

RESOLUTION NO. R-2004-2277

RESOLUTION APPROVING ZONING PETITION DOA2004-230
DEVELOPMENT ORDER AMENDMENT
PETITION OF FOX PROPERTY VENTURE
BY GREENBERG TRAUIG, AGENT
(FOX DRI SOUTH MUPD)

WHEREAS, the Board of County Commissioners, as the governing body of Palm Beach County, Florida, pursuant to the authority vested in Chapter 163 and Chapter 125, Florida Statutes, and the Palm Beach County Unified Land Development Code, is authorized and empowered to consider petitions relating to zoning; and

WHEREAS, the notice and hearing requirements, as provided for in Article 2 of the Palm Beach County Unified Land Development Code, have been satisfied; and

WHEREAS, Zoning Petition DOA2004-230 was presented to the Board of County Commissioners at a public hearing conducted on October 28, 2004; and

WHEREAS, the Board of County Commissioners has considered the evidence and testimony presented by the petitioner and other interested parties, and the recommendations of the various county review agencies; and

WHEREAS, this approval is subject to Article 2.E (Compliance with Time Limitations), of the Palm Beach County Unified Land Development Code and other provisions requiring that development commence in a timely manner; and

WHEREAS, the Board of County Commissioners has considered the findings in the staff report and the following findings of fact:

1. This Development Order Amendment is consistent with the Palm Beach County Comprehensive Plan.
2. This Development Order Amendment complies with the relevant and appropriate portions of Article 6, Supplementary Use Standards; of the Palm Beach County Unified Land Development Code.
3. This Development Order Amendment is consistent with the requirements of the Palm Beach County Unified Land Development Code.
4. This Development Order Amendment, with conditions as adopted, is compatible as defined in the Palm Beach County Unified Land Development Code and generally consistent with the uses and character of the land surrounding and in the vicinity of the land proposed for development.
5. This Development Order Amendment, with conditions as adopted, complies with the standards imposed on it by applicable provisions of the Palm Beach County Unified Land Development Code for use, layout, function, and general development characteristics.
6. This Development Order Amendment meets applicable local land development regulations.
7. This Development Order Amendment, with conditions as adopted, minimizes adverse effects, including visual impact and intensity of the proposed use on adjacent lands.
8. This Development Order Amendment has a concurrency determination and complies with Article 11 (Adequate Public Facility Standards) of the Palm Beach County Unified Land Development Code.

9. This Development Order Amendment, with conditions as adopted, minimizes environmental impacts, including but not limited to water, air, stormwater management, wildlife, vegetation, wetlands and the natural functioning of the environment.
10. This Development Order Amendment, with conditions as adopted, will result in logical, timely and orderly development patterns.

WHEREAS, Article 2.K.3.b of the Palm Beach County Unified Land Development Code requires that the action of the Board of County Commissioners be adopted by resolution.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, that Zoning Petition DOA2004-230, the petition of Fox Property Venture, by Greenberg Traurig, agent, for a Development Order Amendment to modify a DRI condition of approval on a parcel of land legally described in EXHIBIT A, attached hereto and made a part hereof, and generally located as shown on a vicinity sketch attached as EXHIBIT B, attached hereto and made a part hereof, was approved on October 28, 2004, subject to the conditions of approval described in EXHIBIT C, attached hereto and made a part hereof.

Commissioner Masilotti moved for the approval of the Resolution.

The motion was seconded by Commissioner Koons and, upon being put to a vote, the vote was as follows:

Karen T. Marcus, Chair	- Aye
Tony Masilotti, Vice Chairman	- Aye
Jeff Koons	- Aye
Warren H. Newell	- Aye
Mary McCarty	- Aye
Burt Aaronson	- Aye
Addie L. Greene	- Aye

The Chair thereupon declared that the resolution was duly passed and adopted on October 28, 2004.

Filed with the Clerk of the Board of County Commissioners on 15 day of November, 2004

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

PALM BEACH COUNTY, FLORIDA
BY ITS BOARD OF COUNTY
COMMISSIONERS

DOROTHY H. WILKEN, CLERK

BY: 
COUNTY ATTORNEY

BY: 
DEPUTY CLERK

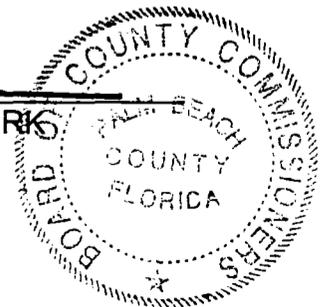


EXHIBIT A

LEGAL DESCRIPTION

PARCEL "4" OF FOX PROPERTIES PLAT, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 83, PAGES 65 THROUGH 67 OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA, LESS THE EAST 300.00 FEET THEREOF.

