

TOWN OF DAVIE

TOWN COUNCIL AGENDA REPORT

TO: Mayor and Councilmembers

FROM/PHONE: Mark Kutney, AICP, Development Services Director / (954) 797-1101
Prepared by Todd Vargo, Planner I

SUBJECT: Resolution - Developers Agreement
DA 7-3-03 Pine Meadow Estates Plat, 8901 Orange Drive / Generally located 1,250 feet west of the intersection of Pine Island Road and Orange Drive.

AFFECTED DISTRICT: District 3

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 THE TOWN OF DAVIE, BROWARD COUNTY, AND PARKSIDE ESTATES ASSOCIATES, LTD. FOR THE ISSUANCE OF BUILDING PERMITS WHILE PLATTING IS IN PROGRESS RELATING TO THE PARKSIDE ESTATES OF DAVIE PLAT; TO ACKNOWLEDGE SUCH APPROVAL BY AFFIXING THEIR SIGNATURES TO SAID AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

REPORT IN BRIEF: On September 17, 2003 Town Council approved a subdivision plat known as the Parkside Estates of Davie Plat. The petitioner is requesting permission from the Town of Davie and Broward County for the Town of Davie to issue building permits for lots 8, 9 and 10 while platting is in process with the County's Development Management Division.

The Town of Davie is party to this Developers Agreement whereby the Town agrees that any building permits issued for the construction of said 'Improvements' as listed in Exhibit B of the agreement will be issued in accordance with Paragraph 2 of the agreement, and the Town of Davie reserves the right to evaluate the developers application for building permits for compliance with all existing laws, ordinances and regulations controlling the issuance of building permits within the Town. The issuance of building permits shall be at the discretion of the Town of Davie.

Paragraph 2 of the Agreement for the Issuance of Building Permits while Platting is in Process states "The County does not object to the issuance of building permits prior to recordation of the plat, subject to the following conditions to assure compliance with the Broward County Land Use Plan:

- (a) No building permit shall be issued unless and until developer shall document payment of the impact fees which are due for construction of the 'Improvements', pursuant to Chapter 5 Article IX, Broward County Code of Ordinances, the Land Development Code; said impact fees may be estimated in those instances when the County is not able to determine actual impact fees at the time of issuance of building permits; and

- (b) No certificate of occupancy, which is complimentary to the building permits, shall be issued unless and until the developer shall record in the Official Records of Broward County said plat which has been approved by the Broward County Board of County Commissioners; and
- (c) Should the developer fail to record the plat within eighteen (18) months of the date of approval, or otherwise allow the plat to expire, the building permits issued shall be revoked and any 'Improvements' constructed pursuant to such permits shall be removed within three (3) months of expiration of the current plat approval unless the plat is re-approved within three (3) months and recorded before expiration of the new approval. The County shall refund all impact fees paid for building permits where the 'Improvements' are demolished.
- (d) Conditions (b) and (c) shall appear on the face of the building permits. However, failure of the permits to so indicate shall not alter any terms of this Agreement or the right to enforce the terms of this Agreement.
- (e) Nothing in this Agreement shall prejudice the County's right to impose conditions on approval of the plat covering the lands described herein which are required by County plat ordinances and regulations or are otherwise necessary to insure the public health, safety, and welfare of the residents of Broward County."

PREVIOUS ACTIONS: None

CONCURRENCES: None

FISCAL IMPACT: None

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

Attachments: Resolution, Agreement for the Issuance of Building Permits while Platting is in Process, Map of Lots 8, 9, and 10, Future Land Use 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 THE TOWN OF DAVIE, BROWARD COUNTY, AND PARKSIDE ESTATES ASSOCIATES, LTD. FOR THE ISSUANCE OF BUILDING PERMITS WHILE PLATTING IS IN PROGRESS RELATING TO THE PARKSIDE ESTATES OF DAVIE PLAT; TO ACKNOWLEDGE SUCH APPROVAL BY AFFIXING THEIR SIGNATURES TO SAID AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE..

WHEREAS, Parkside Estates Associates, LTD. proposes to develop properties known as the Parkside Estates of Davie Plat; and

WHEREAS, Parkside Estates Associates, LTD. is desirous to obtain building permits from the Town of Davie prior to the approval of the Parkside Estates of Davie Plat by the Board of County Commissioners.

