

TOWN OF DAVIE

TOWN COUNCIL AGENDA REPORT

TO: Mayor and Councilmembers

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

SUBJECT: Resolution (requires public hearing)

TITLE OF AGENDA ITEM:

A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA AUTHORIZING THE MAYOR TO EXECUTE A STIPULATED SETTLEMENT AGREEMENT WITH THE STATE OF FLORIDA DEPARTMENT OF COMMUNITY AFFAIRS PERTAINING TO DOAH CASE NO. 99-1308GM; PROVIDING FOR AN EFFECTIVE DATE.

REPORT IN BRIEF:

Council adopted Plan Amendment Application No. LABC98-3B, known as the Flamingo Center Amendment, on November 18, 1998. The amendment revised the text of the Comprehensive Plan to provide for an Employment Center "Special Classification" designation, and changed the future land use plan designation of 22 acres located at the southeast corner of Flamingo Road and SR 84 from Residential (5 du/ac) to Employment Center (Special Classification, limited to 3,112 average vehicle trips per day). The Town also petitioned for a corresponding change to the Broward County Land Use Plan (BCLUP), Future Land Use Map. The Special Classification was implemented in response to concerns about traffic congestion raised by the Florida Department of Community Affairs (DCA) and Broward County.

The Town fully expected DCA to find the amendment "in compliance" with state law, as indicated by the verbal responses of state officials relative to the Town's responses to DCA's Objections, Recommendations and Comments Report. To the Town's surprise, DCA officials subsequently found the amendment "not in compliance" largely due to traffic issues DCA had indicated would be resolved by using the Special Classification which limited the number of vehicle trips that future development within the amendment site could generate.

Staff has spent the ensuing two (2) years since ordinance adoption negotiating with DCA, and when negotiations failed, preparing for an administrative hearing before a state hearing officer. Staff finally reaching an agreement with DCA in recent months which will avoid a hearing. The terms of agreement, stipulated within Exhibit "B" of the attached Agreement, call for the Town to limit the size and intensity of development within the amendment site to a floor area ratio of .25, with no retail and restaurant uses unless a traffic mitigation plan is approved by DCA. The stipulation also calls for the Town to initiate a text amendment to the Comprehensive Plan to change the way the Town measures its level of service (LOS) for I-595, from the existing method using peak hour in both directions to peak hour based upon peak direction. This modification will more accurately reflect actual traffic conditions on the interstate, and will help accommodate buildout of the Town's SR 84 corridor.

PREVIOUS ACTIONS: Council adopted Plan Amendment No. LABC98-3B on November 18, 1998.

CONCURRENCES: The Town Attorney's Office has reviewed the Agreement and is satisfied as to its form.

FISCAL IMPACT: n/a

RECOMMENDATION(S): Motion to approve the Resolution.

Attachment(s): Resolution, Stipulated Settlement Agreement, Subject Site Map.

RESOLUTION NO. _____

A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA AUTHORIZING THE MAYOR TO EXECUTE A STIPULATED SETTLEMENT AGREEMENT WITH THE STATE OF FLORIDA DEPARTMENT OF COMMUNITY AFFAIRS PERTAINING TO DOAH CASE NO. 99-1308GM; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Davie adopted Comprehensive Plan Amendment Application LABC98-3B/DCA 98-2, on November 18, 1998, by Ordinance 98-46, with the expectation that the State of Florida Department of Community Affairs (DCA) would find the amendment "in compliance" with Chapter 163, F.S.; and,

WHEREAS, DCA issued a Statement of Intent to find the amendment "not in compliance" on March 3, 1999; and,

WHEREAS, the Town had disputed the allegations of the Statement of Intent ; and,

WHEREAS, the Town has come to an agreement of terms with DCA, formalized in the attached Stipulated Settlement Agreement; and,

WHEREAS, the Town wishes to enter into the attached Stipulated Settlement Agreement, which will result in the amendment being found "in compliance," and will avoid the expense, delay and uncertainty of litigation.

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

SECTION 1. The Mayor is hereby authorized to execute the Stipulated Settlement Agreement, attached as Schedule "1" hereto, on behalf of the Town Council of the Town of Davie.

SECTION 2. This resolution shall take effect immediately upon its passage and adoption.

