

EXHIBIT LIST

COMMUNITY ZONING APPEALS BOARD 15

OCTOBER 12, 2004

RESOLUTION # CZAB15-23-04

ITEM#	HEARING#	APPLICANT'S NAME	SS-TT-RR
A	03-262	SUMMERVILLE DEVELOPMENT, INC.	19-56-40

EX. #	EXHIBIT DESCRIPTION	IN FILE
A-1	SPIRAL BOUND BOOKLET BY AKERMAN SENTERFITT	YES
A-2	8 PP. PLAN PACKET ENTITLED "SUMMERVILLE TOWN CENTER"	YES
A-3	PROFFERED DECLARATION OF RESTRICTIONS	YES
A-4	AERIAL PHOTO NOTING SUBJECT PROPERTY (ON FOAM BOARD)	NO
A-5	2 PP TRANSCRIPTS WITH HEADING: 'SMALLER SCALE!!'	YES
A-6	1 PG TRANSCRIPT WITH HEADING: 'DEC 9, 2003 7PM'	YES
A-7	COPY OF SURVET BY MAKOWSKI & RICE, INC.	YES
A-8	24 GROUND LEVEL PHOTOGRAPHS	YES
A-9		
A-10		
A-11		
A-12		
A-13		
A-14		
A-15		
A-16		
A-17		
A-18		

EXHIBIT LIST

COMMUNITY ZONING APPEALS BOARD 15

OCTOBER 12, 2004

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A-18		

Handwritten notes:
 Exhibitors
 12/15/04

EXHIBIT LIST

COMMUNITY ZONING APPEALS BOARD 15

JULY 14, 2004

RESOLUTION # CZAB15-04

ITEM#	HEARING#	APPLICANT'S NAME	SS-TT-RR
A	03-262	SUMMERVILLE DEVELOPMENT, INC.	19-56-40

NONE (deferral to October 12, 2004)

EX. #	EXHIBIT DESCRIPTION	IN FILE
A-1		
A-2		
A-3		
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EXHIBIT LIST

COMMUNITY ZONING APPEALS BOARD 15

APRIL 21, 2004

RESOLUTION # CZAB15-04

ITEM#	HEARING#	APPLICANT'S NAME	SS-TT-RR
A	03-262	SUMMERVILLE DEVELOPMENT, INC.	19-56-40

(deferral to 7-14-04)

EX. #	EXHIBIT DESCRIPTION	IN FILE
*	A-1 Letter from KENT Robbins to CZAB15	Yes
	A-2	
	A-3	
	A-4	
	A-5	
	A-6	
	A-7	
	A-8	
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	A-18	

/

EXHIBIT LIST

COMMUNITY ZONING APPEALS BOARD 15

APRIL 21, 2004

RESOLUTION # CZAB15- -04

ITEM#	HEARING#	APPLICANT'S NAME	SS-TT-RR
A	03-262	SUMMERVILLE DEVELOPMENT, INC.	19-56-40

(Deferral to July 14, 2004)

EX. #	EXHIBIT DESCRIPTION	IN FILE
✓ A-1	Letter from Kent Robbins to CZAB 15	Yes
A-2		
A-3		
A-4		
A-5		
A-6	<i>Exhibit complete</i>	
A-7		
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A-18		

KENT HARRISON ROBBINS

ATTORNEY AT LAW
1224 WASHINGTON AVENUE
MIAMI BEACH, FLORIDA 33139

(305) 532-0500

RECEIVED BY CLERK
Item # 03-262
CZAB # 15 Exhibit # A-1
APR 21 2004

CLERK OF THE BOARD

April 21, 2004

Re: Summerville Development- PH No. 03-262

To The Community Council District 15
Miami-Dade County

Dear Council Members:

I am Kent Harrison Robbins and I represent The Farm, Inc., 11999 SW 248 Street, Miami, Florida 33032. My renewed lobbyist registration form is attached.

The Farm Inc. vehemently objects to another deferral of this matter.

Continuances and deferrals are to be granted freely for good cause when a party acts in good faith and due to reasons beyond its control.

The applicant here has not acted in good faith and the reason given for the deferral is not due to reasons beyond the applicant's control.

From the very beginning, the applicant has acted in bad faith. In the first September 3, 2003 Letter of Intent, the applicant represented that the purpose of the rezoning was to allow the use of an existing single family home on the subject site for use as a sales center.

In September, the applicant did not disclose to this council nor to Miami-Dade County planning and zoning department that the ultimate intent of the applicant was to develop a shopping center, parking lot and multifamily residential development on the 4.3 acre site.

The charade that the developer wanted to build only a minimal development on the site continued through two meetings of this council but eventually this council, during its hearings in December and January, uncovered that much more was planned.

In March, the developer submitted plans to the Miami-Dade zoning and planning department to develop a 47,230 square foot commercial shopping center and a 35 unit 44,730 square foot residential apartment units and 260 parking spaces on this small 4.3 acre site. The setbacks of the

plan were wrong and require variances. Moreover, the developer, proposes a variance to remove any barrier between this mixed commercial site and the proposed single family homes adjacent to it.

More importantly, the submitted plans, according to the April 15, 2004 letter from the attorney for the developer, does not comport with the Comprehensive Development Master Plan which is the basis of its request for another deferral.

The reason for the deferral given by the attorney for the developer was caused by the negligence of the developer in failing to design plans that were consistent with the Comprehensive Development Master Plan .

This deferral should be denied and the application rejected because the plans are inconsistent with the Comprehensive Development Master Plan . No further delays should be allowed because the applicant is the cause of the delay because it did not provide plans from the beginning of the process and this delay is the cause of the developer not being ready for these proceedings. The underlying cause for the delay is that the developer repeatedly was not candid with the council and not candid with the public.

I urge you to reject the deferral and deny the project because of its admitted inconsistency with the Master Plan.

Sincerely,



KENT HARRISON ROBBINS

Enclosure

fxe: The Farm Inc.,305-258-0128

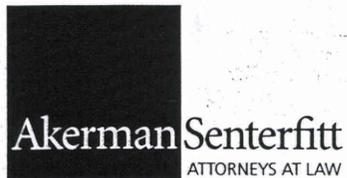
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making it appear like a
6 day notice

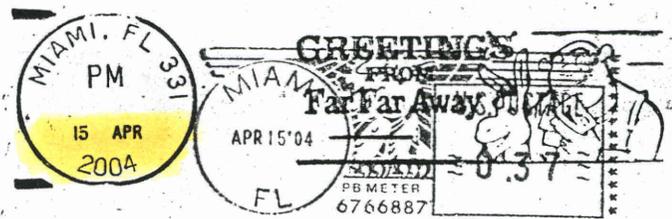
Received on MONDAY
April 19,
2 DAYS BEFORE

THE HEARING

Stamped by their
office on the 15th
(THURSDAY) -

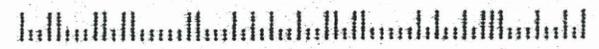


One Southeast Third Avenue
28th Floor
Miami, Florida 33131-1714



Mr. Manuel Dorta-Duque
24120 SW 119 Avenue
Homestead, Florida 33032

33032X4302 13



24120 SW 119 Avenue
Homestead, Florida 33032

Re: Summerville Development - PH No. 03-262

Dear Mr. Dorta-Duque:

We represent the Applicant, Summerville Development, in the zoning public hearing for their property located on S.W. 248th Street. You appeared at the public hearing before the Community Zoning Appeals Board #15 on December 20, 2003, expressing your interest in the application, which requested a rezoning to a business zoning district.

Fort Lauderdale
Jacksonville
Miami
Orlando
Tallahassee
Tampa
West Palm Beach

One Southeast Third Avenue
28th Floor
Miami, Florida 33131-1714
www.akerman.com
305 374 5600 *tel* 305 374 5095 *fax*

April 15, 2004

U.S. MAIL

Mr. Manuel Dorta-Duque
24120 SW 119 Avenue
Homestead, Florida 33032

Re: Summerville Development – PH No. 03-262

Dear Mr. Dorta-Duque:

We represent the Applicant, Summerville Development, in the zoning public hearing for their property located on S.W. 248th Street. You appeared at the public hearing before the Community Zoning Appeals Board #15 on December 20, 2003, expressing your interest in the application, which requested a rezoning to a business zoning district.

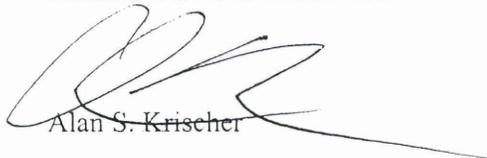
As was discussed at that hearing, the Applicant is preparing a full site plan for the ultimate development of the property, and wants to ensure that there is adequate time for interested members of the public to review any proposed plans. A site plan was prepared and submitted to the Miami-Dade County Planning and Zoning Department. However, in the course of the County's review of the site plan, the Department determined that the plan of development would need to be modified to comport with the County's Comprehensive Development Master Plan. Those modifications will require changes to the site plan and a new advertisement, which will require a deferral of this Application from the CZAB's meeting of April 21, 2004.

Accordingly, we intend to request a deferral of this item until the CZAB's meeting of **July 14, 2004**.

If you have any objections to our request, please contact the undersigned as soon as possible.

Very truly yours,

AKERMAN SENTERFITT


Alan S. Krischer

KENT HARRISON ROBBINS

ATTORNEY AT LAW
1224 WASHINGTON AVENUE
MIAMI BEACH, FLORIDA 33139

(305) 532-0500

February 14, 2005
Fax: 305-375-2795
(Total 11 pages)

Diane Quinn
Director
Department of Planning and Zoning
11th Floor
Miami-Dade County Commissioners
111 NW 1 Street
Miami, FL 33128

Received by the Clerk
for the record.
MAY 19 2005
Item A
Exhibit A
Appl. A03-12-C-215-2/03-262

Re: Appeal before the Board of County Commissioners of Miami-Dade County
Hearing Date: February 24, 2005
Applicant: Summerville Development Inc.
Appellant: Manuel Dorta-Duque and The Farm Inc.
Hearing No. 03-262

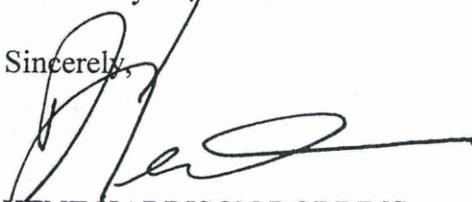
Dear Ms. Quinn:

I am enclosing the February 7, 2005 report of Jamie Correa of Jaime Correa and Associates and the February 14, 2005 report of Ralph Aronberg, P.E. of Aronberg and Associates.

Please place these reports in the public file for consideration and review by the Board of County Commissioners.

Please be advised that these design consultants will be testifying as experts during the hearing before the County Commission.

Sincerely,



KENT HARRISON ROBBINS

Enclosures

TRANSMISSION VERIFICATION REPORT

TIME : 02/14/2005 16:45
NAME :
FAX :
TEL :
SER.# : BROH4J808188

DATE, TIME 02/14 16:42
FAX NO./NAME 3053752795
DURATION 00:02:46
PAGE(S) 11
RESULT OK
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KENT HARRISON ROBBINS
ATTORNEY AT LAW
1224 WASHINGTON AVENUE
MIAMI BEACH, FLORIDA 33139

(305) 532-0500

February 14, 2005
Fax: 305-375-2795
(Total 11 pages)

Diane Quinn
Director
Department of Planning and Zoning
11th Floor
Miami-Dade County Commissioners
111 NW 1 Street
Miami, FL 33128

Re: Appeal before the Board of County Commissioners of Miami-Dade County
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Applicant: Summerville Development Inc.
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Dear Ms. Quinn:

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Please place these reports in the public file for consideration and review by the Board of County

JAIME CORREA AND ASSOCIATES

Town Planning - Regulations - Architectural Design

Jaime Correa
President
jcorrea@miami.edu

February 7, 2005

Mr. Kent Harrison Robbins
1224 Washington Avenue
Miami Beach, Florida 33139

Re: *Summerville Town Center*
Located approximately at the corner of
SW 248th Street and SW 117th Avenue

Dear Mr. Robbins:

Regarding the project described above and based on drawings submitted, by Corwil Architects Inc. on September 7th, 2004, to the Department of Planning and Zoning at Miami-Dade County, and on the Hearing Transcripts provided by your office, the following statements summarize my professional opinion:

1. I agree with the Department of Planning and Zoning on the subject of the use of the land. A combination of neighborhood retail facilities, offices, and residential uses may be of great assistance to the proposed residential communities on the north and west sides of the property. I have no doubt that this type of land use mix is compatible with the other neighborhood uses and would not be in conflict with the principle and intent of the plan for the development of communities in Miami-Dade County.
2. The minimum landscape requirements, advocated by the Miami-Dade County Landscape Ordinance, has forced the architects to

include a variety of plants, a great quantity of trees, a diversity of bushes, and the careful design of ground covers on medians and greens. Compliance with the Landscape Ordinance becomes a positive element of the plan; its design configuration is yet another matter of discussion.

3. The technical advice and interpretation of the law provided by the Director of the Miami-Dade County Department of Planning and Zoning is of excellent quality. Her insights to accept or deny the requests of Summerville Development, Inc., her willingness to negotiate conditions for approval, and her overall clarity of purpose are truthful and just; her conditions are rational, easily solvable, and should not cause an unfeasible economic burden on the applicant.
4. In spite of the previous three issues, I must point out that regardless of how good the land use compatibility is, or how well the project complies with the landscape regulations, or how much the project adheres to or departs from the strict interpretation of the law, these simple facts do not guarantee the production of livable spaces, great pedestrian environments, crime prevention, or delightful architectural pieces. In my professional opinion, the most basic challenge of the project is its overall configuration and, subsequently, the external effects on its adjacent neighborhoods, its users, and its residents, as follows:
 - a. Retail and office uses generate the greatest pedestrian flows. Nevertheless, pedestrians arriving to this project, by foot or by car, would have real difficulties reaching its sidewalks and its so-called "breezeways". By foot, the project proposes a hard surface "promenade" on the south side of Building 1 and Building 2; nevertheless, the promenade is abruptly discontinued at the gap between Building 2 and Building 3 by two parallel parked car spaces occupying a portion of the required front setback (already reduced from 25 ft. to 15 ft.), and by a strip of sod planted with Montgomery Palms and Mahogany trees. By car, the breezeways and sidewalks can only be reached by either a small service entrance in the rear of the buildings (of approx. 4 ft. in width), through the gaps between Buildings 2 and 3 or Building 1 and the

proposed RU-1 park area, or through the 5 ft. sidewalks proposed along the buffering hedges on SW 247th Street.