SAID LANDS SITUATE, LYING AND BEING IN PALM BEACH COUNTY, FLORIDA. SUBJECT TO ALL PERTINENT MATTERS OF RECORD. CONTAINING 9.274 ACRES, MORE OR LESS.

EXHIBIT B
VICINITY SKETCH

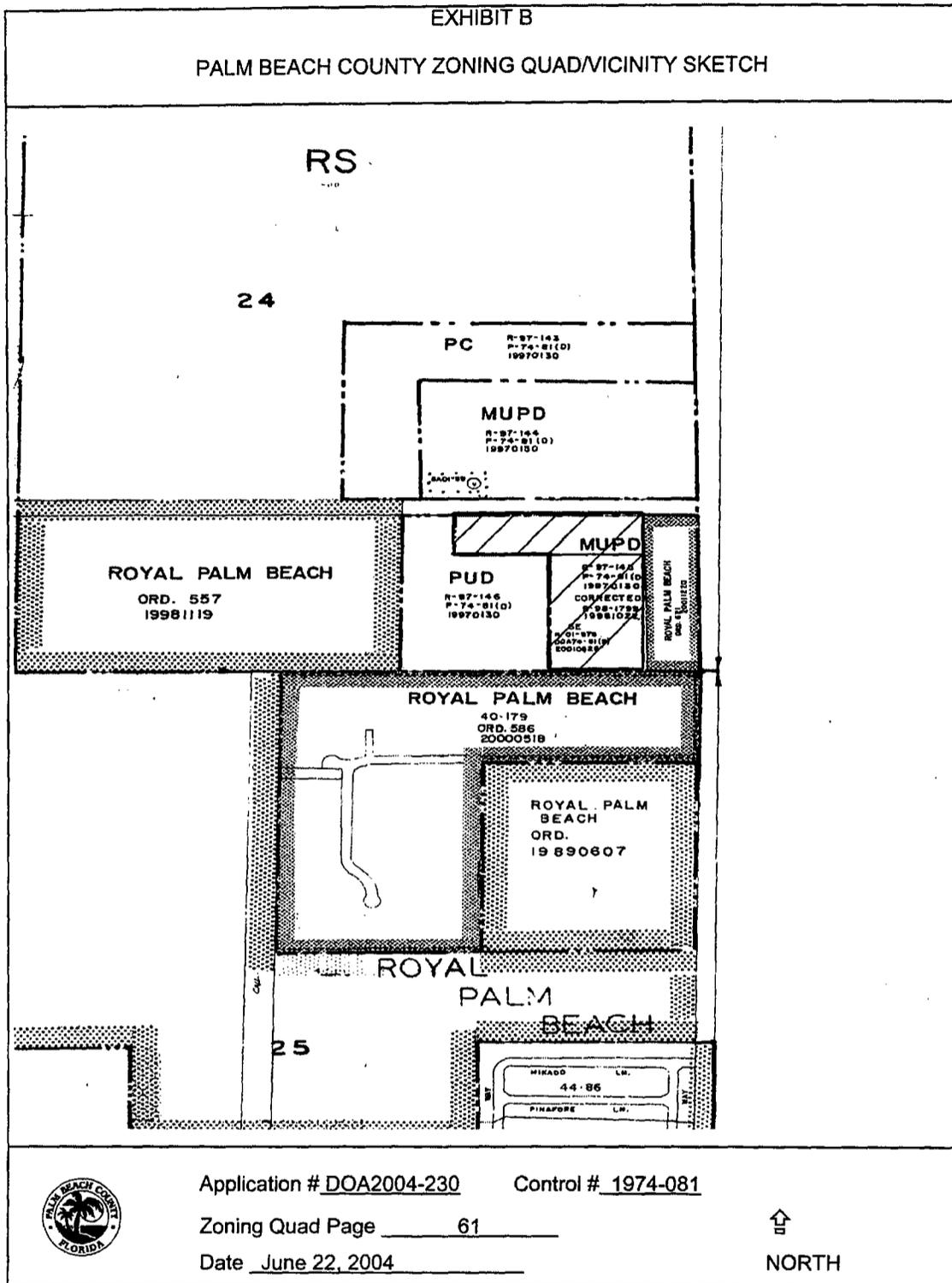


EXHIBIT C

CONDITIONS OF APPROVAL

NOTE: All previous conditions of approval are shown in **BOLD** and will be carried forward with this petition unless expressly modified.

