



Town Council Agenda Report

SUBJECT: Resolution - Developers Agreement

DA 8-1-00, Pointe West Center North Plat - 3550 Weston Road

CONTACT PERSON/NUMBER:

Mark A. Kutney, AICP (797-1101)

TITLE OF AGENDA ITEM:

A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, AUTHORIZING THE MAYOR AND TOWN ADMINISTRATOR TO ENTER INTO AN AGREEMENT BETWEEN THE TOWN OF DAVIE, CITY OF WESTON, BROWARD COUNTY, AND GENE R. BURGESS, HOWARD E. BURGESS AND TIMOTHY M. RYAN PROVIDING FOR REMEDIAL MEASURES TO SATISFY ROAD CONCURRENCY REQUIREMENTS RELATED TO THE POINTE WEST CENTER NORTH PLAT; TO ACKNOWLEDGE SUCH APPROVAL BY AFFIXING THEIR SIGNATURES TO SAID AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

REPORT IN BRIEF:

On January 5, 2000, Town Council passed Resolution No. R 2000-005, approving a boundary plat consisting of 9.994 acres for 55,000 square feet of commercial use to accommodate a car dealership. In order to satisfy roadway concurrency, the developer entered into a development agreement requiring contribution towards City of Weston and Broward County roadway improvement projects, with the Town agreeing not to issue certificates of occupancy until such obligations are met.

Due to timing differences between the Weston and County roadway projects, the previously approved agreement is being split into two new agreements, the only difference being that this agreement deals with the City of Weston improvements, which will occur first, and a second agreement, anticipated for submittal to the Town in December, will deal with the County's improvements to Griffin Road. As with the original agreement, the attached agreement stipulates that the Town will not issue additional certificates of occupancy within the Pointe West Center North Plat until such time as the parties named in the agreement make payment to the City of Weston for the required roadway improvements.

PREVIOUS ACTIONS:

Council approved the original traffic concurrency agreement January 19, 2000 (motion carried 5-0).

CONCURRENCES:

None

RECOMMENDATION(S): Motion to approve the resolution.

Attachment(s): Resolution with backup, Land Use map, Subject Site map, and Aerial.

RESOLUTION NO. _____

A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, AUTHORIZING THE MAYOR AND TOWN ADMINISTRATOR TO ENTER INTO AN AGREEMENT BETWEEN THE TOWN OF DAVIE, CITY OF WESTON, BROWARD COUNTY, AND GENE R. BURGESS, HOWARD E. BURGESS AND TIMOTHY M. RYAN PROVIDING FOR REMEDIAL MEASURES TO SATISFY ROAD CONCURRENCY REQUIREMENTS RELATED TO THE POINTE WEST CENTER NORTH PLAT; TO ACKNOWLEDGE SUCH APPROVAL BY AFFIXING THEIR SIGNATURES TO SAID AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Gene R. Burgess, Howard E. Burgess and Timothy M. Ryan are proposing to develop properties known as the Pointe West Center North Plat; and

WHEREAS, Broward County will allow remedial measures to satisfy road concurrency requirements for compact deferral areas should an agreement be entered into with the Town as a party.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF DAVIE, FLORIDA:

SECTION 1. The Town Council of the Town of Davie does hereby authorize the Mayor and Town Administrator to enter into an Agreement, attached hereto as Exhibit "A", between Broward County, City of Weston, Gene R. Burgess, Howard E. Burgess and Timothy M. Ryan, and the Town of Davie, whereby the Town of Davie Development Services Department shall not issue a certificate of occupancy for any development within the Pointe West Center North Plat prior to the developer's payment of the monies to the City of Weston described in Exhibit "A".

SECTION 2. The Town Administrator and Town Attorney are authorized to make and accept non-substantive revisions to the agreement in order for the agreement to be in final, recordable form.

SECTION 3. This Resolution shall take effect immediately upon its passage and adoption.

PASSED AND ADOPTED THIS _____ DAY OF _____, 2000.