- b. More importantly, the massing articulation of the southeastern corner of Building 2 and the southwestern corner of Building 1 impedes any reasonable pedestrian flow at the most important corner of the so-called "Main Street". The corners of these two buildings reach the edge of the proposed diagonal parking; at the same time, two of the proposed diagonal parking spaces, on the southeast and southwest side of the "Main Street", are also blocking the pedestrian flow of the "promenade" as well as occupying a substantial portion of the reduced front setback – a rather unsafe condition for pedestrians.
- c. Although the architects do not provide a draft of their proposed street sections, the Main Street is designed with almost classical proportions. A street width, of approximately 75 ft. with a building height of 35 ft., produces an equivalent height to width ratio of 2:1 (two to one); as an added improvement, the Main Street possesses a 10 ft. median which divides the street space into two equal rooms of approximately 35 ft each, or an equivalent height to width ratio of 1:1 (one to one). However, the gap between Building 3 and Building 1 is not as successful and contributes to the general lack of street hierarchy of the project. From building face to building face, the gap between Building 3 and Building 1 has a section similar to that of the Main Street; but, it is bounded by two lanes of conventional perpendicular parking with an asymmetrical building section, a few Red Cocoplum bushes, and a deficiency in its design elegance and pedestrian usage – in fact, the blockage is so severe that pedestrians would have to use the street space to access the front breezeways or sidewalks along SW 248th Street.
- d. As I understand, based on the hearing transcripts provided by your office, the site will be facing a townhouse community on its rear (the site on the northern boundary is currently zoned PAD). Although the law

establishes that a 5 ft. wall and/or a sufficient landscape buffer may solve the problem of dissimilar land use incompatibilities, the phenomenological fact is that both of these conditions will diminish the real estate desirability of the neighboring townhouses; therefore causing an undue economic burden on these property/development owners. Based on my experience, it is my speculation that, the Department of Public Works required Corwil Architects, Inc. to align two of their rear parking entrances with the proposed street network of the neighboring development on the north of the site. From an urban design point of view, the termination of a street vista on a public parking lot must be avoided due to its ugliness, traffic impact, and potential for diminishing real estate values.

- e. Regarding the proposed architectural designs, the residential development community, in Miami-Dade County, has almost no design tolerance. In general, the aesthetic motives of "suburban generic" triumph with its excessive articulations, its value engineering, its minimal amount of building types, and its stylistic frets. This case is not an exception; for instance, the net height of most of the commercial spaces on the ground floor does not exceed 10 ft., with the exception of the corners where the stores have an empty three story height – it is definitely not designed to attract Class A offices or Retail; moreover the height of the combined second floor and the so-called "mezzanine" (a pure case of semantics to get a lawful agreement for building three stories) is a mere 18 ft. – or net floors of 8' 6", a dimension which is typically used in affordable or subsidized housing projects.
- f. And, lastly, the so-called "park" is a very generous and altruistic act on the part of the developer but, it makes no location sense. The park faces a parking lot on 80% of its western side, a fire station building on 100% of its eastern side, impedes the views from its neighboring townhouses with a landscape buffer on the north, and fronts SW 248th Street on the south – a relatively busy street. Regardless of the typical park formula, in this case, the landscape diversity, the paths, benches and fountains do not hide

the fact that this park is a residual space -with little or no natural surveillance. This is a prime candidate for criminal activity, police work, and long term maintenance expenditures exceeding every preliminary calculation.

I appreciate that you have kept the anonymity of your client. As I told you, I just wanted to have an opportunity to express my opinion with no other than my own intellectual and professional biases. Hopefully, you will be able to use my brief statements during your forthcoming presentation.

Sincerely,

Jaime Correa

ARONBERG AND ASSOCIATES

Consulting Engineers, Inc.
1304 S.W. 160th Avenue, Suite 220
Ft. Lauderdale, FL 33326
(954) 236-6605

February 14, 2005

Kent Harrison Robbins, Esquire
Attorney at Law
1224 Washington Avenue
Miami Beach, FL 33139

RE: AAA# 1883-Dorta-Duque – Summerville Development

Dear Mr. Robbins:

I have reviewed the proposed site plan for the Summerville Town Center and the "Miami Dade County Department of Planning and Zoning Recommendation to Community Council No. 15". The Public Works Department comments within the report address traffic concurrency and level of service. However, it can be seen that there is no mention of traffic impact on SW 248 Street even though SW 248 Street can reasonably be expected to be the street that will be most affected by the traffic from the proposed development. I've discovered that the only county count station, station 9914, on SW 248 Street east of US1, is not included in the county traffic distribution and analysis model. Therefore, for this project the model is not operating effectively. Station 9914 would need to be incorporated into the model to determine the traffic impact on the SW 248 Street link. The county should in fact incorporate this station into the model and re-evaluate the project.

Attached is page step 10-36 from the Florida Department of Transportation Site Impact Handbook and page 163 from the Institute of Transportation Engineers Book Transportation and Land Planning. These attachments illustrate the problem with insufficient connection depth. To squeeze in the desired amount of parking, this good planning criteria has been violated. Conflicts can be anticipated that will cause traffic to back out on to SW 248 Street. Also attached is the Miami-Dade (previously Metro-Dade County) Standard Road Detail R12.7 titled "Driveway Detail for Large Shopping Center" that illustrates a proper connection depth and shows dual inbound and outbound traffic lanes.

Since the entrances on SW 248 Street have only one inbound traffic lane, when SW 248 Street is widened to a four lane divided facility, traffic would need to be restricted to right turns in and right turns out. This will create a high volume U-turn necessity at SW 117 Avenue that will conflict with drivers on SW 117 Avenue, who want to access SW 248 Street to gain access to Florida's Turnpike.

Other traffic circulation problems include a lack of internal joint access that requires traffic to utilize public roadways for access between the various parking areas. Main Street can be expected to be used as a short cut by the residents in the area, with an obvious conflict between the parking and through traffic. Finally, there is no identified onsite commercial vehicle accessibility, which brings into question how commercial service is to take place.

Please contact me if you have any questions.

Very truly yours,



Ralph Aronberg, P.E.
President

Attachments
RA/lam

Access Drives

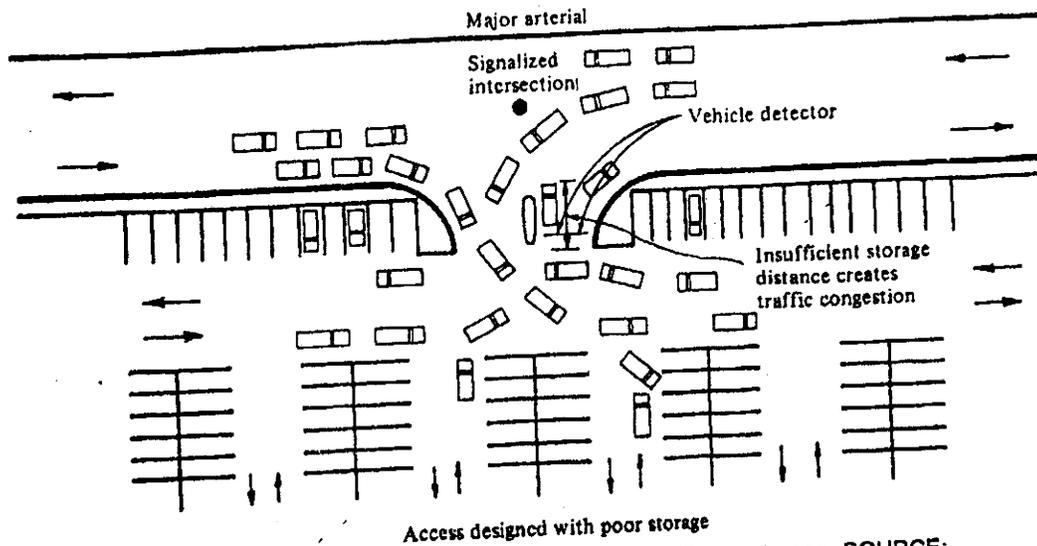


Figure 6-13 Schematic example of insufficient storage. SOURCE: Courtesy of Barton-Aschman Associates, Inc.

Where large developments (greater than 500,000 square feet) are involved, one of the two following basic site layouts should be used in order to develop good access and site-circulation design:

1. Locate the building at least 500 feet back from the street. This will provide a throat length of 250 feet, which is necessary for a high-capacity access drive and adequate parking-bay lengths between the ring road and the building face.
2. Orient the long dimension of linear developments perpendicular to the arterial. This will provide for long signalized access spacing and good on-site circulation.

Figure 6-14 illustrates the essential elements of good design which provides for: (1) long signalized intersection spacing, (2) long throat length between the intersection of the access drive in the arterial and its intersection with the ring road, (3) ample parking between the ring road and the building, and (4) a discontinuous perimeter road.

Figure 6-15(a) illustrates the major site-circulation features of a large medical complex. Signalized intersection spacing is at one-fourth mile. This results in very poor horizontal alignment of the major site circulation on the south end of the complex. Relocating the intersection further to the south would cause interference at the adjacent intersection to the south. Furthermore, the long unobstructed perimeter roadway along the west side is conducive to high speeds and results in high vehicular-pedestrian conflicts. It also results in poor geometry at the intersection of the perimeter and ring road.

The original development consisted of part of the center third of the complex. At that time, the major on-site circulation roadways north and south of the complex were a considerable distance from the structure; parking was provided between these roadways and the structure. As the complex was expanded to the south and the emergency room was relocated, it was necessary to relocate the south roadway. The increase in staff and visitors necessitated a substantial increase in parking. The circulation, as developed, experienced the following problems: (1) It is very difficult to develop signing to direct persons who are not familiar with the complex to the appropriate entrance. (2) The long peripheral roadway (in excess of a quarter of a mile) at the face of the complex is conducive to high volume and high speeds; also, there are numerous conflicts between vehicles entering or leaving the parking lots, dropping off or picking up patients (passengers), and other movement. (3) Access to the emergency room is not as direct as desirable. (4) Truck access (several WB-50s per day) is awkward, and maneuvering into the unloading docks is difficult. (5) Circulation from the visitor's parking area to the building entrances to pick up passengers is inconvenient. (6) The on-site roadway to the south of the building complex has

Insufficient Connection Depth

The diagram illustrates a driveway connecting to a main road. The driveway is too shallow, causing vehicles to enter the main road's travel lanes abruptly. This results in a chaotic traffic pattern with multiple vehicles in the same lane, increasing the risk of collisions. The main road has multiple lanes with cars in various positions, and the driveway's shallow connection disrupts the flow.

- Access Management**
Step 10
- Introduction
 - Review of Site Plan
 - Driveway Dimensions
 - Driveway Configuration
 - Left Turn Lanes
 - On-Site Circulation and Parking

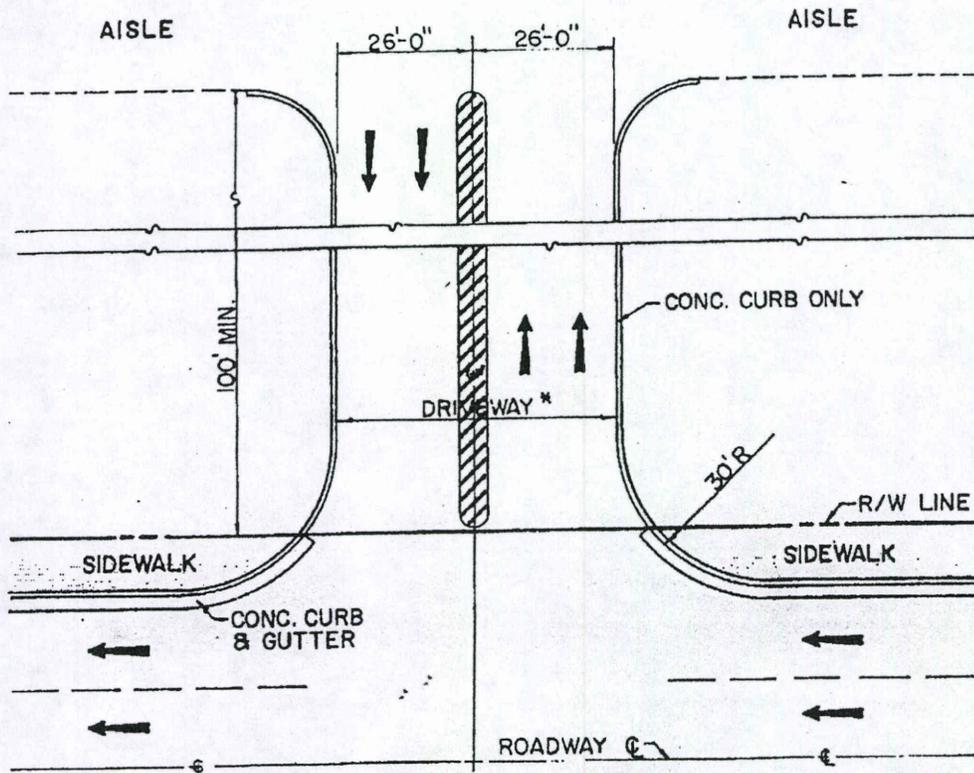
Connection Depth

The diagram shows a driveway with a proper connection depth, including a dedicated left-turn lane. A note indicates that priority should be given to inbound traffic. The driveway's depth allows for a smooth transition into the main road's lanes, with a clear left-turn lane for vehicles exiting the site. The main road has cars in its lanes, and the driveway's design maintains traffic flow.

- Access Management**
Step 10
- Introduction
 - Review of Site Plan
 - Driveway Dimensions
 - Driveway Configuration
 - Left Turn Lanes
 - On-Site Circulation and Parking

Priority Should Be Given to Inbound Traffic

SHOPPING CENTER



* WHEN DRIVEWAY IS LOCATED ON DIVIDED ROADWAY, SEE DADE COUNTY PUBLIC WORKS DEPARTMENT "POLICY ON MEDIAN OPENINGS."

CURB & GUTTER	R-14.1	SEC.146
CONC. SIDEWALK	R-13.1	SEC.145
ITEM	CROSS REF.	SPEC. REF.

METROPOLITAN
DADE COUNTY
PUBLIC WORKS
DEPARTMENT

APPROVED
8/9/72

REVISED

STANDARD ROAD DETAIL
DRIVEWAY DETAIL FOR
LARGE SHOPPING CENTER

R
12.7
SHEET 1 OF 1

KENT HARRISON ROBBINS
ATTORNEY AT LAW
1224 WASHINGTON AVENUE
MIAMI BEACH, FLORIDA 33139

(305) 532-0500

May 18, 2005
Fax: 305-375-2795
(Total 13 pages)

Diane Quinn
Director
Department of Planning and Zoning
11th Floor
Miami-Dade County Commissioners
111 NW 1 Street
Miami, FL 33128

Re: Appeal before the Board of County Commissioners of Miami-Dade County
Hearing Date: February 24, 2005
Applicant: Summerville Development Inc.
Appellant: Manuel Dorta-Duque and The Farm Inc.
Hearing No. 03-262

Dear Ms. Quinn:

In anticipation of tomorrow's hearing on the above matter, today I was reviewing the Planning and Zoning Department file and discovered that the February 7, 2005 report of Jamie Correa of Jaime Correa and Associates and the February 14, 2005 report of Ralph Aronberg, P.E. of Aronberg and Associates that was delivered by fax to your office on February 14, 2005 were not in the file.

I had seen both reports as well as a copy of a cover letter to you in the file prior to today.

