

TOWN OF CUTLER BAY

Mayor Paul S. Vrooman
Vice Mayor Edward P. MacDougall
Council Member Timothy J. Meerbott
Council Member Ernest N. Sochin
Council Member Peggy R. Bell

Interim Town Manager Steve Alexander
Interim Town Attorney Mitchell Bierman
Town Clerk Erika Gonzalez-Santamaria

In accordance with the American with Disabilities Act of 1990, persons needing special accommodation, a sign language interpreter or hearing impaired to participate in this proceeding should contact the Town Clerk at (305) 234-4262 for assistance no later than four (4) days prior to the meeting.

TOWN COUNCIL MEETING AGENDA

Wednesday, July 19, 2006

7:00 PM

South Dade Government Center
10750 SW 211 Street, Room 203
Cutler Bay, Florida 33189

I. CALL TO ORDER, ROLL CALL, PLEDGE OF ALLEGIANCE

II. INVOCATION

III. PROCLAMATIONS, AWARDS, PRESENTATIONS

A. Commissioner Katy Sorenson, District 8

IV. APPROVAL OF MINUTES

A. July 5, 2006



V. ADDITIONS, DELETIONS, AND DEFERRALS

VI. TOWN MANAGER'S REPORT

VII. TOWN ATTORNEY'S REPORT

VIII. BOARD AND COMMITTEE REPORTS

IX. CONSENT AGENDA (ANY ITEM SHALL BE REMOVED FROM THE CONSENT AGENDA FOR DISCUSSION OR SEPARATE VOTE IF REQUESTED BY A COUNCILMEMBER)

X. QUASI-JUDICIAL CONSENT AGENDA (ANY ITEM MAY BE REMOVED FROM THE CONSENT AGENDA IF REQUESTED BY A MEMBER OF THE TOWN COUNCIL, THE TOWN STAFF, THE APPLICANT, OR ANY AFFECTED PARTY)

XI. QUASI-JUDICIAL HEARINGS

- A. A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, APPROVING A MODIFICATION TO AN APPROVED SITE PLAN TO ALLOW FOR REDEVELOPMENT OF A MOVIE THEATER INTO A COMMERCIAL BUILDING AND APPROVAL OF AN UNUSUAL USE FOR OUTDOOR DINING FOR THE SHOPPING CENTER LOCATED AT 18403 SOUTH DIXIE HIGHWAY; AND PROVIDING FOR AN EFFECTIVE DATE.

TAB 2

XII. PUBLIC HEARINGS

A. RESOLUTIONS (NOT A PUBLIC HEARING)

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA; DETERMINING THE PROPOSED MILLAGE RATE, AND THE DATE, TIME AND PLACE FOR THE FIRST AND SECOND BUDGET HEARINGS AS REQUIRED BY LAW; DIRECTING THE CLERK OR HER DESIGNEE TO FILE SAID RESOLUTION WITH THE PROPERTY APPRAISER AND TAX COLLECTOR OF MIAMI-DADE COUNTY; AND PROVIDING FOR AN EFFECTIVE DATE.

TAB 3

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AUTHORIZING MIAMI-DADE COUNTY TO CONTINUE THE PROCESS OF CREATING A SPECIAL TAXING DISTRICT FOR SECURITY GUARD GATES FOR THE LAKES BY THE BAY SOUTH COMMONS; AND PROVIDING FOR AN EFFECTIVE DATE.

TAB 4

B. ORDINANCES

- 1. FIRST READING**
- 2. SECOND READING:**

AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, IMPLEMENTING THE UTILITY TAX AUTHORIZED BY SECTION 166.231, ET.

TAB 5

SEQ., FLORIDA STATUTES, TO LEVY AND IMPOSE A UTILITY TAX UPON THE PURCHASE OF ELECTRICITY, WATER, METERED GAS, BOTTLED GAS, COAL, AND FUEL OIL WITHIN THE TOWN OF CUTLER BAY; AUTHORIZING TRANSMITTAL; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR CONFLICTS AND PROVIDING FOR AN EFFECTIVE DATE.

TAB 6

AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, RELATING TO THE ESTABLISHMENT OF THE TOWN'S LOCAL PLANNING AGENCY; DESIGNATING THE TOWN COUNCIL AS THE LOCAL PLANNING AGENCY; PROVIDING FOR POWERS AND DUTIES; PROVIDING FOR A RECORDING SECRETARY; PROVIDING STAFF FOR THE LOCAL PLANNING AGENCY; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE.

TAB 7

AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, PERTAINING TO THE LOCAL COMMUNICATIONS SERVICES TAX RATE; PROVIDING FOR RECITALS; PROVIDING FOR ELECTION NOT TO REQUIRE AND COLLECT PERMIT FEES; ESTABLISHING THE LOCAL COMMUNICATIONS SERVICES TAX RATES; PROVIDING FOR NOTICE TO THE DEPARTMENT OF REVENUE; PROVIDING FOR REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR CONFLICTS AND PROVIDING AN EFFECTIVE DATE.

TAB 8

AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AMENDING THE MIAMI-DADE COUNTY CODE AS APPLICABLE TO THE TOWN PURSUANT TO SECTION 8.3 OF THE TOWN CHARTER TO SUBSTITUTE THE TOWN COUNCIL FOR COUNTY OFFICIALS, BOARDS, OR COMMITTEES, PROVIDING FOR ZONING REVIEW, PROVIDING FOR AUTHORITY OF THE TOWN COUNCIL, PROVIDING FOR AN APPEAL PROCESS; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR CONFLICTS AND PROVIDING FOR AN EFFECTIVE DATE.

AN ORDINANCE IF THE MAYOR AND THE TOWN
COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA
CREATING PROCEDURES FOR ZONING WORKSHOPS;
PROVIDING FOR ORDINANCES IN CONFLICT,
SEVERABILITY AND AN EFFECTIVE DATE.



XIII. PUBLIC COMMENTS

XIV. MAYOR AND COUNCIL MEMBER COMMENTS

XV. OTHER BUSINESS

XVI. NEXT MEETING ANNOUNCEMENT AND ADJOURNMENT

PURSUANT TO FLORIDA STATUTES 286.0105, THE TOWN HEREBY ADVISES THE PUBLIC THAT IF A PERSON DECIDES TO APPEAL ANY DECISION MADE BY THIS COUNCIL WITH RESPECT TO ANY MATTER CONSIDERED AT ITS MEETING OR HEARING, HE OR SHE WILL NEED A RECORD OF THE PROCEEDINGS, AND THAT FOR SUCH PURPOSE, THE AFFECTED PERSON MAY NEED TO ENSURE THAT A VERBATIM RECORD OF THE PROCEEDING IS MADE, WHICH RECORD INCLUDES THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS TO BE BASED. THIS NOTICE DOES NOT CONSTITUTE CONSENT BY THE TOWN FOR THE INTRODUCTION OR ADMISSION OF OTHERWISE INADMISSIBLE OR IRRELEVANT EVIDENCE, NOR DOES IT AUTHORIZE CHALLENGES OR APPEALS NOT OTHERWISE ALLOWED BY LAW.

TAB 1

**TOWN OF CUTLER BAY
TOWN COUNCIL MEETING
MINUTES**

Wednesday, July 5, 2006

7:00 PM

South Dade Regional Library
10750 SW 211 Street, 2nd floor
Cutler Bay, Florida 33189

I. CALL TO ORDER/ROLL CALL OF MEMBERS: The meeting was called to order by the mayor at 7:15 PM. Present were the following:

Councilmember Peggy R. Bell
Councilmember Timothy J. Meerbott
Councilmember Ernest N. Sochin
Vice Mayor Edward P. MacDougall
Mayor Paul S. Vrooman

Interim Town Manager Steven Alexander
Interim Town Attorney Mitchell Bierman
Interim Town Attorney Chad Friedman
Town Clerk Erika Gonzalez-Santamaria

Mayor Vrooman led the pledge of allegiance.

II. INVOCATION: Mayor Vrooman asked all to join him in a moment of silence.

III. PROCLAMATIONS, AWARDS, PRESENTATIONS:

- A. The mayor presented a Certificate of Completion to Councilmember Sochin for attending the Florida League of Cities "Institute for Elected Municipal Officers." Councilmember Sochin briefed the members of the events of the institute.

IV. APPROVAL OF MINUTES:

- A. Councilmember Meerbott made a motion approving the minutes of the meetings of June 7, 2006 and June 15, 2006. The motion was seconded by Councilmember Sochin and adopted by a unanimous 5-0 voice vote. The vote was as follows: Councilmembers Bell, Meerbott, Sochin, Vice Mayor MacDougall and Mayor Vrooman voting Yes.

V. ADDITIONS, DELETIONS, AND DEFFERALS:

- A. AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, CREATING THE SECTION ENTITLED, "NUISANCE VEGETATION ABATEMENT"; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; AND PROVIDING FOR AN EFFECTIVE DATE. (DEFERRED INDEFINETELY)
- B. A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, APPROVING A MODIFICATION TO AN APPROVED SITE PLAN TO ALLOW FOR REDEVELOPMENT OF A MOVIE THEATER INTO A COMMERCIAL BUILDING AND APPROVAL OF AN UNUSUAL USE FOR OUTDOOR DINING FOR THE SHOPPING CENTER LOCATED AT 18403 SOUTH DIXIE HIGHWAY; AND PROVIDING FOR AN EFFECTIVE DATE. (DEFERRED DATE CERTAIN: JULY 19TH)
- C. AN ORDINANCE IF THE MAYOR AND THE TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA CREATING PROCEDURES FOR ZONING WORKSHOPS; PROVIDING FOR ORDINANCES IN CONFLICT, SEVERABILITY AND AN EFFECTIVE DATE. (DEFERRED DATE CERTAIN: JULY 19TH)

Vice Mayor MacDougall made a motion to approve the deferrals to date certain. The motion was seconded by Councilmember Meerbott and adopted by a unanimous 5-0 voice vote. The vote was as follows: Councilmembers Bell, Meerbott, Sochin, Vice Mayor MacDougall and Mayor Vrooman voting Yes.

VI. TOWN MANAGER'S REPORT:

The Town Manager gave a report on minor changes to the Miami-Dade County interlocal agreements and is making great efforts to finalize the agreements. The Town Manager spoke in reference to town positions being advertised, specifically the grant writer's position and department directors. The manager also discussed briefly on the Lakes by the Bay, the Woolbright, and the Old Cutler and 184th items. The manager also announced that the lease for the police department office space has been executed and the drawings for the build-out will be finalized shortly. The Town Manager also discussed the success of the Fourth of July Whispering Pines Celebration.

VII. TOWN ATTORNEY'S REPORT:

The Town Attorney briefed town council on the first reading ordinances for the evening. The Master Interlocal has gone through the County commission's Environmental Land Use Committee and the Police Interlocal will soon be going through a committee designated by the commission for approval. A positive change likely to come, is the cost of policing services

which originally stated that costs would have mounted to over \$1.1 million has now decreased to slightly under \$600,000 for fiscal year forward in 2006. The attorney briefed town council on an agreement change on the bus benches which was originally a part of the Master Interlocal is now being considered as a separate agreement. Therefore, a contract would be drafted for the purchase of bus benches and bus shelters for a \$1 each.

VIII. BOARD AND COMMITTEE REPORTS: None at this time.

IX. CONSENT AGENDA: None at this time.

X. QUASI-JUDICIAL CONSENT AGENDA PUBLIC HEARING: None at this time.

XI. QUASI-JUDICIAL HEARINGS: None at this time.

XII. PUBLIC HEARINGS:

A. RESOLUTIONS: None at this time.

B. ORDINANCES: The clerk read the following ordinance, on first reading, by title:

- a. AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, IMPLEMENTING THE UTILITY TAX AUTHORIZED BY SECTION 166.231, ET. SEQ., FLORIDA STATUTES, TO LEVY AND IMPOSE A UTILITY TAX UPON THE PURCHASE OF ELECTRICITY, WATER, METERED GAS, BOTTLED GAS, COAL, AND FUEL OIL WITHIN THE TOWN OF CUTLER BAY; AUTHORIZING TRANSMITTAL; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR CONFLICTS AND PROVIDING FOR AN EFFECTIVE DATE.

Mayor Vrooman opened the public hearing. There were no speakers at this time.

Councilmember Meerbott made a motion to approve the ordinance on first reading. The motion was seconded by Councilmember Bell and adopted by unanimous roll call vote. The vote was as follows: Councilmembers Bell, Meerbott, Sochin, Vice Mayor MacDougall and Mayor Vrooman voting Yes.

The clerk read the following ordinance, on first reading, by title:

- b. AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, RELATING TO THE ESTABLISHMENT OF THE TOWN'S LOCAL PLANNING AGENCY; DESIGNATING THE TOWN COUNCIL AS THE LOCAL PLANNING AGENCY; PROVIDING FOR POWERS AND DUTIES;

PROVIDING FOR A RECORDING SECRETARY; PROVIDING STAFF FOR THE LOCAL PLANNING AGENCY; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE.

Mayor Vrooman opened the public hearing. There were no speakers.

Councilmember Sochin made a motion to approve the ordinance on first reading. The motion was seconded by Vice Mayor MacDougall and adopted by unanimous roll call vote. The vote was as follows: Councilmembers Bell, Meerbott, Sochin, Vice Mayor MacDougall and Mayor Vrooman voting Yes.

The clerk read the following ordinance, on first reading, by title:

- c. AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, PERTAINING TO THE LOCAL COMMUNICATIONS SERVICES TAX RATE; PROVIDING FOR RECITALS; PROVIDING FOR ELECTION NOT TO REQUIRE AND COLLECT PERMIT FEES; ESTABLISHING THE LOCAL COMMUNICATIONS SERVICES TAX RATES; PROVIDING FOR NOTICE TO THE DEPARTMENT OF REVENUE; PROVIDING FOR REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR CONFLICTS AND PROVIDING AN EFFECTIVE DATE.

Mayor Vrooman opened the public hearing. There were no speakers.

Councilmember Bell made a motion to approve the ordinance on first reading. The motion was seconded by Councilmember Meerbott and adopted by unanimous roll call vote. The vote was as follows: Councilmembers Bell, Meerbott, Sochin, Vice Mayor MacDougall and Mayor Vrooman voting Yes.

The clerk read the following ordinance, on first reading, by title:

- d. AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AMENDING THE MIAMI-DADE COUNTY CODE AS APPLICABLE TO THE TOWN PURSUANT TO SECTION 8.3 OF THE TOWN CHARTER TO SUBSTITUTE THE TOWN COUNCIL FOR COUNTY OFFICIALS, BOARDS, OR COMMITTEES, PROVIDING FOR ZONING REVIEW, PROVIDING FOR AUTHORITY OF THE TOWN COUNCIL, PROVIDING FOR AN APPEAL PROCESS; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE

CODE; PROVIDING FOR CONFLICTS AND PROVIDING FOR AN EFFECTIVE DATE.

Mayor Vrooman opened the public hearing. There were no speakers.

Vice Mayor MacDougall made a motion to approve the ordinance on first reading. The motion was seconded by Councilmember Sochin and adopted by unanimous roll call vote. The vote was as follows: Councilmembers Bell, Meerbott, Sochin, Vice Mayor MacDougall and Mayor Vrooman voting Yes.

The clerk read the following ordinance, on second reading, by title:

- a. AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, PROVIDING FOR A MORATORIUM ON THE ISSUANCE OF DEVELOPMENT ORDERS AND DEVELOPMENT PERMITS FOR ALL PROPERTIES ABUTTING OLD CUTLER ROAD FROM S.W. 184 STREET SOUTH TO THE TOWN LIMITS; EXEMPTING CERTAIN DEVELOPMENT; PROVIDING FOR WAIVERS; PROVIDING FOR SEVERABILITY; PROVIDING PROCEDURES FOR VESTED RIGHTS AND JUDICIAL REVIEW FOR THE SPECIFIC MATTERS ADDRESSED HEREIN; PROVIDING FOR A TERM; PROVIDING FOR A REPEALER; PROVIDING FOR ORDINANCES IN CONFLICT, SEVERABILITY, AND AN EFFECTIVE DATE.

The Town Attorney made a brief presentation on the ordinance.

Mayor Vrooman opened the public hearing. There were no speakers.

Councilmember Meerbott made a motion to approve the ordinance on second hearing. The motion was seconded by Councilmember Bell and adopted by unanimous roll call vote. The vote was as follows: Councilmembers Bell, Meerbott, Sochin, Vice Mayor MacDougall and Mayor Vrooman voting Yes.

XIII. PUBLIC COMMENTS:

The following individuals spoke: William Meikljohn, 9311 Stirling Drive, Luciane Barroca, 22476 Southwest 94 Place.

XIV. MAYOR AND COUNCIL MEMBER COMMENTS:

The mayor thanked all those who organized and participated in the Fourth of July Whispering Pines Celebration.

Member Meerbott discussed the Metrorail extension item and encouraged the public to continue efforts to working together,

Member Bell thanked the organizers for the Whispering Pines Celebration. Member Bell briefed the council on the Town Logo contest. Member Bell is also requesting a purchase of a plaque in memory of the late Mayor John Cosgrove.

Vice-Mayor MacDougall encouraged members of council and the community to suggest ideas in honoring the late Mayor John Cosgrove.