A. ALL PETITIONS

1. All previous conditions of approval applicable to the subject property, as contained in Resolutions R-2001-0975 (Petition 74-81(E)), have been consolidated as contained herein. The petitioner shall comply with all previous conditions of approval and deadlines previously established by Section 5.8 of the ULDC and the Board of County Commissioners, unless expressly modified. (ONGOING: MONITORING-Zoning)
2. **All conditions contained in Resolution R-74-699 are hereby repealed.** (MONITORING) (Previous Condition A. 2 of Resolution R-2001-0975, Petition 74-81(E))
3. **The petitioner shall comply with all applicable previous conditions of approval contained in Resolution R-94-487 and the Final Order No. LW-93-037 for the State of Florida Land and Water Adjudicatory Commission Stipulated Settlement Agreement for FLWAC Case No. 74-18 and DOA Hb Case No. 77-0846, unless expressly modified.** (ONGOING:MONITORING-Zoning) (Previous Condition A. 3 of Resolution R-2001-0975, Petition 74-81(E))
4. **Development of the site is limited to the uses and general site design indicated on the master plan approved by the Board of County Commissioners. The approved master plan is Exhibit C of Settlement Agreement No. 77-0846, Final Order No. LW-93-037. All modifications must be approved by the Board of County Commissioners unless the proposed changes are in accordance with the ULDC or Settlement Agreement No. 77-0846.** (ONGOING:ZONING-Zoning) (Previous Condition A.4 of Resolution R-2001-0975, Petition 74-81(E))

B. ANNEXATION

1. **The property owner of the five (5) acre Parcel 4B shall voluntarily annex into the Village of Royal Palm Beach upon closing on the property subject to Palm Beach County review and approval.** NOTE:[COMPLETED] (Previous Condition B.1 of Resolution R-2001-0975, Petition 74-81(E))

C. AUTO SERVICE/GAS SALES

1. **All facilities providing gasoline sales to the general public shall provide air and water to the public at no charge.** (ONGOING:CODE ENF-Zoning) (Previous Condition C.1 of Resolution R-2001-0975, Petition 74-81(E))

D. BUILDING AND SITE DESIGN

1. Condition A. 2 of Resolution R-2001-0975, Petition 74-81(E) which currently states:

A maximum of 150,000 gross commercial floor area may be transferred from Pod 5 to Pod 4 of the DRI. This square footage may be permitted in combination with a maximum 400 resident CLF/nursing home. (DRC:ZONING)

Is hereby amended to read:

A maximum of 110,000 gross commercial floor area may be transferred from Parcel 5 (Fox North MUPD) to Parcel 4 (Fox South MUPD) of the DRI. This square footage may be permitted in combination with a maximum 400 resident CLF/nursing home, or any Fox DRI MUPD approved use which does not generate more external traffic than that currently approved for the 400 resident CLF/nursing home. (DRO:ZONING/ENG-Zoning)

2. **A maximum of five (1) one acre outparcels shall be permitted along the south side of Okeechobee Boulevard.** (DRO:ZONING-Zoning) (Previous Condition D.2 of Resolution R-2001-0975, Petition 74-81(E))

E. ENGINEERING

1. **The Property owner shall construct on SR 7 at the project south entrance into Parcel 4: (Control Number 0703-503)**

A) **Right turn lane north approach;**

B) **Directional left turn lane south approach.**

- 1) **This construction shall be concurrent with the paving and drainage improvements for Parcel 4. Any and all costs associated with the construction shall be paid by the property owner. These costs shall include, but are not limited to, utility relocations and acquisition of any additional required right-of-way.** (BLDG PERMIT:MONITORING-Eng)(Previous Condition E.1.B.1 of Resolution R-2001-0975, Petition 74-81(E))
- 2) **Permits required by Palm Beach County for this construction shall be obtained prior to the issuance Building Permits for Parcel 4. (Control Number 0703-503)** (BLDG PERMIT:MONITORING-Eng) (Previous Condition E.1.B.2 of Resolution R-2001-0975, Petition 74-81(E))
- 3) **Construction shall be completed prior to the issuance of Certificates of Occupancy for Parcel 4. (CO: MONITORING-Eng) (Previous Condition E.1.B.3 of Resolution R-2001-0975, Petition 74-81(E))**