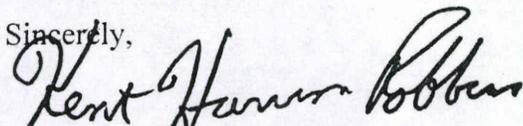
I request an investigation concerning the disappearance of these public records from the official files.

I am enclosing a copy of both of said reports as well as a copy of my February 14, 2005 letter with fax confirmation showing that said reports were delivered to you on February 14, 2005.

Please note that my February 28, 2005 letter noting a scrivener's error was found in the file.

Please place these reports in the public file for consideration and review by the Board of County Commissioners.

Sincerely,



KENT HARRISON ROBBINS

Enclosures

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KENT HARRISON ROBBINS
ATTORNEY AT LAW
1224 WASHINGTON AVENUE
MIAMI BEACH, FLORIDA 33139
(305) 532-0500

May 18, 2005
Fax: 305-375-2795
(Total 13 pages)

Diane Quinn
Director
Department of Planning and Zoning
11th Floor
Miami-Dade County Commissioners
111 NW 1 Street
Miami, FL 33128

Re: Appeal before the Board of County Commissioners of Miami-Dade County
Hearing Date: February 24, 2005
Applicant: Summerville Development Inc.
Appellant: Manuel Dorta-Duque and The Farm Inc.
Hearing No. 03-262

Dear Ms. Quinn:

In anticipation of tomorrow's hearing on the above matter, today I was reviewing the Planning and Zoning Department file and discovered that the February 7, 2005 report of Jamie Correa of Jaime Correa and Associates and the February 14, 2005 report of Ralph Aronberg, P.E. of Aronberg and Associates that was delivered by fax to your office on February 14, 2005 were not in the file.

BEFORE THE MIAMI-DADE COUNTY
BOARD OF COUNTY
COMMISSIONERS

SUMMERVILLE DEVELOPMENT, INC.

Public Hearing 03-262

**Received by the Clerk
for the record.**

MAY 19 2005

Item A

Exhibit B

Appl. 03-12-C215-2/03-262

Holland+Knight

701 Brickell Avenue
Suite 3000
Miami, Florida 33131
(305) 374-5800 Phone
(305) 789-7799 Fax



**MIAMI-DADE COUNTY DEPARTMENT OF PLANNING AND ZONING
RECOMMENDATION TO THE BOARD OF COUNTY COMMISSIONERS**

APPLICANT: Summerville Development, Inc.

PH: Z03-262 (03-12-CZ15-2)

SECTION: 19-56-40

DATE: May 19, 2005

COMMISSION DISTRICT: 8

ITEM NO.: A

=====

A. INTRODUCTION

• **REQUEST:**

THE FARM, INC. & MANUEL DORTA DUQUE are appealing Requests #1, #2, #3 & #6 of the decision of Community Council Appeals Board #15 on SUMMERVILLE DEVELOPMENT, INC. which approved in part, the following:

- (1) AU to BU-1
- (2) Applicant is requesting to permit a residential and commercial development setback 20' (25' required) from the front (west) property line, setback 12' from the rear (east) property line and setback 15' from the side street (south) property (25' required from all property lines).
- (3) Applicant is requesting to waive the 5' high decorative masonry wall along the east property line for the business lot where it abuts a residential district.
- (4) Applicant is requesting to permit the residential/commercial development with a residential floor area covering 73% (50% maximum permitted).
- (5) Applicant is requesting to permit 3 stories (2 stories permitted)

REQUESTS #1 - #5 ON EXHIBIT "A"

- (6) AU to RU-3M
- (7) Applicant is requesting to permit the RU-3M lot with a frontage of 81' (100' required).
- (8) UNUSUAL USE to permit parking in a zone more restrictive (RU-3M) than the use it serves is located (BU-1).

REQUESTS #6 - #8 ON EXHIBIT "B"

- (9) UNUSUAL USE to permit a gated entrance feature.

REQUEST #9 ON EXHIBITS "A" & "B"

Upon a demonstration that the applicable standards have been satisfied, approval of requests #2 through #5 may be considered under §33-311(A)(16) (Alternative Site Development Option for the BU Zoning District) and request #7 may be considered under §33-311(A)(15) (Alternative Site Development Option for Multiple Family Use) or requests #2 through #5 and 7 may be considered under §33-311(A)(4)(b) (Non-Use Variance) or (c) (Alternative Non-Use Variance).

Plans are on file and may be examined in the Zoning Department entitled "Summerville Town Center," as prepared by Corwil Architects, Inc., dated 5/4/06 and consisting of 6 sheets. Plans may be modified at public hearing.

o **SUMMARY OF REQUESTS:**

The appellant is appealing the approval of the Community Zoning Appeals Board 15 in part of this application. The requests approved would allow the applicant to change the zoning on Exhibit A of the subject property from AU, Agricultural District to BU-1, Neighborhood Business District, and will change the zoning on Exhibit B from AU to RU-3M, Minimum Apartment House District. Accompanying requests pertaining to Exhibit A will permit a mixed residential and commercial development to setback closer to the south property line than permitted, and waive the required 5' high decorative masonry wall along the east property line where a business lot abuts a residential district.

o **LOCATION:**

24751 S.W. 117 Avenue, Miami-Dade County, Florida.

o **SIZE:** 4.336 Acres.

o **IMPACT:**

The rezoning of the property will allow the applicant to provide commercial and residential uses to the surrounding community. However, the rezoning will bring additional traffic and noise to the surrounding area. The residential component of this application will bring more children into the schools. The accompanying requests would be visually intrusive to the surrounding area.

B. ZONING HEARINGS HISTORY: None.

C. COMPREHENSIVE DEVELOPMENT MASTER PLAN (CDMP):

1. The Adopted 2005 and 2015 Land Use Plan designates Exhibit A of the subject property as being within the Urban Development Boundary for **business and office**.
2. The Adopted 2005 and 2015 Land Use Plan designates Exhibit B of the subject property as being within the Urban Development Boundary for **low density residential**. The residential densities allowed in this category shall range from a minimum of 2.5 to a maximum of 6.0 units per gross acre. This density category is generally characterized by single family housing, e.g., single family detached, cluster, zero lot line and townhouses. It could include low-rise apartments with extensive surrounding open space or a mixture of housing types provided that the maximum gross density is not exceeded.
3. Residential uses, and mixing of residential use with commercial, office and hotels are also permitted in Business and Office areas provided that the scale and intensity, including height and floor area ratio of the residential or mixed use development, is not

out of character with that of adjacent or adjoining development and zoning, and it does not detrimentally impact, and it provides a sensitive well designed transition to any adjacent or adjoining residentially developed or designated areas of different development intensity. Where these conditions are met residential development may be authorized to occur in the Business and Office category at a density up to one density category higher than the LUP - designated density of the adjacent or adjoining residentially designated area on the same side of the abutting principal roadway, or up to the density of any such existing residential development, or zoning if the adjacent or adjoining land is undeveloped, whichever is higher (Land Use Element, page I-35).

4. Objective 9N. By 1997, Miami-Dade County shall endeavor to initiate review and revision of its Zoning Code and Subdivision Regulations to facilitate the development of better planned communities and better designed buildings. Changes to be considered shall include provisions for:
 - i) Open space in the form of squares, plazas, or green areas in residential and commercial zoning categories;
5. Compatible parks are encouraged in all of the residential categories and may be allowed in all other categories of the LUP map.
6. Existing lawful residential and non-residential uses and zoning are not specifically depicted on the LUP map. They are however reflected in the average Plan Density depicted. All such lawful uses and zoning are deemed to be consistent with this Plan as provided in the section of this CDMP titled "Concepts and Limitations of the Land Use Plan Map." The limitation referenced in this paragraph pertain to existing zoning and uses. All approval of new zoning must be consistent with the provisions of the specific category in which the subject parcel exists, including the provisions for density averaging and definition of gross density.

D. NEIGHBORHOOD CHARACTERISTICS:

<u>ZONING</u>	<u>LAND USE PLAN DESIGNATION</u>
<u>Subject Property:</u>	
AU; single family residence & crops	Business & Office (Exhibit A) & Residential, 2.5 to 6 dua (Exhibit B)
<u>Surrounding Properties:</u>	
NORTH: PAD; vacant	Residential, 2.5 to 6 dua
SOUTH: AU; vacant & crops	Residential, 2.5 to 6 dua
EAST: AU; vacant	Residential, 2.5 to 6 dua

WEST: PAD; plant nursery

Residential, 2.5 to 6 dua

The subject parcel lies on the east side of SW 117 Avenue, north of SW 248 Street. Although zoned for agriculture, this area has become a residential expansion area and has experienced several zone changes to residential zoning in recent years. A Planned Area Development (PAD) District lies to the north and a PAD District also lies to the west. There is a RU-1 residential development located to the east of the adjacent PAD District located to the north and to the east of the AU property to the east.

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:	Acceptable

*For BU-1 on Exhibit A and for RU-1 on Exhibit B in lieu of RU-3M.

F. PERTINENT REQUIREMENTS/STANDARDS:

In evaluating an application for a **district boundary change** the Board shall take into consideration, among other factors the extent to which:

- (1) The development permitted by the application, if granted, conforms to the Comprehensive Development Master Plan for Miami-Dade County, Florida; is consistent with applicable area or neighborhood studies or plans, and would serve a public benefit warranting the granting of the application at the time it is considered;
- (2) The development permitted by the application, if granted, will have a favorable or unfavorable impact on the environmental and natural resources of Miami-Dade County, including consideration of the means and estimated cost necessary to minimize the adverse impacts; the extent to which alternatives to alleviate adverse impacts may have a substantial impact on the natural and human environment; and whether any irreversible or irretrievable commitment of natural resources will occur as a result of the proposed development;
- (3) The development permitted by the application, if granted, will have a favorable or unfavorable impact on the economy of Miami-Dade County, Florida;

- (4) The development permitted by the application, if granted, will efficiently use or unduly burden water, sewer, solid waste disposal, recreation, education or other necessary public facilities which have been constructed or planned and budgeted for construction;
- (5) The development permitted by the application, if granted, will efficiently use or unduly burden or affect public transportation facilities, including mass transit, roads, streets and highways which have been constructed or planned and budgeted for construction, and if the development is or will be accessible by public or private roads, streets or highways.

Section 33-311(A)(16) Alternative Site Development Option for Buildings and Structures in the BU Zoning Districts.

(c) Setbacks for a principal or accessory building or structure shall be approved after public hearing upon demonstration of the following:

- (1) the character and design of the proposed alternative development will not result in a material diminution of the privacy of adjoining property; and
- (2) the proposed alternative development will not result in an obvious departure from the aesthetic character of the immediate vicinity, taking into account existing structures and open space; and
- (3) the proposed alternative development will not reduce the amount of open space on the parcel proposed for alternative development by more than 20% of the landscaped open space percentage required by the applicable district regulations; and
- (4) any area of shadow cast by the proposed alternative development upon an adjoining property will be no larger than would be cast by a structure constructed pursuant to the underlying district regulations, or will have no more than a de minimus impact on the use and enjoyment of the adjoining parcel of land; and
- (5) the proposed alternative development will not involve the installation or operation of any mechanical equipment closer to the adjoining parcel of land than any other portion of the proposed alternative development, unless such equipment is located within an enclosed, soundproofed structure and if located on the roof of such an alternative development shall be screened from ground view and from view at the level in which the installations are located, and shall be designed as an integral part of and harmonious with the building design; and
- (6) the proposed alternative development will not involve any outdoor lighting fixture that casts light on an adjoining parcel of land at an intensity greater than permitted by this code; and
- (7) the architectural design, scale, mass, and building materials of any proposed structure(s) or addition(s) are aesthetically harmonious with that of other existing or

proposed structure(s) or building(s) on the parcel proposed for alternative development; and

- (8) the wall(s) of any building within a front, side street or double frontage setback area or within a setback area adjacent to a discordant use, required by the underlying district regulations, shall be improved with architectural details and treatments that avoid the appearance of a "blank wall"; and
- (9) the proposed alternative development will not result in the destruction or removal of mature trees within a setback required by the underlying district regulations, with a diameter at breast height of greater than ten (10) inches, unless the trees are among those listed in section 24-60(4)(f) of this code, or the trees are relocated in a manner that preserves the aesthetic and shade qualities of the same side of the lot, parcel or tract; and
- (10) any windows or doors in any building(s) to be located within an interior side or rear setback required by the underlying district regulations shall be designed and located so that they are not aligned directly across from facing windows or doors on building(s) of a discordant use located on an adjoining parcel of land; and
- (11) total lot coverage shall not be increased by more than ten percent (10%) of the lot coverage permitted by the underlying district regulations; or a total floor area ratio shall not be increased by more than ten percent (10%) of the floor area ratio permitted by the underlying district regulations; and
- (12) the area within an interior side or rear setback required by the underlying district regulations located adjacent to a discordant use will not be used for off-street parking except:
 - (A) in an enclosed garage where the garage door is located so that it is not aligned directly across from facing windows or doors on buildings of a discordant use located on an adjoining parcel of land; or
 - (B) if the off-street parking is buffered from property that abuts the setback area by a solid wall at least six (6) feet in height along the area of pavement and parking, with either:
 - (i) articulation to avoid the appearance of a "blank wall" when viewed from the adjoining property, or
 - (ii) landscaping that is at least three (3) feet in height at time of planting, located along the length of the wall between the wall and the adjoining property, accompanied by specific provision for the maintenance of the landscaping, such as but not limited to, an agreement regarding its maintenance in recordable form from the adjoining landowner; and
- (13) any structure within an interior side setback required by the underlying district regulations:

- (A) is screened from adjoining property by landscape material of sufficient size and composition to obscure at least eighty percent (80%) (if located adjoining or adjacent to a discordant use) of the proposed alternative development to a height of the lower fourteen (14) feet of such structure(s) at time of planting; or
 - (B) is screened from adjoining property by an opaque fence or wall at least eight (8) feet, six (6) feet if located adjoining or adjacent to a discordant use, in height that meets the standards set forth in paragraph (g) herein; and
- (14) any structure not attached to a principal building and proposed to be located within a setback required by the underlying district regulations shall be separated from any other structure by at least 10 feet or the minimum distance to comply with fire safety standards, whichever is greater; and
- (15) when a principal or accessory building is proposed to be located within a setback required by the underlying district regulations, any enclosed portion of the upper floor of such building shall not extend beyond the first floor of such building within the setback; and
- (16) safe sight distance triangles shall be maintained as required by this code; and
- (17) the parcel proposed for alternative development shall continue to provide the required number of on-site parking spaces as required by this Code, except that off-site parking spaces may be provided in accordance with Section 33-128 of this Code; and
- (18) the parcel proposed for alternative development shall satisfy all other applicable underlying district regulations or, if applicable, prior zoning actions issued prior to the effective date of this ordinance (May 2, 2003), regulating setbacks, lot area and lot frontage, lot coverage, floor area ratio, landscaped open space and structure height; and
- (19) the proposed development will meet the following:
- (A) interior side setbacks shall not be reduced by more than fifty percent (50%) of the side setbacks required by the underlying district regulations, or the minimum distance required to comply with fire safety standards, whichever is greater when the adjoining parcel of land is a BU or IU district; interior side setbacks shall not be reduced by more than twenty-five (25%) percent of the interior side setbacks required by the underlying district regulations when the adjoining parcel of land allows a discordant use.
 - (B) side street setbacks shall not be reduced by more than twenty-five (25%) of the underlying district regulations;
 - (C) front setbacks (including double-frontage setbacks) shall not be reduced by more than twenty-five (25%) percent of the setbacks required by the underlying district regulations; and

- (D) rear setbacks shall not be reduced below fifty (50%) percent of the rear setback required by the underlying district regulations, or the minimum distance required to comply with fire safety standards, whichever is greater, when the adjoining parcel of land is a BU or IU district; rear setbacks shall not be reduced below twenty-five (25%) percent of the rear setback required by the underlying district regulations when the adjoining parcel of land allows a discordant use.
- (E) setbacks between building(s) shall not be reduced below 10 feet, or the minimum distance required to comply with fire safety standards, whichever is greater.