Member Sochin discussed his attendance to the Wi-Fi workshop and suggested to form a committee in the future to establish a Wi-Fi program within the town.

XV. OTHER BUSINESS: None at this time.

XVI. NEXT MEETING ANNOUNCEMENT AND ADJOURNMENT:

The next council meeting will be held on August 2, 2006, at the South Dade Government Center.

The meeting was officially adjourned at 8:15 P.M.

Respectfully submitted:

*Erika Gonzalez-Santamaria
Town Clerk*

*Adopted by the Town Council on
this 19th day of July, 2006*

Paul S. Vrooman, Mayor

PURSUANT TO FLORIDA STATUTES 286.0105, THE TOWN HEREBY ADVISES THE PUBLIC THAT IF A PERSON DECIDES TO APPEAL ANY DECISION MADE BY THIS COUNCIL WITH RESPECT TO ANY MATTER CONSIDERED AT ITS MEETING OR HEARING, HE OR SHE WILL NEED A RECORD OF THE PROCEEDINGS, AND THAT FOR SUCH PURPOSE, THE AFFECTED PERSON MAY NEED TO ENSURE THAT VERBATIM RECORD OF THE PROCEEDING IS MADE, WHICH RECORD INCLUDES THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS TO BE BASED THIS NOTICE DOES NOT CONSTITUTE CONSENT BY THE TOWN FOR THE INTRODUCTION OR ADMISSION OF OTHERWISE INADMISSIBLE OR IRRELEVANT EVIDENCE, NOR DOES IT AUTHORIZE CHALLENGES OR APPEALS NOT OTHERWISE ALLOWED BY LAW.

TAB 2



MEMORANDUM

To: Steven Alexander, Interim Town Manager

From: Joseph M. Corradino, AICP, Interim Town Planning Consultant

Date: July 11, 2006

Re: Towers at Cutler Ridge/South Dade Plaza/Woolbright Pembroke Ltd.
18591 South Dixie Highway

Application No.: 06-011 (Modification of Site Plan and Unusual Use)

RECOMMENDATION:

It is recommended that the Town Council approve the request for Modification of a Site Plan and to allow for an Unusual Use for outdoor dining, subject to conditions as set forth below. The application has been found to substantially comply with the adopted development standards of the Town.

PROPOSAL:

The applicant is proposing to demolish an existing movie theater and replace it with a 3-story, 57,500 square foot office/retail building including restaurant space. Other improvements will include landscaping, a loggia, covered bench seating areas, and a Town entrance monument sign at South Dixie Highway. Additionally, there is a request to permit outdoor dining at the existing R J Gators restaurant and any proposed restaurants in the new structure.

BACKGROUND:

This application was submitted to Miami-Dade County for a Modification to the site plan and to allow for an Unusual Use (outdoor dining) in April, 2005 but now has been transferred to the Town for final review and approval. The County's recommendation letter has been attached, and is part of this staff report (see Attachment 1).

The applicant has meet with Town staff on several occasions in order to discuss the project and gather input. The applicant has made a substantial effort to create a more refined gateway to the Town.

Staff believes the project is the appropriate height, mass and scale for this important intersection. Additional on- and off-site improvements will fulfill the applicants' and Town's desire to upgrade a long neglected area. The proposed loggia will begin to frame South Dixie Highway while announcing arrival to Cutler Bay. The loggia and quality landscaping will also serve to screen the parking from view. The project will contribute to enhancing this prominent intersection by upgrading the landscape strip in front of the Popeye's Chicken and Taco Bell and providing a Town entrance monument sign. Pedestrian safety and comfort will be increased when walking along the street.

Therefore, staff recommends approval subject to the conditions enumerated below.

REQUESTS:

1. **MODIFICATION** of a plan approved pursuant to Resolution Z-231-83, passed and adopted by the board of County Commissioners, last modified by condition #2 of Resolution 5-ZAB-57-95, passed and adopted by the Zoning Appeals Board, reading as follows:

FROM: 2. That in the approval of the plan, the same be substantially in accordance with that submitted for the hearing entitled 'Old Cutler Oyster Company,' as prepared by Michael Alan Fine, dated revised 11-16-94, consisting of five sheets and a liquor survey as prepared by Jose E. Fuxa, P.L.S., dated Sept. 30, 1994.

TO: 2. That in the approval of the plan, the same be substantially in accordance with that submitted for the hearing entitled 'Towers at Cutler Ridge,' as prepared by Gallo Architects, consisting of 10 sheets, dated sealed on 7/10/06 and the Landscape Plans consisting of 4 sheets date sealed on 7/10/06.

2. **MODIFICATION** of Condition #1 of a Covenant recorded in Official Record Book 12025 at pages 125 through 133 and reading as follows:

FROM: 1. Notwithstanding any zoning designation placed upon the real property herein described, Owner hereby agrees, on behalf of itself, its successors and assigns, that the areas designated for landscaping shall be developed and maintained substantially in accordance with the spirit and intent of the plans previously submitted, prepared by O'Leary, Shafer and Cosio, entitled South Dade Plaza Planting Plan dated the 7th day of December 1983 (hereinafter 'Landscape Plan')."

TO: 1. Notwithstanding any zoning designation placed upon the real property herein described, owner hereby agrees, on behalf of itself, its successors

and assigns, that the areas designated for landscaping shall be developed and maintained substantially in accordance with the spirit and intent of the plans previously submitted, as prepared by Gallo Architects entitled 'Towers at Cutler Ridge,' consisting of 10 sheets, dated sealed on 7/10/06 and the Landscape Plans consisting of 4 sheets date sealed on 7/10/06.

The purpose of these requests is to permit the applicant to submit revised plans for an office/retail building in lieu of a movie theater as shown on the previously approved plans and to show revised landscape plans for the Plaza. After review and analysis of the documentation and information submitted with this application, the Town staff has determined that the applicant has satisfied the requirements of Section 33-311(A)(17) and further recommends approval of this application pursuant to Section 33-311(A)(7) .

3. UNUSUAL USE Staff recommends approval pursuant to Section 33-311(A)(3) to permit outdoor dining for two restaurants in the Towers of Cutler Ridge and one existing restaurant known as R J Gators.

CONDITIONS:

1. That the applicants apply for and obtain a Certificate of Use from the Town for the outdoor dining, upon compliance with all terms and conditions, the same subject to cancellation upon violation of any of the conditions.
2. That the outdoor dining areas be arranged in a manner so as not to obstruct pedestrian and wheelchair access to the entrance of the premises.
3. That the applicants submit outdoor seating plans for each location where said use is to be permitted.
4. That all conditions of Resolutions Nos. Z-231-83 and 5-ZAB-57-95 remain in full force and effect, except as herein modified.
5. That a revised Declaration of Restrictions be submitted to the Town within 30 days after public hearing approval of this application, unless a time extension is granted by the Town, for good cause shown.
6. That any new trash dumpsters be enclosed and visually screened, and all existing ones be properly screened and maintained.
7. That no storage of boxes, containers and/or trash be permitted along the eastern side of the building.

8. Signage is not a part of this approval. A uniform sign plan shall be submitted to the Town Manager or his designee for approval prior to Certificate of Use.

ATTACHMENT #1

2. WOOLBRIGHT PEMBROKE LTD.
Applicant

06-5-TCB-2 (05-262)
TCB/District 8
Hearing Date: 5/4/06

Property Owner (if different from applicant) Same.

Is there an option to purchase /lease the property predicated on the approval of the zoning request? Yes No

Disclosure of interest form attached? Yes No

Previous Zoning Hearings on the Property:

<u>Year</u>	<u>Applicant</u>	<u>Request</u>	<u>Board</u>	<u>Decision</u>
1983	Jean Barber Godwin	- Zone change from RU-1, BU-1, AU, and EU-1 to BU-1A. - Non-Use variance for wall.	BCC	Approved w/conds.
1984	Dr. Raul Gonzalez	Special exception spacing requirements for liquor package store.	ZAB	Approved
1984	Freddie Walker Assoc.	- Use variance and special exception for nightclub. - Special exception spacing.	ZAB	Approved w/conds.
1984	Jean Barber	- Modification of conditions. - Non-Use variances parking & sign.	BCC	Approved
1985	G.G.G. Investments, Inc.	Special exception relocation of liquor package store; spacing.	ZAB	Approved w/conds.
1986	G.G.G. Investments, Inc.	- Special exception lounge in conjunction with package store; spacing. - Modification of conditions.	ZAB	Approved w/conds.
1987	Zackli's Restaurant Systems, Inc.	Special exception for cocktail lounge in conjunction with restaurant; spacing.	ZAB	Approved w/conds.
1989	Hooligans Pig City BBQ.	Special exception lounge in connection with restaurant; spacing.	ZAB	Approved w/conds.
1995	The Old Cutler Oyster Co.	- Use variance nightclub in conjunction with a restaurant. - Special exception of spacing requirements.	ZAB	Approved w/conds.

Action taken today does not constitute a final development order, and one or more concurrency determinations will subsequently be required. Provisional determinations or listings of needed facilities made in association with this Initial Development Order shall not be binding with regard to future decisions to approve or deny an Intermediate or Final Development Order on any grounds.

RECOMMENDATION TO THE TOWN OF CUTLER BAY

APPLICANT: Woolbright Pembroke Ltd.

PH: Z05-262

SECTION: 05-56-40

DATE: May 4, 2006

ITEM NO.: 2

=====

A. INTRODUCTION

o REQUESTS:

- (1) MODIFICATION of a plan approved pursuant to Resolution Z-231-83, passed and adopted by the Board of County Commissioners, last modified by Condition #2 of Resolution 5-ZAB-57-95, passed and adopted by the Zoning Appeals Board, reading as follows:

FROM: "2. That in the approval of the plan, the same be substantially in accordance with that submitted for the hearing entitled 'Old Cutler Oyster Company,' as prepared by Michael Alan Fine, dated revised 11-16-94, consisting of five sheets and a liquor survey as prepared by Jose E. Fuxa, P. L. S., dated Sept. 30, 1994."

TO: "2. That in the approval of the plan, the same be substantially in accordance with that submitted for the hearing entitled 'Towers at Cutler Ridge,' as prepared by Gallo Architects, consisting of 13 pages, AS101 and AS104 dated stamped received 9/2/05 and the remaining 11 pages dated stamped received 7/20/05."

- (2) MODIFICATION of Condition #1 of a Covenant recorded in Official Record Book 12025 at Pages 125 through 133 and reading as follows:

FROM: "1. Notwithstanding any zoning designation placed upon the real property herein described, Owner hereby agrees, on behalf of itself, its successors and assigns, that the areas designated for landscaping shall be developed and maintained substantially in accordance with the spirit and intent of the plans previously submitted, prepared by O'Leary, Shafer and Cosio, entitled South Dade Plaza Planting Plan dated the 7th day of December, 1983 (hereinafter 'Landscape Plan')."

TO: "1. Notwithstanding any zoning designation placed upon the real property herein described, owner hereby agrees, on behalf of itself, its successors and assigns, that the areas designated for landscaping shall be developed and maintained substantially in accordance with the spirit and intent of the plans previously submitted, as prepared by Gallo Architects entitled 'Towers at Cutler Ridge,' consisting of 13 pages, AS101 and AS104 dated stamped received 9/2/05 and the remaining 11 pages dated stamped received 7/20/05."

The purpose of these requests is to permit the applicant to submit revised plans for an office building in lieu of a movie theater as shown on the previously approved plans and to show revised landscape plans for the office building site only.

(3) UNUSUAL USE to permit outdoor dining.

Upon a demonstration that the applicable standards have been satisfied, approval of requests #1 & #2 may be considered under §33-311(A)(7) (Generalized Modification Standards) or §33-311(A)(17) (Modification or Elimination of Conditions or Covenants After Public Hearing).

The aforementioned plans are on file and may be examined in the Zoning Department. Plans may be modified at public hearing.

o **SUMMARY OF REQUESTS:**

This application seeks to modify plans of an existing shopping center by replacing an existing movie theater with a commercial building, which will include retail and office uses and two proposed restaurants. An unusual use to permit outdoor dining areas for the two proposed restaurants and an existing restaurant with lounge is also sought.

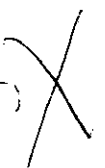
o **LOCATION:**

18403 South Dixie Highway, Town of Cutler Bay, Florida.

o **SIZE:** 28.17 acres

o **IMPACT:**

The proposed outdoor dining service areas will provide an additional dining option for the community. However, the proposed use could ~~visually and aurally impact~~ the surrounding area. The replacement of ~~the movie theater with a~~ commercial/office building with restaurants will bring different entertainment options than the movie theater would have provided for the community.



B. **ZONING HEARINGS HISTORY:**

In 1983, the subject property was granted a district boundary change from BU-1, Neighborhood Business District, EU-1, One Acre Estates District, AU, Agricultural District, and RU-1, Single-Family Residential District, to BU-1A, Limited Business District, pursuant to Resolution No. Z-231-83. A required 5' high decorative masonry wall along the rear (east) property line was also waived. In October 1984, a modification of plans and a non-use variance of parking requirements to permit less parking and a non-use variance of signs to permit a second oversized sign were granted, pursuant to Resolution No. Z-154-84. In that same year, a special exception of spacing requirements to permit a liquor package store to be located within 2,500 feet of churches was approved, pursuant to Resolution No. 4-ZAB-399-84. In November 1984, a use variance and special exception to permit a nightclub in the BU-1A zone as would be permitted in the BU-2 zone and to allow said nightclub to be spaced less than required from churches and from another alcoholic

beverage use was granted, pursuant to Resolution No. 4-ZAB-478-84. In 1985, the package liquor store relocated within the shopping center and was granted a special exception of spacing requirements, pursuant to Resolution No. 4-ZAB-85-85. In 1986, the subject property was granted 1) a special exception to permit a lounge in conjunction with an existing package store, 2) a special exception of spacing requirements for the proposed lounge, and 3) a modification of a Condition of Resolution No. 4-ZAB-85-85 to indicate the aforementioned use, pursuant to Resolution No. 4-ZAB-25-86. In 1986, additional special exceptions were granted to permit a cocktail lounge in conjunction with a restaurant and to permit the proposed cocktail lounge to be spaced less than required from churches and alcoholic beverage uses, pursuant to Resolution No. 4-ZAB-354-87. In 1989, pursuant to Resolution No. 4-ZAB-467-89, a special exception to permit a lounge in connection with an existing restaurant, a special exception of spacing requirements to permit said lounge to be spaced less than required from churches and from another alcoholic beverage use and a non-use variance of hours and days of operation for the lounge were granted on the subject site. In 1995, a use variance to permit a nightclub in conjunction with a restaurant in the BU-1A District was granted. A special exception of spacing requirements to permit said nightclub to be located closer than permitted to other existing alcoholic beverage uses and from churches and schools was also approved, pursuant to Resolution No. 5-ZAB-57-95.

C. COMPREHENSIVE DEVELOPMENT MASTER PLAN (CDMP):

1. The Adopted 2005 and 2015 Land Use Plan designates the subject property as being within the Urban Development Boundary for **Business and Office**. This category accommodates the full range of sales and service activities. Included are retail, wholesale, personal and professional services, commercial and professional offices, hotels, motels, hospitals, medical buildings, nursing homes (also allowed in the institutional category), entertainment and cultural facilities, amusements and commercial recreation establishments such as private commercial marinas. These uses may occur in self-contained centers, high-rise structures, campus parks, municipal central business districts or strips along highways. In reviewing zoning requests or site plans, the specific intensity and range of uses, and dimensions, configuration and design considered to be appropriate will depend on locational factors, particularly compatibility with both adjacent and adjoining uses, and availability of highway capacity, ease of access and availability of other public services and facilities. Uses should be limited when necessary to protect both adjacent and adjoining residential use from such impacts as noise or traffic, and in most wellfield protection areas uses are prohibited that involved the use, handling, storage, generation or disposal of hazardous material or waste, and may have limitations as to the maximum buildable area, as defined in Chapter 24 of the County Code.

2. Other Land Uses Not Addressed.

Certain uses are not authorized under any LUP map category, including many of the uses listed as "unusual uses" in the zoning code. Uses not authorized in any LUP map category may be requested and approved in any LUP category that authorizes uses substantially similar to the requested use. Such approval may be granted only if the requested use is consistent with the objectives and policies of this Plan, and provided that the use would be compatible and would not have an unfavorable effect on the surrounding area: by causing an undue burden on transportation facilities including roadways and mass transit or other utilities and services including water, sewer,

drainage, fire, rescue, police and schools; by providing inadequate off-street parking, service or loading areas; by maintaining operating hours, outdoor lighting or signage out of character with the neighborhood; by creating traffic, noise, odor, dust or glare out of character with the neighborhood; by posing a threat to the natural environment including air, water and living resources; or where the character of the buildings, including height, bulk, scale, floor area ratio or design would detrimentally impact the surrounding area. However, this provision does not authorize such uses in Environmental Protection Areas designated in this Element.

3. Some existing lawful uses and zoning are not specifically depicted on the LUP map. However, all such existing lawful uses and zoning are deemed to be consistent with this Plan as provided in the section of this chapter titled "Concepts and Limitations of the Land Use Plan Map."

