 1b APPROVED				
Retail/Office	20, 21a, 21b, 23, 24, 25, 26, 28, 29, 30, 31, 32	29.1	230,197 SF	1,300
Office	18, 19, 21	12.9	126,800 SF	600
SUBSTANTIAL DEVIATION PHASE 2 (2000-2002) (5)				
Retail/Office	15, 16, 17	101.4	1,240,000 SF	7,300
Hospital/Office (1)	27	15.4	104,941 SF (1)	650
PHASE 3 (2002-2005) (5)				
Retail/Office	13, 14, 15	44.0	419,000 SF	1,750
Hospital	27		0 to 120 Beds	240
Residential	36	1.3	4 DU	

SUMMARY OF LAND USE

Land Use	Parcel(s)	Acres	Development Program	Parking Spaces
Retail/Office	12, 13, 14, 15, 16, 17, 20, 21a, 21b, 23, 24, 25, 26, 28, 29, 30, 31, 32	176.5	1,809,197 SF	10,950
Office	18, 19, 21	12.9	126,800 SF	600
Hospital/Office	27	15.4	104,941 SF	650
Residential	36	1.3	4 DU	240
Stormwater Ponds/Borrow Pits	-	44.6		
Wetland Conservation	-	89.3		
Cultural and Visual Resources	-	20.2		
Open Space	-	36.0		
Right-of-Way	-	30.3		
TOTAL		431.3		12,240

Legend

- Seminole County Jurisdiction
- City of Oviedo Jurisdiction
- City of Winter Springs Jurisdiction
- Wetland Conservation Area

oviedomarketplace

Revised July, 2002
Revised May, 1999
Revised April, 1998
Revised February, 1995



GLATTING
JACKSON
KIRCHNER
ANGLIN
LOPEZ
RINEHART



Master Development Plan

- b. No building or parking facilities will be permitted within 250 feet of the project boundary.
- c. Building heights shall not exceed 35 feet within 275 feet of the boundary between the parcel and the adjacent residential uses, 45 feet within 300 feet of the boundary, nor 65 feet for the remainder of the said parcel.
- d. A 6-foot high masonry wall and 4-inch caliper trees, planted on 40-foot centers will be included in the buffer, where existing natural vegetation does not exist (see item #8).

6. Permitted Uses

a. Commercial (Retail Services)

1) Permitted uses shall include all permitted uses in the C-1 district as of the date hereof plus the following uses:

- Delicatessen
- Restaurants that serve alcohol
- Car wash
- Living quarters in conjunction with a commercial use, to be occupied by the owner or operator of the business or an employee
- Hospitals and nursing homes
- Health clubs
- Fast food restaurants with drive through windows
- Other uses approved by the Current Planning Division Manager which are similar or compatible with those uses set forth above

The determination of the Current Planning Division Manager shall be subject to appeal to the Board of County Commissioners.

2) Conditional Uses

The following uses may be considered as Conditional Uses and must be approved by the Board of Adjustment:

- Alcoholic beverage establishments
- Gasoline stations
- Mechanical or automotive garage
- Gasoline pumps

19. **RED BUG ROAD (LOT 2)** - John Kelly, Dyer, Riddle, Mills & Precourt, applicants; Request for special exception to establish an alcoholic beverage establishment (package store) in the PUD (Planned Unit Development District); Located on the northwest corner of the intersection Red Bug Lake Road and Oviedo Crossing Terrace; (BS2005-008).

Kathy Fall introduced the location of the property and stated that the proposed 9,200 square foot packaged liquor store will be on a 1.25 acre parcel located in the Oviedo Marketplace Planned Unit Development. She further stated that the Planned Unit Development Master Plan allows for the permitted uses in the C-1 Zoning Classification. She also stated that conditional uses, such as Alcoholic Beverage Establishments are allowed if approved by the Board of Adjustment. She lastly stated that staff recommended approval of the request, subject to the following condition:

- The on-premise consumption of alcoholic beverages shall be prohibited.

John Bennett stated that he was making the presentation on John Kelly's behalf. He referred to the packet he had given to the Board members showing the proposed site with interior photos and other ABC stores in the general vicinity. He continued by stating the criteria for granting a variance.