An alternative maximum height of **walls**, hedges or fences shall be approved upon demonstration of the following:

- no wall, hedge or fence shall exceed ten (10) feet in height when adjoining BU or IU zoned lot or parcel; no wall, hedge or fence shall exceed eight (8) feet when adjoining a discordant use, and
- no wall, hedge or fence located in a front or side street setback required by the applicable district regulation shall exceed six (6) feet in height; and
- the additional height of a proposed wall, hedge or fence will not obscure in whole or in part an existing view or vista to any landmark, natural area, or waterbody from any window or door of a building on an adjoining discordant, use; and
- proposed wall or fences shall be:
 - articulated to avoid the appearance of a "blank wall" when viewed from adjoining property, or
 - improved with landscaping material that is at least three (3) feet in height at time of planting, located along the length of the wall between the wall and the adjoining property, accompanied by specific provision for the maintenance of the landscaping, such as but not limited to, an agreement from the landowner regarding its maintenance in recordable form from the adjoining property owner, or
 - where facing a public right-of-way, setback at least two and one-half (2 ½) feet from the right-of-way line and extensively landscaped with shrubs of a minimum of three (3) feet in height when measured immediately after planting, which will form a continuous, unbroken, solid visual screen within one (1) year after time of planting; hedges of a minimum of three (3) feet in height immediately after planting, which will form a continuous, unbroken, solid, visual screen within one (1) year after time of planting;

and/or climbing vines of a minimum of thirty-six (36) inches in height immediately after planting; and

- proposed fences shall be constructed or installed so that all sides of the fence are "finished" in accordance with the applicable regulations; and
- proposed fences are constructed of durable materials and are decorative; and
- proposed fences are not comprised of chain link or other wire mesh, unless hedges totally screen the fence; and

safe sight distance triangles are maintained pursuant to this code.

(k) Notwithstanding the foregoing, no proposed alternative development shall be approved upon demonstration that the proposed alternative development:

- (1) will result in a significant diminution of the value of property in the immediate vicinity; or
- (2) will have substantial negative impact on public safety due to unsafe automobile movements, heightened vehicular-pedestrian conflicts, or heightened risk of fire; or

will result in a materially greater adverse impact on public services and facilities than the impact that would result from development of the same parcel pursuant to the underlying district regulations.

Proposed alternative development under this subsection shall provide additional amenities or buffering to mitigate the impacts of the development as approved, where the amenities or buffering expressly required by this subsection are insufficient to mitigate the impacts of the development. The purpose of the amenities or buffering elements shall be to preserve and protect the economic viability of any commercial enterprises proposed within the approved development and the quality of life of residents and other owners of property in the immediate vicinity in a manner comparable to that ensured by the underlying district regulations. Examples of such amenities include but are not limited to: active or passive recreational facilities, landscaped open space over and above that normally require by the code, additional trees or landscaping materials, the inclusion of residential uses(s), convenient pedestrian connection(s) to adjacent residential development(s), convenient covered bus stops or pick-up areas for transportation services, sidewalks (including improvements, linkages, or additional width), bicycle paths, buffer areas or berms, street furniture, undergrounding of utility lines, monument signage (where detached signs are allowed) or limited and cohesive wall signage, and decorative street lighting. In determining which amenities or buffering elements are appropriate for a proposed development, the following shall be considered:

- the types of needs of the residents or other owners immediate vicinity and the needs of the business owner and employees of the parcel proposed for

development that would likely be occasioned by the development, including but not limited to recreational, open space, transportation , aesthetic amenities, and buffering from adverse impacts; and

- the proportionality between the impacts on residents or other owners of property of parcel(s) in the immediate vicinity and the amenities or buffering required. For example, a reduction in setbacks for numerous lots or significantly large commercial buildings may warrant the provision of additional common open space.

Section 33-311(A)(15). Alternative Site Development Option for Three-unit or Four-unit Apartment House, Multiple-Family Apartment House Use and Multiple-Family Housing Developments.

- (f) The **lot area and frontage** for a three-unit or four-unit apartment house, multiple-family apartment house use or multiple-family housing development shall be approved upon demonstration of at least one of the following:
- (1) the proposed lot area and lot frontage will permit the development or redevelopment of a lot, parcel or tract of land where such development would not otherwise be permitted by the applicable district regulations due to the size or configuration of the parcel proposed for alternative development, provided that:
 - (A) the lot, parcel or tract is under lawful separate ownership from any contiguous property; and
 - (B) the proposed alternative development will not result in the further subdivision of land; and
 - (C) the size and dimensions of the lot, parcel or tract are sufficient to provide all setbacks required by the underlying district regulations; and
 - (D) the lot area is not less than ninety percent (90%) of the minimum lot area required by the applicable district regulations; and
 - (E) the proposed alternative development will not result in an obvious departure from the aesthetic character of the immediate vicinity; and
 - (F) the parcel proposed for alternative development does not adjoin or lie adjacent to AU or GU zoned lands, nor lands designated for Low Density, Agricultural or Open Land under the Land Use Plan map of the Comprehensive Development Master Plan; and
 - (G) the lot frontage dimension is not less than ninety percent (90%) of the minimum lot frontage required by the applicable district regulations, except that the frontage dimension of a flag-lot, parcel or tract shall be permitted to be reduced to the minimum width necessary to allow vehicular access as determined by the County; and

- (H) the resultant lot frontage provides vehicular ingress and egress to all resulting lots, parcels or tracts, including on-site access to emergency equipment.
- (2) the proposed alternative development will result in open space, community design, amenities or preservation of natural resources that enhances the function or aesthetic character of the immediate vicinity in a manner not otherwise achievable through application of the applicable district regulations, provided that:
 - (A) the density of the proposed alternative development does not exceed that permitted by the applicable district regulations; and
 - (B) the size and dimensions of each lot, parcel or tract in the proposed alternative development are sufficient to provide all setbacks required by the applicable district regulations, or, if applicable, any prior zoning actions for similar uses issued prior to the effective date of this ordinance (May 16, 2003); and
 - (C) the area of each lot, parcel or tract is not less than eighty percent (80%) of the area required by the applicable district regulations; and
 - (D) the proposed alternative development will not result in an obvious departure from the aesthetic character of the immediate vicinity; and
 - (E) the parcel proposed for alternative development does not adjoin or lie adjacent to AU or GU zoned lands, nor lands designated for Low Density, Agricultural or Open Land under the Land Use Plan map of the Comprehensive Development Master Plan; and
 - (F) the resultant lot frontage provides vehicular ingress and egress to all resulting lots, parcels or tracts, including on-site access to emergency equipment.
- (3) the proposed lot area and frontage is such that:
 - (A) the proposed alternative development will not result in the creation of more than two (2) lots, parcels or tracts; and
 - (B) the size and dimensions of each lot, parcel or tract are sufficient to provide all setbacks required by the applicable district regulations; and
 - (C) no lot area shall be less than the smaller of:
 - (i) ninety percent (90%) of the lot area required by the applicable district regulations; or
 - (ii) the average area of the developed lots, parcels or tracts in the immediate vicinity within the same zoning district; and
 - (D) the proposed alternative development will not result in an obvious departure from the aesthetic character of the immediate vicinity; and

- (E) the parcel proposed for alternative development does not adjoin or lie adjacent to AU or GU zoned lands, nor lands designated for Low Density, Agricultural or Open Land under the Land Use Plan map of the Comprehensive Development Master Plan; and
 - (F) the resultant lot frontage provides vehicular ingress and egress to all resulting lots, parcels or tracts, including on-site access to emergency equipment.
- (i) Notwithstanding the foregoing, no proposed alternative development shall be approved upon demonstration that the proposed alternative development:
- (1) will result in a significant diminution of the value of property in the immediate vicinity; or
 - (2) will have substantial negative impact on public safety due to unsafe automobile movements, heightened vehicular-pedestrian conflicts, or heightened risk of fire; or
 - (3) will result in a materially greater adverse impact on public services and facilities than the impact that would result from development of the same parcel pursuant to the underlying district regulations; or
 - (4) will combine severable use rights obtained pursuant to Chapter 33B of this code in conjunction with the approval sought hereunder so as to exceed the limitations imposed by section 33B-45 of this code.

Section 33-311(A)(4)(b). Non-use variances from other than airport regulations: Upon appeal or direct application in specific cases, the Board shall hear and grant applications for **non-use variances** from the terms of the zoning and subdivision regulations and may grant a non-use variance upon a showing by the applicant that the non-use variance maintains the basic intent and purpose of the zoning, subdivision and other land use regulations, which is to protect the general welfare of the public, particularly as it affects the stability and appearance of the community and provided that the non-use variance will be otherwise compatible with the surrounding land uses and would not be detrimental to the community. No showing of unnecessary hardship to the land is required.

Section 33-311(A)(4)(c). Alternative non-use variance standard. Upon appeal or direct application in specific cases to hear and grant applications from the terms of the zoning and subdivision regulations for non-use variances from the terms of the zoning regulations the Board (following a public hearing) may grant a non-use variance for these items, upon a showing by the applicant that the variance will not be contrary to the public interest, where owing to special conditions, a literal enforcement of the provisions thereof will result in unnecessary hardship, and so the spirit of the regulations shall be observed and substantial justice done; provided, that the non-use variance will be in harmony with the general purpose and intent of the regulation, and that the same is the minimum non-use variance that will permit the reasonable use of the premises; and further provided, no non-use variance from any airport zoning regulation shall be granted under this subsection.

Section 33-311(A)(3). Special exceptions, unusual 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.

G. NEIGHBORHOOD SERVICES:

DERM	No objection*
Public Works	No objection*
Parks	No objection
MDTA	No objection
Fire Rescue	No objection
Police	No objection
Schools	12 students**

* subject to conditions stated in their attached memoranda

** based on 35 residential units

H. ANALYSIS:

This application was deferred from the February 24, 2005 meeting to the March 03, 2005 meeting at the applicant's request where it was deferred to the April 21, 2005 meeting, then to this date.

The Farm, Inc. & Manuel Dorta Duque are appealing the Community Zoning Appeals Board-15's (CZAB-15) decision to approve requests #1, 2, 3, and 6. At the October 12, 2004 Community Zoning Appeals Board 15 hearing, the applicant withdrew requests #4, 5, 7, 8, and 9 of the subject application as well as those portions of request #2 pertaining to the front and rear setbacks. The CZAB-15 approved the district boundary change request from AU to BU-1 on Exhibit A, approved a district boundary change to RU-1 in lieu of the requested RU-3M on Exhibit B, approved with conditions in part request #2 to permit a residential and commercial development setback 15' from the side street property line, and approved with conditions the waiver of the 5' high decorative masonry wall required between commercial and residential uses.

The appellant states that the requests are contrary to the law, the decisions are not supported by competent substantial evidence, are contrary to the law, ordinances, and statutes, the application is inconsistent with the Comprehensive Development Master Plan (CDMP), and the proceedings failed to provide due process of law. The existing AU zoning

is consistent with the CDMP, as such, should the Board desire to retain the existing zoning on the property, the decision would also be consistent with the CDMP.

The subject property is located at 24751 SW 117 Avenue. In 2002, the 55-acre adjacent parcel to the north and northwest was rezoned to Planned Area Development (PAD) District and will be developed with an integrated residential development that will incorporate a variety of housing types. This application originally pertained to Exhibit A only and sought a district boundary change from AU, Agricultural District, to BU-1, Neighborhood Business District, that would have allowed a temporary sales office that would have served the adjacent Planned Area Development (PAD) and in the future would be developed with a commercial or mixed use development. When the aforementioned PAD was approved, the property to the east of the subject site was proffered as a fire station site as part of the PAD approval. While preparing a site plan for the development of this site with a mixed-use residential and commercial development, the applicant realized that there was a "gap" between the fire station site and the proposed BU-1 zoned property (Exhibit A) which had not been a part of the CDMP amendment to re-designate the entire subject site (Exhibits A and B) to business and office use. Said "gap" consists of 0.45 acres and was not included when Exhibit A was re-designated to business and office. This "gap" which is referred hereafter as Exhibit B has a low-density residential designation on the LUP map. Exhibit B has been included as a part of the design for the proposed mixed use center and will provide a park to serve the development on Exhibit A.

Prior to the CZAB-15 meeting, the applicant submitted an amended letter of intent requesting a zone change to RU-1 on Exhibit B in lieu of the originally requested and advertised RU-3M. The advertisement did not need to be amended since RU-3M permits RU-1 uses and, as such, RU-1 is considered to be within the scope of the advertisement. Accompanying requests pertaining to Exhibit A will permit a residential and commercial development to setback closer to the south property line than permitted and waive the required 5' high decorative masonry wall along the east property line where a business lot abuts a residential district. Based on the amended request to RU-1 zoning on Exhibit B in lieu of RU-3M, the accompanying requests pertaining to Exhibit B (Requests #7 and 8) regarding lot frontage and parking in a more restrictive zone than permitted, and Request #9 pertaining to both Exhibits A and B to allow a gated entrance feature (which is no longer depicted on the plans) were no longer necessary and were withdrawn by the applicant at the CZAB 15 hearing. Requests #4 and 5 were also withdrawn by the applicant at the CZAB-15 hearing.

The plans submitted by the applicant show a mixed-use commercial and residential development on Exhibit A consisting of three (3) L-shaped buildings that will contain two (2) stories. Each building will provide commercial retail services on the ground floor and eleven (11) townhouses above retail for a total of thirty-three (33) residential units. The submitted plans depict Exhibit B as a park area to serve the development on Exhibit A with a centrally located fountain, paved walkways, park benches, and landscaping. Access to the site is provided from SW 248 Street and SW 247 Street. A main street runs through the property between two of the proposed buildings. Extensive landscaping is provided along the perimeter of the site. The applicant intends to proffer a covenant limiting the development of the site to the aforementioned plans, restricting the residential density of the site to no more than thirty-three (33) units, and restricting the RU-1 portion of the property (Exhibit B) solely for park use.