PASSED AND ADOPTED THIS _____ DAY OF _____, 2001

MAYOR/COUNCILMEMBER

ATTEST:

TOWN CLERK

APPROVED THIS _____ DAY OF _____, 2001

SCHEDULE "1"

STATE OF FLORIDA DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF COMMUNITY
AFFAIRS,

Petitioner,

v.

DOAH Case No. 99-1308GM

TOWN OF DAVIE,

Respondent.

STIPULATED SETTLEMENT AGREEMENT

THIS STIPULATED SETTLEMENT AGREEMENT is entered into by and between the State of Florida Department of Community Affairs and the Town of Davie as a complete and final settlement of all claims raised in the above-styled proceeding.

RECITALS

WHEREAS, the State of Florida, Department of Community Affairs (DCA or Department), is the state land planning agency and has the authority to administer and enforce the Local Government Comprehensive Planning and Land Development Regulation Act, Chapter 163, Part II, Florida Statutes; and

WHEREAS, the Town of Davie (Local Government) is a local government with the duty to adopt comprehensive plan amendments that are "in compliance;" and

WHEREAS, the Local Government adopted Comprehensive Plan Amendments adopted by Ordinance No. 98-2 on November 18, 1998; and

WHEREAS, the Department issued its Statement and Notice of Intent regarding the Amendment; and

WHEREAS, as set forth in the Statement of Intent, the Department contends that the Amendment is not "in compliance"; and

WHEREAS, pursuant to Section 163.3184(10), Florida Statutes, DCA has initiated the above-styled formal administrative proceeding challenging the Amendment; and

WHEREAS, the Local Government disputes the allegations of the Statement of Intent regarding the Amendment; and

WHEREAS, the parties wish to avoid the expense, delay, and uncertainty of lengthy litigation and to resolve this proceeding under the terms set forth herein, and agree it is⁴ in their respective mutual best interests to do so;

NOW, THEREFORE, in consideration of the mutual covenants and promises hereinbelow set forth, and in consideration of the benefits to accrue to each of the parties, the receipt and sufficiency of which are hereby acknowledged, the parties hereby represent and agree as follows:

GENERAL PROVISIONS

1. Definitions. As used in this agreement, the following words and phrases shall have the following meanings:

- a. Act: The Local Government Comprehensive Planning and Land Development Regulation Act, as codified in Part II, Chapter 163, Florida Statutes.
- b. Agreement: This stipulated settlement agreement.
- c. Comprehensive Plan Amendment or Plan Amendment: Comprehensive plan amendments adopted by the Local Government on November 18, 1998 in Ordinance No. 98-2.
- d. DOAH: The Florida Division of Administrative Hearings.

e. In compliance or into compliance: The meaning set forth in Section 163.3184(1)(b), Florida Statutes.

f. Notice: The notice of intent issued by the Department to which was attached its statement of intent to find the plan amendment not in compliance.

g. Petition: The petition for administrative hearing and relief filed by the Department in this case.

h. Remedial Action: A remedial plan amendment, submission of support document or other action described in the statement of intent or this agreement as an action which must be completed to bring the plan amendment into compliance.

i. Remedial Plan Amendment: An amendment to the plan or support document, the need for which is identified in this agreement, including its exhibits, and which the local government must adopt to complete all remedial actions. Remedial plan amendments adopted pursuant to this Agreement must, in the opinion of the Department, be consistent with and substantially similar in concept and content to the ones identified in this Agreement or be otherwise acceptable to the Department.

j. Statement of Intent: The statement of intent to find the Plan Amendment not in compliance issued by the Department in this case.

k. Support Document: The studies, inventory maps, surveys, data, inventories, listings or analyses used to develop and support the Plan Amendment or Remedial Plan Amendment.

2. Department Powers. The Department is the state land planning agency and has the power and duty to administer and enforce the Act and to determine whether the Plan Amendment is in compliance.

3. Negotiation of Agreement. The Department issued its Notice and Statement of Intent to find the Plan Amendment not in compliance, and filed the Petition in this case to that effect. Subsequent to the filing of the Petition the parties conferred and agreed to resolve the issues in the Petition, Notice and Statement of Intent through this Agreement. It is the intent of this Agreement to resolve fully all issues between the parties in this proceeding.

4. Dismissal. If the Local Government completes the Remedial Actions required by this Agreement, the Department will issue a cumulative Notice of Intent addressing both the Remedial Plan Amendment and the initial Plan Amendment subject to these proceedings. The Department will file the cumulative Notice of Intent with the DOAH. The Department will also file a request to relinquish jurisdiction to the Department for dismissal of this proceeding or for realignment of the parties, as appropriate under Section 163.3184(16)(f), Florida Statutes.