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, Parkside Estates Associates, LTD., and the Town of Davie, whereby the Town of Davie agrees that any building permits issued for the construction of said 'Improvements' as listed in Exhibit B of the agreement will be issued in accordance with Paragraph 2 of the agreement, and the Town of Davie reserves the right to evaluate the developers application for building permits for compliance with all existing laws, ordinances and regulations controlling the issuance of building permits within the Town. The issuance of building permits shall be at the discretion of the Town of Davie.

Paragraph 2 of the Agreement for the Issuance of Building Permits while Platting is in Process states "The County does not object to the issuance of building permits prior to recordation of the plat, subject to the following conditions to assure compliance with the Broward County Land Use Plan:

- (f) No building permit shall be issued unless and until developer shall document payment of the impact fees which are due for construction of the 'Improvements', pursuant to Chapter 5 Article IX, Broward County Code of Ordinances, the Land Development Code; said impact fees may be estimated in those instances when the County is not able to determine actual impact fees at the time of issuance of building permits; and
- (g) No certificate of occupancy, which is complimentary to the building permits, shall be issued unless and until the developer shall record in the Official Records of Broward County said plat which has been approved by the Broward County Board of County Commissioners; and
- (h) Should the developer fail to record the plat within eighteen (18) months of the date of approval, or otherwise allow the plat to expire, the building permits issued shall be revoked and any 'Improvements' constructed pursuant to such permits shall be removed within three (3) months of expiration of the current plat approval unless the plat is re-approved within three (3) months and recorded before expiration of the new approval. The County shall refund all impact fees paid for building permits where the 'Improvements' are demolished.

- (i) Conditions (b) and (c) shall appear on the face of the building permits. However, failure of the permits to so indicate shall not alter any terms of this Agreement or the right to enforce the terms of this Agreement.
- (j) Nothing in this Agreement shall prejudice the County's right to impose conditions on approval of the plat covering the lands described herein which are required by County plat ordinances and regulations or are otherwise necessary to insure the public health, safety, and welfare of the residents of Broward County."

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 _____, 2003.

MAYOR/COUNCILMEMBER

Attest:

TOWN CLERK

APPROVED THIS _____ DAY OF _____, 2003.

Return recorded copy to:

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

Document prepared by:

Carnahan, Proctor, & Cross, Inc.
6101 W. Atlantic Blvd.
Margate, FL 33063

**AGREEMENT FOR THE ISSUANCE OF BUILDING
PERMITS WHILE PLATTING IS IN PROGRESS**

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

Parkside Estates Associates LTD., its successors and assigns, hereinafter referred to as "DEVELOPER."

[AND IF PROPERTY IS LOCATED WITHIN A MUNICIPALITY]

The CITY of Town of Davie, a municipal corporation, created and existing under the laws of the state of Florida, hereinafter referred to as "CITY".

WHEREAS, DEVELOPER, is the owner of a certain parcel of land, described in Exhibit "A" attached hereto and known as the Parkside Estates of Davie Plat, Plat No./Clerk's File No. 083-MP-02, hereinafter referred to as the "PLAT", which was approved by the Board of County Commissioners on _____, 20____; and

WHEREAS, DEVELOPER is now desirous of obtaining building permits so that DEVELOPER may construct the "Improvements" set forth within Exhibit "B" within the boundaries of said PLAT; and

WHEREAS, building permits may not ordinarily be issued to DEVELOPER for construction of said Improvements within the boundaries of the PLAT, prior to recordation of said PLAT; and

WHEREAS, on _____, 20____, the Board of County Commissioners authorized the issuance of building permits to DEVELOPER for

construction of said Improvements within the boundaries of the PLAT prior to plat recordation; and

WHEREAS, DEVELOPER shall be required to pay actual or estimated impact fees to the COUNTY for the "Improvements" which DEVELOPER wishes to construct prior to issuance of the building permits; and

WHEREAS, the COUNTY requested and DEVELOPER agreed that, prior to the issuance of building permits, the parties shall enter into an Agreement setting forth specific conditions applicable to the issuance of such building permits; and

WHEREAS, this Agreement will facilitate the construction of the "Improvements" within the boundaries of the PLAT by DEVELOPER during the time that preparation for the recordation of the PLAT of the property is proceeding; NOW, THEREFORE,

