

# TOWN OF DAVIE

## TOWN COUNCIL AGENDA REPORT

**TO:** Mayor and Councilmembers

**FROM/PHONE:** Mark A. Kutney, AICP, Development Services Director/ (954) 797-1101

**PREPARED BY:** Christopher M. Gratz, Planner II

**SUBJECT:** Developer's Agreement, DA 8-1-04 West Oak Estates, Kennedy & Pester/Associated Engineers of South Florida, 1900 SW 145 Avenue/Generally located on the east side of SW 145 Avenue, 0.37 miles south of SW 14 Street

**AFFECTED DISTRICT:** District 4

**TITLE OF AGENDA ITEM:** A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA AUTHORIZING THE MAYOR AND THE TOWN ADMINISTRATOR TO ENTER INTO AN AGREEMENT BETWEEN BROWARD COUNTY, NONA J. KENNEDY, AND GLENN KENNEDY, WIFE AND HUSBAND AND STU PESTER, AND THE TOWN OF DAVIE, FOR THE INSTALLATION OF REQUIRED IMPROVEMENTS RELATING TO THE PLAT KNOWN AS "WEST OAK ESTATES"; TO ACKNOWLEDGE SUCH APPROVAL BY AFFIXING THEIR SIGNATURES TO SAID AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

**REPORT IN BRIEF:** The applicant's request is for the Town Council to authorize the Mayor and Town Administrator to enter into a tri-party agreement for the installation of required improvements for the plat known as "West Oak Estates". The plat, P 4-3-04 West Oak Estates, for nine (9) single family dwellings (1 existing), has been submitted concurrently with this request. When Broward County evaluated the plat request it was determined that improvements are needed to satisfy concurrency requirements for the regional transportation network. Specifically, the owner is required to pay \$30,000 to the Town of Davie toward the installation of the roundabout at SW 14 Street and SW 136 Avenue.

The Town is a party to the agreement because Broward County requires that the Town of Davie to withhold the issuance of all building permits, certificates of occupancy, or any other development permits within the boundaries of the plat until such time that the County notifies the Town that the default has been resolved. Staff has no objection to the request.

**PREVIOUS ACTIONS:** None.

**CONCURRENCES:** N/A

**FISCAL IMPACT:** N/A

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

**Attachment(s):** Agreement, Future Land Use Plan Map, Zoning and Aerial Map

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA AUTHORIZING THE MAYOR AND THE TOWN ADMINISTRATOR TO ENTER INTO AN AGREEMENT BETWEEN BROWARD COUNTY, NONA J. KENNEDY, AND GLENN KENNEDY, WIFE AND HUSBAND AND STU PESTER, AND THE TOWN OF DAVIE, FOR THE INSTALLATION OF REQUIRED IMPROVEMENTS RELATING TO THE PLAT KNOWN AS "WEST OAK ESTATES"; TO ACKNOWLEDGE SUCH APPROVAL BY AFFIXING THEIR SIGNATURES TO SAID AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the proposed plat to be known as West Oak Estates was approved by the Town Council of the Town of Davie on June 15, 2005;

WHEREAS, Broward County requires improvements to satisfy concurrency on the regional road network;

WHEREAS, Broward County requires that the Town of Davie withhold the issuance of all building permits, certificates of occupancy, or any other development permits within the boundaries of the plat until such time that the County notifies the Town that the default has been resolved.

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.

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. Any improvements required to satisfy Traffic Concurrency shall be located within the Town of Davie.

SECTION 4. This Resolution shall take effect immediately upon its passage and adoption.

PASSED AND ADOPTED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2005.

\_\_\_\_\_  
MAYOR/COUNCILMEMBER

Attest:

\_\_\_\_\_  
TOWN CLERK

APPROVED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2005.

Return recorded document to:

Development Management Division  
115 S. Andrews Avenue, A240  
Fort Lauderdale, FL 33301

Document prepared by:  
Gustavo X. Aguirre, President  
Associated Engineers of So. Fl., Inc.  
5450 Griffin Road  
Davie, FL 33314

#0030394209

**REGIONAL ROAD CONCURRENCY AGREEMENT  
CONSTRUCTION OF IMPROVEMENTS**

This is an Agreement, made and entered into by and between: BROWARD COUNTY, a political subdivision of the State of Florida, hereinafter referred to as "COUNTY,"

AND

Nona J. Kennedy, and Glenn Kennedy, wife and husband  
and Stu Pester \_\_\_\_\_, its successors and assigns, hereinafter referred to as "DEVELOPER",