The Department of Environmental Resources Management (**DERM**) has **no objections** to this application and has indicated that it meets the Level of Service (LOS) standards set forth in the Master Plan. The **Public Works Department** has **no objections** to this application. This application will generate **227 PM** daily peak hour vehicle trips; however, said trips will not affect the level of service (LOS) on the area roadways which are currently at LOS "B", "C", "D", and "E". Said Department will require, among other things, that the applicant submit a cross access agreement permitting access to the adjacent property to the north. Additionally, the land requires platting in accordance with Chapter 28 and the road dedications and improvements will be accomplished through the recording of a plat. **Miami-Dade County Public Schools (MDCPS)** has indicated that the proposed development would bring an additional **12 students** to the schools in the area based on 35 units. Pursuant to the Interlocal Agreement, the applicant's representative met with the School Board on March 16, 2004 and had a dialogue to discuss the impact of the proposed development on public schools. The applicant has voluntarily proffered a covenant to the School Board in order to provide a monetary donation over and above impact fees.

The rezoning of the property to BU-1 on Exhibit A and RU-1 in lieu of RU-3M on Exhibit B will allow the applicant to provide commercial/retail neighborhood oriented services and housing for the community. Exhibit A is designated for Business and Office use on the Land Use Plan (LUP) map of the Comprehensive Development Master Plan (CDMP). Staff notes that this property was re-designated to Business and Office use through a CDMP amendment application and was approved pursuant to Ordinance #02-87. BU-1 zoning will be **consistent** with the LUP map designation of the CDMP. The CDMP states that residential uses, and mixing of residential uses with commercial, office and hotels are permitted in Business and Office areas provided that the scale and intensity, including height and floor area ratio of the residential or mixed use development, is not out of character with that of adjacent or adjoining development and zoning, and it does not detrimentally impact, and it provides a sensitive well designed transition to any adjacent or adjoining residentially developed or designated areas of different development intensity. Where these conditions are met residential development may be authorized to occur in the Business and Office category at a density up to one density category higher than the LUP - designated density of the adjacent or adjoining residentially designated area on the same side of the abutting principal roadway, or up to the density of any such existing residential development, or zoning if the adjacent or adjoining land is undeveloped, whichever is higher. In this instance, the proposed mixed use development does not detrimentally impact the adjacent development and the scale and intensity, including height and floor area ratio of the mixed use development, and is not out of character with that of adjacent or adjoining development. The submitted plans provide a well designed transition between the adjacent PAD to the north and the subject property and said PAD will be buffered from the subject property by SW 247 Street. Further, the applicant is providing extensive landscaping that will further buffer the proposed mixed use development from the adjacent PAD. The PAD to the north was approved with certain townhouse units to be 3 stories in height. Additionally, the design of the proposed development orients the proposed buildings away from the PAD and towards SW 248 Street, SW 117 Avenue, and along the Main Street provided in the development. Parking areas for the commercial/retail portion of the development are located behind the buildings between said buildings and the PAD. Since the Master Plan allows one density category higher for residential uses in the Business and Office designation when the aforementioned criteria are met, the Master Plan would allow the

residential component on the Business and Office designated portion to be developed in accordance with the density permitted in the Low-Medium residential designation (5 to 13 dua). This category is one density category higher than the adjacent LUP map category which is Low-density residential (2.5 to 6 dua). The maximum number of units permitted by the CDMP on Exhibit A would be 50 dwelling units. As such, the proposed 33 residential units would be **consistent** with the Master Plan.

The LUP map of the CDMP designates Exhibit B for Low Density Residential use (2.5 to 6 dwelling units per gross acre). RU-1 zoning allows a maximum density of 4.65 units per gross acre. The now requested RU-1 zoning on Exhibit B will be **consistent** with the density permitted by the LUP map.

The proposed BU-1 zoning would be **compatible** with the surrounding area and provide neighborhood-serving uses to same. This area has experienced several zone changes to residential zoning in recent years and, as previously mentioned, the property to the north is zoned PAD and will consist of various different housing types. A mixed-use development with residential and commercial uses would also be compatible with the remainder of the surrounding area and it would bring a pedestrian friendly environment to same. RU-1 zoning in lieu of the originally requested RU-3M zoning on Exhibit B will be **compatible** with the surrounding area. As previously mentioned, the applicant intends to proffer a covenant limiting the development of the site to the plans submitted for this hearing that show the development of Exhibit B for park use. The proposed park will be located adjacent to the future fire station to the east, the agricultural area to the south, and residential development to the north. Additionally, said park will serve the residents and patrons of the commercial/residential use on Exhibit A. The CDMP states that compatible parks are encouraged in all of the residential categories and may be allowed in all other categories of the LUP map. As such, the proposed park will be in keeping with CDMP policies and objectives.

When considered under Section 33-311(A)(4)(b), the Non-Use Variance (NUV) standards, Requests #2 and 3 comply with said standard. Allowing the proposed mixed use development on Exhibit A to setback into the required side street setback area (Request #2), will be compatible with the surrounding area and will allow the development to define the street edge. Request #3 to waive the required 5' high decorative wall along the east property line where the business lot abuts the residential lot will allow the residential/retail development on Exhibit A to connect to the proposed park on Exhibit B which will benefit the residents and patrons of the proposed development on Exhibit A. The aforementioned requests maintain the basic intent and purpose of the zoning, subdivision and other land use regulations and will be compatible with the surrounding area. As such, Requests #2 and 3 can be approved under the NUV standard.

When considered under Section 33-311(A)(16), Alternative Site Development Option (ASDO) for the BU Zoning District, Request #2 cannot be approved under same. The request to allow a setback of 15' from the side street (south) property line reduces the side street setback by more than 25% of the underlying district regulations Section 33-311(A)(16)(c)(19)(B). Further, the applicant has not submitted a shadow study that demonstrates that any area of shadow cast by the proposed alternative development upon an adjoining property will be no larger than would be cast by a structure constructed pursuant to the underlying district regulations, or will have no more than a de minimus impact on the use

and enjoyment of the adjoining parcel of land as set forth in Section 33-311(A)(16)(c)(4). When considered under Section 33-311(A)(16), staff notes that no standards for the waiver of masonry walls between discordant uses are addressed under said Section, as such, said request cannot be analyzed under same. Accordingly, Requests #2 and 3 cannot be approved under Section 33-311(A)(16) and should be denied under this section.

Requests #2 and 3 could be considered under the alternative non-use variance (ANUV) standard [Section 311(A)(4)(c)], however, the applicant has not proven that a literal enforcement of the provisions thereof will result in unnecessary hardship since the site can be utilized in accordance with the proposed BU-1 or the existing AU zoning requirements. As such, said requests cannot be approved under said standard.

Accordingly, staff recommends approval of the zone change on Exhibit A to BU-1 (Request #1) and on Exhibit B to RU-1 in lieu of RU-3M (Request #6), subject to the Board's acceptance of the proffered covenant; partial approval with conditions of Request #2 (to allow the 15' side street setback) and of request # 3 under Section 33-311(A)(4)(b) (NUV); denial without prejudice of Requests #2 and 3 under Section 33-311(A)(4)(c) (ANUV) and Section 33-311(A)(16) (ASDO); and denial without prejudice of Requests #4, 5, and 7 through 9, and that portion of request # 2 pertaining to the front and rear setbacks, unless withdrawn by the applicant.

I. RECOMMENDATION:

Denial of the appeal; approval of the zone change on Exhibit A to BU-1 (Request # 1) and on Exhibit B to RU-1 in lieu of RU-3M (Request # 6), subject to the Board's acceptance of the proffered covenant; partial approval with conditions of Request #2 to permit a residential and commercial development setback 15' from the side street (south) property line on Exhibit A under Section 33-311(A)(4)(b) (NUV); and approval with conditions of Request #3 under Section 33-311(A)(4)(b); denial without prejudice of Requests #2 and #3 under Section 33-311(A)(4)(c) (ANUV) and Section 33-311(A)(16) (ASDO); and withdrawal of Requests #4, 5, 7, 8, 9, and that portion of request # 2 pertaining to the front and rear setbacks.

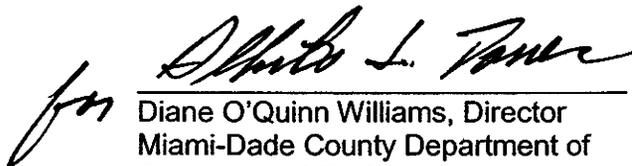
J. CONDITIONS:

The following conditions pertain to Requests #2 and 3 only.

1. That a site plan be submitted to and meet with the approval of the Director upon the submittal of an application for a building permit; said plan to include among other things but not be limited thereto, location of structure or structures, types, sizes and location of signs, light standards, off-street parking areas, exits and entrances, drainage, walls, fences, landscaping, etc.
2. That in the approval of the plan, the same be substantially in accordance with that submitted for the hearing entitled "Summerville Town Center," as prepared by Corwil Architects, Inc., dated August 30, 2004 and consisting of 6 sheets.
3. That the use be established and maintained in accordance with the approved plan.

4. That the applicant submit to the Department for its review and approval a landscaping plan which indicates the type and size of plant material prior to the issuance of a building permit and to be installed prior to the issuance of a Certificate of Use.
5. That a recordable agreement be submitted to and meet with the approval of the Director providing for permanent and safe access for pedestrian and vehicular traffic within the development and particularly for right of access for fire, police, health, and sanitation and other public service personnel and vehicles. The agreement, which shall be a covenant running with the land, shall also include a stipulation that the streets, or access ways, shall be installed and maintained by the applicant, including, but not limited to, sidewalks, drainage facilities, water, sewers and fire hydrants, meeting with the approval of the Director and the Director of the Public Works Department. Such agreement shall be executed by the property owner and any and all parties having an interest in the land, such as mortgages, etc., and its improvements.
6. That in the event of multiple ownership, a homeowners' association, community development district, or special taxing district be established in accordance with applicable regulations to assure that all common areas and facilities for use of all residents shall be maintained in a continuous and satisfactory manner, and without expense to the general taxpayer of Miami-Dade County. The instrument incorporating such provisions shall be approved by the County Attorney as to form and legal sufficiency and shall be recorded in the public records of Miami-Dade County at the time of the recording of the subdivision plat.
7. That the applicant comply with all the conditions and requirements of the Public Works Department as provided in their memorandum as of the date of public hearing.
8. That the applicant comply with all the conditions and requirements of the Department of Environmental Resources Management (DERM) as provided in their memorandum as of the date of public hearing.

DATE INSPECTED: 06/22/04
DATE TYPED: 07/01/04
DATE REVISED: 09/13/04; 01/20/05; 01/24/05; 01/26/05; 02/10/05; 03/31/05; 05/03/05
DATE FINALIZED: 04/06/04; 05/03/05
DO'QW:AJT:MTF:LVT:JDR:GB


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



This instrument was prepared by:

Name: Alan S. Krischer, Esq.
Address: One S.E. Third Avenue
Miami, Florida 33131

(Space reserved for Clerk)

DECLARATION OF RESTRICTIONS

WHEREAS, the undersigned Owner ("Owner") holds the fee simple title to the land in Miami-Dade County, Florida, described in Exhibit "A," attached hereto, and hereinafter called the "Property," which is supported by the attorney's opinion, and

IN ORDER TO ASSURE the County that the representations made by the owner during consideration of Public Hearing No. 03-262 will be abided by the Owner freely, voluntarily and without duress makes the following Declaration of Restrictions covering and running with the Property:

(1) That said Property shall be developed substantially in accordance with the plans previously submitted, prepared by Corwil Architects, Inc. entitled, "Summerville Town Center", dated the 30th day of August, 2004, said plans being on file with the Miami-Dade County Department of Planning and Zoning, and by reference made a part of this agreement.

(2) The total residential density of the Property shall be limited to no more than thirty-three (33) residential units.

(3) That portion of the Property which is rezoned to RU-1, described in Exhibit "B", shall be used solely for a recreational park, and shall not be developed with residential units. Said recreational park shall be maintained by either a duly-created property owners' association or a duly-created condominium association; or, upon the approval and with the consent of the County, said recreational park may be maintained by a special taxing district.

Declaration of Restrictions

Page 2

County Inspection. As further part of this Declaration, it is hereby understood and agreed that any official inspector of Miami-Dade County, or its agents duly authorized, may have the privilege at any time during normal working hours of entering and inspecting the use of the premises to determine whether or not the requirements of the building and zoning regulations and the conditions herein agreed to are being complied with.

Covenant Running with the Land. This Declaration on the part of the Owner shall constitute a covenant running with the land and may be recorded, at Owner's expense, in the public records of Miami-Dade County, Florida and shall remain in full force and effect and be binding upon the undersigned Owner, and their heirs, successors and assigns until such time as the same is modified or released. These restrictions during their lifetime shall be for the benefit of, and limitation upon, all present and future owners of the real property and for the benefit of Miami-Dade County and the public welfare. Owner, and their heirs, successors and assigns, acknowledge that acceptance of this Declaration does not in any way obligate or provide a limitation on the County.

Term. This Declaration is to run with the land and shall be binding on all parties and all persons claiming under it for a period of thirty (30) years from the date this Declaration is recorded after which time it shall be extended automatically for successive periods of ten (10) years each, unless an instrument signed by the, then, owner(s) of the Property has been recorded agreeing to change the covenant in whole, or in part, provided that the Declaration has first been modified or released by Miami-Dade County.

Modification, Amendment, Release. This Declaration of Restrictions may be modified, amended or released as to the land herein described, or any portion thereof, by a written instrument executed by the, then, owner(s) of all of the Property, including joinders of all mortgagees, if any, provided that the same is also by the Board of County Commissioners or Community Zoning Appeals Board of Miami-Dade County, Florida, whichever by law over such matters, after public hearing.

Should this Declaration of Restrictions be so modified, amended or released, the Director of the Miami-Dade County Department of Planning and Zoning, or the executive officer of the successor of such Department, or in the absence of such director or executive officer by his assistant in charge of the office in his absence, shall forthwith execute a written instrument effectuating and acknowledging such modification, amendment or release.

Enforcement. Enforcement shall be by action against any parties or person violating, or attempting to violate, any covenants. The prevailing party in any action or suit pertaining to or arising out of this declaration shall be entitled to recover, in addition to costs and disbursements allowed by law, such sum as the Court may adjudge to be reasonable for the services of his attorney. This enforcement provision shall be in addition to any other remedies available at law, in equity or both.

Authorization for Miami-Dade County to Withhold Permits and Inspections. In the event the terms of this Declaration are not being complied with, in addition to any other remedies available, the County is hereby authorized to withhold any further permits, and refuse to make any inspections or grant any approvals, until such time as this declaration is complied with.

Election of Remedies. All rights, remedies and privileges granted herein shall be deemed to be cumulative and the exercise of any one or more shall neither be deemed to constitute an election of

Declaration of Restrictions

Page 3

remedies, nor shall it preclude the party exercising the same from exercising such other additional rights, remedies or privileges.