5. Description of Provisions not in Compliance and Remedial Actions; Legal Effect of Agreement. Exhibit A to this Agreement is a copy of the Statement of Intent, which identifies the provisions not in compliance. Exhibit B contains Remedial Actions needed for compliance. Exhibits A and B are incorporated in this Agreement by this reference. This Agreement constitutes a stipulation that if the Remedial Actions are accomplished, the Plan Amendment will be in compliance.

6. Remedial Actions to be Considered for Adoption. The Local Government agrees to consider for adoption by formal action of its governing body all Remedial Actions described in Exhibit B no later than the time period provided for in this Agreement.

7. Adoption or Approval of Remedial Plan Amendments. Within 60 days after execution of this Agreement by the parties, the Local Government shall consider for adoption all

Remedial Actions or Plan Amendments and amendments to the Support Documents. This may be done at a single adoption hearing. Within 10 working days after adoption of the Remedial Plan Amendment, the Local Government shall transmit 5 copies of the amendment to the Department as provided in Rule 9J-11.011(5), Florida Administrative Code. The Local Government also shall submit one copy to the regional planning agency and to any other unit of local or state government that has filed a written request with the governing body for a copy of the Remedial Plan Amendment and a copy to any party granted intervenor status in this proceeding. The Remedial Plan Amendment shall be transmitted to the Department along with a letter which describes the remedial action adopted for each part of the plan amended, including references to specific portions and pages.

8. Acknowledgment. All parties to this Agreement acknowledge that the "based upon" provisions in Section 163.3184(8), Florida Statutes, do not apply to the Remedial Plan Amendment.

9. Review of Remedial Plan Amendments and Notice of Intent. Within 30 days after receipt of the adopted Remedial Plan Amendments and Support Documents, the Department shall issue a Notice of Intent pursuant to Section 163.3184, Florida Statutes, for the adopted amendments in accordance with this Agreement.

a. In Compliance: If the adopted Remedial Actions satisfy this Agreement, the Department shall issue a cumulative Notice of Intent addressing both the Plan Amendment and the Remedial Plan Amendment as being in compliance. The Department shall file this cumulative notice with DOAH and shall move to realign the parties or to have this proceeding dismissed, as may be appropriate.

b. Not in Compliance: If the Remedial Actions do not satisfy this Agreement, the Department shall issue a Notice of Intent to find the Plan Amendment not in compliance and shall forward the notice to DOAH for consolidation with the pending proceeding.

10. Effect of Amendment. Adoption of any Remedial Plan Amendment shall not be counted toward the frequency restrictions imposed upon plan amendments pursuant to Section 163.3187(1), Florida Statutes.

11. Purpose of this Agreement; Not Establishing Precedent. The parties enter into this Agreement in a spirit of cooperation for the purpose of avoiding costly, lengthy and unnecessary litigation and in recognition of the desire for the speedy and reasonable resolution of disputes arising out of or related to the Plan Amendment. The acceptance of proposals for purposes of this Agreement is part of a negotiated agreement affecting many factual and legal issues and is not an endorsement of, and does not establish precedent for, the use of these proposals in any other circumstances or by any other local government.

12. Approval by Governing Body. This Agreement has been approved by the Local Government's governing body at a public hearing advertised at least 10 days prior to the hearing in a newspaper of general circulation in the manner prescribed for advertisements in Section 163.3184(15)(c), Florida Statutes. This Agreement has been executed by the appropriate officer as provided in the Local Government's charter or other regulations.

13. Changes in Law. Nothing in this Agreement shall be construed to relieve either party from adhering to the law, and in the event of a change in any statute or administrative regulation inconsistent with this agreement, the statute or regulation shall take precedence and shall be deemed incorporated in this Agreement by reference.

14. Other Persons Unaffected. Nothing in this Agreement shall be deemed to affect the rights of any person not a party to this Agreement. This Agreement is not intended to benefit any third party.

15. Attorney Fees and Costs. Each party shall bear its own costs, including attorney fees, incurred in connection with the above-captioned case and this Agreement.

16. Effective Date. This Agreement shall become effective immediately upon execution by the Department and the Local Government.