2. **LANDSCAPE WITHIN MEDIAN OF STATE ROAD 7**

- A. **Prior to issuance of a building permit, the property owner shall apply to the Palm Beach County Engineering and Public Works Department for a permit to landscape the adjacent median of SR 7 Road Right-of-Ways adjacent to Parcel 4. This permit, to be completed by the property owner, shall name Palm Beach County as the applicant. As part of this permit process, the property owner shall enter into a Right of Way, Landscape Maintenance, Removal, and Indemnification Agreement. When landscaping is permitted by the Florida Department of Transportation, landscaping shall, at a minimum, consist of the "Low Cost Planting Concept" outlined in the Palm Beach County Engineering and Public Works Department latest revision to the Streetscape Standards. The property owner shall also be responsible for supplementing any existing landscape material previously planted in this median and all new landscape material shall be consistent with the landscaping theme adopted for this**

roadway. All landscape material, installation, and maintenance requirements shall be subject to the standards set forth by the Streetscape Standards. If all xeriscape material is utilized, the watering of the plant material during the initial heal-in period shall be the responsibility of the property owner. Alternative species other than those listed in the County standards may be allowed subject to approval by the County Engineer. (BLDG PERMIT:MONITORING - Eng) (Previous Condition E.2.A of Resolution R-2001-0975, Petition 74-81(E))

- B. **All required median landscaping, including an irrigation system if required, shall be installed at the property owners expense. All landscaping, paver block or similar materials shall be the perpetual maintenance obligation of the petitioner and its successors, or assigns or duly established Property Owner's Association or maintenance may be assumed by the County upon payment equal to the long term maintenance cost, in accordance with the adopted policy approved by the Board of County Commissioners. All existing landscape material shall also be the perpetual maintenance obligation of the petitioner and its successors, heirs or assignees or duly established Property Owner's Association and/or Homeowners's Association. Perpetual maintenance includes, but is not limited to, pruning, fertilizing, irrigation, and alternate watering of Xeriscape material during periods of drought in order to maintain healthy plant material. All landscape material shall be installed prior to the issuance of a certificate of occupancy for Parcel 4. (Control Number 0703-503) (CO: MONITORING-Eng) (Previous Condition E.2.B of Resolution R-2001-0975, Petition 74-81(E))**
- C. **If the Developer does not enter into an agreement with Palm Beach County to assume the maintenance responsibility, then appropriate property owner's documents or other restrictive covenant documents, evidencing the maintenance obligation shall be established or amended as required and shall be approved and recorded prior to the issuance of Building Permits for Parcel 4. (Control Number 0703-503) (BLDGPERMIT: MONITORING-Eng) (Previous Condition E.2.C of Resolution R-2001-0975, Petition 74-81(E))**

- 3. Prior to issuance of a Building Permit for Parcel 4 (Fox South MUPD), the property owner shall replat this parcel in accordance with provisions of Article 11 of the Unified Land Development Code. (BLDG PERMIT: MONITORING-Eng)

F. CLF/NURSING HOME

- 1. **The CLF/nursing home shall be limited to a combined maximum of 400 residents. (DRO:ZONING-Zoning) (Previous Condition F.1 of Resolution R-2001-0975, Petition 74-81(E))**

G. LANDSCAPING

- 1. **All landscaping shall be in conformance with previous Exhibit C of Settlement Agreement No. 77-0846, Final Order No. LW-93-037. (CO:LANDSCAPE-Zoning) (Previous Condition G.2 of Resolution R-2001-0975, Petition 74-81(E))**

H. MUPD

1. **Permitted and requested uses shall be allowed as indicated on Exhibit C of Settlement Agreement Case #770846, Final Order #LW93037.** (DRO: ZONING-Zoning) (Previous Condition H.1 of Resolution R-2001-0975, Petition 74-81(E))

I. PARKING

1. **Overnight storage or parking of delivery vehicles or trucks shall not be permitted on site, except within designated loading and delivery areas.** (ONGOING: CODE ENF-Zoning) (Previous Condition I.1 of Resolution R-2001-0975, Petition 74-81(E))
2. **Prior to site plan certification by the Development Review Committee (DRC), the site plan shall be amended to include shopping cart storage and retrieval corrals in all retail parking areas.** (DRO ZONING-Zoning) (Previous Condition I.2 of Resolution R-2001-0975, Petition 74-81(E))

J. PLANNING

1. Prior to issuance of any additional building permits for Parcel 4 (Fox South MUPD), the property owner shall submit a traffic equivalency for the 400 resident CLF/nursing home use which shall include the proposed uses and square footages or other intensity indicators to the County Engineer and the Planning Division for review and approval to ensure that intensity/density thresholds assigned to Parcel 4 (Fox South MUPD), consistent with Condition D.1, and Parcel 5 (Fox North MUPD) of this DRI are not exceeded. (BLDG PERMIT: PLANNING-Planning/Eng)

