

TOWN OF DAVIE

TOWN COUNCIL AGENDA REPORT

TO: Mayor and Councilmembers

FROM/PHONE: Mark A. Kutney, AICP, Development Services Director / (797-1101)
Prepared by: Bradley Swing, AICP, Planner II

SUBJECT: Resolution - Billboard Site Certification

AFFECTED DISTRICT: District 4

TITLE OF AGENDA ITEM: A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, CERTIFYING THAT THE SITE FOR A PROPOSED BILLBOARD AND THE PROPOSED BILLBOARD ARE IN COMPLIANCE WITH THE LAND DEVELOPMENT CODE, CHAPTER 12, ARTICLE VIII, SECTION 238(J)(9), AND PROVIDING AN EFFECTIVE DATE.

REPORT IN BRIEF: The resolution before Town Council this evening is based on the need to provide for the certification of one (1) additional billboard site in the Town of Davie. Section 12-238(J)(9) of the Land Development Code requires the certification of any potential billboard site by Town Council prior to issuance of a permit by the Town Building Department. Pending approval of the ordinance (ZB(TXT) 1-1-03) on the agenda for 1st reading tonight to increase the number of billboards in the Town from ten (10) to eleven (11), the proposed billboard site and the proposed billboard comply with the requirements of Section 12-238(J)(9) of the Land Development Code.

Gold Coast Advertising has requested a billboard permit on the property located at 15701 SW 41 Street. This facility will provide \$8,000 per year to assist in the long-term funding of the new Rick and Rita Case Boys and Girls Club and the construction of the Admiral's Club next to the McFatter Technical School. Approval of this resolution will allow the Town to process a permit for the proposed billboard site in accordance with Section 12-238(J)(9) of the Land Development Code.

PREVIOUS ACTIONS: None

CONCURRENCES: None.

FISCAL IMPACT: None

RECOMMENDATION(S): Staff finds the resolution complete and suitable for transmittal to Town Council for further consideration.

Attachment(s): Resolution

RESOLUTION _____

A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, CERTIFYING THAT THE SITE FOR A PROPOSED BILLBOARD AND THE PROPOSED BILLBOARD ARE IN COMPLIANCE WITH THE LAND DEVELOPMENT CODE, CHAPTER 12, ARTICLE VIII, SECTION 238(J)(9), AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Boys and Girls Club of Broward County, Inc. and Gold Coast Advertising have requested an amendment to the Land Development Code increasing the number of billboards in the Town from ten (10) to eleven (11) in order to assist in funding the operational costs of the Davie units, a copy of which request is attached hereto as Exhibit "A"; and

WHEREAS, the Boys and Girls Club of Broward County, Inc. and Gold Coast Advertising have entered into that certain billboard consulting and rental agreement, dated January 20, 2003, a copy of which is attached hereto as Exhibit "B"; and

WHEREAS, the Permittee has submitted to the Town of Davie one (1) potential billboard site, as described in Exhibit "C", a copy of which is attached hereto, to enable the Town to certify the location as a suitable billboard site; and

WHEREAS, the Town of Davie has determined that the site for the billboard and the proposed billboard comply with the requirements of Section 12-238(J)(9) of the Land Development Code.

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 certify that the potential billboard site described in Exhibit "C" attached hereto is hereby found to meet the criteria set forth in Section 12-238(J)(9) of the Land Development Code and accordingly is hereby certified as a billboard site, such certification being effective upon the effective date of this resolution.

SECTION 2. This resolution shall take effect immediately upon adoption of the ordinance to amend the Land Development Code, Chapter 12, Article VIII, Section 12-238(J)(9) to increase the number of billboards in the Town from ten (10) to eleven (11)..

PASSED AND ADOPTED THIS _____ DAY OF _____, 2003.

MAYOR/COUNCILMEMBER

ATTEST:

TOWN CLERK

APPROVED THIS _____ DAY OF _____, 2003.

EXHIBIT "B"**BILLBOARD CONSULTING AND RENTAL AGREEMENT**

THIS AGREEMENT is made and entered into this 20th day of January, 2003, by and between GOLD COAST ADVERTISING, INC. a Florida Corporation ("GOLD COAST"); and THE BOYS CLUBS OF BROWARD COUNTY, INC., a Florida corporation, (the "CLUB").

WITNESSETH:

WHEREAS, GOLD COAST is in the business of providing advertising on various forms of media, including billboards; and

WHEREAS, GOLD COAST desires to generate revenues to be used for the CLUB pursuant to a billboard advertising program as described below (the "Program"); and

WHEREAS, the CLUB desires to participate in the Program so as to generate funds to be used for activities.