MAYOR/COUNCILMEMBER

Attest:

TOWN CLERK

APPROVED THIS _____ DAY OF _____, 2000.

Return recorded document to:
Broward County Dev. Management Division
115 South Andrews Avenue, Room #A-240
Fort Lauderdale, Florida 33301

Document prepared by:
Bonnie L. Miskel, Esq.
Ruden, McClosky, et al.
200 E. Broward Boulevard, P.O. Box 1900
Fort Lauderdale, FL 33301

TRAFFIC CONCURRENCY AGREEMENT
AMONG
BROWARD COUNTY, AND
THE TOWN OF DAVIE, AND
THE CITY OF WESTON AND
GENE R. BURGESS, HOWARD E. BURGESS
AND TIMOTHY M. RYAN
FOR ROAD CONCURRENCY RELATING TO
THE POINTE WEST CENTER NORTH PLAT

THIS AGREEMENT, is made and entered into by and among:

BROWARD COUNTY, a political subdivision of the State of Florida, its successors and assigns, hereinafter referred to as "COUNTY" through its Board of County Commissioners;

and

The TOWN OF DAVIE, a Florida municipal corporation created and existing under the laws of the State of Florida, hereinafter referred to as "TOWN;"

and

The CITY OF WESTON, a municipal corporation created and existing under the laws of the State of Florida, hereinafter referred to as "CITY;"

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10/7/98

PL 191017.4

-1-

and

GENE R. BURGESS, HOWARD E. BURGESS and TIMOTHY M. RYAN, their successors and assigns, hereinafter referred to collectively as "DEVELOPER."

WHEREAS, Chapter 5, Article IX, Broward County Code of Ordinances, requires that the regional transportation network be adequate to serve the reasonably projected needs of proposed developments; and

WHEREAS, Section 5-182 of said Chapter 5 more specifically requires that an application for a development permit satisfy concurrency requirements for compact deferral areas; and

WHEREAS, DEVELOPER, as owner, has applied for approval of the Point West Center North Plat (100-MP-99) more particularly described in Exhibit "A" attached hereto and made a part hereof ("Plat"); and

WHEREAS, on May 11, 2000, the Broward County Development Management Division issued a Notification of Failure to Satisfy Broward County Concurrency Standards for the regional transportation network, finding that the application for approval of the Plat does not satisfy the compact deferral area concurrency standards for the regional road network as stated in Section 5-182 of the Broward County Land Development Code ("CODE") for Griffin Road from I-75 to S.W. 160th Avenue, and for Weston Road from Emerald Park Circle to Griffin Road, for Weston Road from Arvida Parkway to South Post Road, and for Arvida Parkway from I-75 to Weston Road and South Post Road from enterprise avenue to Weston Road; and

WHEREAS, City will be undertaking an expansion of Arvida Parkway from I-75 to West of Weston Road and an expansion of Weston Road from North Commerce Parkway South Corporate Lakes Boulevard (collectively, "City Project"); and

WHEREAS, in accordance with Ordinance No. 98-57, the CITY made a determination that a contract for the CITY Project shall be let no later than September 30, 2000, and

WHEREAS, DEVELOPER has conducted a study and has determined that CITY Project will mitigate the Plat's traffic impacts on Arvida Parkway from I-75 to Weston Road, and for Weston Road from Arvida Parkway to South Post Road so that the Plat will partially satisfy Broward COUNTY concurrency standards; and

WHEREAS, DEVELOPER has agreed to pay a share of the cost of CITY Project, proportionate to the Plat's impact, and

WHEREAS, the Broward County Development Management Division has approved these remedial measures and finds that its concurrency requirements are partially satisfied

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FILE 99-0017-3

for the Plat and will be partially met with the execution of, and compliance with, the terms of this Agreement by DEVELOPER,

NOW, THEREFORE, in consideration of the mutual terms, conditions, promises, covenants, and payments hereinafter set forth, the Parties agree as follows:

1. The above recitals are true and correct and are hereby incorporated herein.
2. Construction of Improvements.
 - (a) DEVELOPER agrees to pay to CITY \$91,240, which represents the DEVELOPER's proportionate share of the cost of the CITY Project. DEVELOPER agrees that payment must be made on or before December 31, 2000. Developer shall post a Letter of Credit with the City in a form acceptable to the City and which will guarantee the Developer's payment in full of the amount of money prescribed in this paragraph 2(b). In the event that the amount of money becomes due and payable, City shall have the right to draw against the security to satisfy payment of the amount of money prescribed in this paragraph 2(a).
 - (b) CITY shall execute a binding contract for the implementation of the CITY Project no later than September 30, 2000.
 - (d) Form of Security (Strike through inapplicable ALTERNATIVE)
(ALTERNATIVE A)
 - (i) This Agreement shall be recorded in the Official Records of Broward County and a lien is hereby imposed by the COUNTY against all of the real property described in Exhibit "A" for \$91,240.00. Such lien shall continue from the date of this Agreement until fully paid, discharged, released or barred by law. The obligations created under this Agreement shall run with the land and shall bind DEVELOPER, its successors, grantees, heirs and assigns.
 - (ii) In the event that the amount of money or any portion thereof the DEVELOPER has agreed to pay pursuant hereto becomes due and payable as provided herein and continues unpaid for thirty (30) days or more thereafter, the entire unpaid balance of such amount, plus costs and interest accrued from the due date at the rate of 12 percent per annum, shall become immediately due and payable and may be recovered by the COUNTY against the DEVELOPER in a civil action, along with COUNTY's costs incurred in bringing such action, or the lien created hereby plus such costs and interest may be foreclosed or otherwise enforced by the COUNTY by action or suit in equity as for the foreclosure of a mortgage on real property.

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County Project

- (iii) The lien of any mortgage on the real property described in Exhibit "A" shall be subordinate to the rights of the COUNTY with respect to the lien created by this Agreement. The DEVELOPER shall cause this Agreement to be executed by the holder of any such mortgage as consent to such subordination.
- (iv) When the lien hereby has been fully paid or discharged, the COUNTY shall promptly cause evidence of such satisfaction and discharge to be recorded in the Official Records of Broward County. At the request of the DEVELOPER and upon payment of the appropriate amounts, the COUNTY may grant the DEVELOPER a partial release of the lien.

(ALTERNATIVE B)

- (v) In the event DEVELOPER elects to post a Letter of Credit on Surety Bond, Developer shall provide the COUNTY contemporaneously with this agreement with a form of security such as a surety bond or irrevocable letter of credit, which is acceptable to the COUNTY and which will guarantee the DEVELOPER's payment in full of \$91,240.00 which represents 100% of the amount of payment to be made to City for City project.
3. CONCURRENCY COMPLIANCE. COUNTY finds that by executing and complying with the terms of this Agreement, DEVELOPER has partially satisfied the adequacy of the Regional Roadway Network requirement of Section 5-182 of the Broward County Land Development Code for the PLAT as approved by the COUNTY. Developer is currently conducting a study to resolve the remaining concurrency issues related to development of the Plat, specifically, for Griffin Road from I-75 to S.W. 160th Avenue, Weston Road from Emerald Park Circle to Griffin Road and South Post Road from Enterprise Avenue to Weston Road.
 4. TOWN is a party to the Agreement solely for the purpose of issuance of a Certificate of Occupancy which shall not be issued for any development within the Plat until the Plat is approved and recorded and TOWN receives confirmation from CITY that the payment required pursuant to Section 2(a) have been received by CITY.
 5. This Agreement shall be recorded in the Public Records of Broward County and shall be binding upon successors and assigns.
 6. APPLICABLE LAW AND VENUE. The Parties agree that this Agreement shall be construed in accordance with the laws of the state of Florida. Venue for any action arising from this Agreement shall lie in Broward County, Florida.

IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement on the respective dates under each signature: BROWARD COUNTY through

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its BOARD OF COUNTY COMMISSIONERS, signing by and through its Chair or Vice Chair, authorized to execute same by Board action on the ____ day of _____, 2000, CITY OF WESTON, signing by and through its Mayor, duly authorized to execute same, TOWN OF DAVIE, signing by and through its Mayor, duly authorized to execute same, and DEVELOPER, signing by and through its _____, duly authorized to execute same.

COUNTY

ATTEST:

BROWARD COUNTY, through its
BOARD OF COUNTY COMMISSIONERS

County Administrator and
Ex-Officio Clerk of the
Board of County Commissioners
of Broward County, Florida

By _____
Chair

____ day of _____, _____ (date)

Approved as to form by
Office of County Attorney
Broward County, Florida
Governmental Center, Suite 423
115 South Andrews Avenue
Fort Lauderdale, Florida 33301
Telephone: (954) 357-7600
Telecopier: (954) 357-6968

By _____
Assistant County Attorney

TRAFFIC CONCURRENCY AGREEMENT AMONG BROWARD COUNTY, THE CITY OF WESTON AND THE TOWN OF DAVIE FOR ROAD CONCURRENCY RELATING TO THE POINT WEST CENTER PLAT

CITY

CITY OF WESTON

Witness Signature

Mayor

Printed Name

____ day of _____, 2000

Witness Signature

Printed Name

ATTEST:

City Clerk

____ day of _____, 2000

CORPORATE SEAL

APPROVED AS TO FORM:

By _____
City Attorney

STATE OF FLORIDA)

COUNTY OF BROWARD)

SS

The foregoing instrument was acknowledged before me this _____ day of _____ by _____ who is personally known to me or who has produced _____ as identification.

My commission expires:

NOTARY PUBLIC

Commission No.

Type or print name

TRAFFIC CONCURRENCY AGREEMENT AMONG BROWARD COUNTY, THE CITY OF WESTON AND THE TOWN OF DAVIE FOR ROAD CONCURRENCY RELATING TO THE POINT WEST CENTER PLAT

TOWN

TOWN OF DAVIE

Witness Signature

Mayor

Printed Name

____ day of _____, 2000

Witness Signature

Printed Name

ATTEST:

City Clerk

____ day of _____, 2000

CORPORATE SEAL

APPROVED AS TO FORM:

By _____
Town Attorney

STATE OF FLORIDA)
)
COUNTY OF BROWARD)

SS

The foregoing instrument was acknowledged before me this ____ day of _____ by _____ who is personally known to me or who has produced _____ as identification.

My commission expires:

NOTARY PUBLIC

Commission No.

Type or print name

DEVELOPER

Witnesses:
Howard E. Burgess

Printed Name: HOWARD E. BURGESS

Patricia D. Kelly
Printed Name: PATRICIA D. KELLY

Gene R. Burgess

Print name: GENE R. BURGESS

Title: _____

Address: 5800 SW 33RD TERL
FT. LAUDERDALE, FL 33312

2 day of August, 2000

(CORPORATE SEAL)

STATE OF FLORIDA)
COUNTY OF MIAMI-DADE) SS

The foregoing instrument was acknowledged before me this 2 day of August, 2000, by GENE R. BURGESS, who is personally known to me or who has produced _____ as identification.

(Seal)



My commission expires: 9-19-2004

NOTARY PUBLIC:

Patricia D. Kelly
Print name: PATRICIA D. KELLY
Commission No.: CC 938458

Howard E. Burgess
Printed Name: HOWARD E. BURGESS

Patricia G. Kelly
Printed Name: PATRICIA G. KELLY

DEVELOPER

Howard E. Burgess

Print name: HOWARD E. BURGESS

Title: _____

Address: 5850 S.W. 30th TERR
FT. LAUDERDALE, FL 33312

2 day of August, 2000

(CORPORATE SEAL)

STATE OF Florida)
COUNTY OF Duval) SS

The foregoing instrument was acknowledged before me this 2 day of August, 2000, by HOWARD E. BURGESS, who is personally known to me or who has produced _____ as identification.