D. NEIGHBORHOOD CHARACTERISTICS:

ZONING

LAND USE PLAN DESIGNATION

Subject Property:

BU-1A; shopping center

Business and Office

Surrounding Properties:

NORTH: BU-3; offices
 BU-1A; retail businesses and
 vacant land

Business and Office

SOUTH: BU-2; retail businesses
 BU-1A; gas station
 RU-3; townhouse style condos
 RU-2; duplexes
 RU-1; single-family residences

Business and Office
 Low Density Residential, 2.5 to 6 dua

EAST: RU-4L; multi-family apartments
 GP; park
 RU-1; single-family residences

Business and Office
 Low Density Residential, 2.5 to 6 dua

WEST: BU-1A; gas station
 BU-2; commercial building
 BU-3; gas station

Business and Office

The subject property is located at 18403 South Dixie Highway. The area is characterized by mixed uses including single-family residences, duplexes, multi-family apartments, gas stations, offices and retail businesses. A vacant parcel is located to the north.

E. SITE AND BUILDINGS:

Site Plan Review:

(Site plan submitted.)

Scale/Utilization of Site:

Acceptable

Location of Buildings:	Acceptable
Compatibility:	Acceptable
Landscape Treatment:	Acceptable
Open Space:	Acceptable
Buffering:	Acceptable
Access:	Acceptable
Parking Layout/Circulation:	Acceptable
Visibility/Visual Screening:	N/A
Energy Considerations:	N/A
Roof Installations:	N/A
Service Areas:	N/A
Signage:	N/A
Urban Design:	N/A

F. PERTINENT REQUIREMENTS/STANDARDS:

Section 33-311(A)(3) Special Exceptions, Unusual Uses and New Uses. The Board shall hear an application for and grant or deny special exceptions; that is, those exceptions permitted by regulations only upon approval after public hearing, new uses and **unusual uses** which by the regulations are only permitted upon approval after public hearing; provided the applied for exception or use, including exception for site or plot plan approval, in the opinion of the Community Zoning Appeals Board, would not have an unfavorable effect on the economy of Miami-Dade County, Florida, would not generate or result in excessive noise or traffic, cause undue or excessive burden on public facilities, including water, sewer, solid waste disposal, recreation, transportation, streets, roads, highways or other such facilities which have been constructed or which are planned and budgeted for construction, are accessible by private or public roads, streets or highways, tend to create a fire or other equally or greater dangerous hazards, or provoke excessive overcrowding or concentration of people or population, when considering the necessity for and reasonableness of such applied for exception or use in relation to the present and future development of the area concerned and the compatibility of the applied for exception or use with such area and its development.

Section 33-311(A)(7) Generalized Modification Standards. The Board shall hear applications to modify or eliminate any condition or part thereof which has been imposed by any final decision adopted by resolution; provided, that the appropriate Board finds after public hearing that the modification or elimination, in the opinion of the Community Zoning Appeals Board, would not generate excessive noise or traffic, tend to create a fire or other equally or greater dangerous hazard, or provoke excessive overcrowding of people, or would not tend to provoke a nuisance, or would not be incompatible with the area concerned, when considering the necessity and reasonableness of the modification or elimination in relation to the present and future development of the area concerned.

Section 33-311(A)(17) Modification or Elimination of Conditions and Covenants After Public Hearing. The Community Zoning Appeals Board shall approve applications to modify or eliminate any condition or part thereof which has been imposed by any zoning action, and to modify or eliminate any restrictive covenants, or parts thereof, accepted at public hearing, upon demonstration at public hearing that the requirements of at least one of the paragraphs under this section has been met. Upon demonstration that such requirements have been met, an application may be approved as to a portion of the

property encumbered by the condition or the restrictive covenant where the condition or restrictive covenant is capable of being applied separately and in full force as to the remaining portion of the property that is not a part of the application, and both the application portion and the remaining portion of the property will be in compliance with all other applicable requirements of prior zoning actions and of this chapter.

G. NEIGHBORHOOD SERVICES:

DERM	No objection*
Public Works	No objection
Parks	No objection
MDTA	No objection
Fire Rescue	No objection
Police	No objection
Schools	No comment

*Subject to conditions indicated in their memorandum.

H. ANALYSIS:

The subject property is a commercial shopping center that is zoned BU-1A and is located at 18403 South Dixie Highway. The applicant is requesting Modifications of previously approved plans pursuant to Resolution Z-231-83 and of a condition of a Covenant restricting the development of the property to a specific site plan. The applicant intends to redevelop the site with a new commercial building consisting of retail and office space and two proposed restaurants. An unusual use to permit outdoor dining service areas for the two proposed restaurants and an existing restaurant with lounge within the shopping center is also being requested. The surrounding area is characterized by a mixture of uses including an established residential area to the south; multi-family apartments, single-family residences and a park to the east; gas stations and commercial buildings to the west and offices, apartment buildings and a vacant parcel to the north.

The Department of Environmental Resources Management (DERM) has **no objections** to this application and states that it meets the minimum requirements of Chapter 24 of the Code of Miami-Dade County, Florida. However, the applicant will have to comply with all DERM conditions as set forth in their memorandum pertaining to this application. The **Public Works Department** also has **no objections** to this application. They indicate that this application will generate less vehicle trips than the existing usage and will not generate any new additional daily peak hour vehicle trips and therefore meets traffic concurrency.

Approval of this application would allow the applicant to provide to the community additional retail uses and office space, two new restaurants with outdoor dining services and outdoor dining for an existing restaurant and lounge. The Land Use Plan (LUP) map of the Comprehensive Development Master Plan (CDMP) designates the subject property for **Business and Office** use. This category accommodates a full range of sales and services activities, including retail, wholesale, personal and professional services, commercial and professional offices, hotels and motels, hospitals, medical buildings, entertainment and cultural facilities and commercial recreational establishments. A vacant movie theater building exists on the site of the subject property, which will be

X

demolished and replaced with a three-story building to contain retail, office and two restaurants with outdoor dining service. A third outdoor dining area is proposed for an existing restaurant and lounge located on the northwest portion of the site. The subject site's existing BU-1A zoning and uses and the proposed retail, office, restaurants and outdoor dining service uses, are **consistent** with the LUP Map of the CDMP.

The applicant is seeking an unusual use to permit outdoor dining in connection with an existing restaurant and lounge and two proposed restaurants (request #3). The Master Plan specifies that certain uses are not authorized under any LUP map category, including many of the uses listed as "unusual uses" in the Zoning Code. Uses not authorized in any LUP map category may be requested and approved in any LUP category that authorizes uses substantially similar to the requested use. Such approval may be granted only if the requested use is consistent with the objectives and policies of this Plan, and provided that the use would be compatible with and would not have an unfavorable effect on the surrounding area: by causing an undue burden on transportation facilities including roadways and mass transit or other utilities and services; by providing inadequate off-street parking, service or loading areas; by maintaining operating hours, outdoor lighting or signage out of character with the neighborhood; by creating traffic, noise, odor, dust or glare out of character with the neighborhood; by posing a threat to the natural environment including air, water and living resources; or where the character of the buildings, including height, bulk, scale, floor area ratio or design would detrimentally impact the surrounding area. The unusual use request for outdoor dining is similar to a children's accessory playing facility that can be found outside restaurants. The site is a commercial shopping center consisting of several buildings located on all sides of the property and the majority of the parking area is located in the center of the site. The subject property is bounded by South Dixie Highway to the west, SW 184 Street (Eureka Drive) to the north and SW 186 Street (Quail Roost Road) to the south, which facilitates transportation to the site by patrons. A 95' wide berm exists along the south property line. To the south of the subject property is an established residential development consisting of single-family residences, duplexes, and townhouse-style apartments; to the west is a commercial building and a gas station; to the east are multi-family apartments, a park and single-family residences and to the north are offices and a vacant parcel. The applicant will be demolishing a vacant theater located on the southwest portion of the subject property and replacing it with a commercial building that will include offices, retail uses, and two restaurants with outdoor dining areas on the first floor. Staff supports the proposed outdoor dining in conjunction with the proposed restaurants. The site plan submitted indicates that the two proposed restaurants with outdoor dining areas will be oriented towards South Dixie Highway. A 75'4" wide parking area will act as a buffer from said major roadway and will lessen any visual or aural impacts generated by the outdoor dining areas. The 95' wide landscaped berm located along the south portion of the property and the additional 65' wide SW 186 Street (Quail Roost Road) is, in staff's opinion, an adequate buffer for the residential community located to the south from the visual and aural impacts of the proposed outdoor dining areas. Staff also supports the third proposed outdoor dining area for an existing restaurant with lounge which is located on the northwest portion of the site near SW 184 Street (Eureka Drive). Across this roadway to the north are offices and a vacant parcel, which staff opines, will not be impacted by the proposed use. When considering the necessity for and reasonableness of such applied for use in relation to the present and future development of the area concerned and the compatibility of the applied for use with such area and its development, staff is of the opinion that the proposed outdoor dining is **consistent** with the Master Plan and **compatible** with the surrounding

area. As such, staff recommends approval with conditions of request #3 to permit outdoor dining under Section 33-311(A)(3), Standards For Special Exceptions, Unusual Uses And New Uses.

When analyzed under the Generalized Modification Standards, Section 33-311(A)(7), the proposed modifications of a plan previously approved pursuant to Resolution Z-231-83 (request #1) and of Condition #1 of a Covenant (request #2) to allow the redevelopment of the southwest portion of the site with a new commercial building consisting of retail and office spaces and two proposed restaurants with outdoor dining service areas and to permit an outdoor dining service area for an existing restaurant with lounge will not generate excessive noise or traffic, provoke excessive overcrowding of people, or tend to provoke a nuisance, and will not be contrary to the public interest. As previously mentioned, the Public Works Department has indicated that the proposed uses would generate less traffic than the previously approved uses. The submitted plans indicate that the theater building will be demolished and a three-story commercial and office building will be constructed that includes two restaurants with outdoor dining service areas on the first floor. The difference between the previously approved plans and the proposed plans is that the setback of the theater building from the west property line was 30', whereas the proposed building will be setback 75'4" from the west (South Dixie Highway) property line. This significant change will allow additional parking area to be provided for the proposed retail and office uses and restaurants with outdoor dining service areas and buffer the proposed building from South Dixie Highway. Also, the plans indicate a third proposed outdoor dining service area for an existing restaurant with lounge that is located towards the northwest portion of the site, which staff opines will not negatively impact the office building and vacant parcel to the north nor the residential areas to the south and west. The landscape plans submitted indicate that substantial landscaping will be provided along the west side of the property which will help lessen the visual impact of the proposed building and uses onto South Dixie Highway. The existing live oaks and cocoplum hedge lined along the west property line and the proposed added ficus hedge and redtip cocoplum hedge on the perimeter of the commercial building where the proposed restaurants will be located will enhance the aesthetics of the property. Staff is of the opinion that approval of these modifications to the site will not cause an undue burden on the surrounding area. As such, staff recommends approval of requests #1 and #2 under the Generalized Modification Standards, Section 33-311(A)(7).

The standards under Section 33-311(A)(17), Modification or Elimination of Conditions and Covenants After Public Hearing, provide for the approval of a zoning application which demonstrates at public hearing that the modification or elimination of conditions of a previously approved resolution or restrictive covenant complies with one of the applicable modification or elimination standards and does not contravene the enumerated public interest standards as established. However, the applicant has not submitted documentation to indicate which modification or elimination standards are applicable to requests #1 and #2. Due to the lack of information, staff is unable to properly analyze requests #1 and #2 under said standards and, as such, said requests should be denied without prejudice under these standards.

Accordingly, staff recommends approval with conditions of requests #1 and #2 under Section 33-311(A)(7)(Generalized Modification Standards); approval with conditions of request #3 under Section 33-311(A)(3) (Standards For Special Exceptions, Unusual Uses

And New Uses) and denial without prejudice of requests #1 and #2 under Section 33-311(A)(17) (Modification or Elimination of Conditions and Covenants After Public Hearing).

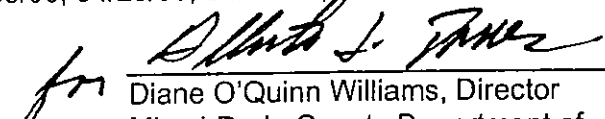
I. RECOMMENDATION:

Approval with conditions of requests #1 and #2 under Section 33-311(A)(7) (Generalized Modification Standards); approval with conditions of request #3 under Section 33-311(A)(3) (Standards For Special Exceptions, Unusual Uses And New Uses) and denial without prejudice of requests #1 and #2 under Section 33-311(A) (17) (Modification or Elimination of Conditions and Covenants After Public Hearing).

J. CONDITIONS:

1. That the applicants apply for and obtain a Certificate of Use from the Town of Cutler Bay for the outdoor dining, upon compliance with all terms and conditions, the same subject to cancellation upon violation of any of the conditions.
2. That the outdoor dining areas be arranged in a manner so as not to obstruct pedestrian and wheelchair access to the entrance of the premises.
3. That all conditions of Resolutions Nos. Z-231-83 and 5-ZAB-57-95 remain in full force and effect, except as herein modified.
4. That a revised Declaration of Restrictions be submitted to the Town of Cutler Bay within 90 days after public hearing approval of this application, unless a time extension is granted by the Town of Cutler of Bay, for good cause shown.

DATE INSPECTED: 03/30/06
DATE TYPED: 03/31/06
DATE REVISED: 04/03/06; 04/05/06; 04/20/06; 04/22/06; 04/24/06
DATE FINALIZED: 04/24/06
DO'QW:AJT:MTF:LVT:JV:CSE


for Diane O'Quinn Williams, Director
Miami-Dade County Department of
Planning and Zoning

LETTER OF INTENT

April 12, 2005

Ms. Diane O'Quinn Williams
Director, Planning and Zoning Department
11th Floor
111 NW 1st Street
Miami, Florida 33128

Woodby
Office
John
Zany

RE:

Dear Ms. Williams:

This letter is submitted in conjunction with an application to modify an existing Site Plan which was approved through the Public Hearing process. The last Zoning Resolution on the property which approved the Site Plan is attached. In addition, the actual shopping center did incur substantial damage during Hurricane Andrew. Much of it has now been rebuilt and there have been some changes to the overall Site Plan in accordance with the prior Zoning approval or a Substantial Compliance Review. The present application proposes to eliminate the theater building and replace it with an office building. This is located in the front of the shopping Center along the U.S. 1 frontage. *outside seating is also being re-located*

In reviewing the guidelines for a modification of a prior resolution, we believe we are consistent with those criteria. The modification or elimination will be deemed not to create new adverse impacts. The modification should not result in an increase of traffic trips generated above that generated by the approved development. The existing Use, a theater, consists of in excess of thirty thousand square feet. Although the office building is actually fifty-two thousand square feet, the proposed traffic trips generated by the office building, we believe, would be less than the theater generates as the current Use. In addition, as a result of this proposed change, there is an increase in available parking on the property. As such, we believe the overall impact is reduced. The modification will not result in a reduction of the area under tree canopy. The landscaping will be maintained in accordance with the Zoning Code. We are not impacting the landscaping. In fact, substantial landscape buffers are located on the East side of the property and those will remain undisturbed.

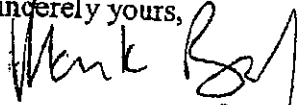
This is a Commercial Site and is surrounded by Commercial Uses. The actual modification fronts along U.S. 1, which is a major roadway with substantial traffic. The building itself, we believe, is actually of higher aesthetic character and quality than the existing building. It will enhance the aesthetics of the area. The height of the building is consistent with the Zoning Code and less than what is actually allowed by the Code. As such, we believe the Architect's design, scale, height, mass, etc are not a departure from the quality or aesthetics of the area on this particular site, but rather, we believe, enhance

the site. The modification should not result in an increase in the area of shadow or light from outdoor lighting on adjacent properties. Again, the only property affected is our property. This is replacing an existing building. The office is a less intense Use than the Commercial Uses throughout the site and also less intense than the theater. Although the building is slightly higher, we do not believe that it is in any way inconsistent with density and intensity. We believe this modification is the type of Use that is consistent with the approved Uses in this area. It does conform to the zoning that is allowed throughout this area and that exists throughout this area. We do not anticipate any adverse impact on the values of the properties in this immediate area. Again, this is a shopping center. It continues to be a shopping center. We believe, if anything, we have continued to upgrade the shopping center, which should ultimately enhance values in the vicinity.

We believe the subject property complies with all other applicable requirements of prior zoning actions and the Zoning Code.

As you review the Site Plan, you will see that it has an architecturally pleasing design. It is lower at the ends, with the three stories in the center of the building. The roof line is shown. The elevations, we believe, are of a high quality. The actual offices themselves are set up as in other buildings throughout the area. Substantial landscaping is provided around the property both fronting along U.S. 1 and also around the building itself. In closing, we believe that the modification for the office building would be consistent with the zoning and development of the area and, we believe, will have a lesser impact from the standpoint of traffic and a better impact from the standpoint of aesthetics. In closing, we again request your consideration.