**[AND IF THE PROPERTY IS LOCATED WITHIN A MUNICIPALITY]**

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

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, Chapter 5, Article IX, Broward County Code of Ordinances, more specifically requires that an application for a development permit satisfy concurrency requirements for impact areas; and

WHEREAS, DEVELOPER has applied for approval of or an amendment to the West Oak Estates Plat (031-MP-04), hereinafter referred to as "PLAT," more particularly described in Exhibit "A" attached hereto and made a part hereof; and

WHEREAS, on June 1, 2004, 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 or amendment to the PLAT does not satisfy the impact area concurrency standards for the regional road network as stated in the Broward County Land Development Code ("CODE"); and

WHEREAS, TOWN has undertaken a project to install a roundabout at the intersection of Southwest 136 Avenue and Southwest 14 Street, hereinafter referred to as "Project;" and

WHEREAS, TOWN has determined that a contribution of \$30,000 is necessary to complete said roundabout; and

WHEREAS, DEVELOPER has agreed to pay TOWN the sum of **\$30,000.00** which is DEVELOPER'S proportionate fair share cost of the Project; and

WHEREAS, the Broward County Development Management Division has approved this remedial measure and finds that its concurrency requirements for the PLAT or the amendment to the PLAT will be 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 and representations are true and correct and are incorporated herein.
2. Construction of Improvements.
  - (a) DEVELOPER agrees to pay **\$30,000.00** to TOWN, which represents DEVELOPER's proportionate share of the cost of the "Improvements" described in Exhibit "B," hereinafter referred to as the "Improvements." DEVELOPER agrees that payment must be made to the TOWN either prior to plat recordation or within thirty (30) days of receiving notice from TOWN that payment is due, whichever date occurs first.
  - (b) COUNTY agrees that no security shall be required since payment shall be made prior to PLAT recordation.
3. COUNTY and TOWN (if applicable) find that execution of and adherence to this Agreement on the part of DEVELOPER satisfies the requirement of Chapter 5, Article IX, Broward County Code of Ordinances, that plats of land shall be designed to provide for the adequacy of the regional road network, at the adopted levels of service, concurrent with the impact of the development. Nothing in this Agreement shall be construed as constituting a waiver or an exemption from road impact fees authorized to be assessed by COUNTY to DEVELOPER under the provisions of Chapter 5, Article IX, Broward County Code of Ordinances.
4. PROPERTY WITHIN A MUNICIPALITY.
  - (a) TOWN agrees that, upon notification from the COUNTY that DEVELOPER is in default of this Agreement, TOWN shall withhold issuance of all building permits, certificates of occupancy, or any other development permits within

the boundaries of the PLAT, until such time that the COUNTY notifies the TOWN that the default has been resolved. If the property is located within the unincorporated area and the DEVELOPER is determined to be in default of this Agreement by the COUNTY, the COUNTY shall withhold issuance of all building permits, certificates of occupancy, or any other development permits within the boundaries of the PLAT, until such time as the default has been resolved.

(b) The parties hereto agree that, except as may otherwise be provided herein, the TOWN is a party to this Agreement solely for the purpose of issuing or withholding the issuance of permits for the construction of buildings within the property subject to this Agreement and for the purpose of issuing or withholding the issuance of certificates of occupancy for the construction of buildings within the property subject to this Agreement. The parties specifically agree and recognize that nothing in this Agreement is a waiver, specific or otherwise, of the obligation of the DEVELOPER to strictly comply with all the requirements of the TOWN's land development codes.

5. NOTICE. Whenever any of the parties desire to give notice to the other, such notice must be in writing, sent by U.S. Mail, postage prepaid, addressed to the party for whom it is intended at the place last specified; the place for giving of notice shall remain such until it is changed by written notice in compliance with the provisions of this paragraph. For the present, the parties designate the following as the respective places for giving notice:

For the COUNTY:

Director of the Broward County Development Management Division  
115 South Andrews Avenue, Room A240  
Fort Lauderdale, FL 33301

Director of the Broward County Engineering Division  
115 South Andrews Avenue, Room 321  
Fort Lauderdale, FL 33301

For the DEVELOPER:  
Stu Pester

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1900 S.W. 145th Avenue

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Davie, FL 33325

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FOR the TOWN (if applicable):

