

TOWN OF DAVIE

TOWN COUNCIL AGENDA REPORT

TO: Mayor and Councilmembers

FROM/PHONE: Chris Kovanes, Programs Administrator / 797-1102

PREPARED BY: Colleen Ryan, Grants Specialist/ 797-1024

SUBJECT: Resolution

AFFECTED DISTRICT: District 3

TITLE OF AGENDA ITEM: A RESOLUTION OF THE TOWN OF DAVIE AUTHORIZING THE APPROPRIATE TOWN OFFICIALS TO EXECUTE AND FILE A DECLARATION OF RESTRICTIVE COVENANTS FOR OPEN SPACE SITE OS-77, ALSO KNOWN AS MATH IGLER GROVE.

REPORT IN BRIEF: The Math Iglers Grove parcel was acquired by the Town of Davie through the Broward County Conservation, Green Space, and Open Space Land Acquisition Bond Program on December 19, 2003 (Site OS-77). As required by the terms and conditions of the bond program, the Town filed a "Declaration of Restrictive Covenants" in the Public Records of Broward County on December 4, 2003 to preserve it as open space for recreational use in perpetuity (attached as Exhibit B). Due to arsenic contamination discovered during the due diligence process and its clean-up by the Town of Davie, Broward County now requires that the Town file an updated "Declaration of Restrictive Covenants" that incorporates language required by the State of Florida (updated Declaration is attached as Exhibit A). This new language includes the recitals listed on page 2, and two restrictions stated on pages 2-3 under subheadings (d) & (e). All other language in the updated Declaration is the same as that in the previously-filed document.

PREVIOUS ACTIONS: "Declaration of Restrictive Covenants" filed by Town of Davie on 12/4/03.

CONCURRENCES: None

FISCAL IMPACT:

Has request been budgeted? N/A

If yes, expected cost:

If no, amount needed: N/A

What account will funds be appropriated from:

RECOMMENDATION(S): Motion to approve the resolution

Attachment(s): Resolution, Exhibit A - Updated "Declaration of Restrictive Covenants," Exhibit B- "Declaration of Restrictive Covenants" recorded in Broward County Records on 12/4/03.

RESOLUTION _____

A RESOLUTION OF THE TOWN OF DAVIE AUTHORIZING THE APPROPRIATE TOWN OFFICIALS TO EXECUTE AND FILE A DECLARATION OF RESTRICTIVE COVENANTS FOR OPEN SPACE SITE OS-77, ALSO KNOWN AS MATH IGLER GROVE.

WHEREAS, the Town of Davie has participated with Broward County in the acquisition of a parcel of property known as Math Iglers Grove, Site #OS-77, which is located at 2581 South Hiatus Road; and

WHEREAS, this property was acquired through the Broward County Conservation, Green Space, and Open Space Land Acquisition Bond Program; and

WHEREAS, the Town of Davie desires to restrict use of Site OS-82 in accordance with the terms and conditions of the bond program.

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

Section 1. The Town of Davie does hereby authorize the Mayor and Town Administrator to execute the updated Declaration of Restrictive Covenants for Site OS-77, Math Iglers Grove, attached as "Exhibit A" and to file the executed document in the public records of Broward County.

Section 2. This Resolution shall take effect immediately upon its passage and adoption.

PASSED AND ADOPTED THIS _____ DAY OF _____, 2004.

MAYOR/COUNCILMEMBER

ATTEST:

TOWN CLERK

APPROVED THIS _____ DAY OF _____, 2004.

Exhibit A

Return recorded document to:
Dept. of Planning and Environmental Protection
Land Preservation Section
218 SW 1st Avenue
Ft. Lauderdale, FL 33301

Document prepared by:

DECLARATION OF RESTRICTIVE COVENANTS

THIS DECLARATION OF RESTRICTIVE COVENANTS, made this ____ day of _____, 20__, by Town of Davie, hereinafter referred to as "PROPERTY OWNER."