NOW, THEREFORE, in consideration of the mutual promises and other considerations herein contained, the parties agree as follows:

1. The Program The Program shall consist of one (1) billboard site selected by GOLD COAST (the "Site") and located in the Town of Davie on the Interstate 75 right-of-way. For the Site procured in the manner described below GOLD COAST shall make contributions to the CLUB for the Site in accordance with the terms set forth below.
2. Site GOLD COAST shall have the sole right to select Site, and, upon selection of a Site, to petition, file, apply for and obtain all necessary permits and zoning variances from the controlling governmental authorities on behalf of the CLUB and as such, is hereby authorized by the CLUB to sign all applications and other documents necessary to apply for and process the permit and zoning variance requests from the controlling governmental authorities on behalf of the CLUB, as the CLUB'S agent. The CLUB hereby further appoints GOLD COAST as its agent to, and GOLD COAST shall have the sole and exclusive right to, secure the lease or license, to erect the billboard from owners of the Site, and to secure advertising for the billboard. The agency granted hereby is limited to the actions solely required to accomplish the purposes as set forth above in this paragraph 2. The CLUB hereby agrees to cooperate fully, and use the CLUB'S best and most diligent efforts, in the execution of all such permits, fillings and applications for permits and zoning variances of such lease and/or license. The permit, zoning variance, license and/or

lease necessary for the construction of a billboard facility on a Site by GOLD COAST, and the sale or lease of advertising space thereon by GOLD COAST, shall hereinafter be referred to as the "Permit".

3. Revenues and Expenses All revenues from the billboard located on the Sites, including from the sale of advertising on the billboards, shall be the sole property of GOLD COAST. All expenses in connection with the billboard, including but not limited to Site selection, permitting, construction, advertising and insurance expenses, shall be the sole responsibility of GOLD COAST.

4. Contributions

A. For the Site for which the Permit is required, GOLD COAST shall make an annual contribution of Eight Thousand Dollars (\$8,000) to the CLUB for each year that the Permit is available with respect to, and a billboard is actually erected on, the Site. The annual contribution for such Site shall be made on or before the 90th (ninetieth) day immediately following the date that the first advertising contract begins (the "Start Date") by GOLD COAST of the billboard on the Site pursuant to the Permits, or monthly as agreed by the parties. To the extent that the Permit does not entitle GOLD COAST to conduct its billboard advertising at the site for a complete year following the Start Date or any anniversary thereof, the annual contribution for any such partial year shall be pro rated accordingly.

B. For each Year (as defined below) following the fifth anniversary of the Start Date of the Site, the annual contribution with respect to such Site will be adjusted as follows:

i. The Annual Contribution for the applicable Year will be calculated by multiplying the Annual Contribution for the preceding Year by a fraction, the numerator of which will be the index (as defined below) published for the second month preceding the beginning of the applicable Year, and the denominator of which will be the index published for the second month preceding the beginning of the preceding Year.

ii. As used herein, the following terms shall have the following meanings:

(a) the term "Year" with respect to any Site shall mean each twelve (12) consecutive month period following the Start Date for such Site;

(b) the term "index" shall mean the United States Bureau of Labor Statistics, Consumer Price Index For All Items For All Urban consumers, United States City Average (1984 = 100). If the Bureau of Labor Statistics should, at any time during the term of this Agreement, revise or change the methods or basic data used in calculating the Index in such a way as to affect the comparability of such revised or changed Index with the Index as utilized herein, then the

parties shall request a conversion factor designed to adjust to the new basis. If the Index, as now constituted, compiled and published, shall cease to be compiled and published during the Term of this Agreement, then the parties shall use a comparable Index published by the Bureau of Labor Statistics in computing the adjustments provided herein. If no conversion or other Index is available, then such adjustment shall be as agreed between the parties, or if no such agreement can be reached, then arbitration shall be used. The arbitration shall be conducted in accordance with the rules of the American Arbitration Association then obtaining and said award shall be final and non-appealable and judgment may be entered in any court of competent jurisdiction.

C. Notwithstanding anything contained herein to the contrary, in no event shall the Annual Contribution for a Site for any Year be more than 4% higher than the preceding Year.

D. To the extent that the Permit does not entitle Gold Coast to conduct its billboard advertising at any Site for a complete Year following the Start Date or any anniversary thereof, the annual contribution for any such partial year shall be prorated accordingly.