Davie Town Administrator

6591 Orange Drive

Davie, FL 33314-3399

6. RECORDATION. This Agreement shall be recorded in the Public Records of Broward County Florida, at the DEVELOPER'S expense. The benefits and obligations contained in this Agreement shall inure to grantees, successors, heirs, and assigns who have an interest in the PLAT.
7. VENUE; CHOICE OF LAW. Any controversies or legal issues arising out of this Agreement and any action involving the enforcement or interpretation of any rights hereunder shall be submitted to the jurisdiction of the State Courts of the Seventeenth Judicial Circuit of Broward County, Florida, the venue sitis, and shall be governed by the laws of the State of Florida.
8. CHANGES TO FORM AGREEMENT. DEVELOPER represents and warrants that there have been no amendments or revisions whatsoever to the form Agreement without the prior written consent of the County Attorney's Office. Any unapproved changes shall be deemed a default of this Agreement and of no legal effect.
9. CAPTIONS AND PARAGRAPH HEADINGS. Captions and paragraph headings contained in this Agreement are for convenience and reference only and in no way define, describe, extend or limit the scope or intent of this Agreement, nor the intent of any provisions hereof.
10. NO WAIVER. No waiver of any provision of this Agreement shall be effective unless it is in writing, signed by the party against whom it is asserted, and any such written waiver shall only be applicable to the specific instance to which it relates and shall not be deemed to be a continuing or future waiver.
11. EXHIBITS. All Exhibits attached hereto contain additional terms of this Agreement and are incorporated herein by reference. Typewritten or handwritten provisions inserted in this Agreement or attached hereto shall control all printed provisions in conflict therewith.
12. FURTHER ASSURANCES. The parties hereby agree to execute, acknowledge and deliver and cause to be done, executed, acknowledged and delivered all further assurances and to perform such acts as shall reasonably be requested of them in order to carry out this Agreement.

13. ASSIGNMENT AND ASSUMPTION. DEVELOPER may assign all or any portion of its obligations pursuant to this Agreement to a grantee of the fee title to all or any portion of the property described in Exhibit "A." DEVELOPER agrees that any assignment shall contain a provision which clearly states that such assignment is subject to the obligations of this Agreement.
  
14. AMENDMENTS. No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by the parties to this Agreement.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement on the respective dates under each signature: BROWARD COUNTY through its BOARD OF COUNTY COMMISSIONERS, signing by and through its Mayor or Vice Mayor, authorized to execute same by Board action on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, DEVELOPER, signing by and through its \_\_\_\_\_ representative duly authorized to execute same and TOWN OF DAVIE, signing by and through its Mayor-Commissioner, 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 \_\_\_\_\_  
Mayor

\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_  
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

\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_



**MORTGAGEE-CORPORATION/PARTNERSHIP**

Mortgagee, being the holder of a mortgage relating to the parcel(s) described in Exhibit "A" hereby consents and joins in for the purpose of agreeing that its mortgage shall be subordinated to the foregoing Agreement.

Witnesses (if partnership):

Deborah Wallace  
(Signature)  
Print name: Deborah Wallace

Terry Thompson  
(Signature)  
Print name: Terry Thompson

Suntrust Mortgage, Inc.

Name of Mortgagee (corporation/partnership)

By [Signature]  
(Signature)  
Print name: JACKIE L. MILLER

Title: VICE PRESIDENT

Address: 1001 Semmes Ave.  
Richmond, Va. 23224

12 day of August, 2004

ATTEST (if corporation):

[Signature] (CORPORATE SEAL)  
(Secretary Signature)  
Print Name of Secretary: Annette Holman-Joreman

**ACKNOWLEDGMENT - CORPORATION/PARTNERSHIP**

STATE OF Virginia )  
~~FLORIDA~~ )  
City Richmond ) SS.  
COUNTY OF ~~BROWARD~~ )

The foregoing instrument was acknowledged before me this 12 day of August, 2004, by Jackie L. Miller, as Vice President of Suntrust Mortgage, Inc., a Florida corporation/partnership, on behalf of the corporation/ partnership. He or she is:  
 personally known to me, or  
 produced identification. Type of identification produced \_\_\_\_\_.

(Seal)

My commission expires: 11/30/06

NOTARY PUBLIC:

[Signature]  
Print name: 11/30/06

CITY

(If Property is located within a City)

WITNESSES:

TOWN of DAVIE

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

By \_\_\_\_\_  
Mayor-Commissioner  
\_\_\_\_ day of \_\_\_\_\_, 20\_\_

ATTEST:

\_\_\_\_\_  
Town Clerk

By \_\_\_\_\_  
Town Manager  
\_\_\_\_ day of \_\_\_\_\_, 20\_\_

APPROVED AS TO FORM:

By \_\_\_\_\_  
Town Attorney

EXHIBIT "A"