W I T N E S S E T H

WHEREAS, PROPERTY OWNER is the fee title owner of that certain real property located in Broward County, Florida, as described in Exhibit "A," attached hereto and made a part hereof, (the PROPERTY); and

WHEREAS, the PROPERTY was acquired in whole or in part through Broward County's Conservation, Green Space and Open Space Land Acquisition Bond Program; and

WHEREAS, the use of the PROPERTY shall be in accordance with the provisions of the terms and conditions contained in the Broward County's Land Preservation Bond Program, as set forth in Broward County Resolution No. 2000-1230 and the Interlocal Agreement (the AGREEMENT) entered into with Broward County for Acquisition, Improvement/Enhancement, Operation and Management of Conservation Land, Green Space and Open Space Sites approved by the Broward County Board of County Commissioners on the ____ day of _____, 20__;

NOW, THEREFORE, PROPERTY OWNER hereby declares that the Property shall be developed, held, maintained, transferred, sold, conveyed and owned subject to the following designations and restrictive covenants:

1. RECITALS.

Arsenic contamination was identified in soils at the Property at concentrations exceeding the Soil Cleanup Target Levels of Chapter 62-777, Florida Administrative Code (F.A.C.). This contamination is documented in Environmental Site Assessment Reports, dated March 5, 2003, through September 9, 2003, and prepared by Water Restoration, Inc. These documents are on file at the Broward County Department of Planning and Environmental Protection (DPEP) and are incorporated by reference. Contaminated soils not covered by an impervious surface were subsequently removed and properly disposed.

Broward County DPEP has agreed to issue a No Further Action Approval Letter with Conditions (hereinafter "Conditional Approval") upon recordation of this Declaration, and DPEP can unilaterally revoke the Order if the conditions of this Declaration or of the Conditional Approval are not met. Additionally, in the event that a subsequent contaminant discharge occurs at the site, DPEP may require site rehabilitation to reduce concentrations of contamination to the levels allowed by Chapter 62-777, F.A.C. The Conditional Approval relating to PROPERTY OWNER is on file with Broward County DPEP.

The recitals set forth above are true and correct and are incorporated into these restrictive covenants.

2. RESTRICTIONS.

(a) The PROPERTY shall be preserved as open space and for recreational use in perpetuity.

(b) Only buildings necessary for and ancillary to the open space and recreational use shall be allowed.

(c) Any proposed use for the Site shall be consistent with the terms and conditions contained in the Final Open Space Park Management Plan

(d) No use of the PROPERTY shall be allowed which is inconsistent with the intent and purpose of this Declaration of Restrictive Covenants, the AGREEMENT and the Final Open Space Park Management Plan.

(e) The area of soil contamination as located on the Property shall be permanently covered with an impermeable material that prevents human exposure and water infiltration, or two (2) feet of clean and uncontaminated soil or fill must cover the Property.

(f) For the purpose of monitoring the restrictions contained herein, DPEP or its respective successors and assigns shall have site access to the Property at reasonable times and with reasonable notice to the PROPERTY OWNER.

3. MODIFICATION AND TERMINATION.

No revisions to the Declarations of Restrictive Covenants shall be permitted unless specifically approved by the Board of County Commissioners of Broward County, Florida (the BOARD), in accordance with the procedures set forth below. If PROPERTY OWNER, its successors and assigns wishes to modify or terminate these restrictive covenants, it shall be required to do the following:

(a) PROPERTY OWNER must apply to the BOARD for an amendment to, or termination of, these restrictive covenants.

(b) It shall be at the sole discretion of the BOARD whether to modify or terminate these restrictive covenants.

4. COVENANT RUNNING WITH THE LAND.

This Declaration of Restrictive Covenants shall be recorded in the Public Records of Broward County, Florida, and shall run with the PROPERTY described in Exhibit "A," and shall be binding on all persons and entities acquiring title to or use of the PROPERTY.

5. ENFORCEMENT.

Broward County, through its Board of County Commissioners, its successors and assigns, is the beneficiary of these restrictive covenants and as such, Broward County may enforce these restrictive covenants by action at law or in equity against any person or persons, entity or entities, violating or attempting to violate the terms of these Restrictions. Broward County shall provide PROPERTY OWNER with a written notice of violations for any provision of this Declaration and allow PROPERTY OWNER ninety (90) days to cure the violation. If PROPERTY OWNER fails to remedy the default within the time frame set forth above, PROPERTY OWNER shall transfer fee simple title of the PROPERTY to Broward County within sixty (60) days of the date of Broward County requests transfer of the PROPERTY.

6. WAIVER.

Any failure by Broward County to enforce these restrictive covenants shall not be deemed a waiver of the right to do so thereafter.