5. Billboard Materials GOLD COAST and the CLUB hereby agree that all materials used in the construction of a billboard shall be the sole property of GOLD COAST and that, upon termination or expiration of any or all of the necessary Permits for a Site, it shall be the sole responsibility of GOLD COAST to remove the billboard from the Site.

6. Insurance GOLD COAST does hereby agree to hold the CLUB harmless from any and all causes of action, damages, costs, attorney fees, suits and other expenses (individually a "Liability" and collectively the "Liabilities") incurred by it because of any Liability arising through the billboard, the construction, maintenance, removal, advertising and use of the billboard and the Site upon which the same are located, except that the CLUB shall have no right to indemnification hereunder in the event that any such Liability arises out of or results from any willful or grossly negligent act of the CLUB or any of its agents or employees. GOLD COAST shall, at its expense, provide the CLUB with liability insurance for bodily injury and property damage to protect the CLUB against damage, costs and attorneys' fees arising out of accidents or occurrences of any kind on or about the billboard and Site. The insurance shall have liability limits of not less than One Million Dollars (\$1,000,000.00) for the injury or death of one or more than one person, and One Hundred Thousand Dollars (\$100,000.00) for property damage. The above coverages must be maintained in force at all times during the term hereof. The CLUB must be named as an additional insured on all such policies, and GOLD COAST shall submit evidence of current insurance on an annual basis to the CLUB.

7. Default In the event either party shall fail to perform any of its obligations under this Agreement, the performing party shall have the right to give notice pursuant to paragraph 8, which notice shall state the nature of the violation. The non-performing party shall have 30 (thirty) days from the receipt of notice to cure such violation. In the event the non-performing party shall fail to cure its violation of this Agreement within the 30 (thirty) day period, the performing party shall have the option of terminating this Agreement by giving notice of termination to the non-performing party effective upon delivery of the notice. All required payments shall be made through the date of termination.

8. Notices All notices and other communications under this Agreement shall be in writing and shall be delivered either personally, by telecopier or by certified mail, return receipt requested, postage prepaid, to the parties at the following addresses:

to the CLUB: 1401 NE 20th Street
Fort Lauderdale, Fla. 33305
Fax: (954) 537-1070

to GOLD COAST: 3921 SW 47th Avenue
Suite 1010
Fax: (954) 587-0009

All notices shall be deemed delivered at the time of hand delivery in the event of personal delivery, upon receipt of telecopier copy, or upon receipt or rejection of certified mail, in the event delivery is made by certified mail. Either party may change its address for the purposes of receiving notices pursuant to this paragraph, providing such change is in writing, which shall not be effective until actually received by the recipient party.

9. Attorneys' Fees In the event that either party has recourse to court action in order to enforce this Agreement, the prevailing party shall recover court costs, including attorney's fees on the trial or appellate level, from the non-prevailing party.

10. Advertising Prohibited Advertising of any alcohol, tobacco, adult entertainment, gambling, overtly sexual material, or obscene or offensive materials will be prohibited. If the Club or the Town of Davie reasonably objects to any advertisement, such advertisement shall be removed within sixty (60) days written notice by the Club.

11. Termination This Agreement shall terminate automatically if, at any time after December 1st, 2003, there shall exist no Permits for any Sites. Such termination shall be effective on the first such day following December 1st, 2003 when no Permits are in effect. This agreement shall be for a term of 40 years.

12. Invalid Provisions The invalidity or unenforceability of any provision of this Agreement shall not affect validity or enforceability of the remaining provisions.

13. Choice of Laws This Agreement shall be interpreted and enforced pursuant to the State of Florida. Any lawsuits or other legal actions commenced in connection with this Agreement shall be commenced and held in Broward County, Florida.

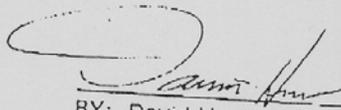
14. Assignments This Agreement shall be assignable by obtaining the consent of the other party subject to the agreement of both parties which such consent shall not be unreasonably withheld.

15. Entire Agreement This Agreement contains the entire understanding of the parties. An Amendment to this Agreement shall not be enforceable unless it is in writing and signed by both parties.

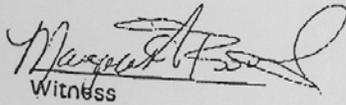
16. GOLD COAST shall have the right to represent THE BOYS CLUBS OF BROWARD COUNTY in other appropriate areas mutually agreed upon.

IN WITNESS WHEREOF, CLUB AND GOLD COAST have set their hands hereto as of the day and year first hereinabove written.