Presumption of Compliance. Where construction has occurred on the Property or any portion thereof, pursuant to a lawful permit issued by the County, and inspections made and approval of occupancy given by the County, then such construction, inspection and approval shall create a rebuttable presumption that the buildings or structures thus constructed comply with the intent and spirit of this Declaration.

Severability. Invalidation of any one of these covenants, by judgment of Court, shall not affect any of the other provisions which shall remain in full force and effect. However, if any material portion is invalidated, the County shall be entitled to revoke any approval predicated upon the invalidated portion.

Recording. This Declaration shall be filed of record in the public records of Miami-Dade County, Florida at the cost to the Owner following the adoption by the Miami-Dade County Board of County Commissioners or Community Zoning Appeals Board of a resolution approving the application.

Acceptance of Declaration. Acceptance of this Declaration does not obligate the County in any manner, nor does it entitle the Owner to a favorable recommendation or approval of any application, zoning or otherwise, and the Board of County Commissioners and/or any appropriate Community Zoning Appeals Board retains its full power and authority to deny each such application in whole or in part and to decline to accept any conveyance.

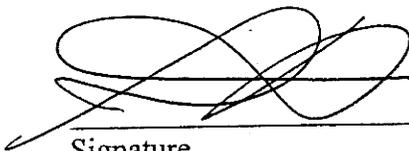
Owner. The term Owner shall include the Owner, and its heirs, successors and assigns.

[Execution Pages Follow]

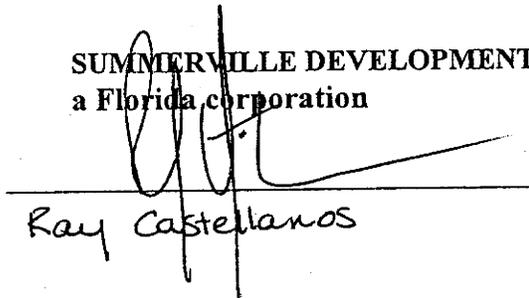
IN WITNESS WHEREOF, we have hereunto set our hands and seal this 6 day of
OCTOBER, 2004.

WITNESSES:

SUMMERVILLE DEVELOPMENT, INC.,
a Florida corporation



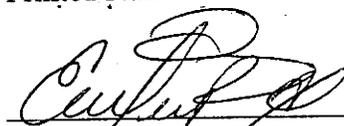
By:


Ray Castellanos

Signature

ISABEL AREU

Printed Name



Signature

Edlett N. Tolosa

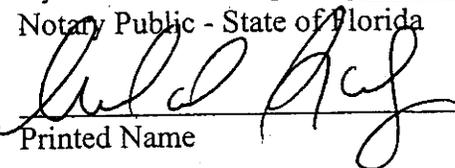
Printed Name

STATE OF FLORIDA)
) SS
COUNTY OF DADE)

The foregoing instrument was acknowledged before me by RAY Castellanos,
as _____ of Summerville Development, Inc., a Florida corporation,
and for the purposes stated herein on behalf of the company. He is personally known to me or
has produced _____ as identification.

Witness my signature and official seal this 6 day of OCTOBER, 2004, in the
County and State aforesaid.

My Commission Expires: 7/2006
Notary Public - State of Florida


Printed Name

CARIDAD RODRIGUEZ
NOTARY PUBLIC - STATE OF FLORIDA
COMMISSION #00129699
EXPIRES 07/20/2006
BONDED THRU 1-888-NOTARY1

COMMENCE AT THE SOUTHEAST CORNER OF SECTION 24,
TOWNSHIP 56 SOUTH, RANGE 39 EAST; THENCE N01°04'14"E, FOR
65.03 FEET; THENCE S89°03'18"E, FOR 40.00 FEET TO THE POINT OF
BEGINNING; THEN N01°04'14"E, FOR 266.39 FEET; THENCE
S89°01'53"E, FOR 790.84 FEET; THENCE S01°11'31"W, FOR 266.36
FEET; THENCE N89°03'18"W, FOR 790.27 FEET TO THE POINT OF
BEGINNING.

EXHIBIT A

(Summerville-Commercial)

MIAMI- DADE COUNTY - PUBLIC WORKS
ENGINEERING-SUBDIVISION CONTROLOPINION OF TITLETO: Miami-Dade County, a Political Subdivision of
the State of Florida

With the understanding that this opinion of title is furnished to Miami-Dade County, Florida, in compliance with its Ordinance No. 57-30, and as an inducement issuing final plat covering the real property hereinafter described, it is hereby certified that I have examined title to the property by using the following instruments:

Attorneys' Title Insurance Fund, Inc., Owner's Title Insurance Policy, OPM-2339358, effective February 19, 2003, together with a certified computer search covering the period from the effective date of such policy through September 19, 2004, at 11:00 P.M.;

(the "Search"), inclusive, of the following described parcels:

COMMENCE AT THE SOUTHEAST CORNER OF SECTION 24, TOWNSHIP 56 SOUTH, RANGE 39 EAST; THENCE N01°04'14"E, FOR 65.03 FEET; THENCE S89°03'18"E, FOR 40.00 FEET TO THE POINT OF BEGINNING; THEN N01°04'14"E, FOR 266.39 FEET; THENCE S89°01'53"E, FOR 790.84 FEET; THENCE S01°11'31"W, FOR 266.36 FEET; THENCE N89°03'18"W, FOR 790.27 FEET TO THE POINT OF BEGINNING.

Basing our opinion on an examination of the above instruments, I am of the opinion that on the abovementioned date the fee simple title to the above property described is vested in:

Summerville Development, Inc., a Florida corporation

said property is subject to the following liens, encumbrances, and other exceptions:

GENERAL EXCEPTIONS

1. All taxes for the year in which this opinion is rendered, unless noted below that such taxes have been paid.
2. Rights or claims of persons other than the above owners who are in possession.
3. Easement or claims of easements not shown by the Public Records, boundary line disputes, overlaps, encroachments and any facts or matters not of record which would be disclosed by an accurate survey and inspection of the premises.
4. Any unrecorded labor, mechanics' or materialmens' liens.
5. Zoning and other restrictions imposed by governmental authority.

SPECIAL EXCEPTIONS

1. Agreement for Water and Sanitary Sewage Facilities between Miami-Dade County and Summerville Development, Inc., recorded October 14, 2003, in O.R. Book 21737 at Page 2287, as amended by Addendum No. 1 for the Phase I Water and Sanitary Sewage Facilities recorded January 21, 2004, in O.R. Book 21986 at Page 2962; Amended by Addendum #2 recorded June 4, 2004, in O.R. Book 22371, Page 947.
2. Memorandum and Ordinance creating and establishing Street Lighting Special Taxing District dated July 13, 2004, and recorded August 5, 2004, in O.R. Book 22548, at Page 4487.
3. Memorandum and Ordinance creating Multipurpose Special Taxing District dated July 13, 2004, and recorded August 5, 2004, in O.R. Book 22548 at Page 4519.
4. Memorandum and Resolution adopting preliminary assessment roll for Street Lighting Special Taxing District dated July 13, 2004, recorded in O.R. Book 22548, at Page 4605.

ALL REFERENCE IS TO THE PUBLIC RECORDS OF MIAMI-DADE COUNTY,
FLORIDA.

Therefore, it is my opinion that the following parties must join in the platting of the above described real property in order to grant DADE COUNTY, FLORIDA, and the public, a good and proper title to the dedicated areas shown on the final Plat of the aforescribed property, the subdivision there to be known as

Name	Interest	Special Exception No.
Summerville Development, Inc.	fee simple	none

I, the undersigned, further certify that I am an attorney at law duly admitted to practice in the State of Florida, and am a member in good standing of the Florida Bar.

Respectfully submitted this 7th day of October, 2004.

ELLIOTT HARRIS, ESQ.
Fla. Bar No. 097072
111 S.W. 3rd Street, 6th Floor
Miami, Florida 33130
(305) 358-0146

STATE OF FLORIDA)
 ss.
COUNTY OF MIAMI-DADE)

THE FOREGOING INSTRUMENT was acknowledged before me this 7th day of October, 2004, by Elliott Harris, who is personally known to me and who did/did not take an oath.

My commission expires:

NOTARY PUBLIC



This instrument was prepared under the supervision of:

Name: Alan S. Krischer, Esq.
Address: Akerman, Senterfitt, P.A.
One Southeast Third Avenue
28th Floor
Miami, Florida 33131

(Space Reserved for Clerk of the Court)

DECLARATION OF RESTRICTIONS
IN FAVOR OF THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA

WHEREAS, the undersigned Owner holds the fee simple title to that certain parcel of land located in unincorporated Miami-Dade County, Florida (the "Property"), which is legally described in Exhibit "A" to this Declaration;

WHEREAS, the Property is the subject of an Application for public hearing under Public Hearing Number 03-262 (the "Application"), which seeks a rezoning of the Property to BU-1A and RU-3M zoning; and

WHEREAS, the Owner has submitted a site plan in connection with the Application, which site plan provides for thirty-three (33) residential units;

WHEREAS, the Owner desires to help mitigate the future public school needs generated by the Application.

NOW, THEREFORE, IN ORDER TO ASSURE The School Board of Miami-Dade County, Florida ("The School Board"), that the representations made by the Owner during the consideration of the Application will be abided by, the Owner freely, voluntarily, and without duress make the following Declaration of Restrictions covering and running with the Property:

1. **Monetary School Contribution.** In order to help meet the future public schools needs generated by the Application, the Owner agrees to voluntarily contribute funds to the School Board equal to \$7,200.00 (the "Contribution"), based on the proposed density of thirty-three (33) multi-family residential dwelling units, which funds shall be utilized first for capital improvements at Redland Middle School and Homestead Senior High School, and to the extent that there are no pending or proposed capital improvements at the foregoing schools as of the date of payment of the contribution, then for capital improvements at other schools within the affected feeder pattern. The total Contribution shall be paid in one (1) payment becoming due and payable prior to the final plat approval for the subject development.

The Owner acknowledges and agrees that the Contribution shall not entitle the Owner or its successors and assigns to a credit against the amount of the educational facilities impact fee that will be assessed against the future development of the Property under Chapter 33K of the Miami-Dade County Code. In the event that the Community Zoning Appeals Board, the Board of County Commissioners, or the Miami-Dade County Plat Committee approves fewer than the maximum density of thirty-three (33) multi-family residential dwelling units, the amount of the Contribution shall be reduced on a pro rata basis, in an amount equal to \$1,200 per student, as calculated by the School District.

2. **Miscellaneous.**

A. **Covenant Running with the Land/Release.** This Declaration on the part of the Owner shall constitute a covenant running with the land and shall be recorded by the Owner, at the Owner's expense, in the public records of Miami-Dade County, Florida, and shall remain in full force and effect and be binding upon the undersigned Owner and its heirs, successors, and assigns until such time as the same is modified or released with

the approval of the School Board. These restrictions, during their lifetime, shall be for the benefit of, and limitation upon, all present and future owners of the Property and for the public welfare; provided, however, upon payment of the Contribution, the Superintendent of Schools or his/her designee shall release this Declaration by forthwith executing a written instrument in recordable form effectuating and acknowledging such release.

B. Term. This Declaration shall run with the land and shall be binding on all parties and all persons claiming under it for a period of thirty (30) years from the date that this Declaration is recorded. After which time, it shall be extended automatically for successive periods of ten (10) years each, unless an instrument signed by the then owner(s) of the Property has been recorded agreeing to change the Declaration in whole, or in part, provided that the Declaration has first been modified or released by the School Board.

C. Modification, Amendment, Release. This Declaration of Restrictions may be modified, amended, or released as to the land herein described, or any portion thereof, by a written instrument executed by the, then, owner(s) of all of the Property covered under the modification, amendment, or release, including joinders of all mortgagees, if any, provided that the modification, amendment, or release is also approved by the School Board after public hearing.

D. Enforcement. Enforcement shall be by action against any parties or person violating, or attempting to violate, the covenants. This enforcement provision shall be in addition to any other remedies available at law, in equity, or both.

E. Election of Remedies. All rights, remedies, and privileges granted herein shall be deemed to be cumulative and the exercise of any one or more shall neither be deemed to constitute an election of remedies, nor shall it preclude the party exercising the same from exercising such other additional rights, remedies or privileges.

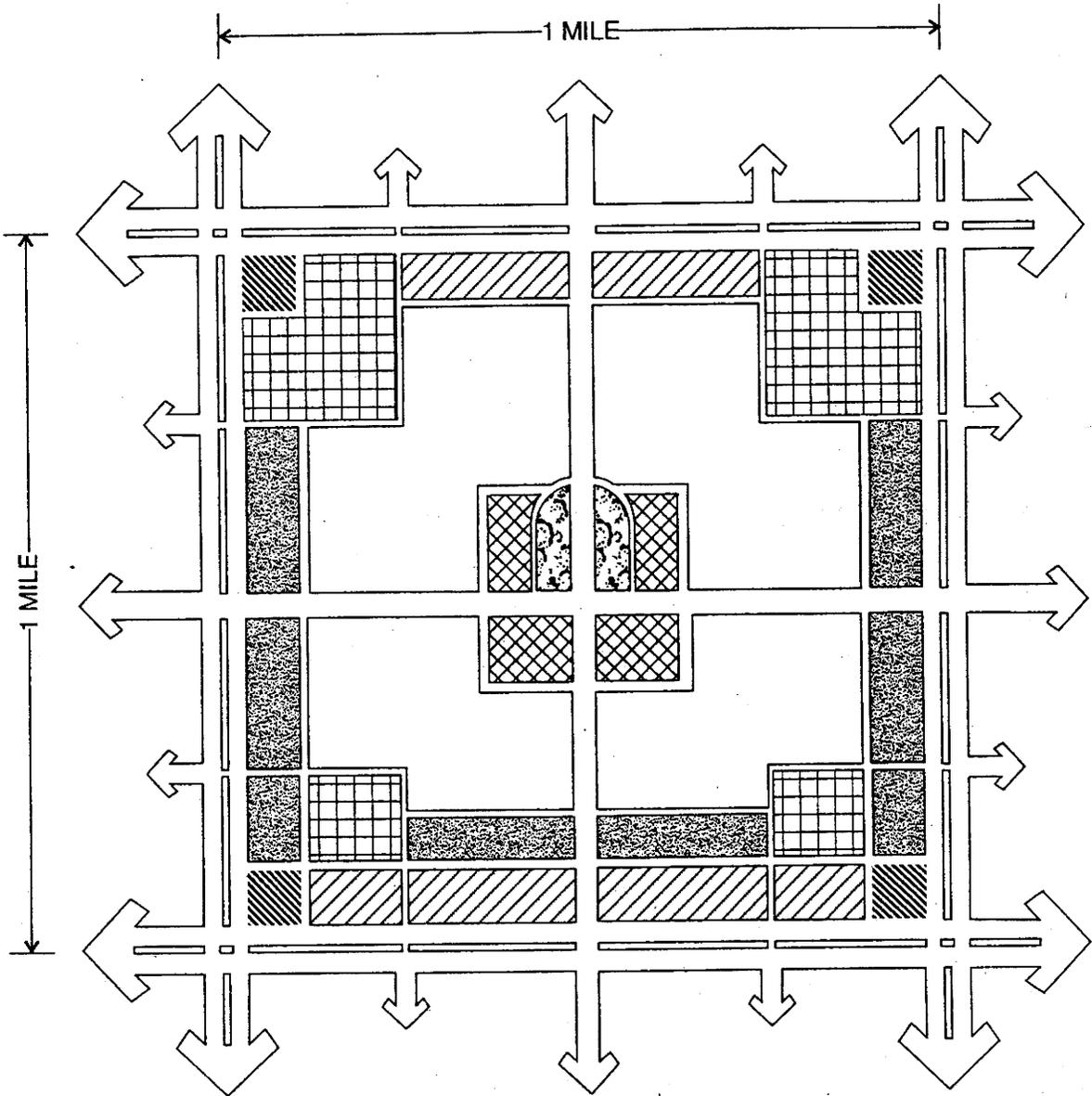
F. Severability. Invalidation of any one of these covenants by judgment of Court shall not affect any of the other provisions which shall remain in full force and effect.