17. Filing and Continuance. This Agreement shall be filed with DOAH by the Department after execution by the parties. Upon the filing of this Agreement, the administrative proceeding in this matter shall be stayed by the Administrative Law Judge in accordance with Section 163.3184(16)(b), Florida Statutes.

18. Retention of Right to Final Hearing. Both parties hereby retain the right to have a final hearing in this proceeding in the event of a breach of this Agreement, and nothing in this Agreement shall be deemed a waiver of such right. Any party to this Agreement may move to have this matter set for hearing if it becomes apparent that any other party whose action is required by this Agreement is not proceeding in good faith to take that action.

19. Construction of Agreement. All parties to this Agreement are deemed to have participated in its drafting. In the event of any ambiguity in the terms of this Agreement, the parties agree that such ambiguity shall be construed without regard to which of the parties drafted the provision in question.

20. Entire Agreement. This is the entire agreement between the parties and no verbal or written assurance or promise is effective or binding unless included in this document.

21. Governmental Discretion Unaffected. This Agreement is not intended to bind the Local Government in the exercise of governmental discretion which is exercisable in accordance with law only upon the giving of appropriate public notice and required public hearings.

22. Multiple Originals. This Agreement may be executed in any number of originals, all of which evidence one agreement, and only one of which need be produced for any purpose.

23. Captions. The captions inserted in this Agreement are for the purpose of convenience only and shall not be utilized to construe or interpret any provision of this Agreement.

In witness whereof, the parties hereto have caused this Agreement to be executed by their undersigned officials as duly authorized.

DEPARTMENT OF COMMUNITY AFFAIRS

By: _____
J. Thomas Beck, Director
Division of Community Planning

Approved as to form and legality:

Assistant General Counsel

Date

Date

TOWN OF DAVIE

By: _____
[Name]

[Title]

Approved as to form and legality:

Attorney for the Town of Davie

Date

Date

STATE OF FLORIDA
DEPARTMENT OF COMMUNITY AFFAIRS

IN RE: TOWN OF DAVIE)
COMPREHENSIVE PLAN)
AMENDMENT ADOPTED BY) DOCKET NO. 98-2-NOI-0606-(A)-(I)(N)
ORDINANCE NO. 98-46)
ON NOVEMBER 18, 1998)

STATEMENT OF INTENT TO FIND
COMPREHENSIVE PLAN AMENDMENT
NOT IN COMPLIANCE

The Florida Department of Community Affairs hereby issues its Statement of Intent to find the Town of Davie Comprehensive Plan Amendment 98-2, adopted by Ordinance No. 98-46 on November 18, 1998 Not In Compliance. The Department finds that the plan amendment is not "in compliance," as defined in Section 163.3184(1)(b), Florida Statutes (F.S.), because it is not consistent with Section 163.3177, F.S., the State Comprehensive Plan and Chapter 9J-5, Florida Administrative Code (F.A.C.), for the following reasons:

I AMENDMENT TO THE FUTURE LAND USE MAP (FLUM)

A Inconsistent provisions The inconsistent provisions of the plan amendment under this subject heading are as follows:

1) The proposed amendment does not include a complete analysis of transportation impacts. It does not include peak hour vehicle trip generation data and analysis or trip assignment and distribution analysis for the five year planning period. The amendment fails to demonstrate coordination between the Future Land Use Element and the Traffic Circulation Element. In addition, the amendment is internally inconsistent with Capital Improvements Element Level of Service Policy 2.1



[Section 163.3177(2), 163.3177(6)(a), F.S., Rule 9J-5.005(2)(a), 9J-5.005(5)(a) and 9J-5.006(2)(a), F.A.C.]

2) The impacts of the proposed amendment cannot be adequately evaluated as the Davie Comprehensive Plan do not contain adequate intensity standards for the Employment Center land use category. [Section 163.3177(2), 163.3177(6)(a), F.S. and Rule 9J-5.005(2)(a), F.A.C.]

3) The proposed amendment is internally inconsistent with Future Land Use Policy 20-1 of the Davie Comprehensive Plan and fails to address the impacts of the land use change on land uses in the adjacent community (Plantation) and the County. The amendment fails to address the impacts the proposed development has on the adopted Level of Service standard for effected roadways in the adjacent community.

[Section 163.3177(2), F.S., and Rule 9J-5.005(5)(a), 9J-5.015(3)(b)2. and (3)(c)5 & 7., F.A.C.]