IN CONSIDERATION of the promises and mutual covenants hereinafter contained, the parties do agree as follows:

1. The above recitals and representations are true and correct and are incorporated herein.
2. The COUNTY does not object to the issuance of building permits to DEVELOPER for construction of the "Improvements", within the boundaries of the PLAT prior to the recordation of said PLAT, subject to the following conditions to assure compliance with the Broward County Land Use Plan:
 - (a) No building permit shall be issued unless and until DEVELOPER shall document payment of the impact fees which are due for construction of the "Improvements", pursuant to Chapter 5, Article IX, Broward County Code of Ordinances, the Land Development Code; said impact fees may be estimated in those instances when the COUNTY is not able to determine actual impact fees at the time of issuance of the building permits; and
 - (b) No certificate of occupancy, which is complementary to the building permits, shall be issued unless and until DEVELOPER shall record in the Official Records of Broward County said PLAT which has been approved by the Broward County Board of County Commissioners; and
 - (c) Should the DEVELOPER fail to record the PLAT approved by the Board on _____, 20____, within eighteen (18) months of the date of approval, or otherwise allow the PLAT to expire, the building permits issued shall be revoked and any "Improvements" constructed pursuant to such permits shall be removed within three (3) months of expiration of the current PLAT approval unless the PLAT is re-approved within three (3) months and

recorded before expiration of the new approval. The COUNTY shall refund all impact fees paid for building permits where the "Improvements" are demolished.

- (d) Conditions 2(b) and (c) shall appear on the face of the building permits. However, failure of the permits to so indicate shall not alter any terms of this Agreement or the right to enforce the terms of this Agreement.
 - (e) Nothing in this Agreement shall prejudice the COUNTY'S right to impose conditions on approval of the PLAT covering the lands described herein which are required by COUNTY plat ordinances and regulations or are otherwise necessary to insure the public health, safety, and welfare of the residents of Broward County.
3. If the property is located within a municipality, the CITY agrees that any building permits issued for the construction of said "Improvements" will be issued in accordance with paragraph 2, and the CITY reserves the right to evaluate DEVELOPER'S application for building permits for compliance with all existing laws, ordinances and regulations controlling the issuance of building permits for construction within the CITY. The issuance of building permits shall be at the discretion of the CITY. If the property is located within the unincorporated area, the COUNTY shall issue building permits in accordance with paragraph 2, and reserves the right to evaluate DEVELOPER'S application for building permits for compliance with all existing laws, ordinances and regulations controlling the issuance of building permits for construction within the unincorporated area of Broward County.
 4. DEVELOPER agrees not to occupy the "Improvements" unless and until a certificate of occupancy has been issued.
 5. In those instances when estimated impact fees are paid they shall be adjusted at the time of PLAT recordation and any underpayment or overpayment shall be taken into consideration.
 6. The DEVELOPER assumes the risks associated with constructing the "Improvements" prior to PLAT recordation. The issuance of the building permits before final PLAT recordation shall not be considered as a grant to DEVELOPER of any vested right whatsoever for the use, occupancy, or completion of the construction of "Improvements" within the boundaries of the PLAT nor shall the COUNTY or the CITY (if the property is in a city) be deemed estopped from enforcing the terms of this Agreement because of the issuance of the building permits or construction completed pursuant to such permits. Furthermore, if the presently approved PLAT expires without the PLAT being recorded, the DEVELOPER shall be required to meet all land development regulations in effect

at the time the new Plat is submitted and shall be subject to new concurrency determinations.