Sincerely yours,


W. Mark Barry
Vice President

5	56	40
---	----	----

Sec. Twp. Range

**ZONING HEARING APPLICATION
MIAMI-DADE COUNTY
DEPARTMENT OF PLANNING & ZONING**

LIST ALL FOLIO #S: 30-6005-067-0010

Date Received

1. NAME OF APPLICANT (Provide complete name of applicant, exactly as recorded on deed, if applicable. If applicant is a lessee, an executed 'Owner's Sworn-to-Consent' and copy of a valid lease for 1 year or more is required. If the applicant is a corporation, trust, partnership, or like entity, a 'Disclosure of Interest' is required).

Woolbright Pembroke Ltd.

2. APPLICANT'S MAILING ADDRESS, TELEPHONE NUMBER:

Mailing Address: 3200 N. Military Trail

City: Boca Raton State: FL Zip: 33431 Phone#: 561 989-2240

3. OWNER'S NAME, MAILING ADDRESS, TELEPHONE NUMBER:

Owner's Name (Provide name of ALL owners): Same

Mailing Address: _____

City: _____ State: _____ Zip: _____ Phone#: _____

4. CONTACT PERSON'S INFORMATION:

Name: Phil Ward Company: DellaPorta, Ward & Associates

Mailing Address: 250 Catalonia Avenue, Suite 706

City: Coral Gables State: Florida Zip: 33134

Phone#: (305) 648-3390 Fax#: (305) 648-3385 E-mail: _____

5. LEGAL DESCRIPTION OF ALL PROPERTY COVERED BY THE APPLICATION

(Provide complete legal description, i.e., lot, block, subdivision name, plat book & page number, or metes and bounds. Include section, township, range. If the application contains multiple rezoning requests, then a legal description for each sub-area must be provided. Attach separate sheets, as needed).

Tract A, South Dade Shopping Ctr.

PB 123-68

6. ADDRESS OR LOCATION OF PROPERTY (For location, use description such as NE corner of, etc.)

18403 South Dixie Hwy.

REQUEST FOR LEGAL DESCRIPTION CHECK (Part A)

Appl. No.: Z

Sec: 5 Twp: 56 Rge: 40

Processor: _____

CZAB #: _____ BCC _____

TYPE OR PRINT ALL INFORMATION - ALL FOLIO NUMBERS REQUIRED

1. FOLIO NUMBER(S) OF SUBJECT PROPERTY (List all folio numbers comprising the subject property)

30-6005-067-0010

2. NAME OF APPLICANT (Property Owner or Lessee with Owner's Sworn-to-Consent)

Woolbright Pembroke Ltd.

3. LEGAL DESCRIPTION OF ALL PROPERTY COVERED BY THE APPLICATION

Provide complete legal description, i.e., lot, block, subdivision name, plat book & page number, or metes and bounds. Include section, township, range. If application contains requests for multiple zone changes, provide the legal description for each area. Attach separate sheet(s), as needed.

Tract A, South Dade Shopping Ctr., PB 123-68

4. ADDRESS OR LOCATION OF PROPERTY (For location, use description such as NE corner of, etc.)

18403 South Dixie Hwy.

5. SIZE OF PROPERTY irr. x irr. (in acres): 28.17
(divide total sq. ft. by 43,560 to obtain acreage)

6. IF CONTIGUOUS PROPERTY IS OWNED BY THE SUBJECT PROPERTY OWNER(S), provide complete legal description of said contiguous property. (If attaching separate sheet, clearly label as contiguous property)

N/A

7. SIZE OF PROPERTY (in acres): 28.17 (divide total sq. ft. by 43,560 to obtain acreage).

8. DATE property acquired leased: 10-2-03
(month & year)

9. Lease term: N/A years

10. IF CONTIGUOUS PROPERTY IS OWNED BY THE SUBJECT PROPERTY OWNER(S), provide complete legal description of said contiguous property.

N/A

11. Is there an option to purchase or lease the subject property or property contiguous thereto?
 no yes (If yes, identify potential purchaser or lessee and complete 'Disclosure of Interest' form)

N/A

12. PRESENT ZONING CLASSIFICATION: BU-1A

13. APPLICATION REQUESTS (Check all that apply and describe nature of the request in space provided)
(DBC requires special exception to permit site plan approval unless rezoning 3 acres or less to residential categories)

- District Boundary Changes (DBC) [Zone class requested]: _____
- Unusual Use: _____
- Use Variance: _____
- Alternative Site Development: _____
- Special Exception: _____
- Modification of previous resolution/plan: (2-154-84)
- Modification of Declaration or Covenant: _____

14. Has a public hearing been held on this property within the last year & a half? no yes.
If yes, provide applicant's name, date, purpose and result of hearing, and resolution number:

15. Is this application as a result of a violation notice? no yes. If yes, give name to whom the violation notice was served: _____ and describe the violation:

16. Describe structures on the property: CBS

17. Is there any existing use on the property? no yes. If yes, what use and when established?

Use: Shopping Center Year: 1984

APPLICANT'S AFFIDAVIT

The Undersigned, first being duly sworn depose that all answers to the questions in this application, and all supplementary documents made a part of the application are honest and true to the best of (my)(our) knowledge and belief. (I)(We) understand this application must be complete and accurate before the application can be submitted and the hearing advertised.

OWNER OR TENANT AFFIDAVIT

(I)(WE), _____, being first duly sworn, depose and say that (I am)(we are) the owner tenant of the property described and which is the subject matter of the proposed hearing.

Signature _____

Signature _____

Sworn to and subscribed to before me this ____ day of _____, _____

Notary Public: _____
Commission Expires: _____

CORPORATION AFFIDAVIT

(I)(WE), _____, being first duly sworn, depose and say that (I am)(we are) the President Vice-President Secretary Asst. Secretary of the aforesaid corporation, and as such, have been authorized by the corporation to file this application for public hearing; and that said corporation is the owner tenant of the property described herein and which is the subject matter of the proposed hearing.

Attest: _____

Authorized Signature _____

Office Held _____

(Corp. Seal)

Sworn to and subscribed to before me this ____ day of _____, _____

Notary Public: _____
Commission Expires: _____

PARTNERSHIP AFFIDAVIT

(I)(WE), _____, being first duly sworn, depose and say that (I am)(we are) partners of the hereinafter named partnership, and as such, have been authorized to file this application for a public hearing; and that said partnership is the owner tenant of the property described herein which is the subject matter of the proposed hearing.

By _____ %
By _____ %

Woolbright Parkbroke Ltd.
(Name of Partnership)
By _____ %
By _____ %

Sworn to and subscribed to before me this 19 day of July 2008

Notary Public: Robin Jill Galle
Commission Expires: 3/27/08
My Commission DD28: Expires March 27 2008

ATTORNEY AFFIDAVIT

I, _____, being first duly sworn, depose and say that I am a State of Florida Attorney at Law, and I am the Attorney for the Owner of the property described and which is the subject matter of the proposed hearing.

Signature _____

Sworn to and subscribed to before me this ____ day of _____

Notary Public: _____
Commission Expires: _____

OWNERSHIP AFFIDAVIT
FOR
LIMITED PARTNERSHIP

STATE OF _____

Public Hearing No. _____

COUNTY OF _____

Before me, the undersigned authority, personally appeared Mark Barry, hereinafter the Affiant, who being duly sworn by me, on oath, deposes and says:

1. Affiant is the general partner of the Woodlight Pembroke limited partnership, at the following address: _____
2. Affiant, as general partner, is authorized to file this application for a public hearing.
3. The limited partnership owns the property, which is the subject of the proposed hearing.
4. The subject property is legally described as:
Tract A, South Dade Shopping Ctr.
PB 12368
5. Affiant understands this affidavit is subject to the penalties of law for perjury and the possibility of voiding of any zoning granted at public hearing.

Witnesses:

Robin Jill Gallo
Signature

ROBIN JILL GALLO
Print Name

Signature

Print Name

Mark Barry
Affiant's signature (General Partner)
W. Mark Barry
Print Name

Sworn to and subscribed before me on the 19 day of JULY, 2005.
Affiant is personally known to me or has produced identification. _____ as

Robin Jill Gallo
Notary Public, State of FLORIDA

My Commission Expires:

3/27/08

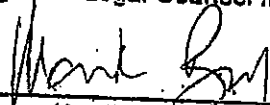


Robin Jill Gallo
My Commission DD287844
Expires March 27 2008

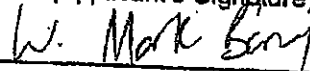
RESPONSIBILITIES OF THE APPLICANT

I AM AWARE THAT:

1. The Public Works Department, the Department of Environmental Resources Management (DERM), and other County agencies review and critique zoning applications which may affect the scheduling and outcome of applications. These reviews may require additional public hearings before DERM's Environmental Quality Control Board (EQCB), or other County boards, and/or the proffering of agreements to be recorded. I am also aware that I must comply promptly with any DERM or Public Works conditions and advise this office in writing if my application will be withdrawn.
2. Filing fees may not be the total cost of a hearing. Some requests require notices to be mailed to property owners up to a mile from the subject property. In addition to mailing costs, fees related to application changes, plan revisions, deferrals, re-advertising, etc., may be incurred. Applications withdrawn within 60 days of the filing are eligible for a refund of 50% of the hearing fee but after that time hearings withdrawn or returned will be ineligible for a refund. I understand that fees must be paid promptly.
3. The South Florida Building Code requirements may affect my ability to obtain a building permit even if my zoning application is approved; and that a building permit will probably be required. I am responsible for obtaining permits and inspections for all structures and additions proposed, or built without permits. And that a Certificate of Use and Occupancy must be obtained for the use of the property after it has been approved at Zoning Hearing, and that failure to obtain the required permits and/or Certificates of Completion or of Use and Occupancy will result in enforcement action against any occupant and owner. Submittal of the Zoning Hearing application may not forestall enforcement action against the property.
4. The 3rd District Court of Appeal has ruled that zoning applications inconsistent with the Comprehensive Development Master Plan (CDMP) cannot be approved by a zoning board based upon considerations of fundamental fairness. Therefore, I acknowledge that if the hearing request is inconsistent with the CDMP and I decide to go forward then my hearing request can only be denied or deferred, but not approved.
5. In Miami-Dade County v. Omnipoint Holdings, Inc., Case No. 3D01-2347 (Fla. 3rd DCA 2002), the 3rd District Court of Appeal has held invalid the standards for non-use variances, special exceptions, unusual uses, new uses requiring a public hearing and modification of covenants. This is not a final decision and the County Attorney's Office is seeking further review. In the interim, the County Attorney's Office is working with the Planning and Zoning Department's professional staff to develop new standards that will address the Court's concerns. While the new standards are being developed, applicants are advised that any non-use variance, special exception, unusual use, new use requiring a public hearing or request for modification of covenants granted under the existing standards are subject to being reversed in the courts. An applicant wishing to avoid the substantial legal risks associated with going forward under the existing standard may seek a deferral until the new standards are developed.
6. Any covenant to be proffered must be submitted to the Department's Legal Counsel, on County form, at least 1 month prior to the hearing date. The covenant will be reviewed and the applicant will be notified if changes or corrections are necessary. Once the covenant is acceptable, the applicant is responsible to submit the executed covenant with a current 'Opinion of Title' within 1 week of the hearing. And that Legal Counsel can advise as to additional requirements applicable to foreign corporations. Documents submitted to Legal Counsel must carry a cover letter indicating subject matter, application number and hearing date. Legal Counsel may be reached at (305) 375-3075

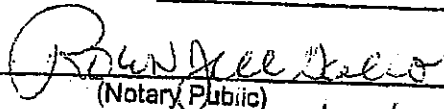


(Applicant's Signature)



(Print Name)

Sworn to and subscribed before me this 19 day of JULY, 2008. Affiant is personally known to me or has produced _____ as identification.


(Notary Public)

My commission expires 3/27/08



Robin Jill Gallo
My Commission DD287844
Expires March 27 2008

DISCLOSURE OF INTEREST

If a CORPORATION owns or leases the subject property, list principal stockholders and percent of stock owned by each. [Note: Where principal officers or stockholders consist of other corporation(s), trust(s), partnership(s) or similar entities, further disclosure shall be made to identify the natural persons having the ultimate ownership interest].

CORPORATION NAME: _____

<u>NAME AND ADDRESS</u>	<u>Percentage of Stock</u>
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

If a TRUST or ESTATE owns or leases the subject property, list the trust beneficiaries and percent of interest held by each. [Note: Where beneficiaries are other than natural persons, further disclosure shall be made to identify the natural persons having the ultimate ownership interest].

TRUST/ESTATE NAME: _____

<u>NAME AND ADDRESS</u>	<u>Percentage of Interest</u>
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

If a PARTNERSHIP owns or leases the subject property, list the principals including general and limited partners. [Note: Where partner(s) consist of other partnership(s), corporation(s), trust(s) or similar entities, further disclosure shall be made to identify the natural persons having the ultimate ownership interests].

PARTNERSHIP OR LIMITED PARTNERSHIP NAME: Woolbright Pembroke Ltd.

<u>NAME AND ADDRESS</u>	<u>Percent of Ownership</u>
<u>3200 N. Military Trl. Boca Raton FL 33431</u>	<u>100</u>
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

If there is a **CONTRACT FOR PURCHASE** by a Corporation, Trust or Partnership, list purchasers below, including principal officers, stockholders, beneficiaries or partners. [Note: Where principal officers, stockholders, beneficiaries or partners consist of other corporations, trusts, partnerships or similar entities, further disclosure shall be made to identify natural persons having ultimate ownership interests].

NAME OF PURCHASER: _____

NAME, ADDRESS AND OFFICE (if applicable)	Percentage of Interest
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

Date of contract: _____

If any contingency clause or contract terms involve additional parties, list all individuals or officers, if a corporation, partnership or trust:

NOTICE: For changes of ownership or changes in purchase contracts after the date of the application, but prior to the date of final public hearing, a supplemental disclosure of interest is required.

The above is a full disclosure of all parties of interest in this application to the best of my knowledge and belief.

Signature: Mark Gino
(Applicant)

Sworn to and subscribed before me this 19 day of July, 2007. Affiant is personally known to me or has produced _____ as identification.

Robin Jill Gello
(Notary Public)

 Robin Jill Gello
My Commission DD287844
Expires March 27 2008

My commission expires 3/27/08

*Disclosure shall not be required of: 1) any entity, the equity interests in which are regularly traded on an established securities market in the United States or another country; or 2) pension funds or pension trusts of more than five thousand (5,000) ownership interests; or 3) any entity where ownership interests are held in a partnership, corporation or trust consisting of more than five thousand (5,000) separate interests, including all interests at every level of ownership and where no one (1) person or entity holds more than a total of five per cent (5%) of the ownership interest in the partnership, corporation or trust. Entities whose ownership interests are held in a partnership, corporation, or trust consisting of more than five thousand (5,000) separate interests, including all interests at every level of ownership, shall only be required to disclose those ownership interest which exceed five (5) percent of the ownership interest in the partnership, corporation or trust.

WE Nbr 2006-136	DOH NUMBER 000000-000-N/A	STR 5 -56-40	Status A	WE Date 06/19/2006	Job Number
---------------------------	-------------------------------------	------------------------	--------------------	------------------------------	------------

Name.....**SOUTH DADE OUTPARCEL**
 Address.....**9820-9828 SW 184 STREET**
 Description..

Project PE..... 35158	PE #	First Name ALBERT	I Last Name R CAPELLINI	Phone # (954)428-6300
Certifying PE...				() -

Number of Hydrants..... 0	DERM Receipt Number..... 4587
Utility Code..... 30	Review Fee..... \$ 115.00
MIAMI DADE WATER & SEWER DEPARTMENT	
City Code..... 30	
UNINCORPORATED DADE COUNTY	
DERM Approval Date..... 06/19/2006	DOH Appv. Letter Date.... 05/08/2006
Expiration Date..... 06/20/2011	DERM Warning Letter..... / /
	Certification Date..... / /
	DOH Clearance Date..... / /

Comments:

Index	Length (LF)	of Main Size	Material	Signature	Date
***	_____	_____	_____	_____	/ /
	_____	_____	_____	_____	/ /
	_____	_____	_____	_____	/ /
	_____	_____	_____	_____	/ /
	_____	_____	_____	_____	/ /

GOLD/R Plan <R>eview
 Gold/G Codes & Cate<g>ories

GOLD/L P<l>ats
 GOLD/N E<n>gineers

Signature FERNAC
 Date 06/19/2006

GOLD/P <P>roperties
 Gold/T Le<t>ter Paragraphs

Handwritten signature: H. H. Phillips

RESOLUTION NO. 06-____

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, APPROVING A MODIFICATION TO AN APPROVED SITE PLAN TO ALLOW FOR REDEVELOPMENT OF A MOVIE THEATER INTO A COMMERCIAL BUILDING AND APPROVAL OF AN UNUSUAL USE FOR OUTDOOR DINING FOR THE SHOPPING CENTER LOCATED AT 18403 SOUTH DIXIE HIGHWAY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Woolbright Pembroke Ltd (the "Applicant") has submitted an application to the Town of Cutler Bay (the "Town") for a modification of an approved site plan and approval of an unusual use for the shopping center located at 18403 South Dixie Highway (Application No. Z05-262); and

WHEREAS, the Applicant seeks to modify the approved site plan for the shopping center by replacing an existing movie theater with a commercial building, which will include retail and office uses and two proposed restaurants; and

WHEREAS, the Applicant also seeks approval of an unusual use for this shopping center to permit outdoor dining areas for the two proposed restaurants and an existing restaurant; and

WHEREAS, Town staff has reviewed the requirements of the Town Code of Ordinances and has recommended approval of these requests with conditions; and

WHEREAS, public notice was provided in accordance with law; and

WHEREAS, the Town Council finds that this modification of the site plan for the shopping center and the unusual use are consistent with the provisions of the Town's Comprehensive Plan.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AS FOLLOWS:

Section 1. Recitals. The above recitals are true and correct and are incorporated herein by this reference.