B Recommended remedial actions These inconsistencies may be remedied by taking the following actions:

1. The Town should provide a complete and accurate analysis of the transportation impacts associated with the FLUM amendment. Utilizing information contained in the adopted Broward County Transportation Element, the Town should provide peak hour vehicle trip generation data and analysis or trip assignment and distribution analysis for the five year (2003) and long range (2015) planning periods. Each effected segment should be analyzed individually. Finally, the Town should provide analysis to demonstrate consistency with Capital Improvements Element Policy 2.1 of the Davie Comprehensive Plan
2. The Town should develop intensity standards for the Employment Center Future

Land Use category. These standards should be based on complete and accurate data.

3. The Town should provide analysis to demonstrate consistency with Future Land Use Policy 20-1 of the Davie Comprehensive Plan. Furthermore, the Town should provide an analysis of the impacts, especially transportation impacts, the amendment will have on the land uses in the adjacent community (Plantation) and the County. This analysis should be based on complete and accurate data.

VII. CONSISTENCY WITH THE STATE COMPREHENSIVE PLAN

A. Inconsistent provisions. The inconsistent provisions of the plan amendment under this subject heading are as follows:

1. The comprehensive plan amendment is inconsistent with the State Comprehensive Plan goals and policies, including the following provisions (Chapter 187.201, F.S.):

- a) Goal 20, Transportation and Policies 3, 9, and 13

B. Recommended remedial action. These inconsistencies may be remedied by taking the following action:

1. Revise the plan amendment as described above in Section I.B.

CONCLUSIONS

- 1 The plan amendment is not consistent with the State Comprehensive Plan.
- 2 The plan amendment is not consistent with Chapter 9J-5, Florida Administrative Code.
3. The plan amendment is not consistent with the requirements of Section 163.3177, 163.3178 and 163.3191, Florida Statutes.
- 4 The plan amendment is not "in compliance," as defined in Section 163.3184(1)(b), Florida Statutes
5. In order to bring the plan amendment into compliance, the Town may complete the recommended remedial actions described above or adopt other remedial actions that eliminate the inconsistencies

Executed this 2nd day of March, 1999, at Tallahassee, Florida.

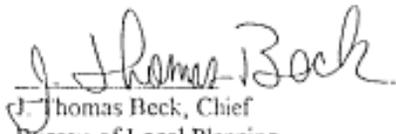
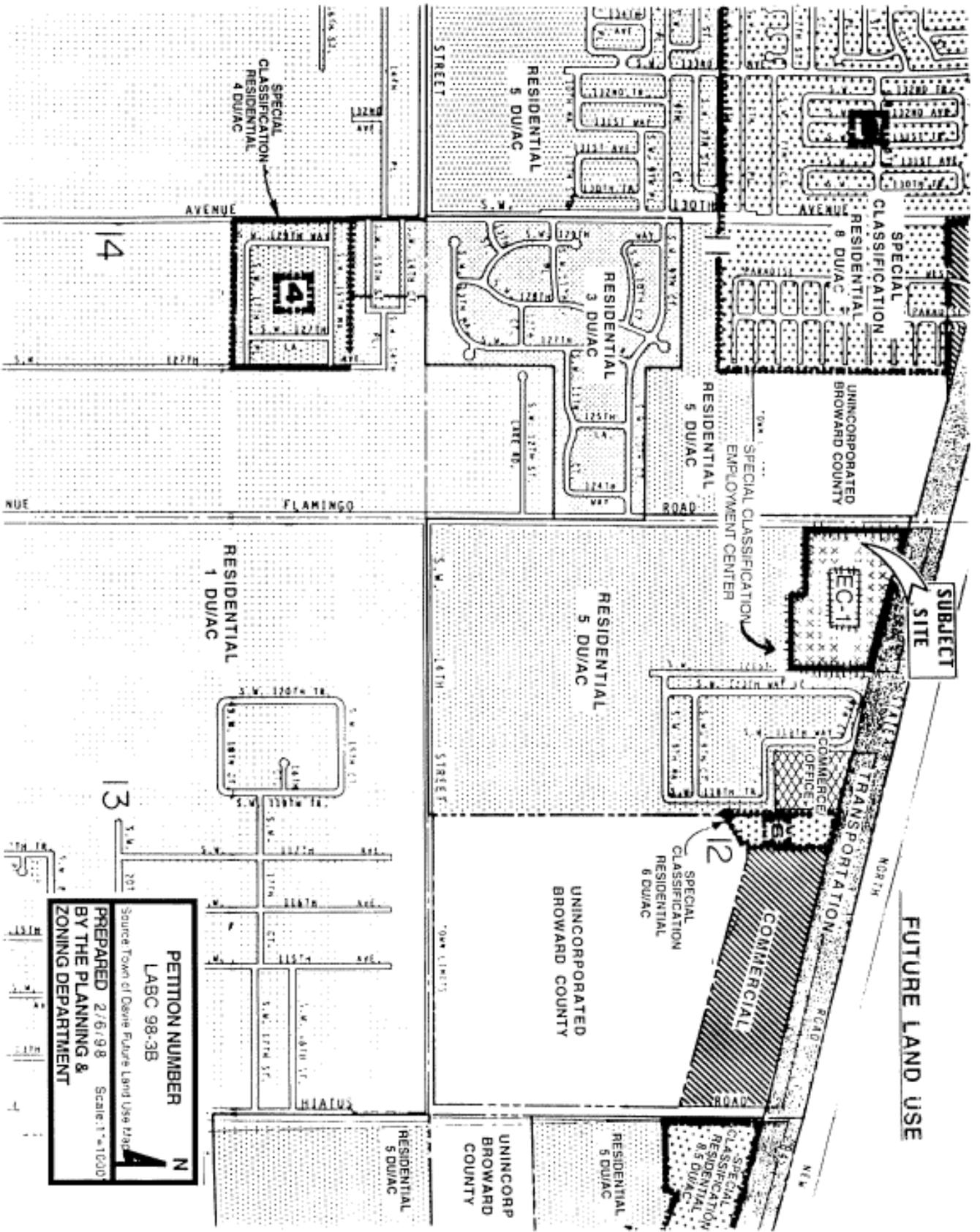