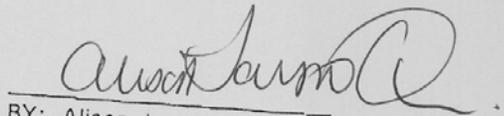
THE BOYS CLUBS OF BROWARD COUNTY, INC., a Florida Corporation



BY: David Hughes, its Executive Director


Witness

GOLD COAST ADVERTISING, INC.
a Florida corporation



BY: Alison Jayne Oliver

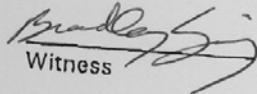

Witness

EXHIBIT "C"

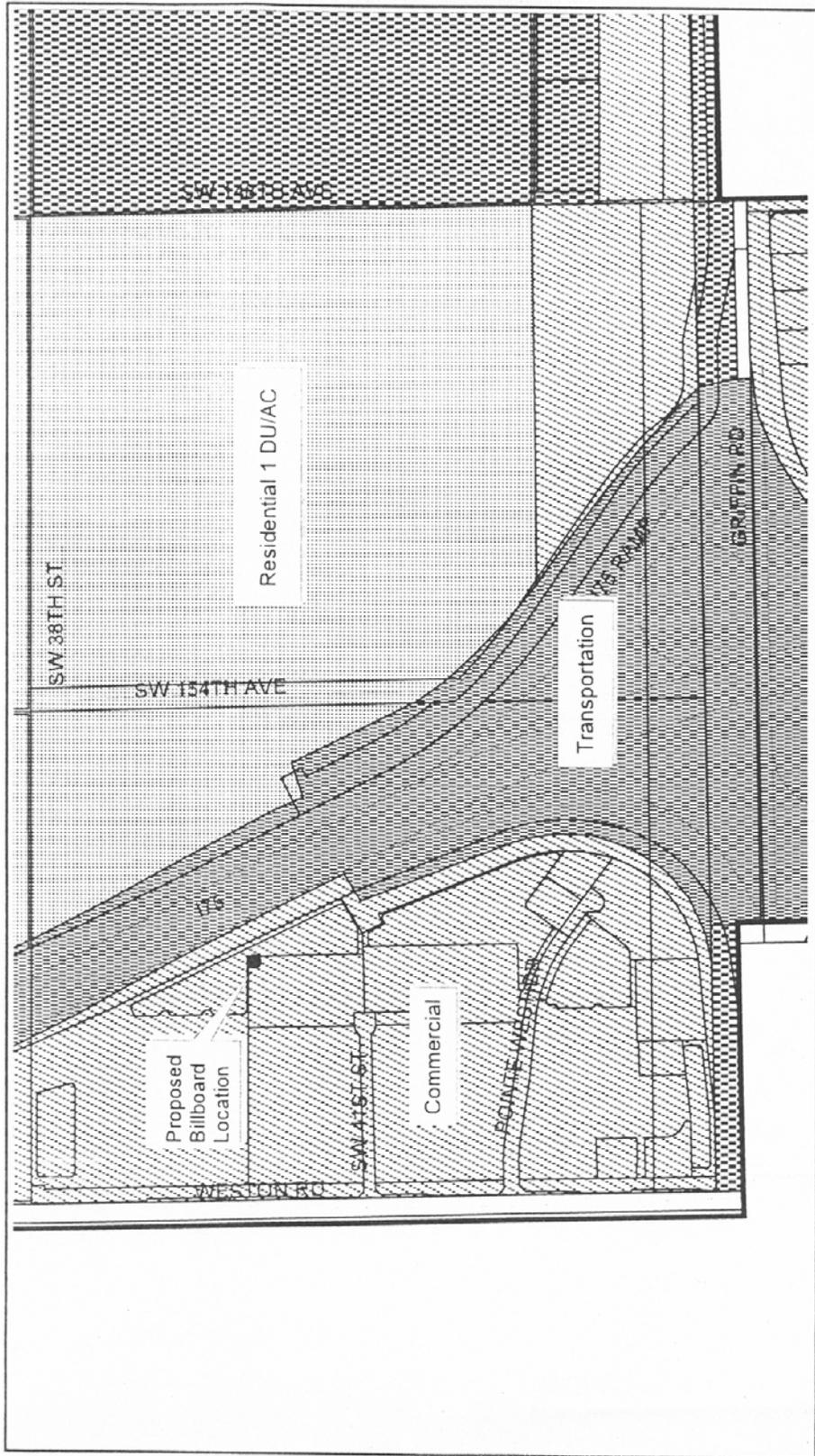
Proposed Location Description

15701 SW 41st Street, Davie, Florida

Point west Commerce Center. West of I-75 approximately 1/4 mile north of Griffin Road and 1/16 mile east of Weston Road. To the north is Maroone Toyota, to the west and south are industrial warehousing (Butters) and to the east is water retention lake and I-75.