G. Recording. This Declaration shall be filed of record by the Owner in the public records of Miami-Dade County, Florida, at the cost to the Owner, and shall become effective following the adoption by the Miami-Dade County Board of County Commissioners of a resolution approving the Application and the expiration of any applicable filing periods without an appeal having been filed. Upon recordation, the Owner shall provide a copy of the recorded Declaration to the School Board.

[Signature Page(s) Follow]



RECYCLED



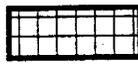
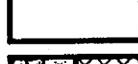
-  ACTIVITY NODE
-  TRANSITION AREA
-  SECTION PERIPHERY WITHOUT/OFFICES
-  LOW DENSITY RESIDENTIAL
-  SECTION CENTER

Figure 1
**GENERALIZED NEIGHBORHOOD
 DEVELOPMENT PATTERN**

S C A L E ↑
 0 660' 1,320' N

**DEPARTMENT OF PLANNING,
 DEVELOPMENT AND REGULATION**

DISK 1 01 BASEMAPS\GEO1 SCHEMATS.CDR.1/97

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.

- Residential uses, and mixing of residential use with commercial, office and hotels are also permitted in Business and Office areas provided that the scale and intensity, including height and floor area ratio of the residential or mixed use development, is not out of character with that of adjacent or adjoining development and zoning, and it does not detrimentally impact, and it provides a sensitive well designed transition to any adjacent or adjoining residentially developed or designated areas of different development intensity. Where these conditions are met residential development may be authorized to occur in the Business and Office category at a density up to one density category higher than the LUP - designated density of the adjacent or adjoining residentially designated area on the same side of the abutting principal roadway, or up to the density of any such existing residential development, or zoning if the adjacent or adjoining land is undeveloped, whichever is higher. If there is no adjacent or adjoining residential use existing, zoned or designated on the same side of the roadway, the maximum allowable residential density will be that which exists or which this plan allows across the roadway. Where there is no residential use, zoning or designation on either side of the roadway, the intensity of residential development, including height, bulk and floor area ratio shall be no greater than that which would be permitted for an exclusively commercial use of the site. Where SURs are transferred to Business-designated parcels which are zoned or to be used for residential development the SUR allowances of the Residential section may be used within the limits provided in this paragraph.

Strips and Nodes. The plan recognizes existing strip commercial development along many roadways. However, commercial development in newly developing areas is designated as nodes at major intersections. Allocation of commercial development rights among quadrants of such nodes will depend on locational factors, geographic constraints, ownership fragmentation, compatibility with adjacent uses and availability of highway capacity and other public services and facilities.

Ribbons or strips of commercial use along roadway frontages are identified along one or both block faces fronting certain roadways. Where only one block face is indicated, this specifically provides that only that block face is intended for commercial use and is not to suggest that the opposite face is also included. The lateral boundary of the ribbon indicates the extent to which business uses may be allowed to expand along the roadway frontage.

The depth of the ribbon is more generalized. In general, the depth should be limited to the norm for the strip, but may be approved at such other depth necessary to ensure compatibility with, and liberal permanent buffering of adjacent residential uses, or transition to adjacent commercial uses in keeping with the Plan's policies. Extension of commercial strip depth beyond the mid-block to the frontage of an interior street does not necessarily authorize vehicular access on that interior street, and such access may be prohibited if it would be incompatible with neighboring development. Intervening areas between commercial ribbons along a highway face may be used only for the uses permitted in the designated land use category. Further lateral extension of the ribbon beyond that shown on the Plan map will require a Plan amendment.

Uses and Zoning Not Specifically Depicted. 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." The limitations referenced in this paragraph pertain to existing zoning and uses. All approval of new commercial locations must be consistent with the LUP map or the specific exceptions provided in the various LUP map categories, and the objectives and policies of this Plan.

Office/Residential

Uses allowed in this category include both professional and clerical offices, hotels, motels, and residential uses. Office developments may range from small-scale professional office to large-scale office parks. A specific objective in designing developments to occur in this category is that the development should be compatible with any existing, or zoned, or Plan-designated adjoining or adjacent residential uses. The maximum scale and intensity, including height and floor area ratio of office, hotel and motel development in areas designated Office/Residential shall be based on such factors as site size, availability of services, accessibility, and the proximity and scale of adjoining or adjacent residential uses. Where the Office/Residential category is located between residential and business categories, the more intensive activities to occur on the office site, including service locations and the points of ingress and egress, should be oriented toward the business side of the site, and the residential side of the site should be designed with sensitivity to the residential area and, where necessary, well buffered both visually and acoustically.

Residential uses are also allowed in the Office/Residential category. In these locations, residential density may be approved up to one density category higher than that allowed in the adjoining or adjacent residentially designated area on the same side of the abutting principal roadway, or up to the density of existing adjoining or adjacent residential

Where both measures – projected commercial land depletion year and the commercial acres per 1,000 population ratio – indicate a future need for additional commercial land, it is probable that this need will become apparent during the projection period if no additional land is designated on the LUP map for Commercial or Office use. Thus, both the vacancy condition and the adequacy of the commercial land to population ratio need to be considered when determining locations where additional commercial land should or need not be added.

Another factor that must be considered is the existence of vacant industrial land. There has been a continuing pattern in which there is much crossover in the use of industrial land for commercial purposes. The Research Section of the Planning and Zoning Department analyzed a sample (5,614 acres) of vacant industrially zoned or designated land for the period between 1985-2000. It found that only 20.9 percent was developed for industrial uses and that 18.6 percent was still vacant and zoned or designated for industrial uses. Of the 5,614 vacant industrial land analyzed, 17 percent went to residential capacity, 4.4 percent was built residential, and 13 percent was built for transportation and utilities. Some 7.3 percent was built for commercial uses and 7.1 percent was rezoned to commercial uses. Only 39 percent of the sample of vacant industrially zoned acres in 1985 remained either vacant industrial or in industrial use in 2000. Hence, the availability of vacant industrial land must be appraised before the final determination is made to add more commercial land.

In addition to the traditional depletion analysis, a new procedure was added to analyze the adequacy of small-scale applications for commercial uses. The procedure is what is commonly known as a Trade Area analysis. It consists of drawing a radius (the size of the radius depends on the project's size) around the proposed project and computing the population, in-use commercial acreage, and the vacant commercially zoned land inside its radius. Using guidelines developed by the Urban Land Institute, the feasibility of the proposed project (See Table 11.1) can be assessed.

Table 2-9
Trade Area Guidelines

Type	Gross Leasable Area	Minimum Population Support Required	Radius
Neighborhood	30,000-100,000	3,000-40,000	1 ½
Community	100,000-300,000	40,000-150,000	3-5
Regional	300,000+	150,000+	8-12

Source: Adopted from Urban Land Institute, 1985.

Industrial Land

Table 2-10 presents countywide projections of industrial land absorption. The first step in projecting Miami-Dade County's future industrial land use was to develop control totals for countywide use of this type of land in each projection year. Historical land use data for 1985, 1994, 1998, 2000, 2001, and 2003 was divided by relevant employment data to obtain employees per acre ratios, which projected by linear regression. These ratios were applied to employment projections to obtain projected industrial land. Using historical land use data, the share of industrial land was projected and applied to the total for each projection year.



RESOLUTION NO. CC15-05-02

RESOLUTION OF SOUTH BAY COMMUNITY COUNCIL
(15) ISSUING RECOMMENDATION ON OCTOBER 2001
CYCLE AMENDMENT APPLICATION NO. 10
REQUESTING SMALL SCALE AMENDMENT TO THE
COMPREHENSIVE DEVELOPMENT MASTER PLAN
LAND USE PLAN MAP

WHEREAS, Section 20-40 of the Code of Miami-Dade County establishes Community Councils in the unincorporated area; and

WHEREAS, Section 2-116.1 of the Code of Miami-Dade County provides exclusive procedures for amending the Comprehensive Development Master Plan (CDMP) consistent with requirements of Chapter 163, Part 2, Florida Statutes, and the Florida Administrative Code; and

WHEREAS, the Community Councils may, at their option, make recommendations to the Planning Advisory Board and the Board of County Commissioners on proposed amendments to the CDMP that would directly impact the Council's area; and

WHEREAS, Section 2-116.1(3)(e) of the Code of Miami-Dade County provides that Community Council recommendations may address the decisions to be made by the Board of County Commissioners regarding transmittal of the application to the State land planning agency for review and comment, and regarding ultimate adoption, adoption with change, or denial of the applications; and

WHEREAS, at its meeting of March 21, 2002, South Bay Community Council (15) conducted a public hearing as authorized by Section 20-41 of the County Code;

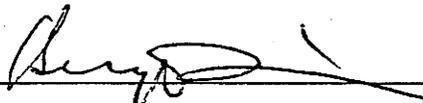
NOW, THEREFORE, BE IT RESOLVED THAT SOUTH BAY COMMUNITY COUNCIL (15) recommends that October 2001-cycle (Small Scale) CDMP amendment Application No. 10 be Adopted.

The foregoing resolution was offered by Council Member Paul S. Vrooman, who moved its adoption and was seconded by Council Member Gail Betancourt, and upon being put to a vote, the vote was as follows:

Daniel L. Adams	Aye	Leonard Anthony	Aye
Gail Betancourt	Aye	Nancy McCue, Vice Chair	Aye
Paul S. Vrooman	Aye		
Timothy G. Sander, Chair	Absent		

The Chair thereupon declared the resolution duly passed and adopted this 21st day of March 2002.

I hereby certify that the above information reflects the action of the Council.


Henry Davis, Executive Secretary

Where both measures – projected commercial land depletion year and the commercial acres per 1,000 population ratio – indicate a future need for additional commercial land, it is probable that this need will become apparent during the projection period if no additional land is designated on the LUP map for Commercial or Office use. Thus, both the vacancy condition and the adequacy of the commercial land to population ratio need to be considered when determining locations where additional commercial land should or need not be added.

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In addition to the traditional depletion analysis, a new procedure was added to analyze the adequacy of small-scale applications for commercial uses. The procedure is what is commonly known as a Trade Area analysis. It consists of drawing a radius (the size of the radius depends on the project's size) around the proposed project and computing the population, in-use commercial acreage, and the vacant commercially zoned land inside its radius. Using guidelines developed by the Urban Land Institute, the feasibility of the proposed project (See Table 11.1) can be assessed.

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OCT 8 2004





AIN STREET

PURPLE RAIN

OCT 8 2004

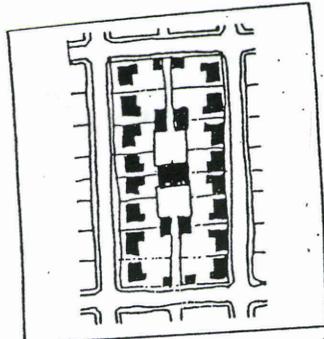




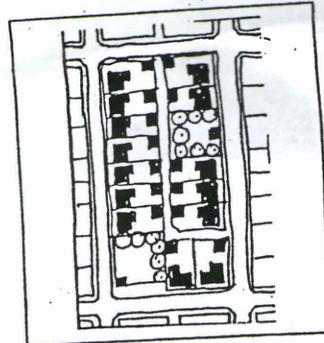


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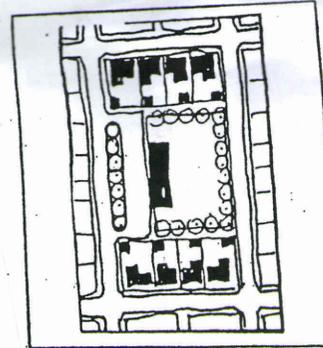
Open Space Types



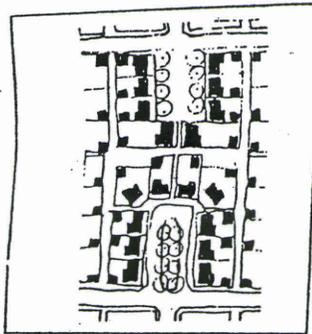
Pedestrian lane providing access to rear apartment units



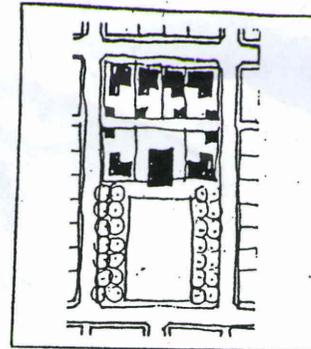
Example of the placement of a "tot lot" within the residential block



Example of a nursery school protected within the block



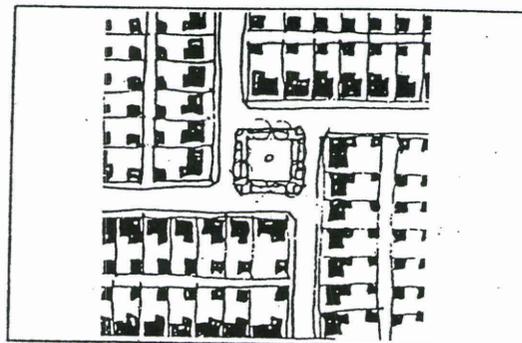
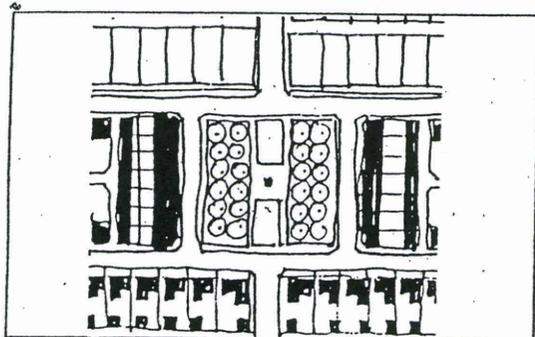
The use of a green/square as neighborhood open space



Example of a green along a roadway

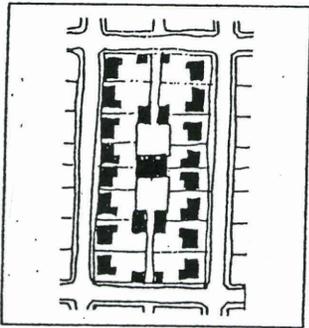


This sketch shows the use of a green to define a cluster of single family units. Alleys and parallel parking minimize the impact of parking.