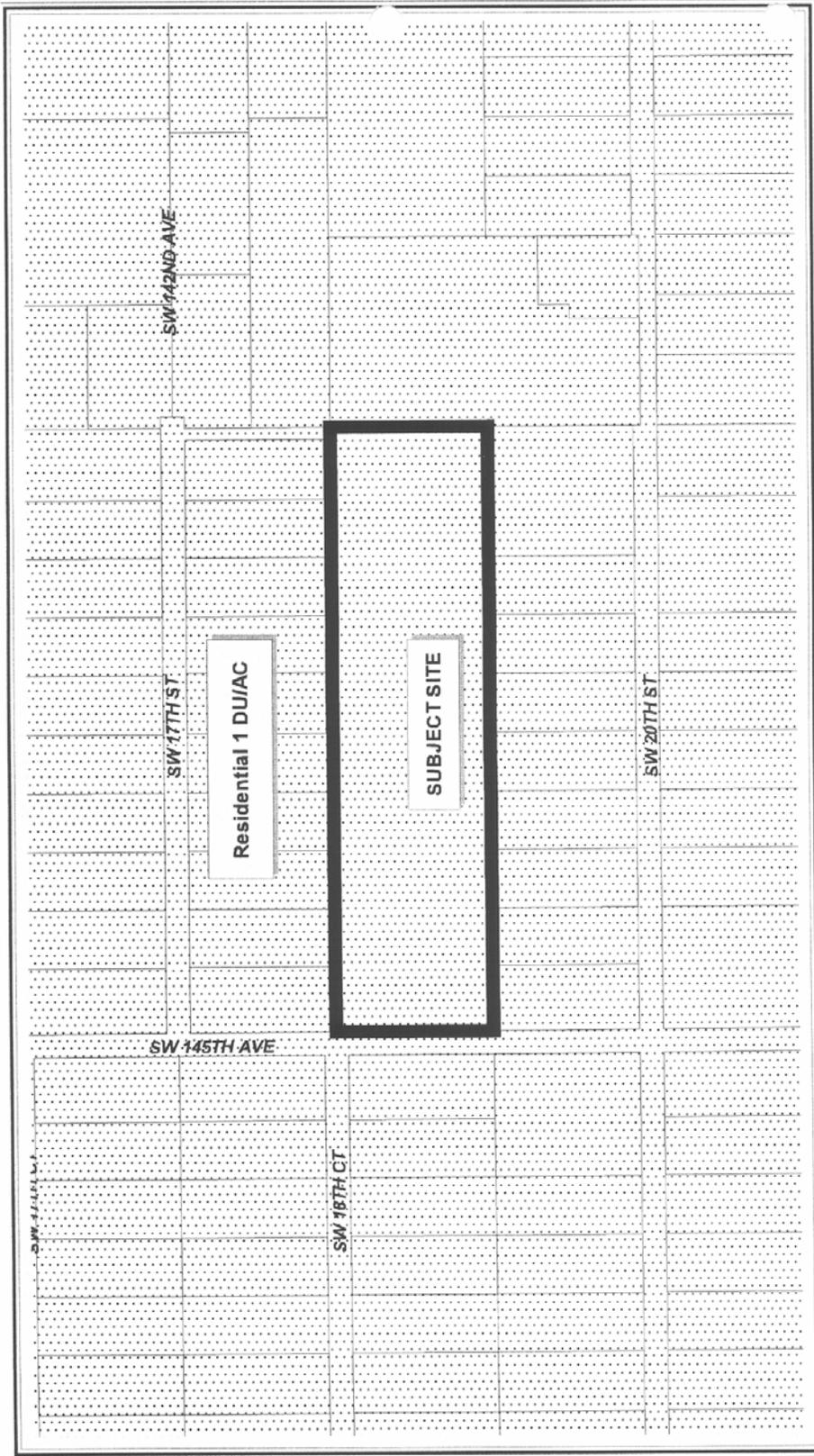
LEGAL DESCRIPTION

All of Tract 23 in Section 15, Township 50 South, Range 40 East, of FLORIDA FRUIT LAND COMPANY'S SUBDIVISION No. 1, according to the Plat thereof recorded in Plat Book 2, Page 17 of the Public Records of Dade County, Florida, less and except the West 25.00 feet thereof for road Right-of-Way. Said lands situate, lying and being in Broward County, Florida.