Section 2. Approval of Modification of Site Plan. The Town Council hereby approves the request by the Applicant, subject to the conditions below, to replace an existing movie theater with a commercial building, which will include retail and office uses and two proposed restaurants.

Attest:

ERIKA GONZALEZ SANTAMARIA
Town Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY FOR THE
SOLE USE OF THE TOWN OF CUTLER BAY:

WEISS SEROTA HELFMAN PASTORIZA
COLE & BONISKE, P.A.
Interim Town Attorney

FINAL VOTE AT ADOPTION:

Mayor Paul S. Vrooman _____
Vice Mayor Edward P. MacDougall _____
Councilmember Timothy J. Meerbott _____
Councilmember Ernest N. Sochin _____
Councilmember Peggy R. Bell _____

TAB 3

RESOLUTION NO. ____

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA; DETERMINING THE PROPOSED MILLAGE RATE, AND THE DATE, TIME AND PLACE FOR THE FIRST AND SECOND BUDGET HEARINGS AS REQUIRED BY LAW; DIRECTING THE CLERK OR HER DESIGNEE TO FILE SAID RESOLUTION WITH THE PROPERTY APPRAISER AND TAX COLLECTOR OF MIAMI-DADE COUNTY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, on June 30, 2006, Property Appraiser of Miami-Dade County, Florida (the "Property Appraiser") served upon the Town of Cutler Bay, Florida (the "Town"), a "Certification of Taxable Value" certifying to the Town its 2006 taxable value; and

WHEREAS, the provisions of Section 200.065, Florida Statutes, require that the Town, within thirty-five (35) days of service of the Certification of Taxable Value, furnish to the Property Appraiser and Tax Collector the proposed millage rate and the date, time and place at which public hearings will be held to consider the proposed millage rate and the tentative budget; and

WHEREAS, the Town is proposing the adoption of a millage rate for the first time, making the statutory requirement to compute a rolled-back rate inapplicable.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AS FOLLOWS:

Section 1. The above recitals are true and correct and incorporated into this resolution by this reference.

Section 2. That the proposed millage is declared to be 2.447 mills, which is \$2.447 per \$1,000.00 of assessed property within the Town of Cutler Bay, Florida.

Section 3. That the date, time and place of the first and second public hearings are set by the Town Council as follows:

<u>Date</u>	<u>Time</u>	<u>Place</u>
<u>First Budget Hearing:</u>		
<u>September 6, 2006</u>	<u>7:00 P.M.</u>	<u>South Dade Library Branch</u> <u>10750 SW 211 Street</u> <u>2nd Floor</u> <u>Cutler Bay, Florida 33189</u>
<u>Second Budget Hearing:</u>		
<u>September 20, 2006</u>	<u>7:00 P.M.</u>	<u>South Dade Government Center</u> <u>10750 SW 211 Street</u> <u>Room 203</u> <u>Cutler Bay, Florida 33189</u>

In the event that either the Board of County Commissioners of Miami-Dade County, Florida or the Miami Dade County School Board schedule their Budget Hearings on a date set for a Town Budget Hearing, the Mayor is authorized to change the date, time and place of one or both of the Budget Hearings as required by general law. In the event the date, time or place of a Town Budget Hearing is changed the Town Clerk provide public notice in the manner required by general law and the Town Charter.

Section 4. That the Town Clerk is directed to send the original Certification of Taxable Value and a certified copy of this resolution to the Property Appraiser.

Section 5. This resolution shall be effective immediately upon its adoption.

PASSED and ADOPTED this ____ day of _____, 2006.

PAUL S. VROOMAN, Mayor

Attest:

ERIKA GONZALEZ-SANTAMARIA
Town Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY FOR THE
SOLE USE OF THE TOWN OF CUTLER BAY:

WEISS SEROTA HELFMAN PASTORIZA COLE & BONISKE, P.A.
Interim Town Attorney

FINAL VOTE AT ADOPTION:

Mayor Paul S. Vrooman _____

Vice-Mayor Edward P. MacDougall _____

Councilmember Timothy J. Meerbott _____

Councilmember Ernest N. Sochin _____

Councilmember Peggy R. Bell _____

TAB 4

Memo

To: Steve Alexander, Town Manager
From: Chad Friedman, Assistant Town Attorney *CF*
Date: July 11, 2006
Re: Lakes by the Bay South Commons Special Taxing District

I. Issue.

Town Staff expressed concern, during the review of the proposed special taxing district for security guard gates (the "District") at the three entrances to the Lakes by the Bay South Commons (the "South Commons") development, that the security guard gate ("gate") located at 97th Avenue and S.W. 224th Street will impact the existing linear park along 97th Avenue.¹ In response to this concern, staff has asked whether the District can be created for the other two northern gates,² without the western gate located at this entrance. This memorandum will provide an answer to this question and will hope to provide some clarity on this issue.

II. Background.

Lennar Homes (the "Applicant") has filed an application with Miami-Dade County (the "County") requesting the creation of the District for the South Commons

¹ Initially, there was also concern that this gate would create a traffic problem because of the possible stacking of cars along 97th Avenue. However, after discussions with the Town's traffic expert, this concern has been alleviated.

² Town staff has provided that the County approved the two northern gates, but staff is still determining the status of the third western gate.

development. The underlying purpose of the District is to provide an exterior security system for the residents of South Commons.

Section 18-2 of the County Code of Ordinances requires the Applicant to obtain the Town's support for the District prior to the County Commission approving the creation of the District. This District will provide the funding for the security guards that will staff the proposed gates for the South Commons. It is anticipated that a gate, with an accompanying guard, will be located at each entrance of the South Commons. (Exhibit A). There are three entrances proposed for the South Commons which are located as follows:

- S.W. 216th Street and S.W. 93rd Path
- S.W. 216th Street and S.W. 88 Place
- S.W. 224 Street and S.W. 97th Avenue

To date, the two northern entrances located on S.W. 216th Street have been constructed.

The third western entrance, located at S.W. 224th Street and S.W. 97th Avenue (the "third entrance"), is required to be constructed upon the construction of residential dwellings units in Parcel D or Parcel E within the South Commons. It is this third entrance which is the subject of this memorandum.

III. Will the County Agree to Create the District Without the Security Guard Gate at the Third Entrance?

Currently, S.W. 97th Avenue south of S.W. 216th Street is a two lane road that terminates where the proposed third entrance will be located. Development within the South Commons is governed by the development approvals and covenant approved by County Resolution Z-17-03 (the "Covenant"). Pursuant to the Covenant, the Applicant agreed to construct a number of phased road improvements within the South Commons.

The construction of S.W. 224th Street to 97th Avenue, which will create the third entrance, is one of these improvements. As noted above, the Applicant is required to construct the third entrance upon the construction of residential units within Parcel D or E within the South Commons. (Exhibit B).

After review of the proposed District, County staff opined that it is necessary for a gate to be built at the third entrance in order for the District to be successful. In support of this opinion, County staff explained that the external security system of the District would be compromised if the third entrance does not have a gate because visitors could enter the South Commons through this unguarded entrance. As such, if the Town Council chooses to support the District without the gate at the third entrance, it is highly unlikely that the County will approve the creation of the District because all of the entrances into the South Commons will not be secured.

IV. Will the Creation of the District Impact the Linear Park Along S.W. 97th Avenue?

As described above, the Applicant has agreed to make a number of phased road improvements within the South Commons. One of these phased road improvements is a conditional improvement that requires the expansion of S.W. 97th Avenue south of S.W. 216th Street to 4 lanes. (Exhibit B). This improvement is conditioned on the adequacy of the Level of Service (LOS) for the existing two lanes of S.W. 97th Avenue from S.W. 216th Street south to the southern boundary of Lakes by the Bay Section 5 (Plat Book 131 p. 75)(the "Roadway") as well as the intersection of S.W. 97th Avenue and S.W. 216th Street (the "Intersection").

Prior to the 2,000th building permit being issued for the South Commons, the Applicant is required to conduct a traffic study for the Roadway and the Intersection. If

the study demonstrates that the LOS for the Roadway or the Intersection is operating below LOS "D" at the build out of the South Commons, the County³, at its discretion, can require the Applicant to: (1) expand S.W. 97th Avenue south of S.W. 216th Street to 4 lanes and/or (2) connect S.W. 224th Street within Section 16, and S.W. 224 Street within Section 17,⁴ so long as either or both improvements would improve the LOS to "D" or better. (Exhibit C). In the event that S.W. 97th Avenue is expanded to 4 lanes, the Covenant requires that the expansion minimize the impact on the linear park, as described in Exhibit D attached to this memorandum.

Accordingly, the creation of the District will not impact the linear park on S.W. 97th Avenue. Instead, it is the connection of S.W. 224th Street to S.W. 97th Avenue that may impact the linear park because it will allow vehicles to access S.W. 97th Avenue, which will cause the LOS on the Roadway or Intersection to deteriorate. As shown above, if the traffic study demonstrates that the LOS on the Roadway or Intersection would fall below LOS "D" at the build out of the South Commons, the County may require the Applicant to expand S.W. 97th Avenue south of S.W. 216th Street to 4 lanes, which will impact the linear park.

V. Conclusion.

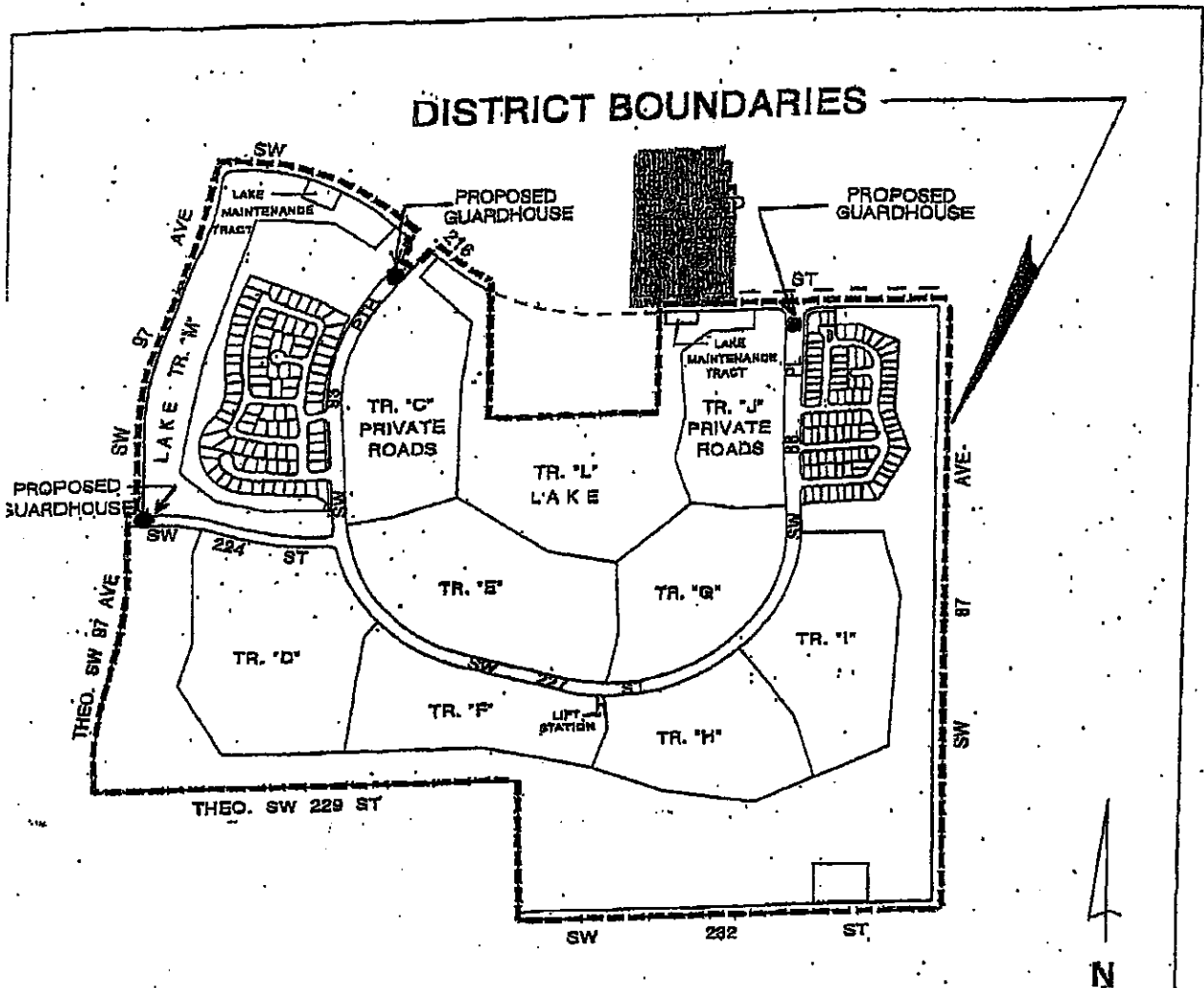
Based upon the foregoing, it appears that the creation of the District will not impact the linear park along S.W. 97th Avenue. Instead, any impact on the park will be caused by the connection of S.W. 224th Street to S.W. 97th Avenue. If the Town Council chooses to support the District without the gate at the third entrance, it is highly unlikely

³ Initially, it seemed that this portion of S.W. 97th Avenue would be dedicated to the Town from the County because it could be considered a local road. However, pursuant to the finalized County master interlocal agreement, the County will retain jurisdiction over this road.

⁴ Essentially, this improvement would connect S.W. 224th Street to the south and west.

that the County will approve the creation of the District, unless the Covenant is amended by removing the requirement to construct S.W. 224th Street to S.W. 97th Avenue. If the Covenant is so amended⁵, the third entrance to the South Commons will never be created and the third guard gate will not be needed. If the Town Council is interested in amending the Covenant, it is essential that the City's traffic consultant be consulted to analyze any impacts this may have on the connectivity of the road system within the South Commons and the LOS on the surrounding roads.

⁵ The Town Council will have to amend Resolution Z-17-03 to amend the Covenant. This will require an advertised public hearing.



**LAKES BY THE BAY
SOUTH COMMONS**
SECURITY GUARD SPECIAL TAXING DISTRICT

3-256 (COMM. 0008)
SECTION: 16-56-40

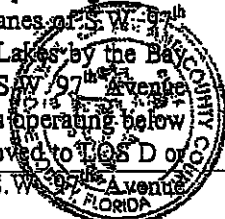
EXHIBIT "A"



(Space reserved for Clerk)

Parcel P Entrance Divided at S.W. 216 Street.	Four Lane Divided Cross Section (3)	At time of issuance of first building permit for Parcel P
S.W. 88 Place at S.W. 216 Street	South and North approaches - four lane Divided cross section (3)	In accordance with the the Platting Process
	Signal Warrant Study (4)	2,000 th Building Permit in South Commons
S.W. 87 Avenue at S.W. 216 Street (5)	North Approach - Left Turn Lanes	At such time as platting occurs in Parcels M, V, W, and/or X or at 2,000 DU's (6), whichever occurs first
	Signal Warrant Study. (4)	2,200 DU's (6)
S.W. 97 Avenue at S.W. 216 Street	Signal Warrant Study	2,000 DU's (6)
S.W. 87 Avenue at Old Cutler Road	East and west approaches Left turn lanes	With first plat (7) Design and install signal modification
S.W. 224 Street from S.W. 93 Path to existing southern terminus of S.W. 97 Avenue at the southern boundary of Lakes by the Bay Section Five (Plat book 131, Page 75)	Two Lane - Two Way Roadway	Upon construction of residential dwelling units in Parcel D or Parcel E

Applicant or its successor in interest will conduct a traffic study prior to the issuance of the 2,000th building permit for the Lakes by the Bay development south of S.W. 216th Street, east of S.W. 97th Avenue, west of S.W. 87th Avenue, and north of S.W. 232nd Street ("South Common"). The traffic study shall analyse the operating level of service (LOS) at buildout of South Common for the existing two lanes of S.W. 87th Avenue from S.W. 216th Street south to the southern boundary of Lakes by the Bay Section Five (Plat book 131, Page 75), as well as the intersection of S.W. 97th Avenue and S.W. 216th Street, and if either the roadway or the intersection is operating below LOS D and the study shows that such levels of service will be improved to LOS D or better by either (i) the construction of an additional two lanes of S.W. 87th Avenue



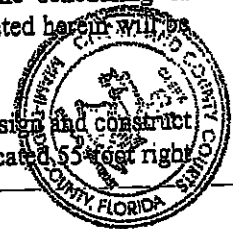
(Public Hearing)

(Space reserved for Clerk)

from S.W. 216th Street south to the southern boundary of Lakes by the Bay Section Five (Plat book 131, Page 75) and/or (ii) the connection of S.W. 224th Street within Section 16, and S.W. 224th Street within Section 17, then the county may request the applicant to construct either or both of improvements, only if such construction will bring the level of service of the roadway or the intersection to LOS D or better. If construction of improvement (i) is required, then the improvement shall be constructed in accordance with the sketch attached as Exhibit G and the cross section attached as Exhibit H to minimize impact on the linear park; if construction of improvement (ii) is required, then the improvement shall be constructed in accordance with the sketch attached as Exhibit I. If the traffic study indicates that either or both roadway improvements are required then the applicant shall commence the design, permitting and approval within 6 months; the roadway(s) shall be constructed within two years from approval/permit. If the traffic study indicates that the intersection and the roadway will operate at a LOS D or better at buildout of South Common then the applicant shall be released from all of the above construction requirements.