7. FORM OF SECURITY.

- letter of credit
- (a) DEVELOPER is obligated to maintain with BROWARD COUNTY adequate security in the form of a ~~surety bond~~, as set forth in Exhibit "C," attached hereto and made a part hereof, in the amount of \$ _____ which is acceptable to the COUNTY and which will guarantee the DEVELOPER'S removal and demolition of all "Improvements" if DEVELOPER fails to record the PLAT within eighteen (18) months of the date of approval by the Board of County Commissioners.
 - (b) In the event DEVELOPER defaults under the terms of this Agreement, COUNTY shall be entitled to draw against the security for the amount set forth above, plus costs and interest as set out herein. If COUNTY draws against the security and the amount recovered is less than the amount due, COUNTY may maintain an action against DEVELOPER in a court of competent jurisdiction for the difference between any sums obtained and the amount due, plus costs and interest accrued from the due date at the rate of twelve (12) per cent per annum.
 - (c) DEVELOPER shall ensure that the security remains valid and in full force and effect until the PLAT is recorded. Expiration of the security prior to DEVELOPER'S satisfaction of such obligations, or notice to Broward County that the security will expire or be canceled prior to DEVELOPER'S satisfaction of all obligations hereunder, shall constitute a default of this Agreement.
 - (d) In the event DEVELOPER defaults under the terms of this Agreement and COUNTY draws on the security, DEVELOPER shall be responsible for COUNTY'S reasonable costs incurred in drawing against the security.
 - (e) In the event the security is disaffirmed by the issuing institution and the County receives timely notice of the disaffirmance, COUNTY shall send notice to DEVELOPER according to the notice provisions of this agreement and DEVELOPER shall have one (1) month from the date of such notice to provide substitute security in a form acceptable to COUNTY. If DEVELOPER fails to provide acceptable substitute security within one (1) month, COUNTY may record a document entitled "Notice of Lien for Demolition Amount" which shall constitute a lien on the property described in Exhibit "A" for the amount set forth above.

8. RECORDATION. This Agreement shall be recorded in the Public Records of Broward County, Florida, at the DEVELOPER'S expense. Recordation of the PLAT shall be an automatic release of the obligations of DEVELOPER set forth herein. COUNTY shall release the security if the PLAT is not recorded when the "Improvements" are demolished.
9. 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 sits, and shall be governed by the laws of the State of Florida.
10. 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.
11. 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.
12. 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.
13. 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.
14. 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.
15. 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.

16. 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 the Agreement.

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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 Chair or Vice Chair, authorized to execute same by Board action on the _____ day of _____, 20____, _____, signing by and through its _____, duly authorized to execute same, and the CITY, 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 _____, 20____

Approved as to form
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____

CITY
(If Property is located within a City)

WITNESSES:

TOWN of Davie

By _____
Mayor-Commissioner
____ day of _____, 20__

ATTEST:

City Clerk

By _____
City Manager
____ day of _____, 20__

APPROVED AS TO FORM:

By _____
City Attorney

EXHIBIT "A"

LEGAL DESCRIPTION

A PORTION OF TRACTS 17 AND 18 OF SECTION 29, TOWNSHIP 50 SOUTH, RANGE 41 EAST, AND A PORTION OF THE ADJACENT 30.00 FOOT RIGHT-OF-WAY, ALL OF "NEWMAN'S SURVEY", ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 2 AT PAGE 26 OF THE PUBLIC RECORDS OF DADE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF THE SOUTHEAST ONE-QUARTER OF SAID SECTION 29; THENCE SOUTH 02°05'55" EAST, ALONG THE EAST LINE OF SAID SECTION 29, ALSO BEING THE EAST LINE OF SAID TRACT 17, A DISTANCE OF 218.18 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE SOUTH 02°05'55" EAST, ALONG SAID EAST LINE, A DISTANCE OF 1171.50 FEET; THENCE SOUTH 88°32'16" WEST, ALONG THE NORTH RIGHT-OF-WAY LINE OF THE SOUTH FLORIDA WATER MANAGEMENT DISTRICT C-11-3 CANAL, AS SHOWN ON THE FLORIDA DEPARTMENT OF TRANSPORTATION RIGHT-OF-WAY MAP FOR STATE ROAD 818 (SECTION 86015-2510), A DISTANCE OF 1320.16 FEET; THENCE NORTH 02°04'19" WEST, ALONG THE WEST LINE OF SAID TRACT 18, A DISTANCE OF 1171.17 FEET; THENCE NORTH 88°31'25" EAST, ALONG A LINE 218.17 FEET SOUTH OF AND PARALLEL WITH THE NORTH LINE OF SAID TRACTS 18 AND 17, A DISTANCE OF 1319.61 FEET TO THE POINT OF BEGINNING.