**EXHIBIT "B"**

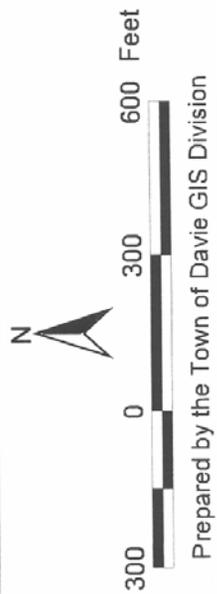
**IMPROVEMENTS & COST OF IMPROVEMENTS**

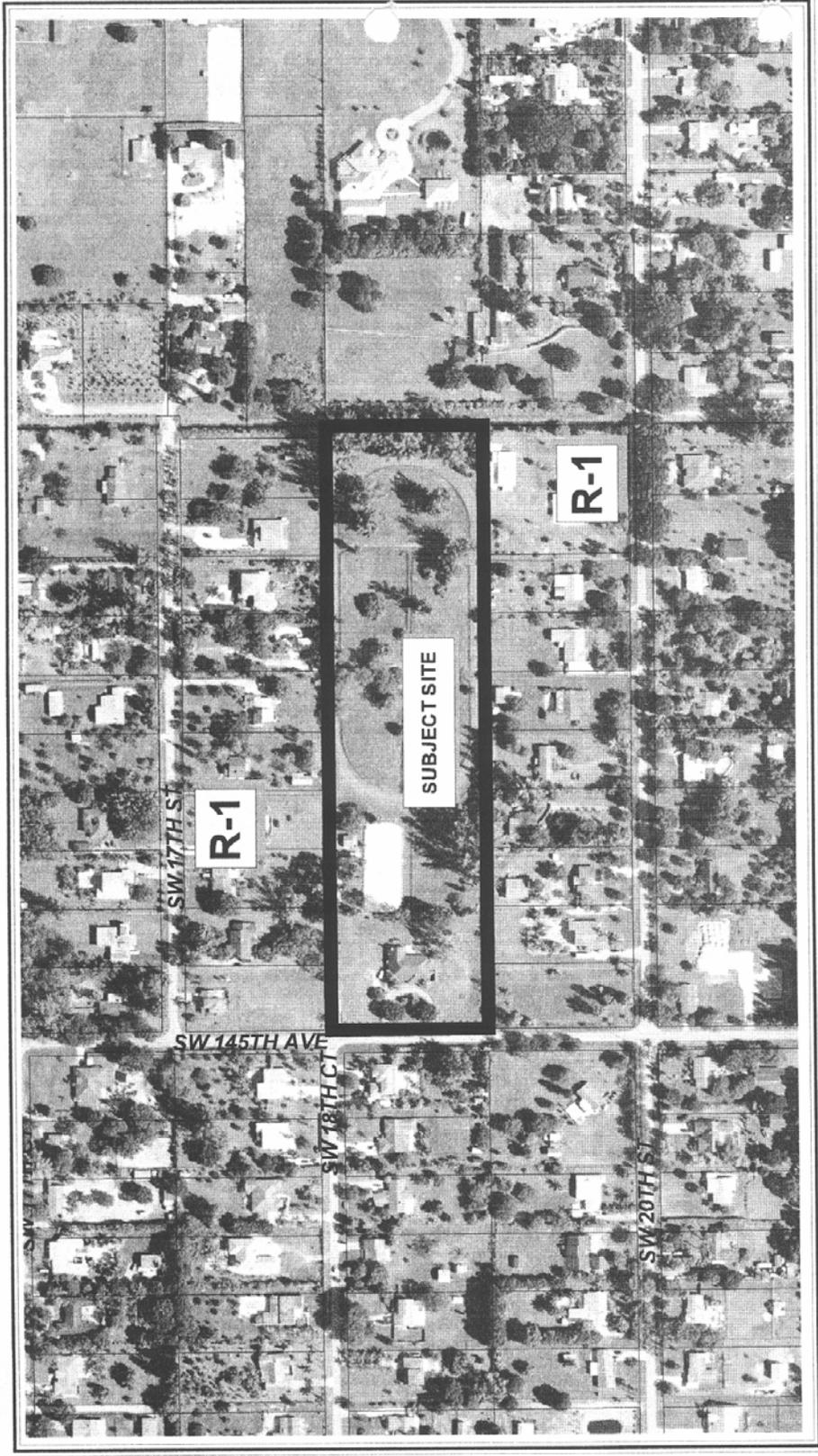
Prior to plat recordation, pay **\$30,000.00** to the Town of Davie for the construction of a roundabout at the intersection of Southwest 136 Avenue and Southwest 14 Street. The roundabout is to be constructed by the Town.



**PLAT  
P 4-3-04  
Future Land Use Map**

Prepared By: ID  
Date Prepared: 5/5/04





Date Flown:  
12/31/02



Prepared by the Town of Davie GIS Division



**PLAT  
P 4-3-04  
Zoning and Aerial Map**

Prepared By: JD  
Date Prepared: 5/5/04

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