(Seal)



NOTARY PUBLIC:

Patricia G. Kelly
Print name: PATRICIA G. KELLY
Commission No.: CC 938458

My commission expires: 9-19-2004

Witnesses:

[Signature]
Printed Name: FORNIA, LISA

[Signature]
Printed Name: SUZANNE BASSO

[Signature]

Print name: TIMOTHY M. RYAN

Title: Owner

Address: 700 WEST DORRIS BARR
BLVD, DORRIS BARR, IL
32004

2nd day of AUGUST, 2000

(CORPORATE SEAL)

STATE OF _____)
COUNTY OF _____) SS

The foregoing instrument was acknowledged before me this 2nd day of AUGUST, 2000, by TIMOTHY M. RYAN, who is personally known to me or who has produced _____ as identification.

(Seal)

NOTARY PUBLIC:

[Signature]
Print name: LEAH REID
Commission No.: CC220040

My commission expires:



Lora D. Reid
MY COMMISSION # CC220040 EXPIRES
April 28, 2002
BANKED BY THE STATE OF ILLINOIS

EXHIBIT "A"

LEGAL DESCRIPTION

CALIFORNIA
COUNTY PROJECT
10-7-98
FILE 19-0017-1

LEGAL DESCRIPTION

A PARCEL OF LAND IN THE SOUTHEAST 1/4 OF SECTION 21, TOWNSHIP 50 SOUTH, RANGE 40 EAST, SAID PARCEL INCLUDING PORTIONS OF TRACTS 43 THROUGH 47 INCLUSIVE, ACCORDING TO THE FLORIDA FRUIT LANDS COMPANY'S SUBDIVISION NO.1 AS RECORDED IN PLAT BOOK 2 AT PAGE 17 OF THE PUBLIC RECORDS OF DADE COUNTY, FLORIDA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF THE SOUTHWEST 1/4 OF SECTION 21; THENCE RUN SOUTH 00°15'58" EAST (ON A GRID BEARING) 563.18 FEET ALONG THE WEST LINE OF SAID SOUTHWEST 1/4 OF SECTION 21 TO THE POINT OF BEGINNING; THENCE RUN NORTH 89°44'02" EAST 165.62 FEET TO AN INTERSECTION WITH THE WESTERLY RIGHT OF WAY LINE OF INTERSTATE HIGHWAY NO. 1-75 AS DESCRIBED IN THE INSTRUMENT FILED IN OFFICIAL RECORDS BOOK 7637 AT PAGE 156 OF THE PUBLIC RECORDS OF BROWARD COUNTY, FLORIDA; THENCE RUN SOUTH 15°24'36" EAST 127.29 FEET ALONG SAID WESTERLY RIGHT OF WAY LINE TO A POINT OF INTERSECTION; THENCE RUN SOUTH 13°58'35" EAST 113.45 FEET ALONG SAID WESTERLY RIGHT OF WAY LINE, TO A POINT OF INTERSECTION; THENCE CURVE TO THE LEFT; THENCE ALONG SAID WESTERLY RIGHT OF WAY LINE, ON THE ARC OF CURVATURE OF A HAVING A RADIUS OF 11,706.16 FEET AND A CENTRAL ANGLE OF 03°21'39", TO A POINT OF INTERSECTION; THENCE INTERSECTION WITH THE NORTHERLY RIGHT OF WAY LINE, ON THE ARC OF SAID CURVE TO THE LEFT, FILED IN OFFICIAL RECORDS BOOK 7637 AT PAGE 156 OF THE PUBLIC RECORDS OF BROWARD COUNTY, FLORIDA; THENCE RUN SOUTH 89°55'49" WEST 534.71 FEET ALONG SAID NORTH RIGHT OF WAY LINE, TO AN INTERSECTION WITH SAID WEST LINE OF THE SOUTHWEST 1/4 OF SECTION 21; THENCE RUN NORTH 00°15'58" WEST 1281.62 FEET ALONG SAID WEST LINE TO THE POINT OF BEGINNING.

INTEREST
CORB 7