K. SIGNS

1. **Freestanding point of purchase signs shall be in conformance with previous Exhibit C of Settlement Agreement No. 77-0846, Final Order No. LW-93-037.** (CO:BLDG-Zoning) (Previous Condition J.1 of Resolution R-2001-0975, Petition 74-81(E))

L. COMPLIANCE

1. Condition K.1 of Resolution R-2001-0975, Petition 74-81(E)) which currently states:

In granting this approval, the Board of County Commissioners relied upon the oral and written representations of the petitioner both on the record and as part of the application process. Deviations from or violation of these representations shall cause the approval to be presented to the Board of County Commissioners for review under the compliance condition of this approval. (ONGOING: MONITORING - Zoning)

Is hereby amended to read:

In granting this approval, the Board of County Commissioners relied upon the oral and written representations of the petitioner both on the record and as part of the application process. Deviations from or violation of these representations shall cause the approval to be presented to the Board of County Commissioners for review under the compliance condition of this approval. (ONGOING: MONITORING - Zoning)

2. Condition K.2 of Resolution R-2001-0975, Petition 74-81(E)) which currently states:

Failure to comply with any of the conditions of approval for the subject property at any time may result in:

- a. **The issuance of a stop work order; the issuance of a cease and desist order; the denial or revocation of a building permit; the denial or revocation of a Certificate of Occupancy; the denial of any other permit, license or approval to any developer, owner, lessee, or user of the subject property; the revocation of any other permit, license or approval from any developer, owner, lessee, or user of the subject property; revocation of any concurrency; and/or**
- b. **The revocation of the Official Map Amendment, Conditional Use, Requested Use, Development Order Amendment, and/or any other zoning approval; and/or**
- c. **A requirement of the development to conform with the standards of the ULDC at the time of the finding of non-compliance, or the addition or modification of conditions reasonably related to the failure to comply with existing conditions; and/or**
- d. **Referral to code enforcement; and/or**
- e. **Imposition of entitlement density or intensity.**

Staff may be directed by the Executive Director of PZ&B or the Code Enforcement Division to schedule a Status Report before the body which approved the Official Zoning Map Amendment, Conditional Use, Requested Use, Development Order Amendment, and/or other zoning approval, in accordance with the provisions of Section 5.8 of the ULDC, in response to any flagrant violation and/or continued violation of any condition of approval Appeals of any departmental administrative actions hereunder may be taken to the Palm Beach County Board of Adjustment or as otherwise provided in the Unified Land Development Code (ULDC), as amended. Appeals of any revocation of an Official Zoning Map Amendment, Conditional Use, Requested Use, Development Order Amendment or other actions based on a Board of County Commission decision shall be by petition for writ of certiorari to the Fifteenth Judicial Circuit. (MONITORING)

Is hereby amended to read:

Failure to comply with any of the conditions of approval for the subject property at any time may result in:

- a. **The issuance of a stop work order; the issuance of a cease and desist order; the denial or revocation of a building permit; the denial or revocation of a Certificate of Occupancy; the denial of any other permit, license or approval to any developer, owner, lessee, or user of the subject property; the revocation of any other permit, license or approval from any developer, owner, lessee, or user of the subject property; revocation of any concurrency; and/or**
- b. **The revocation of the Official Map Amendment, Conditional Use, Requested Use, Development Order Amendment, and/or any other zoning approval; and/or**
- c. **A requirement of the development to conform with the standards of the ULDC at the time of the finding of non-compliance, or the addition or modification of conditions reasonably related to the failure to comply with existing conditions; and/or**
- d. **Referral to code enforcement; and/or**
- e. **Imposition of entitlement density or intensity.**

Staff may be directed by the Executive Director of PZ&B or a Code Enforcement Special Master to schedule a Status Report before the body which approved the Official Zoning Map Amendment, Conditional Use, Requested Use, Development Order Amendment, and/or other zoning approval, in accordance with the provisions of Article 2.E of the ULDC, in response to any flagrant violation and/or continued violation of any condition of approval.

Appeals of any departmental administrative actions hereunder may be taken to the Palm Beach County Board of Adjustment or as otherwise provided in the Unified Land Development Code (ULDC), as amended. Appeals of any revocation of an Official Zoning Map Amendment, Conditional Use, Requested Use, Development Order Amendment or other actions based on a Board of County Commission decision shall be by petition for writ of certiorari to the Fifteenth Judicial Circuit. (ONGOING: MONITORING - Zoning)