- Is not detrimental to the character of the area or neighborhood or inconsistent with trends of development in the area
- Does not have an unduly adverse effect on existing traffic patterns, movements and volumes
- Is consistent with the County's Vision 2020 Comprehensive Plan
- Meets any additional requirements specified in the code section authorizing the use in a particular zoning district or classification
- Will not adversely affect the public interest.

He furthered stated that based on the criteria he thought the request should be granted. He also referred to the letter signed by Gerald Seeber, City Manager for the City of Oviedo. He stated that the City did not object to ABC Liquors, but expressed a preference for a hotel site should the same be in the works. He further stated that no such proposal is in the works, is not contemplated and has in fact, not even been discussed with his client.

Greg Pryor stated that he was the Chairman of the Red Bug Residential Coalition which has over 2,500 members. He further stated that they were a Pro-Development Organization who believe consistency and compatibility is very important to the area. He also stated that the area is a Planned Development with a lot of input from the community. He further stated that there had not been any special exception granted in that area. He continued to state that if the Board granted the special exception tonight what is to stop Hess from requesting a special exception. He further stated to issue this use it requires special circumstances and

they didn't see any special circumstances. He lastly stated that he asked the Board not to grant the request.

Mr. Bennett stated that the Board did not have absolute discretion, which is why you have the criteria set forth in the code. He further stated that Mr. Pryor didn't suggest that any of the criteria was not met, with that in mind I think it is appropriate to grant the special exception.

Mr. Rozon stated that the Board of Adjustment approved two (2) special exceptions in that area.

Mr. Bushrui stated that he lives in the area and the area caters to families. He further stated that this request would be too much for the area with the youth that are in the area.

Mr. Pennington made a motion to deny the request.

Mr. Bushrui seconded the motion.

The motion passed by unanimous consent (5-0).

APPROVAL OF JUNE 2005 MEETING MINUTES

Mr. Pennington made a motion to approve the June 27, 2005 Amended Minutes.

Mr. Rozon seconded the motion.

The motion passed by unanimous consent (5-0).

ADJOURNMENT

Time of Adjournment was 10:45 P.M.

Commissioner Dallari advised he will include in the motion that the house sizes will be a minimum of 1,500 square feet. Commissioner Cary agreed to include that in the motion.

Commissioner Morris suggested including in the Land Development Code a separate affordable housing section. He said the house minimum square footages have almost doubled in the last 30 years and that needs to be addressed also during the Land Development Code review.

Districts 1, 2, 3, 4 and 5 voted AYE.

A brief discussion ensued with regard to the Land Development Code review and Mr. Walter advised staff is almost done with reviewing the first module of the Code. The second module will deal with all the zoning districts. He said staff plans to bring the information to the BCC for their input during a work session in January. He further said that then staff will incorporate all of that in the ordinance for BCC adoption.

Commissioner Morris requested a briefing from staff on their review process.

APPEAL AGAINST BOA,
JOHN KELLY

Proof of publication, as shown on page 2039, calling for a public hearing to consider an Appeal against the Board of Adjustment's decision to deny a Special Exception to establish an alcoholic beverage establishment (package liquor store) located on the northwest corner of the intersection of Red Bug Lake Road and Oviedo Crossing Terrace, John Kelly, received and filed.

Planner, Kathy Fall, addressed the Board to present the appeal, advising the BOA denied the request, finding the proposed use is incompatible in size and type with the current

approved uses in the Oviedo Marketplace. She added the staff's recommendation is to overturn the BOA and approve the requested establishment.

Upon inquiry by Commissioner Carey, Ms. Fall advised there is a Chili's Restaurant located across the street from the property. She also advised the proposed ABC Liquor Store will not have a lounge - it will only be a package store for consumption off-premises.