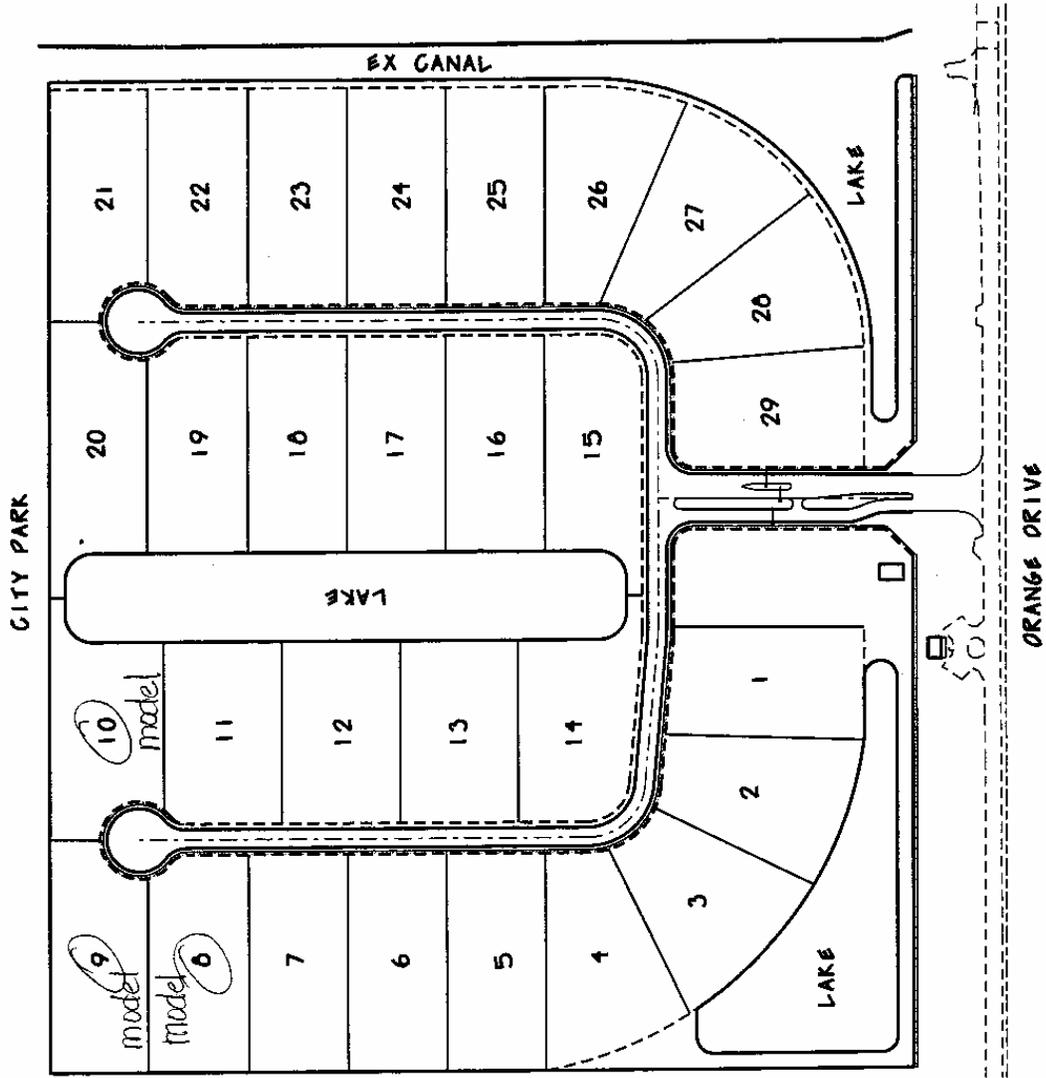
SAID LANDS SITUATE IN THE TOWN OF DAVIE, BROWARD COUNTY, FLORIDA, AND CONTAIN 35.490 ACRES, MORE OR LESS.