FOOTNOTES

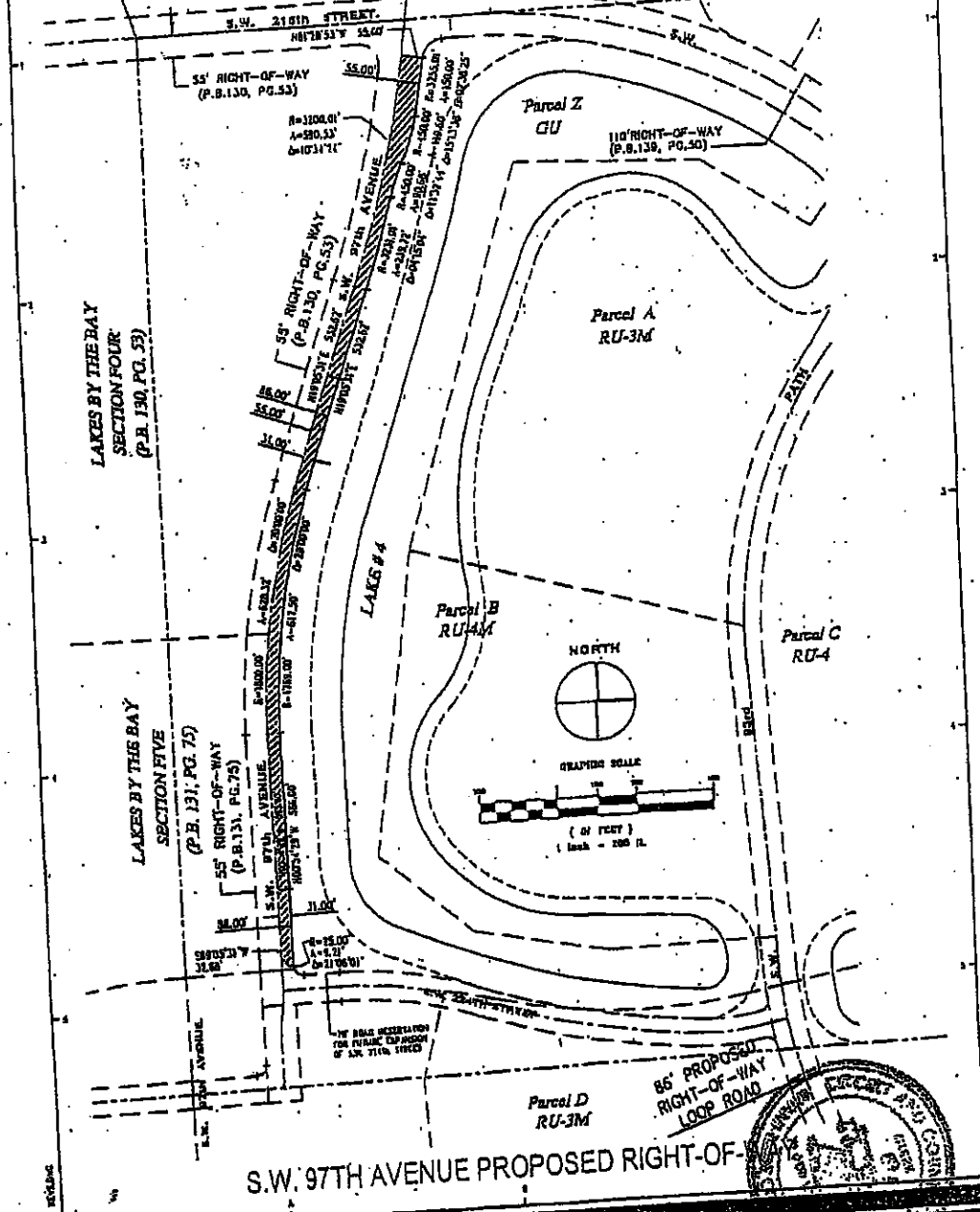
- 1) All improvements to be designed and constructed in accordance with applicable State and County design standards and reviewed and approved by the Public Works Department of Miami-Dade County prior to construction.
- 2) Initial Platting is the first recorded plat. The designated roadway improvements must be completed prior to the first unit being certified for occupancy.
- 3) Construction of the four lane divided cross section includes left-turn bays with storage and taper lengths in accordance with all applicable design standards.
- 3A) Construction of the two lane divided cross section includes left-turn bays with storage and taper lengths in accordance with all applicable design standards.
- 4) Rather than specifying future dates for the installation of traffic signals, it is currently Miami-Dade County's policy to require traffic signal warrant studies prior to installation. In recognition of that policy, traffic signal warrant studies should be undertaken within the building parameters identified above. At that time, determinations will be made by the County for the scheduling of signalization. All signal warrant studies and installations listed herein will be by Lakes by the Bay.
- 5) S.W. 216th Street with S.W. 87th Avenue. Developer will design and construct a two-way, two-lane roadway 24 feet in width within a dedicated 55-foot right of way.



(Public Hearing)

OLD CUTLER COMMON
UNIT TWO
(P.B. 123, PG. 4)
N.W. CORNER OF
SECTION 16-56-40.

LAKES BY THE BAY
SECTION SEVEN
(P.B. 136, PG. 47)
55' RIGHT-OF-WAY
(P.B. 136, PG. 47)



LAKES BY THE BAY - SOUTH COMMON



FORD, ARMENTEROS & MANUZY, INC.
1980 N.W. 97TH AVENUE, 2ND FLOOR
MIAMI, FLORIDA 33172
PH. (305) 477-8472
FAX (305) 470-2805

TYPE OF PROJECT	SKETCH OF PROPOSED RIGHT-OF-WAY		
SHEET NAME	SKETCH OF SURVEY		
DRAWING FOR	LENNAR HOMES, INC.		
DRAWN BY	J. LOPEZ	DATE	1-8-2002
CHECKED BY		SCALE	1" = 300'
APPROVED BY		PROJECT NO.	011-1111

EXHIBIT
C

LAKES BY THE BAY
SECTION FIVE
(P.B. 131, PG. 75)

S.W. 97th AVENUE.

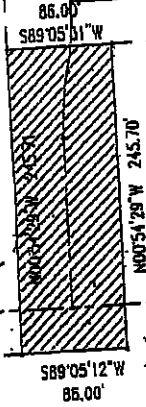
S.W. 224th STREET

WEST 1/4 CORNER OF
SECTION 16-56-40

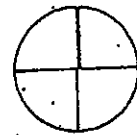
70' ROAD RESERVATION
FOR FUTURE EXPANSION
OF S.W. 224th STREET

SOUTH LINE OF NW 1/4
OF SECTION 16-56-40

WEST LINE OF
SECTION 16-56-40
S.W. 97th AVENUE.



NORTH



GRAPHIC SCALE



(IN FEET)

1 inch = 100 ft

S.W. 97TH AVENUE PROPOSED RIGHT-OF-WAY

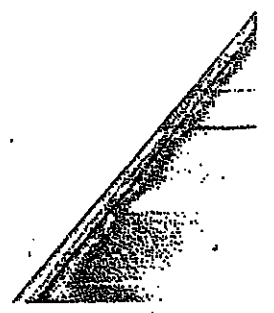
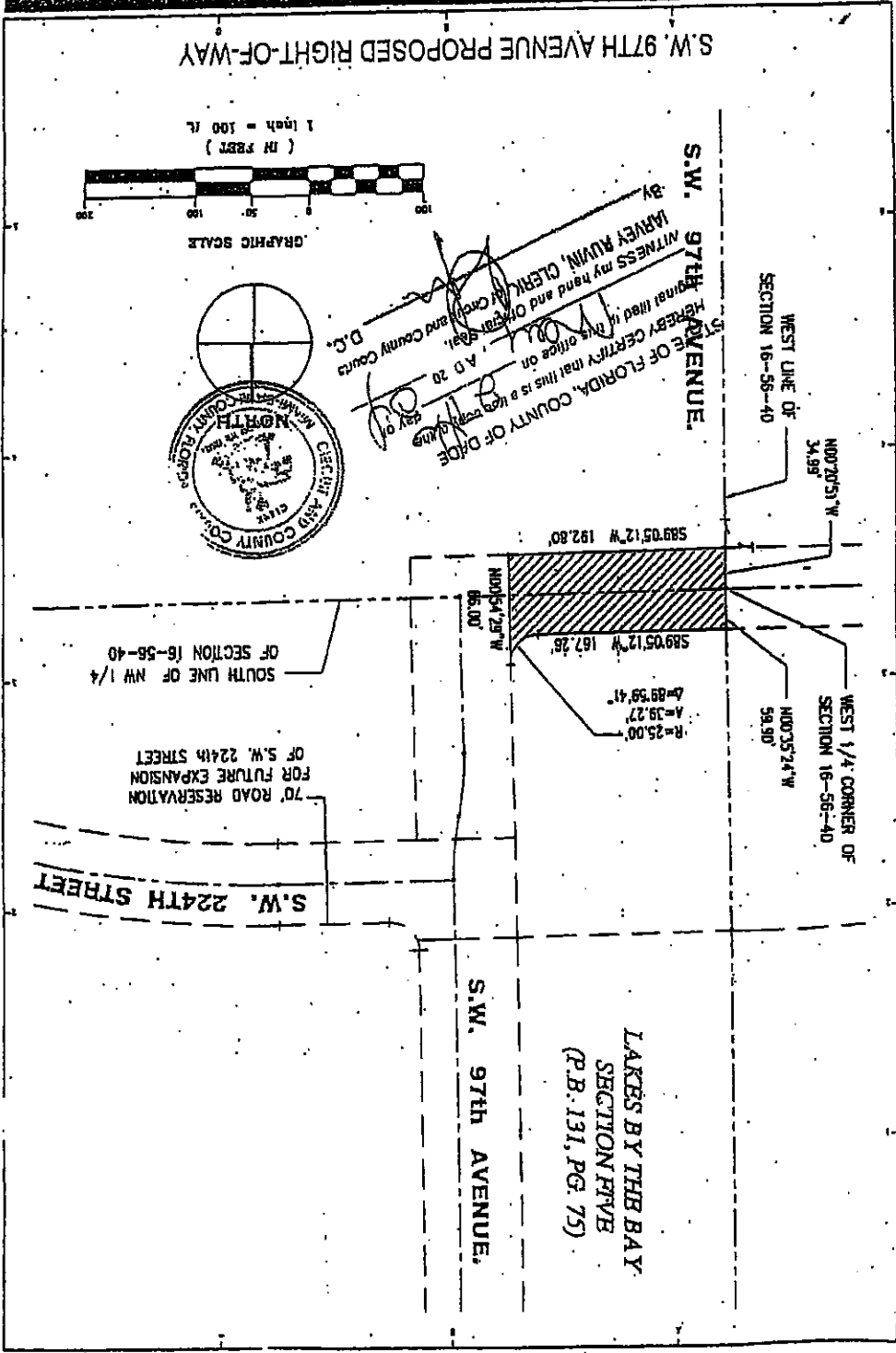
LAKES BY THE BAY - SOUTH COMMONS

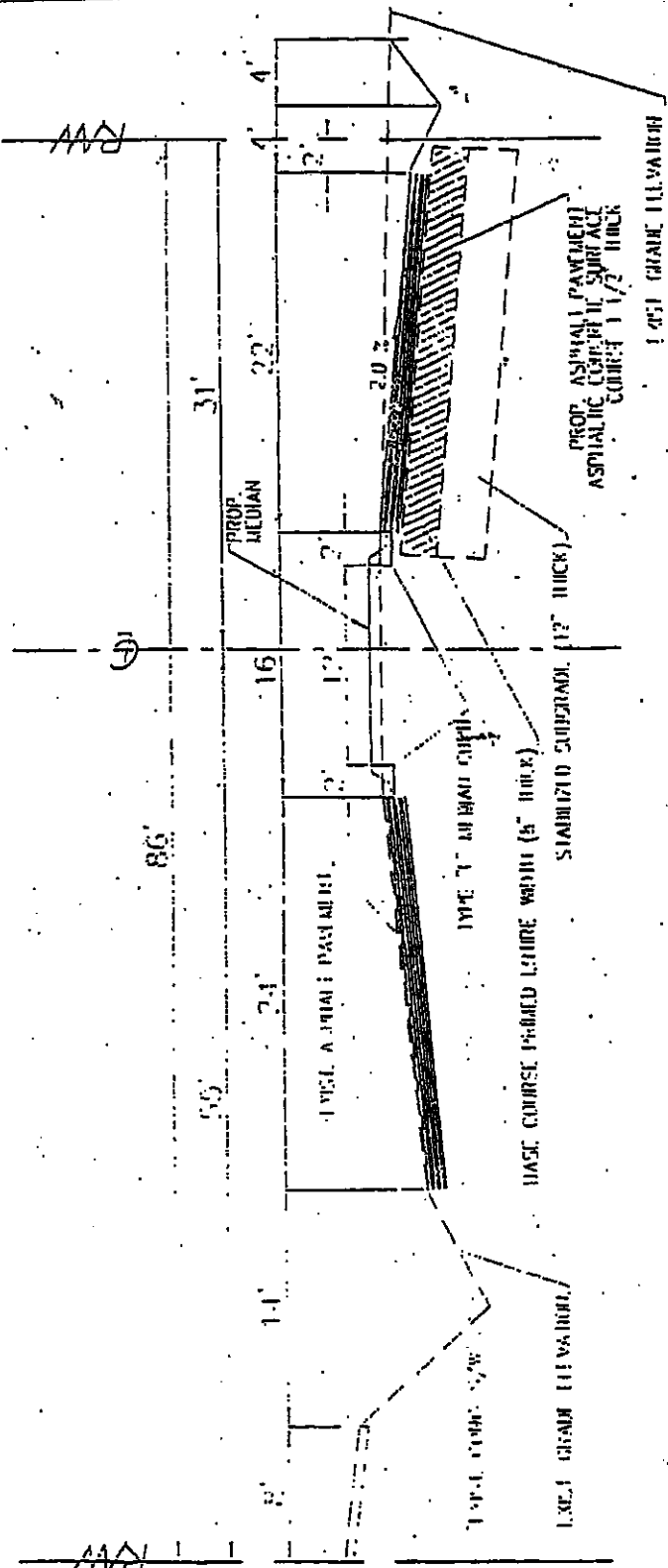
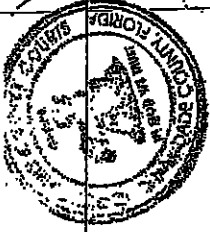


FORD, ARMENTEROS & MANUCY, INC.
1950 N.W. 94th AVENUE, 2nd FLOOR
MIAMI, FLORIDA 33172
PH. (305) 477-8472
FAX (305) 470-2803

TYPE OF PROJECT	SKETCH OF PROPOSED RIGHT-OF-WAY		
DRAWN BY	SKETCH OF SURVEY		
PREPARED FOR	LENNAR HOMES, INC.		
DRAWN BY	J. LOPEZ	DATE	1-3-2002
SCALE	1" = 100'		SHEET 1 of 1 SHEETS
PROJECT NO.	01-041		

REVISIONS TO THIS MASTER ZONING PLAN REQUIRE





PROP. CROSS SECTION (SW 97th AVE)
DRAINAGE SWALE OUTSIDE OF RIGHT-OF-WAY.
N.T.S.

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AUTHORIZING MIAMI-DADE COUNTY TO CONTINUE THE PROCESS OF CREATING A SPECIAL TAXING DISTRICT FOR SECURITY GUARD GATES FOR THE LAKES BY THE BAY SOUTH COMMONS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Chapter 18, Article 1, of the Miami-Dade County Code of Ordinances (the "County Code") allows for the creation and establishment of special taxing districts within incorporated areas for the purpose of public improvements; and

WHEREAS, prior to creating a special taxing district, the County Code requires the approval of the Town of Cutler Bay (the "Town") when the special taxing district falls within the Town's municipal boundaries; and

WHEREAS, the County Code also provides the procedure for creating taxing districts for the purpose of providing security guard gates within new subdivisions within the Town; and

WHEREAS, the Town wishes to allow the County to continue creating the special taxing district for security guard gates within the Lakes by the Bay South Commons development.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AS FOLLOWS:

Section 1. Recitals. The above recitals are true and correct and are incorporated herein by this reference.

Section 2. Approval. In accordance with Chapter 18, Article 1, of the Miami-Dade County Code of Ordinances, the Town hereby approves and authorizes Miami-Dade County to continue establishing a special taxing district for security guard gates within the Lakes by the Bay South Commons.

Section 3. Effective Date. This Resolution shall be effective immediately upon adoption.

PASSED AND ADOPTED this ____ day of _____, 2006.