John Bennett, representing the appellant and ABC Liquor Stores, addressed the Board to display a large photograph (received & filed) of the proposed store, advising it is an upscale building with an extended line of wines. He said ABC has gotten rid of the lounges statewide and their license will only be for package goods. He reviewed the requirements for granting a special exception and stated the request will not be a detriment to the surrounding area. He provided pictures (received & filed) of the establishments in the area, including a Frankie's Italian Grill & Bar, Bill's Elbow South Bar & Restaurant, RJ Gators, and Toucan Willie's Restaurant & Bar. He said the proposed store would not have an undue adverse impact on the traffic patterns and it is consistent with the County's Comp Plan. He submitted for the Record the original Transcript of the Seminole County Board of Adjustment Meeting of July 25, 2005 regarding this property. He pointed out that the Oviedo Marketplace Master Plan calls for 175.5 acres of retail services and the proposal meets the separation requirements between churches, schools and properties with residential land use or zoning. He added that it is consistent with the Vision 2020 Plan.

Jim Hall, Canin Associates, representing the appellant, addressed the Board to state with regard to the rumor of a hotel going on the property, he does not know of any hotel that can be put on a one-acre piece of property. He also said that with regard to the argument that the granting of the special exception will set a precedent, he believes the BCC has more purview over like requests. He added that he believes staff's recommendation is accurate and by approving the request, the development will increase property values in the area.

Commissioner Morris stated there has been some confusion about the hotel and believes that involves the two and a half acre site to the left of the subject property.

Michael Pacini, 1471 Towhee Run, addressed the Board to speak in support of the special exception, stating he happens to enjoy fine wine and does not like to drive across the County to get it.

Kristine Kraus, representing the Red Bug Residential Coalition, addressed the Board to speak in opposition and to read into the Record a letter (received & filed) from Greg Pryor, Chairman of the Red Bug Residential Coalition.

Upon inquiry by Commissioner Morris, Ms. Kraus stated it was her understanding that a hotel was proposed for the site.

No one else spoke in support or in opposition.

Speaker Request Forms were received and filed.

District Commissioner Dallari stated for the past number of years, the Board has put various restrictions on package stores, including denying them outright.

Motion by Commissioner Dallari to deny the Appeal, thereby, upholding the Board of Adjustment's decision to deny a Special Exception to establish an alcoholic beverage establishment

(package liquor store) located on the northwest corner of the intersection of Red Bug Lake Road and Oviedo Crossing Terrace, as described in the proof of publication, John Kelly.

The Chairman called for a second to the motion, whereupon, he surrendered the gavel to the Vice Chairman for that purpose.

Under discussion, Commissioner Dallari stated he has a list of properties along Red Bug Lake Road as well as Dodd Road where package stores have been denied.

Commissioner Morris stated he has a list of properties where package stores have been approved. He asked for a five-minute recess to review this new information.

Vice Chairman Carey recessed the meeting at 2:25 p.m., reconvening it at 2:29 p.m.

The Vice Chairman asked for any additional Board discussion.

Commissioner Morris stated Commissioner Dallari's list mostly entailed properties denied by the Board of Adjustment and most of those have been overturned by the BCC - or they were on the residential portion of Red Bug Lake Road. However, in this case, he said the subject property is in the most intensive zoning district allowed. He said he cannot support the motion because he believes the appellant has met all the criteria.

Commissioner Henley stated as the Board knows, they quite often disagree with staff and their findings. He said he thinks an area can be over-saturated and believes alcohol can be detrimental.

Vice Chairman Carey stated these types of issues are looked at by the Board on a case-by-case basis and the information she has received is that out of 15 requests denied by the BOA, 14 were overturned by the BCC.

Districts 1 and 3 voted AYE.

Commissioners Morris, Henley and Carey voted NAY. Whereupon, Commissioner Henley asked for clarification of the motion.

Vice Chairman Carey advised the motion is to uphold the Board of Adjustment and deny the appeal. Whereupon, Commissioner Henley asked that another vote be held.

Districts 1, 3 and 4 voted AYE.

Commissioner Morris and Carey voted NAY.

The gavel was returned to the Chairman.

**APPEAL AGAINST THE BOA,
EMMA SMITH**

Proof of publication, as shown on page 2039, calling for a public hearing to consider an Appeal against the Board of Adjustment's decision to deny a Special Exception for the permanent placement of an existing mobile home located at 1211 Cochran Road, Emma Smith, received and filed.

Planner, Kathy Fall, presented the Appeal, advising staff recommends the BCC overturn the BOA's decision and grant the permanent placement of the mobile home.

Emma Smith, appellant, addressed the Board to advise she plans to build on the property, but does not have a timeframe at this point. She said she would appreciate a two to five-year permit.