Property Ownership

BMS Davie LTD - Victor, Steven & David Brown:
Also operates Penske Truck Rental Agency



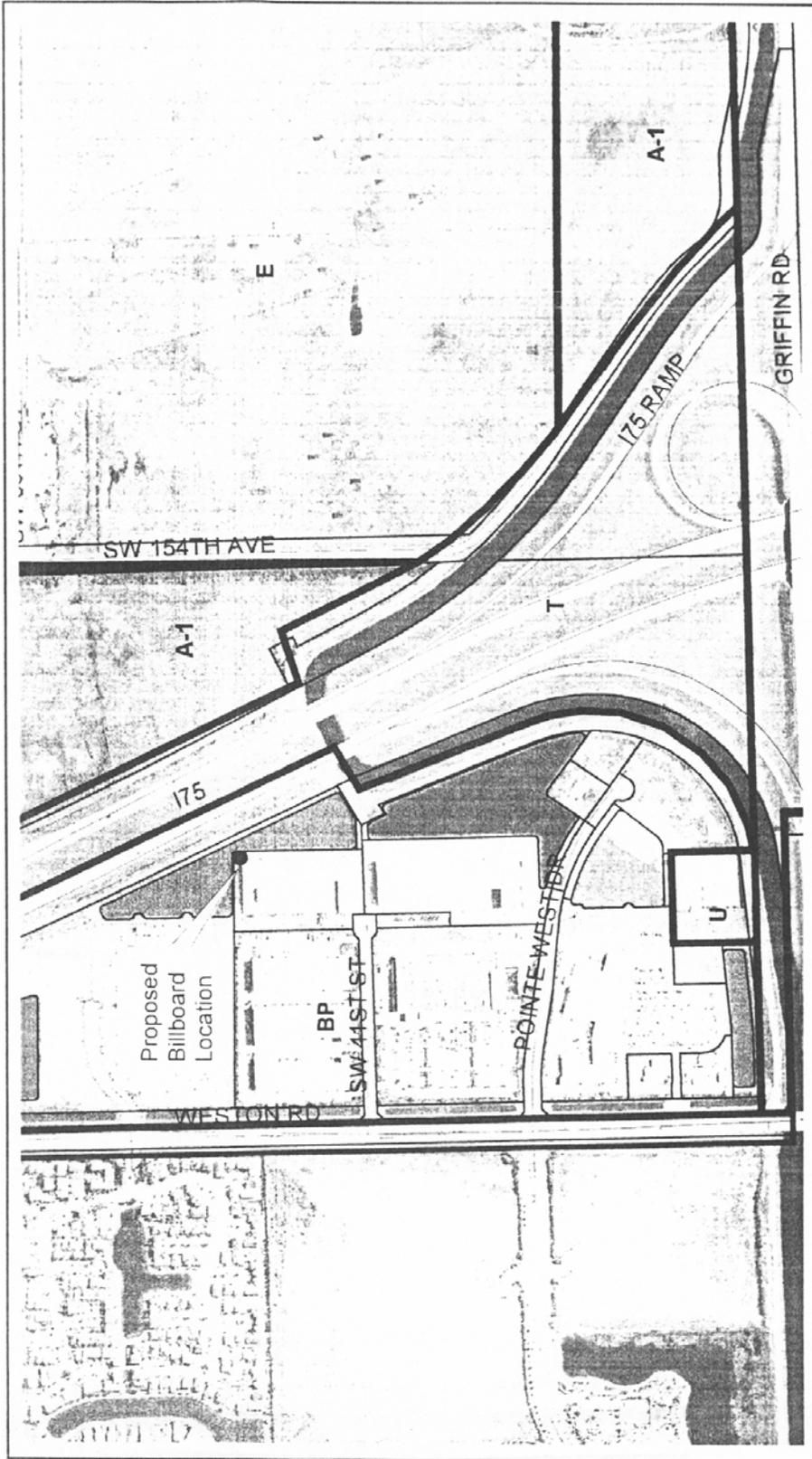
600 0 600 1200 Feet

Planning & Zoning Division - GIS



Proposed Billboard Location Future Land Use Map

Prepared By: BS
Date Prepared: 5/27/03



Date Flown:
12/31/00



600 0 600 1200 Feet

Planning & Zoning Division - GIS



Proposed Billboard Location Site, Zoning and Aerial Map

Prepared By: BS
Date Prepared: 5/27/03