7. INVALIDATION.

Invalidation of any one of these restrictive covenants by judgment or court order shall in no way affect any other conditions which remain in full force an effect.

8. EFFECTIVE DATE.

The Declaration of Restrictive Covenants shall become effective upon recordation in the Public Records of Broward County, Florida.

IN WITNESS WHEREOF, _____ has hereunto set its authorized hand this ____ day of _____, 20____.

WITNESSES:

TOWN OF DAVIE

By _____
Mayor-Commissioner

_____ day of _____, 20____.

ATTEST:

Town Clerk

By _____
Town Administrator

_____ day of _____, 20____.

(CORPORATE SEAL)

APPROVED AS TO FORM:

By _____
Town Attorney

EXHIBIT "A"

LEGAL DESCRIPTION OF PROPERTY

LEGAL DESCRIPTION

That portion of Tract 56, Section 13, Township 50 South, Range 40 East, FLORIDA FRUIT LANDS COMPANY SUBDIVISION NO. 1, according to the plat thereof, recorded in Plat Book 2, Page 17, of the Public Records of Dade County, Florida, more particularly described as follows: Commence at the Southeast corner of said Section 13; thence Northerly along the East boundary of said Section 13, a distance of 50 feet to the Point of Beginning; thence continuing along the aforesaid corner, a distance of 240 feet; thence Westerly and parallel to the South boundary of said Section 13; to the Southerly bank of a drainage canal; thence meandering said drainage canal in a Westerly and Southerly direction to an intersection with a line 50 feet North of and parallel to the South boundary of said Section 13; thence Easterly along said line to an intersection with the East boundary of said Section 13 and the Point of Beginning;

EXCEPT THAT PORTION THEREOF described as follows:

A portion of Tract 56, Section 13, Township 50 South, Range 40 East, FLORIDA FRUIT LANDS COMPANY SUBDIVISION NO. 1, according to the Plat thereof, recorded in Plat Book 2, Page 17, of the Public Records of Dade County, Florida, being more particularly described as follows:

COMMENCING at the Southeast corner of said Section 13; thence Northerly along the East line of said Section 13, a distance of 61.26 feet to the Point of Beginning of this description; thence Westerly making an included angle of 73°26'00", a distance of 70.04 feet; thence Northwesterly, making an included angle of 146°30'00", a distance of 94.10 feet; thence Northwesterly, making an included angle of 169°12'40", a distance of 42.65 feet; thence Northerly, making an included angle of 157°55'00", a distance of 80 feet, more or less, to the Southerly bank of a drainage canal; thence meander Northeasterly, along said drainage canal, to the intersection with a line parallel with and 40 feet West of the East line of said Section 13; thence Easterly, along a line parallel with the South line of said Section 13; a distance of 40 feet, to the East line of said Section 13; thence Southerly along the East line of said Section 13, a distance of 228.74 feet to the Point of Beginning.

TOGETHER WITH

A portion of Tract 56, Section 13, Township 50 South, Range 40 East, FLORIDA FRUIT LANDS COMPANY SUBDIVISION NO. 1, according to the Plat thereof, recorded in Plat Book 2, Page 17, of the Public Records of Dade County, Florida, being more particularly described as follows:

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SUBJECT TO THE FOLLOWING:

1. A road reservation over and across the Easterly 15 feet thereof.

**EXHIBIT A
LEGAL DESCRIPTION OF PROPERTY**

ALSO KNOWN AS:

A portion of Tract 56, Section 13, Township 50 South, Range 40 East, "FLORIDA FRUIT LANDS COMPANY SUBDIVISION NO. 1", according to the Plat thereof, as recorded in Plat Book 2, Page 17, of the Public Records of Dade County, Florida, being more particularly described as follows:

COMMENCE at the Southeast corner of said Section 13:

THENCE North 00°09'24" West on the East line of said Section 13, a distance of 50.00 feet;

THENCE South 89°39'55" West a distance of 15.00 feet to the **POINT OF BEGINNING** (NO.2) and a point on the Easterly Plat Limit line of "CRYSTAL GROVE ESTATES", according to the Plat thereof, as recorded in Plat Book 144, Page 17, of the Public records of Broward County, Florida;

THENCE continue on said Easterly Plat Limit line the ten(10) following courses and distances:

1. Continue South 89°39'55" West, a distance of 326.34 feet;
2. North 03°48'25" East, a distance of 44.61 feet;
3. North 11°51'18" East, a distance of 35.77 feet;
4. North 23°39'26" East, a distance of 51.48 feet;
5. North 41°08'11" East, a distance of 55.07 feet;
6. North 59°07'54" East, a distance of 48.01 feet;
7. North 68°32'02" East, a distance of 79.90 feet;
8. North 82°10'27" East, a distance of 58.00 feet;
9. North 78°52'40" East, a distance of 61.39 feet;
10. North 89°39'54" East, a distance of 25.22 feet to a point on a line 15 feet West of and parallel to the East line of said Section 13, Township 50 South, Range 40 East;

THENCE South 00°09'24" East on said parallel line, a distance of 240.00 feet to the **POINT OF BEGINNING** (NO.2).

Said lands lying and being in the Town of Davie, Broward County, Florida, containing 63,909 Square feet (1.4671 Acres), more or less.

Exhibit B

CFN # 103543519, OR BK 36536 Page 716, Page 1 of 6, Recorded 12/04/2003 at 05:01 PM, Broward County Commission, Deputy Clerk 1033

5

Return recorded document to:
Dept. of Planning and Environmental Protection
Land Preservation Section
218 SW 1st Avenue
Ft. Lauderdale, FL 33301

Document prepared by:

DECLARATION OF RESTRICTIVE COVENANTS

THIS DECLARATION OF RESTRICTIVE COVENANTS, made this 2nd day of December, 2003, by Town of Davie, hereinafter referred to as "PROPERTY OWNER."

WITNESSETH

WHEREAS, PROPERTY OWNER is the fee title owner of that certain real property located in Broward County, Florida, as described in Exhibit "A," attached hereto and made a part hereof, (the PROPERTY); and

WHEREAS, the PROPERTY was acquired in whole or in part through Broward County's Conservation, Green Space and Open Space Land Acquisition Bond Program; and

WHEREAS, the use of the PROPERTY shall be in accordance with the provisions of the terms and conditions contained in the Broward County's Land Preservation Bond Program, as set forth in Broward County Resolution No. 2000-1230 and the Interlocal Agreement (the AGREEMENT) entered into with Broward County for Acquisition, Improvement/Enhancement, Operation and Management of Conservation Land, Green Space and Open Space Sites approved by the Broward County Board of County Commissioners on the 2nd day of December, 2003;

NOW, THEREFORE, PROPERTY OWNER hereby declares that the Property shall be developed, held, maintained, transferred, sold, conveyed and owned subject to the following designations and restrictive covenants:

CAF#552
03/17/03 Revised

1

Approved BCC 12/2/03 # 32

Submitted By DPEP

RETURN TO DOCUMENT CONTROL

NC (6)

1. RECITALS.

The recitals set forth above are true and correct and are incorporated into these restrictive covenants.

2. RESTRICTIONS.

(a) The PROPERTY shall be preserved as open space and for recreational use in perpetuity.

(b) Only buildings necessary for and ancillary to the open space and recreational use shall be allowed.

(c) Any proposed use for the Site shall be consistent with the terms and conditions contained in the Final Open Space Park Management Plan

(d) No use of the PROPERTY shall be allowed which is inconsistent with the intent and purpose of this Declaration of Restrictive Covenants, the AGREEMENT and the Final Open Space Park Management Plan.

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6. WAIVER.

Any failure by Broward County to enforce these restrictive covenants shall not be deemed a waiver of the right to do so thereafter.

7. INVALIDATION.

Invalidation of any one of these restrictive covenants by judgment or court order shall in no way affect any other conditions which remain in full force an effect.

8. EFFECTIVE DATE.

The Declaration of Restrictive Covenants shall become effective upon recordation in the Public Records of Broward County, Florida.

IN WITNESS WHEREOF,

Hereunto set is authorized hand this 5 day of November, 2003.

WITNESSES:

TOWN OF DAVIE

[Signature]
Jenema R Edwards

By [Signature]
Mayor-Commissioner
5 day of November, 2003

ATTEST:

[Signature]

By [Signature]
Town Administrator
5 day of November, 2003

(CORPORATE SEAL)

APPROVED AS TO FORM:

By [Signature]
Town Attorney

EXHIBIT "A"
LEGAL DESCRIPTION OF PROPERTY

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