PAUL S. VROOMAN, Mayor

Attest:

ERIKA GONZALEZ-SANTAMARIA
Town Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY FOR THE
SOLE USE OF THE TOWN OF CUTLER BAY:

WEISS SEROTA HELFMAN PASTORIZA
COLE & BONISKE, P.A.
Interim Town Attorney

FINAL VOTE AT ADOPTION:

Mayor Paul S. Vrooman _____

Vice-Mayor Edward P. MacDougall _____

Councilmember Timothy J. Meerbott _____

Councilmember Ernest N. Sochin _____

Councilmember Peggy R. Bell _____

TAB 5

ORDINANCE NO. 06-_____

AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, IMPLEMENTING THE UTILITY TAX AUTHORIZED BY SECTION 166.231, ET. SEQ., FLORIDA STATUTES, TO LEVY AND IMPOSE A UTILITY TAX UPON THE PURCHASE OF ELECTRICITY, WATER, METERED GAS, BOTTLED GAS, COAL, AND FUEL OIL WITHIN THE TOWN OF CUTLER BAY; AUTHORIZING TRANSMITTAL; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR CONFLICTS AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, pursuant to Section 8.8 of the Town Charter, on February 14, 2006, the Town Council adopted a transition emergency ordinance in relation to this matter; and

WHEREAS, this ordinance replaces the transition emergency ordinance; and

WHEREAS, pursuant to Section 8.4 of the Town of Cutler Bay (the "Town") Charter, until otherwise modified by the Town Council, all municipal taxes and fees imposed within the Town boundaries by Miami-Dade County (the "County") as the municipal government for unincorporated Miami-Dade County, which taxes and fees were in effect on the date of adoption of the Town Charter, shall continue at the same rate and on the same conditions as if those taxes and fees had been adopted and assessed by the Town; and

WHEREAS, the Town Council finds that the above-cited Charter provision is effective by operation of law to continue the levy and imposition of the utility tax (the "Utility Tax") provided by Section 29-36, et. seq. of the Miami-Dade County Code (the "County Code") as authorized by Section 166.231, et. seq., Fla. Stat., upon the purchase in the Town of electricity, water, metered gas, bottled gas, coal, and fuel oil (the "Utility Services"), without the necessity for adoption of an ordinance by the Town; and

WHEREAS, the Town Council has been advised that certain providers of Utility Services may have concerns regarding the application of Town Charter Section 8.4 pertaining to the imposition of the Utility Tax and may assert that the adoption of an enabling ordinance is necessary for the levy and imposition by the Town of such Utility Tax; and

WHEREAS, although the Town Council believes that no further action is necessary, it wishes to expedite the payment of Utility Taxes to the Town and avoid a lengthy technical debate with any Utility Service providers; and

WHEREAS, the Town Council finds that the enactment of this ordinance will protect the public health, safety and welfare of the residents and inhabitants of the Town and secure revenues which are due and owing to the Town.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AS FOLLOWS:

Section 1. Utility Tax Ordinance Adopted. An ordinance to be known as the "Utility Tax Ordinance" is hereby adopted as an ordinance of the Town of Cutler Bay, Florida, to read as follows:

ARTICLE I. UTILITY TAX

Sec. 1.01. Definitions

For the purposes hereof, the following words and phrases shall have the meanings respectively ascribed to them by this section:

Bottled Gas: All types and kinds of natural, liquefied petroleum and manufactured gas for lighting, heating, cooking, power or any other purpose delivered to any purchaser thereof within the incorporated area of the Town.

Town: Town of Cutler Bay, Florida.

Coal: All coal for lighting, heating, cooking, power, energy or any other purpose competing with any other utility or energy source taxed under this ordinance delivered to any purchaser thereof within the incorporated area of the Town.

Electricity: All electric current or energy for lighting, heating, cooking, power or any other purpose delivered to any purchaser thereof within the incorporated area of the Town.

Fuel Oil: All bunker C oil, number 1 and 2 fuel oil, and kerosene or any combination thereof capable of being used for lighting, heating, cooking, power or any other purpose and delivered to any purchaser thereof within the incorporated area of the Town.

Metered Gas: All types and kinds of natural and manufactured gas for lighting, heating, cooking, power or any other purpose delivered to any purchaser thereof within the incorporated area of the Town.

Purchase: Every act or transaction whereby possession of, utilization of, control over or title to Water, Electricity, Metered Gas, Bottled Gas, Coal, or Fuel Oil, and the duty and obligation to pay therefor become vested in the Purchaser within the incorporated area of the Town, but such term shall not pertain to nor include any such Purchase act or

transaction when undertaken or performed by an agency or instrumentality of the United States Government, the State, the County or a municipality as Purchaser.

Purchaser: Every person legally liable for the payment of Water, Electricity, Metered Gas, Bottled Gas, Coal or Fuel Oil delivery, unless such person making the Purchase is an agency or instrumentality of the United States Government, the State, the County, a municipality, or a house of public worship, which qualifies for exemption from the State sales tax under Section 212.08(7), Fla. Stat.

Seller: Every person delivering Water, Electricity, Metered Gas, Bottled Gas, Coal or Fuel Oil to any Purchaser thereof.

Water service: The water supply furnished to all consumers in the incorporated area of the Town for retail use and not for resale, except water delivered to a Purchaser in a bottle or other container.

Sec. 1.02. Rate and Amount of Excise Tax on Purchase of Public Utility Services; Collection of Tax.

Effective from and after November 8, 2005, there is hereby levied and imposed by the Town upon every purchase in the incorporated area of the Town of Water, Electricity, Metered Gas, Bottled Gas, Coal, or Fuel Oil, included in or reflected by any bill rendered by the Seller to the Purchaser an excise tax which shall be determined as follows:

- (1) When the Seller, in accordance with rules and regulations, renders a bill to the Purchaser to cover purchases made during the period of time to which the bill is applicable, the amount of excise tax shall be ten (10) percent of the total amount shown on any such bill due and payable on account of such purchases (not exceeding four cents (\$0.04) per gallon for purchases of fuel oil), exclusive of governmental charges, and adjustments caused by the increased cost of energy-producing fuels, provided such governmental charges, service fees, taxes and fuel adjustments are shown separately on any such bill.
- (2) In the use and application set out in this section, purchases of Water, Electricity, Metered Gas, Bottled Gas, Coal, Fuel Oil, shall be considered and treated as constituting and being distinct and unrelated classes of purchases, and in the event

that more than one (1) such class shall be shown upon the same bill, the amount of excise tax payable pursuant hereto shall be determined and computed for each such class separately.

- (3) The Seller is required and it shall be Seller's duty to render to each Purchaser bills covering all such purchases made, and the amount of such excise tax shall be entered and shown by the Seller as a separate item on each such bill and shall become due and payable to the Town whenever such bill becomes due and payable under the rules and regulations of the Seller. Each such bill shall include purchases applicable to but one (1) location, or to but one (1) family or business where more than one (1) family or business uses separate metered services at one (1) location in the incorporated areas of the Town.
- (4) The Purchaser is required and it shall be Purchaser's duty to pay such excise tax to the Seller, as agent for the Town, at the time of the payment of each such bill, and in the event that the Purchaser shall fail, neglect or refuse to pay such excise tax to the Seller when such bill becomes due and payable, the Seller is hereby empowered to discontinue forthwith to make any further sales or to render any further service to the Purchaser until the total amount, including such excise tax, shown upon such bill has been paid in full. The Seller is hereby authorized and required and it shall be Seller's duty to collect such excise tax from such Purchaser at the time of the payment of each such bill and to remit the same to the Town Manager's office or his designee in accordance with the provisions hereinafter stated, provided that the Seller shall have the right and privilege of assuming and paying such excise tax itself in lieu of collecting the same from the Purchaser; and that whenever the Seller shall fail or neglect to collect such excise tax from the Purchaser within one (1) year from the date of the bill on which such tax was or should have been imposed, the Seller shall be deemed to have assumed such excise tax itself and shall thereupon become liable for the payment of the amount thereof to the Town to the same extent as if such excise tax had been collected from the Purchaser, with further recourse to the Purchaser therefor.

- (5) This section shall be applicable to all bills for Water, Electricity, Metered Gas, Bottled Gas, Coal, or Fuel Oil; except that any bills for the purchase of sixteen (16) ounces or less of Bottled Gas in a container or less than one (1) gallon of Fuel Oil shall be exempt from taxation under this ordinance, and further in reference to those purchases enumerated in Section 166.231, Fla. Stat., this ordinance shall only apply to the extent permitted therein; the sale of Fuel Oil and Coal to a public or private utility; either for resale or for use as fuel in the generation of Electricity; or the sale of fuel used for the propulsion of land, water or air vehicles or as fuel for other engines, the use of which does not compete with those utilities or energy sources specified in Section 166.231, Fla. Stat. is exempt from taxation hereunder.

Sec. 1.03. Remittance of Tax to Town By Seller.

(a) Every Seller is hereby required to execute and file not later than the twentieth day of each month at the office of the Town Manager and/or his designee a certified statement on a form prescribed by the Town Manager and/or his designee, setting forth the amount of such excise tax to which the Town became entitled under the provisions hereof on account of bills paid by Purchasers during the preceding fiscal month, and, contemporaneously with the filing of such statements, shall pay the amount of such excise tax to the Town Manager and/or his designee.

(b) The Town Manager and/or his designee shall assess interest and penalties in accordance with this paragraph for failure of a Seller to pay any tax when due or to file any required return or statement, except that no penalty shall be assessed in the absence of willful neglect, willful negligence, or fraud. Interest shall be assessed at a rate of one percent (1%) per month of the delinquent tax from the date the tax was due until paid. Penalties shall be assessed at the rate of five percent (5%) per month of the delinquent tax, not to exceed a total penalty of 25%, except that in no event will the penalty for failure to file a return be less than fifteen dollars (\$15). In the case of a fraudulent return or statement or a willful intent to evade payment of the tax, the Seller making such fraudulent return or statement or willfully attempting to evade payment of the tax, shall be liable for a specific penalty of 100% of the tax. Interest and penalties shall be computed on the net tax due after application of any overpayments, and are subject to compromise by the Town Manager pursuant to Section 166.234(14), Fla. Stat.

(c) All collected tax, interest and penalties shall be deposited to the credit of the

general fund of the Town to be expended for Town purposes in accordance with law.

Sec. 1.04. Records To Be Kept.

Every Seller is hereby required to establish and maintain appropriate accounts and records showing the amount of such excise tax payable to the Town under the provisions hereof, and such accounts and records shall be open to inspection by the Town Manager or his duly authorized agent at all reasonable times. The Town Manager and/or his designee is hereby authorized and empowered to promulgate from time to time such rules and regulations with respect to the establishment and maintenance of such accounts and records as he or she may deem necessary to carry into effect the purpose and intent of the provisions hereof. Such rules and regulations shall not conflict with Section 166.234(1), Fla. Stat.

Sec. 1.05. Reports of Deliveries For Resale.

Every manufacturer, distributor, wholesaler or Seller who shall deliver Water, Electricity, Metered Gas, Bottled Gas, Coal, Fuel Oil, or Water Service to any Seller or other person having a place of business in the incorporated area of the Town, or licensed to do business therein, to be sold or resold to ultimate Purchasers, shall report to the Town Manager and/or his designee semi-annually, as of June 30th and December 31st, the names and addresses of such Sellers or other persons, and the quantities received by each of them during the preceding six (6) months, such reports to be filed not later than one month after the close of each semi-annual period.

Sec. 1.06. Recognition of Expense In Regulation of Rates; Taxable Telecommunication Services Collection Allowance; Travel Cost For Audit.

(a) All reasonable expense incurred by a Seller in making the collections and remittances and in fulfilling the duties prescribed herein is hereby declared to be and to constitute an operating expense and shall be accorded full recognition as such in the establishment of rates and charges for rendering Water, Electricity, Metered Gas, Bottled Gas, Coal, or Fuel Oil service in the Town.

(b) The Town may assess audit expenses, including travel, only as authorized by Section 166.234, Fla. Stat.

Sec. 1.07. Administration.

The tax imposed pursuant to this Article shall be administered in accordance with

Section 166.234, Fla. Stat., to the extent applicable.

Sec. 1.08. Violations.

It shall be unlawful and a violation hereof for any Purchaser to evade the payment of the excise tax provided for herein or any part thereof, or to fail or neglect to pay such excise tax within thirty (30) days after the same has become due and payable; or for any Seller to fail or refuse to pay to the Town all amounts of excise tax payable to the Town by the Seller, or to fail or refuse to file the monthly return or statement or to set forth any erroneous or false information therein with intent to defraud the Town, or to refuse to permit the Town Manager or his or her duly authorized agent to examine the accounts and records to be kept as required hereby.

Section 2. Transmittal. The Town Manager is directed to file the required reports and notices with the appropriate state and local agencies, and affected utility companies. The Town Clerk is directed to provide a copy of this Ordinance to the Department of Revenue and to all affected utility companies by certified mail.

Section 3. Severability. The provisions of this ordinance are declared to be severable and if any section, sentence, clause or phrase of this ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this ordinance but they shall remain in effect, it being the legislative intent that this ordinance shall stand notwithstanding the invalidity of any part.

Section 4. Inclusion In The Code. It is the intention of the Town Council that the provisions of this Ordinance shall become and made a part of the Town of Cutler Bay Code; that the sections of this Ordinance may be renumbered or re-lettered to accomplish such intentions; and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

Section 5. Conflicts. Any and all Ordinances or parts of Ordinances in conflict herewith are hereby repealed.

Section 6. Effective Date. This ordinance shall be effective immediately upon adoption.

PASSED on first reading this 5th day of July, 2006.

PASSED AND ADOPTED on second reading this _____ day of _____, 2006.

PAUL S. VROOMAN, Mayor

Attest:

ERIKA GONZALEZ-SANTAMARIA
Town Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY FOR THE
SOLE USE OF THE TOWN OF CUTLER BAY:

WEISS SEROTA HELFMAN PASTORIZA COLE & BONISKE, P.A.
Interim Town Attorney

FINAL VOTE AT ADOPTION:

Mayor Paul S. Vrooman _____

Vice-Mayor Edward P. MacDougall _____

Councilmember Peggy R. Bell _____

Councilmember Timothy J. Meerbott _____

Councilmember Ernest N. Sochin _____

TAB 6

ORDINANCE NO. 06-

AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, RELATING TO THE ESTABLISHMENT OF THE TOWN'S LOCAL PLANNING AGENCY; DESIGNATING THE TOWN COUNCIL AS THE LOCAL PLANNING AGENCY; PROVIDING FOR POWERS AND DUTIES; PROVIDING FOR A RECORDING SECRETARY; PROVIDING STAFF FOR THE LOCAL PLANNING AGENCY; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, pursuant to Section 8.8 of the Town Charter, on February 16, 2006, the Town Council adopted a transition emergency ordinance in relation to this matter; and

WHEREAS, this ordinance replaces the transition emergency ordinance; and

WHEREAS, recognizing the value of resident input on planning issues, the Town of Cutler Bay (the "Town") desires to establish a Local Planning Agency, as required by Section 163.3174, Florida Statutes; and

WHEREAS, the Local Planning Agency shall have the general responsibility for the conduct of the comprehensive planning program and the responsibility to hear, review, and make recommendations to the Town Council on proposed amendments to the Town's Land Development Regulations, Comprehensive Plan, and changes to the Official Zoning Map.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AS FOLLOWS:

Section 1. Local Planning Agency. The Local Planning Agency is hereby established.

Section 2. Town Council. The Town Council is hereby designated as the Town's Local Planning Agency. A member of the School Board of Miami-Dade County or a designee shall be an ex-officio member of the Local Planning Agency when any application for a land use plan amendment or rezoning that would increase residential density is considered by the Local Planning Agency.

Section 3. Powers and Duties. The Local Planning Agency shall have the powers and duties provided in Section 163.3174, Florida Statutes, including but not limited to the following:

- a. To hear, review, and make recommendations to the Town Council regarding the adoption or amendment of the Comprehensive Plan;
- b. To monitor and oversee the effectiveness and status of the Comprehensive Plan and recommend to the Town Council such changes in the Comprehensive Plan as may from time to time be required, including preparation of the periodic reports required by Section 163.3191, Florida Statutes;
- c. To review and make recommendations to the Town Council in regard to proposed Land Development Regulations and changes to the Official Zoning Map and make recommendations to the Town Council as to the consistency of the regulation or changes with the Comprehensive Plan;
- d. To make its special knowledge and expertise available upon written request and authorization of the Town Council to any official, department, board, commission and/or agency of the Town, county, state or federal government; and
- e. To adopt such rules of procedure necessary for the administration of their responsibilities.

Section 4. Recording Secretary. The Town Clerk or designee shall appoint a recording secretary to serve the Local Planning Agency. The secretary shall keep minutes of all proceedings of the Local Planning Agency. The minutes shall be a summary of all proceedings before the Local Planning Agency, attested to by the secretary, and shall include the vote of each member upon every question. The minutes shall be approved by a majority of the voting members of the Local Planning Agency. In addition, the secretary shall maintain all records of Local Planning Agency meetings, hearings, proceedings, and the correspondence of the Local Planning Agency.

Section 5. Staff. The Town Manager or designee shall appoint or assign such staff as may be necessary for the Local Planning Agency to conduct its business.

