

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

This meeting is open to the public. In accordance with the Americans with Disabilities Act of 1990, persons needing special accommodation, a sign language interpreter or hearing impaired to participate in this proceeding should contact the Interim Town Clerk at (305) 505-2172 for assistance no later than four days prior to the meeting.

LOCAL PLANNING AGENCY

AGENDA

Wednesday, June 7, 2006

7:00 PM

South Dade Regional Library

10750 SW 211 Street

(305) 234-4262

- I. **CALL TO ORDER, ROLL CALL**
- II. **PLEDGE OF ALLEGIANCE**
- III. **ADDITIONS, DELETIONS, AND DEFERRALS**
- IV. **CONSENT AGENDA**
- V. **PUBLIC HEARING: MOTION RECOMMENDING ADOPTION OF THE FOLLOWING ORDINANCE:**
 - 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.

VI. 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.

ORDINANCE NO. 06- _____

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.

WHEREAS, in June of 2002, residents of the now incorporated Town of Cutler Bay (the "Town") participated in the Old Cutler Road Charrette Area Plan (the "Charrette"); and

WHEREAS, during this Charrette, residents of the Town envisioned architectural design guidelines, a civic district/town center, and a walkable pedestrian-friendly environment for Old Cutler Road; and

WHEREAS, at the Town Council meeting on May 4th 2006, the Town Council expressed concern that the current zoning scheme along Old Cutler Road may permit development which is incompatible with the residents' vision from the Charrette; and

WHEREAS, to ensure that the residents' vision would come to fruition, the Town Council directed Town staff to draft an ordinance for its consideration, declaring a building moratorium for properties abutting Old Cutler Road from S.W. 184th Street south to the Town limits (the "moratorium area") to be approved by the Town Council; and

WHEREAS, the Town Council has determined that this building moratorium should be in place for 120 days from the effective date of this Ordinance; and

WHEREAS, this Ordinance was heard and recommended by the Town Council, in its capacity as the Town's Local Planning Agency; and

WHEREAS, by resolution, the Town Council approved the Town Manager's Administrative Order No. 06-2 that was issued pursuant to Section 33-319 of the Town's Code of Ordinances (the "Code"), which further authorizes a building moratorium in the moratorium area; and

WHEREAS, it is the intent of the Town Council that this Ordinance be adopted together with the above referenced resolution to accomplish the same purpose in accordance with all applicable laws; and

WHEREAS, after due notice and hearing, the Town Council finds that this Ordinance is consistent with the Miami-Dade County Comprehensive Development Master Plan, which now functions as the Town's Comprehensive Plan, and the Town's Code.

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

Section 1. Building Moratorium Imposed. During the time that this Ordinance is in effect as specified in Section 7 below, there shall be a building moratorium on the issuance of development orders and development permits within the moratorium area. For purposes of this Ordinance, the terms "development orders" and "development permits" shall be defined as follows: building permits, variances, special exceptions, zoning district changes, minimum square footage requirement changes, unusual and new uses, or modifications or elimination of conditions, restrictions or limitations on these orders and permits. The following categories of development shall be exempt from this moratorium:

- Expansions, repairs, or renovations to existing single family homes
- Any development that has had a development order or development permit approved by the Town.

Section 2. Waivers. Any property owner seeking a waiver under this Section 2 must file an application with the Town Council, for a determination within 60 days after the effective date of this Ordinance. The Town Council, after a public hearing, may grant a waiver to the moratorium provided above and permit development to proceed on a specific parcel where the Town Council determines, based upon substantial competent evidence, that the specific use or activity requested by the waiver application will not detrimentally affect the preparation and implementation of the proposed Town regulations, will be compatible with surrounding land uses, and will not impair the public health, safety or welfare. The public hearing shall be advertised at least seven days prior to the hearing in a local newspaper. The grant of waiver, if any, shall be by resolution. The applicant shall be responsible for the waiver application fee and any other standard fees and requirements for a public hearing.

Section 3. Determination of Vested Rights or Denial of All Economic Use.

(A) Nothing in this Ordinance shall be construed or applied to abrogate the vested right of a property owner to complete development of a parcel where the property owner can demonstrate by substantial competent evidence each of the following:

- (1) A governmental act of development approval was obtained prior to the effective date of this Ordinance; and
- (2) Upon which the property owner has detrimentally relied, in good faith, by making substantial expenditures; and

(3) That it would be highly inequitable to deny the property owner the right to complete the development.

(B) Nothing in this Ordinance shall be construed or applied to prevent development of a particular parcel where the property owner can demonstrate by substantial competent evidence that, because of the moratorium, no economic use can be made of the parcel.

(C) Any property owner claiming vested rights or denial of all use under this Section 3 must file an application with the Town Council for a determination within 30 days after the effective date of this Ordinance. The application shall be accompanied by an application fee of \$1,500.00 and contain a sworn statement as to the basis upon which the vested rights or denial of all use are asserted, together with documentation required by the Town and other documentary evidence supporting the claim. The Town Council shall hold a public hearing on the application and, based upon the competent substantial evidence submitted, shall make a determination as to whether the property owner has established vested rights or a lack of economic use for the parcel.

Section 4. Judicial Review. Judicial review of final decisions by the Council under Section 2 or Section 3 of this Ordinance shall be by the filing of a Petition for Certiorari in the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County in accordance with the Florida Rules of Appellate Procedure for the review of the quasi-judicial decisions of municipalities.

Section 5. Exhaustion of Administrative Remedies. No property owner claiming that this Ordinance, as applied, constitutes or would constitute a temporary or permanent taking of private property or an abrogation of vested rights may pursue such claim in court, unless he or she has first exhausted the applicable administrative remedies provided in Sections 2 and 3 of this Ordinance.

Section 6. Conflicts. All Sections or parts of Sections of the Code of Ordinances, all Ordinances or parts of Ordinances, and all Resolutions, or parts of Resolutions, in conflict with this ordinance are repealed to the extent of such conflict.

Section 7. Term. The building moratorium imposed by this Ordinance is temporary and shall be effective for a period of 120 days from the effective date of this Ordinance, unless dissolved earlier by the Town Council. Further, the building moratorium shall automatically dissolve upon the adoption of new land development regulations for the moratorium area. The building moratorium may be reasonably extended, if necessary, by Ordinance of the Town Council.

Section 8. Effective Date. This Ordinance shall be effective immediately upon adoption on second reading.

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

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

PAUL 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:

Mitchell A. Bierman, Esq.
WEISS SEROTA HELFMAN PASTORIZA
COLE & BONISKE, P.A.
Town Attorney

FINAL VOTE AT ADOPTION:

Mayor Paul Vrooman _____

Vice Mayor Ed MacDougall _____

Council Member Timothy J. Meerbott _____

Council Member Ernest Sochin _____

Council Member Peggy Bell _____