EXHIBIT "B"

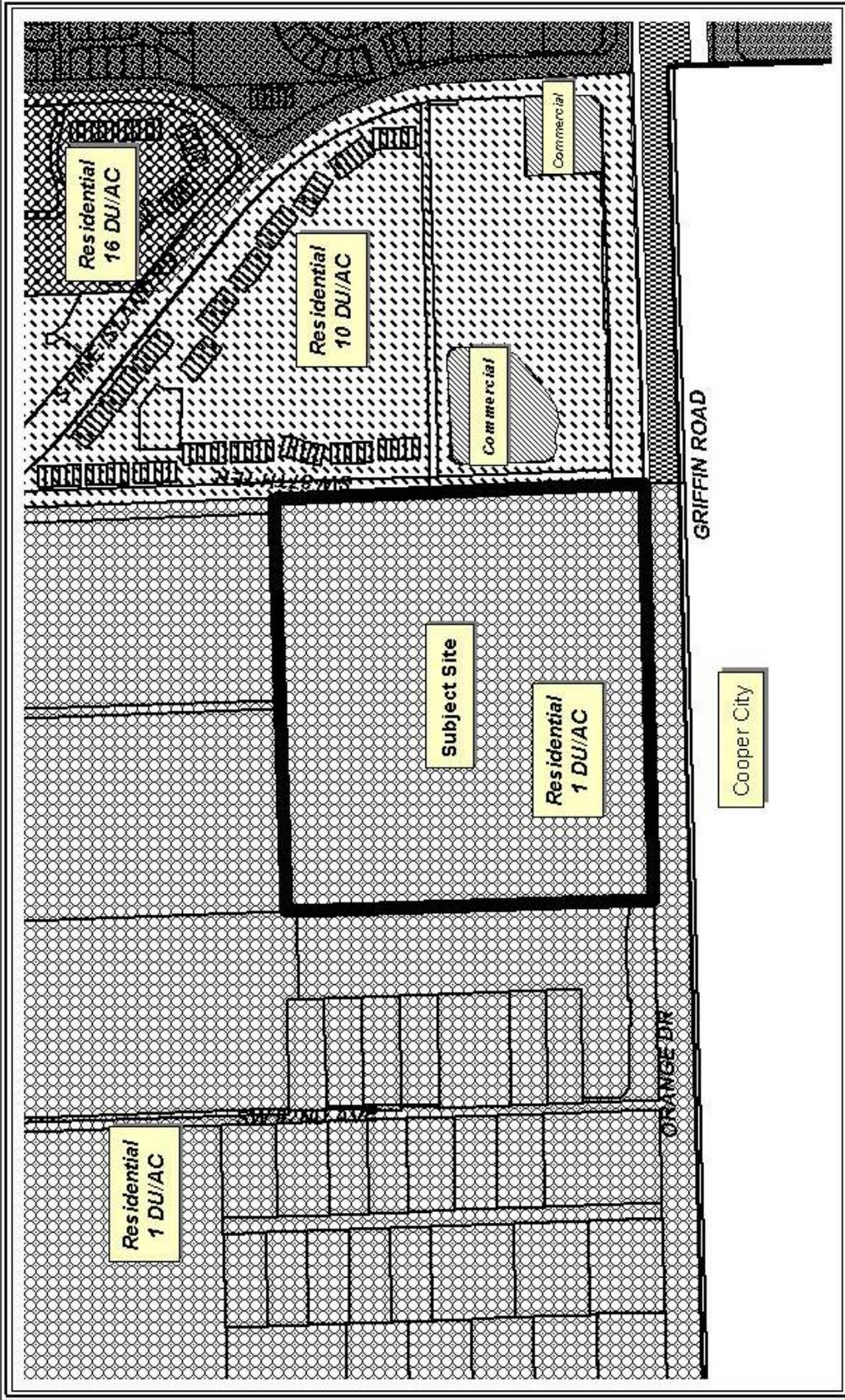
LIST OF IMPROVEMENTS

THREE (3) SINGLE-FAMILY DWELLING UNITS ON PROPOSED LOTS 8, 9 & 10.