Section 6. Severability. If any section, clause, sentence, or phrase of this ordinance is for any reason held invalid or unconstitutional by a court of competent jurisdiction, the holding shall not affect the validity of the remaining portions of this ordinance.

Section 7. Inclusion In The Code. It is the intention of the Town Council that the provisions of this Ordinance shall become and made a part of the Town of Cutler Bay Code; that the sections of this Ordinance may be renumbered or re-lettered to accomplish such intentions; and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

Section 8. Conflicts. Any and all Ordinances or parts of Ordinances in conflict herewith are hereby repealed.

Section 9. Effective Date. This ordinance shall be effective immediately upon adoption.

PASSED on first reading this 5th day of July, 2006.

PASSED AND ADOPTED on second reading this _____ day of _____, 2006.

PAUL S. VROOMAN, Mayor

Attest:

ERIKA GONZALEZ-SANTAMARIA
Town Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY FOR THE
SOLE USE OF THE TOWN OF CUTLER BAY:

WEISS SEROTA HELFMAN PASTORIZA COLE & BONISKE, P.A.
Interim Town Attorney

FINAL VOTE AT ADOPTION:

Mayor Paul S. Vrooman _____

Vice-Mayor Edward P. MacDougall _____

Councilmember Timothy J. Meerbott _____

Councilmember Ernest N. Sochin _____

Councilmember Peggy R. Bell _____

TAB 7

ORDINANCE NO. 06-

AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, PERTAINING TO THE LOCAL COMMUNICATIONS SERVICES TAX RATE; PROVIDING FOR RECITALS; PROVIDING FOR ELECTION NOT TO REQUIRE AND COLLECT PERMIT FEES; ESTABLISHING THE LOCAL COMMUNICATIONS SERVICES TAX RATES; PROVIDING FOR NOTICE TO THE DEPARTMENT OF REVENUE; PROVIDING FOR REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR CONFLICTS AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, pursuant to Section 8.8 of the Town Charter, on March 2, 2006, the Town Council adopted a transition emergency ordinance in relation to this matter; and

WHEREAS, this ordinance replaces the transition emergency ordinance; and

WHEREAS, section 202.19, Florida Statutes (2005), authorizes municipalities to impose a local communications services tax at a rate of up to 5.1% for municipalities that have not chosen to levy permit fees, and at a rate of up to 4.98% for municipalities that have chosen to levy permit fees; and

WHEREAS, the maximum rate does not include an optional add on of up to 0.12% for municipalities that choose not to levy permit fees pursuant to section 337.401, Florida Statutes, nor do the rates supersede conversion or emergency rates authorized by section 202.20, Florida Statutes, which may be in excess of these maximum rates; and

WHEREAS, a municipality may require and collect permit fees from any providers of communications services that use or occupy municipal roads or rights-of-way for the provision of communications services; and

WHEREAS, to ensure competitive neutrality among providers of communications services, a municipality that elects to exercise its authority to require and collect permit fees will have an automatic reduction in the rate of the local communications services tax for the municipality, as computed under section 202.20(1) and (2), Florida Statutes (2005), as amended, by a rate of 0.12%; and

WHEREAS, alternatively a municipality may elect not to require and collect permit fees from any provider of communications services that uses or occupies municipal roads or rights-of-way for the provision of communications services; and

WHEREAS, if the municipality elects not to require and collect permit fees, the total rate for the local communications services tax as computed under section 202.20(1)

and (2), Florida Statutes (2005), as amended, for that municipality may be increased by ordinance by an amount not to exceed a rate of 0.12%; and

WHEREAS, the Town was created pursuant to the Constitution of the State of Florida and the Home Rule Charter of Miami-Dade County, on November 8, 2005, and therefore, Section 202.20(1)(a) and (b), Florida Statutes (2005), as amended, did not establish conversion rates for the Town that are higher than the maximum rate of 5.1%; and

WHEREAS, Section 337.401(3)(c)(1)(a), Florida Statutes (2005) provides substantial restrictions on permit fees that municipalities may charge communications providers, including a cap of \$100 per permit; and

WHEREAS, the Town has determined that it is in the best interests of the public and of the Town not to charge communications providers permit fees authorized by Section 337.401, Florida Statutes, (2005) effective October 1, 2005, and to benefit from the higher local communications tax rate.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AS FOLLOWS:

Section 1. Recitals. The above recitals are true and correct and are incorporated herein by this reference.

Section 2. Permit Fees. The Town elects not to require and collect permit fees from any provider of communications services that uses or occupies municipal roads or rights-of-way for the provision of communications services, as provided in Section 337.401(3)(c)(1), Florida Statutes (2005).

Section 3. Local Communications Services Tax Rate. The Town adopts the local communications tax rate as follows:

- a. The base tax rate shall be set at 5.1% and this tax rate shall take effect on January 1, 2007.
- b. Pursuant to Section 337.401(3)(c)(1)(b), Florida Statutes (2005), the Town elects to increase its total tax rate for the local communications services tax by an amount of 0.12%, and this election shall take effect January 1, 2007.
- c. The total local communications services tax rate shall be 5.22%.
- d. The total local communications service tax rate shall be effective January 1, 2007.

Section 4. Notice to the Department of Revenue. The Town Manager is directed to file the appropriate report(s) with the Department of Revenue and the Town Clerk is directed to provide a copy of this Ordinance to the Department of Revenue by certified mail postmarked on or before September 1, 2006, as provided in Section 202.21, Florida Statutes (2005).

Section 5. Repeal of Conflicting Provisions. All provisions of the Code of Miami-Dade County as made applicable to the Town by Section 8.3 of the Town Charter which are in conflict with this Ordinance are hereby repealed.

Section 6. Severability. The provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

Section 7. Inclusion In The Code. It is the intention of the Town Council that the provisions of this Ordinance shall become and made a part of the Town of Cutler Bay Code; that the sections of this Ordinance may be renumbered or re-lettered to accomplish such intentions; and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

Section 8. Conflicts. Any and all Ordinances or parts of Ordinances in conflict herewith are hereby repealed.

Section 9. Effective Date. This ordinance shall be effective immediately upon adoption.

PASSED on first reading this 5th day of July, 2006.

PASSED AND ADOPTED on second reading this _____ day of _____, 2006.

PAUL S. VROOMAN, Mayor

Attest:

ERIKA GONZALEZ-SANTAMARIA
Town Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY FOR THE
SOLE USE OF THE TOWN OF CUTLER BAY:

WEISS SEROTA HELFMAN PASTORIZA COLE & BONISKE, P.A.
Interim Town Attorney

FINAL VOTE AT ADOPTION:

Mayor Paul S. Vrooman _____

Vice-Mayor Edward P. MacDougall _____

Council Member Timothy J. Meerbott _____

Council Member Ernest N. Sochin _____

Council Member Peggy R. Bell _____

TAB 8

ORDINANCE NO. 06-

AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AMENDING THE MIAMI-DADE COUNTY CODE AS APPLICABLE TO THE TOWN PURSUANT TO SECTION 8.3 OF THE TOWN CHARTER TO SUBSTITUTE THE TOWN COUNCIL FOR COUNTY OFFICIALS, BOARDS, OR COMMITTEES, PROVIDING FOR ZONING REVIEW, PROVIDING FOR AUTHORITY OF THE TOWN COUNCIL, PROVIDING FOR AN APPEAL PROCESS; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR CONFLICTS AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, it is necessary for the Town Council of the Town of Cutler Bay (the "Town") to initiate procedures for the assumption of regulatory jurisdiction, including zoning and planning matters; and

WHEREAS, pursuant to Section 8.8 of the Town Charter, on February 14, 2006, the Town Council adopted a transition emergency ordinance in relation to this matter; and

WHEREAS, this ordinance replaces the transition emergency ordinance; and

WHEREAS, the Town Council finds that the enactment of this ordinance is necessary to protect the public health, safety and welfare of the residents and inhabitants of the Town and to implement the jurisdiction of the City.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND TOWN COUNCIL OF THE OF THE TOWN OF CUTLER BAY, FLORIDA AS FOLLOWS:

Section 1. The following changes are hereby made to the Town Code:

- (a) County Staff; Provisions In Effect. The Miami-Dade County Code, as made applicable to the Town pursuant to the provisions of Section 8.3 of the Town Charter, is amended to substitute the Town Council in the place and stead of County officials, boards or committees, including but not limited to the Board of County Commissioners, the Director of Planning, Development and Regulation the Community Zoning Appeals Board, and the Code Enforcement Board and/or Hearing Officer, so that any and all actions shall be taken by the Town Council. The County staff shall perform those functions for the Town as may be provided by agreement between the Town and the County. Section 33-310 of the Miami-Dade County Code as applicable to the Town shall be repealed. Except as otherwise provided in this ordinance, the provisions of the Miami-Dade County Code, as made applicable to the Town to the extent required by

Section 8.3 of the Town Charter, shall remain in full force and effect until otherwise modified or replaced by the Town Council.

(b) Zoning Review and Approval; Standards; Authority To Grant Variances, etc.. In connection with Chapter 33 of the Miami-Dade County Code as applicable to the Town pursuant to Section 8.3 of the Town Charter and subsection (a), above, the Town Council may delegate to an individual(s), contractor, or board so designated, from time to time, by motion or resolution, the authority and responsibility to review and process all permit applications for zoning compliance, to make interpretations in connection with Chapter 33, and to show zoning approval by a stamp or mark with signature on all copies of applications and plans pursuant to agreement between Miami-Dade County, Florida, and the Town of Cutler Bay, or as otherwise may be subsequently provided. The standards and criteria set forth in Chapter 33 of the Miami-Dade County Code, and as otherwise provided in the codes, ordinances, resolutions and laws made applicable pursuant to Section 8.3 of the Town Charter, shall constitute the standards and criteria which shall govern performance of the duties delegated pursuant to this subsection and subsection (a), above. The authority of the Town Council to grant comprehensive plan amendments, district boundary changes, zoning variances, special exceptions, or to amend the provisions of the zoning codes shall not be delegated under this ordinance.

(c) Record of Zoning Compliance Review Actions; Appeal. A list of zoning compliance review actions completed by the Town Council or the delegate of the Town Council shall be maintained in the Office of the Town Clerk. In the event that any aggrieved applicant or other aggrieved person provides written notice of an appeal of any action by a delegate of the Town Council pursuant to subsection (b) to the Town Clerk within seven days after such decision or interpretation is rendered, the Council shall at the next available meeting, review such action under the standards and criteria referenced in this Ordinance. Any and all land development decisions made by the Town Council, including but not limited to resolutions and ordinances, shall be reviewed in accordance with the procedure and within the time provided by the Florida Rules of Appellate Procedure for the review of the rulings of any commission or board; and such time shall commence to run from the date the decision sought to be reviewed is transmitted to the Town Clerk.

Section 3. Severability. The provisions of this ordinance are declared to be severable and if any section, sentence, clause or phrase of this ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this ordinance but they shall remain in effect, it being the legislative intent that this ordinance shall stand notwithstanding the invalidity of any part.

Section 4. Inclusion In The Code. It is the intention of the Town Council that the provisions of this Ordinance shall become and made a part of the Town of Cutler Bay Code; that the sections of this Ordinance may be renumbered or re-lettered to accomplish such intentions; and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

Section 5. Conflicts. Any and all Ordinances or parts of Ordinances in conflict herewith are hereby repealed.

Section 6. Effective Date. This ordinance shall be effective immediately upon adoption.

PASSED on first reading this 5th day of July, 2006.

PASSED AND ADOPTED on second reading this _____ day of _____, 2006.

PAUL S. VROOMAN, Mayor

Attest:

ERIKA GONZALEZ-SANTAMARIA
Town Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY FOR THE
SOLE USE OF THE TOWN OF CUTLER BAY:

WEISS SEROTA HELFMAN PASTORIZA COLE & BONISKE, P.A.
Interim Town Attorney

FINAL VOTE AT ADOPTION:

Mayor Paul S. Vrooman _____

Vice-Mayor Edward P. MacDougall _____

Councilmember Peggy R. Bell _____

Councilmember Timothy J. Meerbott _____

Councilmember Ernest N. Sochin _____

TAB 9

ORDINANCE NO. 06-__

AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA CREATING PROCEDURES FOR ZONING WORKSHOPS; PROVIDING FOR ORDINANCES IN CONFLICT, SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, it is the intent of the Town Council of the Town of Cutler Bay (the "Town") that proposed developments within the Town be discussed at a publicly advertised zoning workshop prior to the public hearing on such developments; and

WHEREAS, at such workshops, the Town Council and the public will have the ability to ask questions and to provide feedback about the proposed developments in an open forum, and the applicant will have the opportunity to respond to such input prior to the public hearing; and

WHEREAS, the Town Council finds that adoption of these regulations is in the best interest and welfare of the citizens of the Town.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY AS FOLLOWS¹:

Section 1. Zoning Workshops.

A. **Intent.** It is the intent of the zoning workshop process to provide an open and public forum for members of the public, as well as the Town Council, to comment on proposed developments within the Town. It is further the intent that any communications between members of the Town Council and the applicant during a zoning workshop shall not be considered an ex parte communication, and shall not create a presumption of bias in relation to any future quasi-judicial decision on the applicant's application. **The zoning workshop shall not be considered part of the quasi-judicial hearing. Each application shall be evaluated based upon the record presented at the Town Council hearing(s) on the application.**

B. **Applicability.** A pre-application conference with the Town's planning and zoning staff shall be held prior to an application being presented at a zoning workshop. A zoning workshop shall be held no fewer than thirty (30) days prior to **the publication of the advertisement the application for the first being heard by the** Town Council or local planning agency **meeting at which the application will be heard.** A zoning workshop shall be required for the following types of applications:

1. Rezoning;
2. Site plan approval;

¹ Coding: shaded text reflects additions and/or deletions made from First Reading. ~~Struck through~~ words are deletions made from First Reading and underlined words are additions made from First Reading.

3. Site plan amendments that seek to develop additional square footage;
4. Variances
5. Special exceptions; ~~and~~
6. Unusual uses; ~~and~~
7. Any application deemed necessary by the town manager or his or her designee.

C. Exemptions. The following applications shall be exempt from the zoning workshop requirement:

Any applications related to the approval of Site plan approval for a one (1) single family residence, house on one (1) single family lot, and,

Amendments to an approved site plan for a single family house on one (1) single family lot, and setback variances shall be exempt from the zoning workshop requirement.

D. Advertisement. An advertisement shall be published in a local newspaper at least 5 days prior to a zoning workshop. The advertisement shall state the date, time, and place of the zoning workshop. In addition, the advertisement shall provide a description and the location of the proposed development. The cost of publishing an advertisement for a zoning workshop shall be paid by the applicant.

E. Agenda. The zoning workshop agenda shall be set by the town manager and prepared by the town clerk. A zoning workshop shall not be held more than once per calendar month. However, the town manager, at his or her discretion, may schedule a second zoning workshop to be held during the same calendar month.

F. Meeting Procedure. A zoning workshop shall consist of two sessions which are described below:

1. First Session. The first session of a zoning workshop shall provide a forum for members of the public to learn about proposed developments within the Town. Developments may be presented to the public simultaneously, in several locations within the meeting site. During this session, members of the public are encouraged to ask questions and to provide feedback to the applicant about the proposed development. The applicant shall provide visual depictions, such as renderings, drawings, pictures, and the location of the proposed development. In addition, representatives of the applicant shall be available to answer questions that members of the public may have about the proposed development. The members of the Town Council shall not be present during the first session of the zoning workshop.

2. Second Session. The second session of a zoning workshop shall provide a forum for the Town Council to learn about the proposed developments discussed at the first session half of the zoning workshop. No quorum requirement shall apply. Developments shall be presented by the applicants sequentially, one at a time, for the Town Council's review and comment. The applicant shall again present visual depictions of the proposed development. In

addition, the applicant shall be available to answer any questions that members of the Town Council may have about the proposed development.

G. Police officer in attendance. It shall be the duty of the chief of police or a police officer assigned by him, who shall have the grade of lieutenant or higher, to be present and on official duty at all zoning workshops within the Town.

Section 2. Severability. If any section, clause, sentence, or phrase of this Ordinance is for any reason held invalid or unconstitutional by a court of competent jurisdiction, the holding shall not affect the validity of the remaining portions of this Ordinance.

Section 3. Repealer. All resolutions or ordinances or parts of resolutions or ordinances in conflict with the provisions of this Ordinance are repealed.

Section 4. Effective Date. This Ordinance shall be effective immediately upon adoption.

PASSED on first reading this _____ day of _____, 2006.

PASSED AND ADOPTED on second reading this _____ day of _____, 2006.

PAUL S.VROOMAN, Mayor

Attest:

ERIKA GONZALEZ-SANTAMARIA
Town Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY FOR THE
SOLE USE OF THE TOWN OF CUTLER BAY:

WEISS SEROTA HELFMAN PASTORIZA
COLE & BONISKE, P.A.
Interim Town Attorney

FINAL VOTE AT ADOPTION:

Mayor Paul S. Vrooman _____

Vice-Mayor Edward P. MacDougall _____

Councilmember Peggy R. Bell _____

Councilmember Timothy J. Meerbott _____

Councilmember Ernest N. Sochin _____