Upon inquiry by Commissioner Carey, Ms. Smith advised the mobile home is a 1973 model. She further advised that she does not live in the mobile home; but rents it out.

Mary Isaacs, 350 Saunders Trail, addressed the Board to display a map (received & filed) of the area showing parcels with mobile homes on them and parcels with conventional houses on them. She said the trend in the area is to conventional

houses. She also said that she had a mobile home for two years and is now building a conventional house. She displayed photographs (received & filed) of the subject property and the mobile home in question, stating the property has code violations on it and has been before the Code Enforcement Board. She questioned if the 1973 mobile home is legally placed on the property because to her knowledge the previous permit was for a 1969 trailer. She added that the trailer is old, not maintained, and is clearly visible from the road; therefore, she would request the Board deny the appeal and the permit for the mobile home. She added that she believes the County should do a better job of monitoring mobile home permits.

Commissioner Carey stated the lack of monitoring is why she has asked staff to look at mobile homes as it relates to the Land Development Code.

Commissioner Morris stated he does not recall the Board directing staff to address mobile homes in the Land Development Code. He said mobile homes have historically, in Seminole County, been temporary and not permanent. He further said in this case, the mobile home is for rental purposes, it is in disrepair and has code enforcement problems, and the appellant has not attempted to build.

Doug Norman, 1276 Saratoga Lane, addressed the Board to state the trend for the area is to move away from mobile homes. He said he built a home on Saratoga Lane two years ago and would like to see the area go to conventional homes. He therefore, requested the BCC uphold the BOA.

Chris Wilson addressed the Board to advise he purchased the land across the street from the subject property and plans to build one-acre home sites. He also agrees that the trend is for

DEVELOPMENT ORDER #

SEMINOLE COUNTY ADMINISTRATIVE ORDER

On July 25, 2005, Seminole County issued this Administrative Order relating to and touching and concerning the following described property:

LOT 2 OVIEDO CROSSING PH 2A PB 52 PGS 15 & 16

(The aforescribed legal description has been provided to Seminole County by the owner of the aforescribed property.)

FINDINGS OF FACT

Property Owner: Jambarco, LLC
1031 W. Morse Boulevard, Suite 300
Winter Park, FL 32789

Project Name: ABC at Oviedo Marketplace

Requested Development Approval:

REQUEST FOR SPECIAL EXCEPTION TO ESTABLISH AN ALCOHOLIC BEVERAGE ESTABLISHMENT (PACKAGED LIQUOR STORE).

After fully considering staff analysis and all evidence submitted at the public hearing of July 25, 2005, regarding this matter, the Board of Adjust has found, determined and concluded that the request for the Special Exception for an alcoholic beverage establishment is inconsistent with the large body of family oriented retail in the surrounding area, is a large alcoholic beverage establishment, incompatible with the C-1 uses allowed in the Oviedo Marketplace and is located at the gateway to the Oviedo Marketplace. In conclusion the use is incompatible in size and type with the current family type approved uses in the Oviedo Marketplace.

Prepared by: Kathy Fall
1101 East First Street
Sanford, Florida 32771

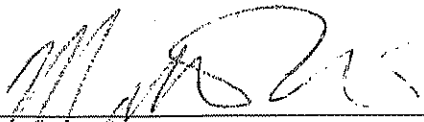
FILE #:

BS2005-008

05-32000009

DEVELOPMENT ORDER #

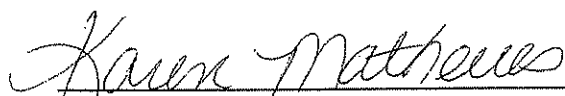
Done and Ordered on the date first written above.

By: 
Matthew West
Planning Manager


STATE OF FLORIDA)
COUNTY OF SEMINOLE)

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State and County aforesaid to take acknowledgments, personally appeared _____ who is personally known to me or who has produced _____ as identification and who executed the foregoing instrument.

WITNESS my hand and official seal in the County and State last aforesaid this 9 day of Aug, 2005.


Notary Public, in and for the County and State
Aforementioned

My Commission Expires:

 Karen Mathews
My Commission DD144950
Expires August 26, 2006