Map of Lots 8, 9, and 10

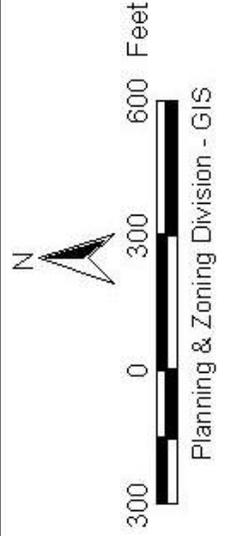


'PARKSIDE ESTATES'
DAVIE, FLORIDA

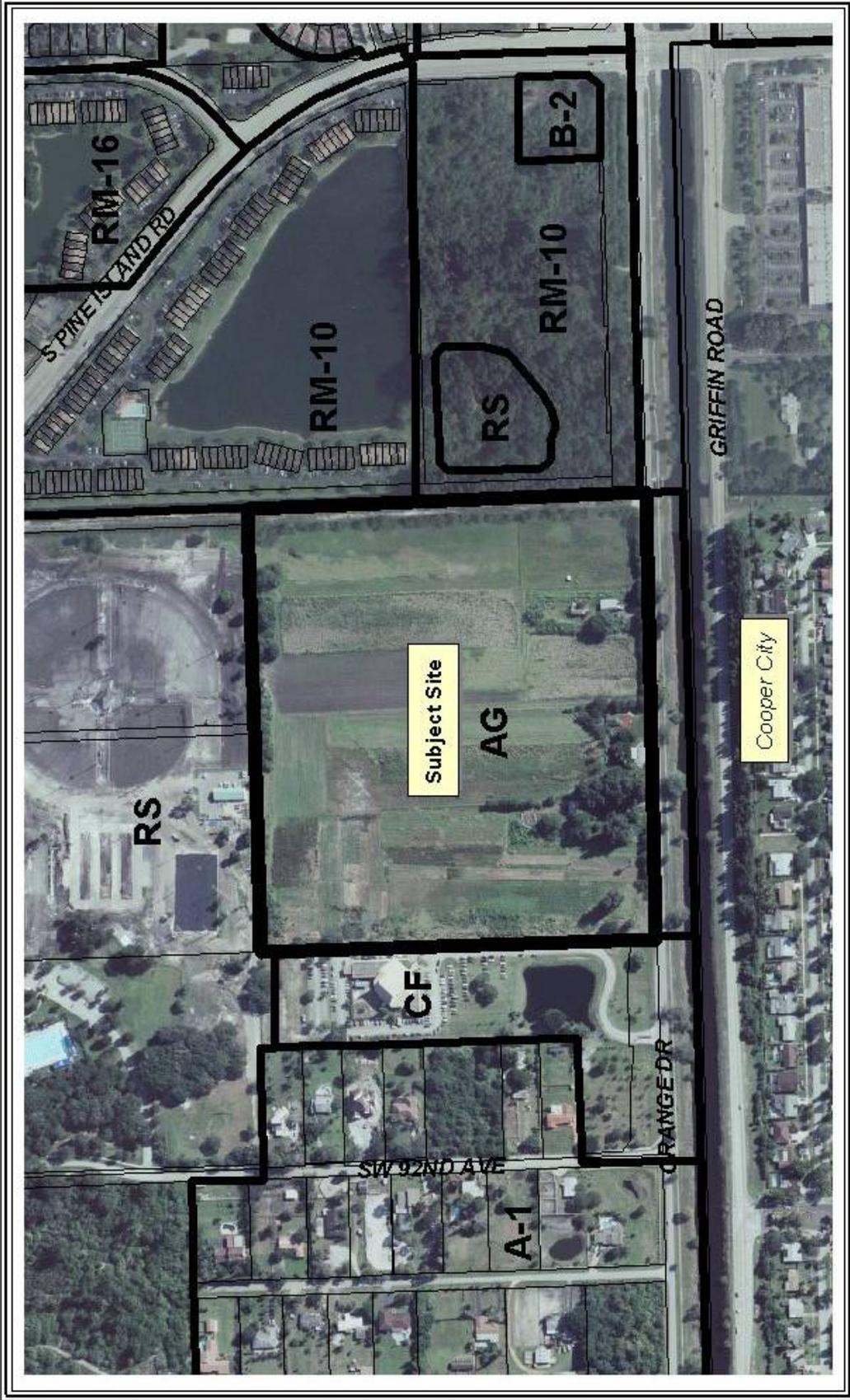


DEVELOPERS AGREEMENT
DA 7-3-03
Future Land Use Map

Prepared By: TAV
 Date Prepared: 9/00/03



Planning & Zoning Division - GIS



Date Flown:
12/31/00



Planning & Zoning Division - GIS



DEVELOPERS AGREEMENT

DA 7-3-03

Zoning and Aerial Map

Prepared By: TAV
Date Prepared: 9/9/03

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