J. Thomas Beck, Chief
Bureau of Local Planning
Department of Community Affairs
2555 Shumard Oak Boulevard
Tallahassee, Florida 32399-2100

EXHIBIT B
TO TOWN OF DAVIE
COMPLIANCE AGREEMENT

1. The TOWN OF DAVIE will include the following additional limitations in an amendment to Town Ordinance 98-4 setting forth that:
 - a. Development of retail and restaurant uses within the amendment site shall be prohibited unless a satisfactory traffic mitigation plan is submitted to and approved by the Town and the Department addressing any increase in p.m. peak hour, peak direction vehicle trips between the proposed use and the uses available to the amendment site prior to the enactment of this Amendment.
 - b. The floor area ratio (building square footage to gross site area) within the amendment site shall be no greater than .25.
2. The TOWN OF DAVIE shall initiate a text amendment to its Comprehensive Plan in the next amendment cycle to modify the Level of Service standards for I-595 from Level of Service D at the peak hour in both directions to Level of Service D at the peak hour based upon the peak direction.
3. Actions taken by the Town or County in completing the processing of the Amendment shall not count against the twice a year limitation on the filing of amendments as set out in Florida Statute 163.3/84 (16).



PETITION NUMBER
 LABC 98-3B

Source: Town of Davie Future Land Use Map
 PREPARED 2/6/98 Scale: 1"=1000'
 BY THE PLANNING &
 ZONING DEPARTMENT

14

13

FUTURE LAND USE

SUBJECT SITE

EC-1

12

SPECIAL CLASSIFICATION RESIDENTIAL 4 DU/AC

RESIDENTIAL 5 DU/AC

SPECIAL CLASSIFICATION RESIDENTIAL 8 DU/AC

RESIDENTIAL 3 DU/AC

UNINCORPORATED BROWARD COUNTY

RESIDENTIAL 5 DU/AC

SPECIAL CLASSIFICATION EMPLOYMENT CENTER

RESIDENTIAL 5 DU/AC

COMMERCIAL

SPECIAL CLASSIFICATION RESIDENTIAL 6 DU/AC

UNINCORPORATED BROWARD COUNTY

UNINCORP BROWARD COUNTY

RESIDENTIAL 5 DU/AC

SPECIAL CLASSIFICATION RESIDENTIAL 8.5 DU/AC

RESIDENTIAL 5 DU/AC

RESIDENTIAL 1 DU/AC

PETITION NUMBER LABC 98-3B

Source: Town of Davie Future Land Use Map
 PREPARED 2/6/98 Scale: 1"=1000'
 BY THE PLANNING &
 ZONING DEPARTMENT