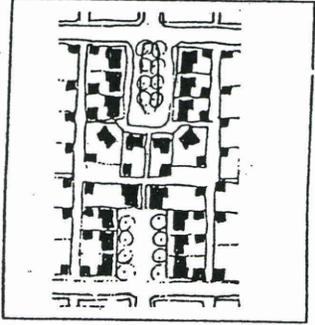


Examples of the use of a square to slow traffic

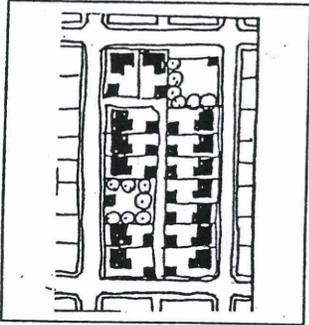
Open Space Types



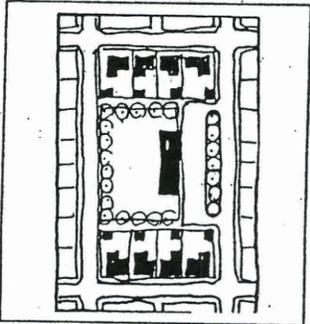
Pedestrian lane providing access to rear apartment units



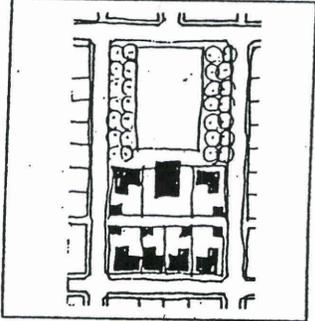
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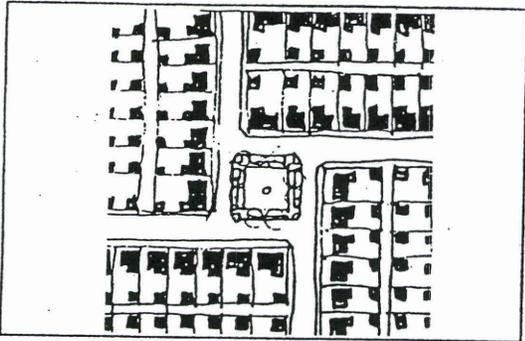
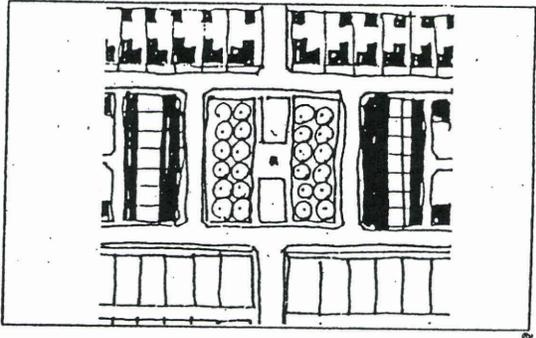
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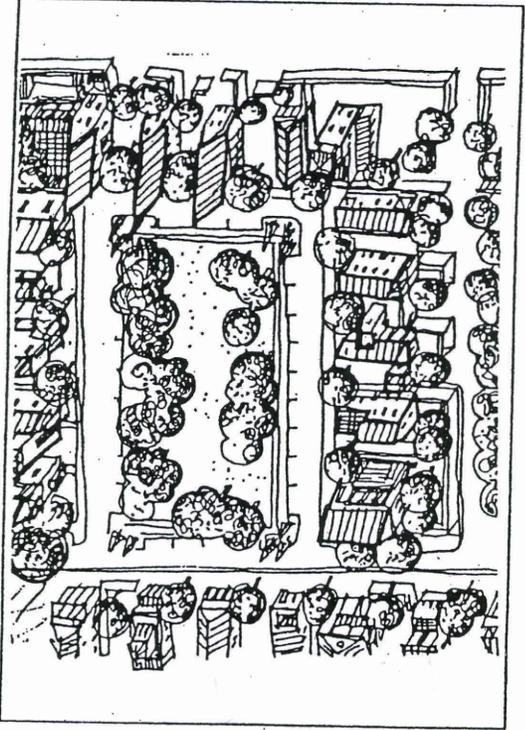
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Examples of the use of a square to slow traffic



This sketch shows the use of a green to define a cluster of single family units. Alleys and parallel parking minimize the impact of parking.

EXHIBIT LIST

COMMUNITY ZONING APPEALS BOARD 15

JANUARY 20, 2004

RESOLUTION # CZAB15- -04

ITEM#	HEARING#	APPLICANT'S NAME	SS-TT-RR
F	03-262	SUMMERVILLE DEVELOPMENT, INC.	19-56-40

NONE (DEFERRAL TO APRIL 21, 2004)

EX. #	EXHIBIT DESCRIPTION	IN FILE
F-1		
F-2		
F-3		
F-4		
F-5		
F-6		
F-7		
F-8		
F-9		
F-10		
F-11		
F-12		
F-13		
F-14		
F-15		
F-16		
F-17		
F-18		

SETTLEMENT AGREEMENT

GC Homes, Inc., a Florida ("GC Homes"), and Manuel Dorta-Duque ("Dorta-Duque"), stipulate and agree as follows:

RECITALS

WHEREAS, GC Homes, filed a zoning application, Public Hearing No. 2001-333 (the "Application"), on that certain ~~±~~54 acres located on the south side of SW 248th Street at SW 117th Avenue (the "Property");

WHEREAS, GC Homes has entered into a contract to acquire the Property from Robert Borek; Jody K. Vaccaro & Richard L. Vitta; Claude F. Daigle & Sara L. Daigle; **Wilfred J. Vick and Pamela Vick**, which transaction is subject to the approval of the Application;

WHEREAS, differences have arisen between Dorta-Duque and GC Homes with respect to the Application; and

WHEREAS, Dorta-Duque and GC Homes desire to resolve their differences.

NOW, THEREFORE, in consideration of the mutual promises, covenants and conditions herein, the parties stipulate and agree as follows:

AGREEMENT

1. The above-listed recitals are true and correct and form a part of this Agreement.

2. To address Dorta-Duque's concerns regarding the impact of the Application on Dorta-Duque's property, GC Homes and Dorta-Duque have simultaneously herewith entered into a Contract for Sale and Purchase (the "Contract"), under the terms of which GC Homes will set aside for sale to Dorta-Duque approximately 1/2 acres located on the western boundary of the Property, adjacent to Dorta-Duque's property (the "Land Use Buffer"), all as shown on the plans submitted with the Application. The purpose of the Land Use Buffer is to establish and maintain an appropriate land use transition between the development of the Property and Dorta-Duque's property, as well as other homes & farms located west of the

MAD
+ together with the proposed wall

proposed residential community # SW 117 AVE, between SW 232 st + SW 248 st.

3. In consideration of the execution of the Contract by GC Homes, Dorta-Duque, on behalf of himself, his heirs, successors and assigns, agrees not to oppose, object to or interfere, whether directly or indirectly, with the efforts of GC Homes to secure the approval of the Application and other approvals that are necessary for the development of the Property, provided GC Homes is in compliance with the terms of this Agreement. Further, Dorta-Duque agrees to appear ~~**~~ before the Community Zoning Appeals Board, or in the event of an appeal, the Board of County Commissioners, to

MAD

*** (either personally, in writing or at Seller's request & expense through counsel)*

(M789001:1)
RECEIVED BY CLERK
Item # 03-262
CZAB # 15 Exhibit # 2-11
DEC - 9 2003
CLERK OF THE BOARD

MAD

RC

actively support the approval of the Application, provided G. Homes is in compliance with the terms of this Agreement.

4. This Agreement is binding on the parties hereto and the parties agree to execute any and all documents necessary to ratify and confirm the terms and provisions of this Agreement. *The parties hereto agree, that this is a private Settlement Agreement, which neither party may disclose to any*

5. This Agreement shall be deemed drafted by all parties and there shall be no presumption against any party relating to the drafting of said Agreement and the language used herein.

6. This Agreement and its enforcement shall be governed by the laws of the State of Florida.

7. In the event of any dispute hereunder, the prevailing party shall be entitled to an award of reasonable attorneys' fees and costs.

8. The parties signing this Agreement represent and warrant that they have full and complete legal and binding authority to enter into said Agreement.

9. The terms of this Agreement shall be binding on the parties, their legal representatives, successors and assigns, and shall supersede all prior discussions and negotiations among the parties concerning settlement. This Agreement represents the entire agreement of the parties and shall not be modified except by a writing signed by all of the parties.

10. The terms of this Agreement may be modified if mutually agreed upon, in writing, by GC Homes and Dorta-Duque, with no third party consent required.

11. This Agreement may be signed in counterparts, and the signature counterparts of the parties or their authorized representative shall be treated the same as if said Agreement had been signed by all parties or their authorized representatives. A facsimile signature shall be deemed the equivalent of an original signature of a party or its authorized representative.

12. Notices shall be sent via Certified Mail, Hand Delivery or Federal Express as follows:

If to Owner:

GC Homes, Inc.
c/o Mr. Ray Castellanos
14425 Country Walk Drive
Miami, Florida 33186

With a copy to:

Juan J. Mayol, Jr., Esq.
Akerman Senterfit & Eidson, P.A.
One Southeast Third Avenue, 28th Floor

MAAD
other party without the prior written consent of the other party here unless it party her has been an enforcer action her under, whereupon this Settlement Agreement may be disclosed in connection with said enforcement action & for no other purpose

MAAD

PC

(MDS9001:1)

Miami, Florida 33131-1714

If to Dorta-Duque

Mr. Manuel Dorta-Duque
11999 SW 248th Street
Miami, Florida 33032

With a copy to:

Thomas V. Eagan, Esq.
Steel Hector & Davis
200 S. Biscayne Boulevard
Suite 4000
Miami, Florida 33131-2310

13. This Agreement is executed by the parties as of the date stated at the end of the Settlement Agreement.

WHEREOF, the parties have read, understood and agreed to the terms of this Amendment and by their signatures below bind themselves, their heirs, distributees, legatees, assigns and any other successors in interest.

DATED this 3 day of JUNE, 2002.

Manuel Dorta-Duque

GC Homes, Inc., a Florida Corporation

By: Manuel
~~Manuel Dorta-Duque~~

By: [Signature]
~~RAY CASTELLANOS~~

{M1799001;1}

ELLIOTT HARRIS, P.A.
111 S.W. 3rd Street
Sixth Floor
Miami, Florida 33130
Telephone No. (305) 358-0146
Fax No. (305) 358-0149

RECEIVED BY CLERK
Item # 03-262
CZAB # 15 Exhibit # 2-12
DEC - 9 2003
CLERK OF THE BOARD

FAX MEMO

TO: THOMAS V. EAGAN, ESQ. (FAX NO. 305-577-7001)
FROM: ELLIOTT HARRIS, ESQ.
RE: SUMMERVILLE DEVELOPMENT, INC. with MANUEL DORTA-DUQUE
DATE: February 11, 2003

We are hoping to close our transaction with the various Sellers and Commercebank, N.A., at 220 Alhambra Circle (I believe 11th floor) on Friday, February 14.

The legal description of the property to be acquired by Manuel Dorta-Duque follows and the survey shows that it is 5.744 acres. The purchase price at \$65,500.00 per acre amounts to \$376,232.00 and is 26.544 of the total net acres 21.639, being acquired from Claude F. Daigle, Jr.

\$64,354.84 will have been paid to Mr. Daigle for the extension fee and according to agreement, Manuel Dorta-Duque is responsible for 26.544% or \$17,082.35 for a total purchase price of \$393,314.35.

We will prepare the Deed directly from Claude F. Daigle Jr. and Sandra L. Daigle, his wife, to Manuel Dorta-Duque along with the FIRPTA Affidavit and No-Lien Affidavit. The closing statement will be between Summerville Development and Manuel Dorta-Duque.

Schedule A and Schedule B of a prior Commitment follows.

I would like the cash to close made payable to Elliott Harris Trust Account either in the form of a cashier's check or wire transfer so that we could use that money at the closing of the transaction. Please confirm Also, please advise if you will prepare the Memorandum of Agreement as per para. 8 of the addendum between the parties.

Very truly yours,



ELLIOTT HARRIS

EH/lg

Pages transmitted: 9

Plaintiff's Exhibit

"C"

Faxed

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR DADE COUNTY, FLORIDA
 IN THE COUNTY COURT IN AND FOR DADE COUNTY, FLORIDA

DIVISION <input type="checkbox"/> CIVIL <input type="checkbox"/> OTHER	CIVIL COVER SHEET	CASE NUMBER 03 - 262
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PLAINTIFF Summeville Development, Inc	VS. DEFENDANT Manuel Dorta Duque	CLOCK IN FILED FOR RECORD 10 PM 9-30-03
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The civil cover sheet and the information contained here does not replace the filing and service of pleadings or other papers as required by law. This form is required by the Clerk of Court for the purpose of reporting judicial workload data pursuant to Florida Statute 25.075. See instructions and definitions on reverse of this form.

TYPE OF CASE (Place an 'x' in one box only)

Domestic Relations	Torts	Other Civil
<input type="checkbox"/> Simplified dissolution <input type="checkbox"/> Dissolution of Marriage <input type="checkbox"/> Support - IV-D <input type="checkbox"/> Support - Non IV-D <input type="checkbox"/> URESA - IV-D <input type="checkbox"/> URESA - Non IV-D <input type="checkbox"/> Domestic Violence <input type="checkbox"/> Other domestic relations	<input type="checkbox"/> Professional Malpractice <input type="checkbox"/> Products liability <input type="checkbox"/> Auto negligence <input type="checkbox"/> Other negligence	<input checked="" type="checkbox"/> Contracts <input type="checkbox"/> Condominium <input type="checkbox"/> Real property/Mortgage foreclosure <input type="checkbox"/> Eminent domain <input type="checkbox"/> Other

Is Jury Trial Demanded in Complaint? Yes No DATE: 7/18/03

Signature of Attorney for party initiating action: *[Signature]* Elliott Harris, Esq.
 FBN 097072

JUDGE:

RECEIVED BY CLERK
 Item # 03-262
 CZAB # 15 Exhibit # 2-13
 DEC - 9 2003
 CLERK OF THE BOARD

IN THE CIRCUIT COURT FOR MIAMI-DADE COUNTY, FLORIDA
GENERAL JURISDICTION DIVISION

SUMMERVILLE DEVELOPMENT,
INC., a Florida corporation,

Plaintiff,

vs.

MANUEL DORTA-DUQUE,

Defendant.

CASE NO.

DIVISION 03 1681 0020

COMPLAINT FOR DECLARATORY
RELIEF

Fla. Bar No. 097072

215
LSS
RCP 7265

FILED
MAY 18 2003
CLERK OF COURT
MIAMI-DADE COUNTY
FLORIDA

Plaintiff, SUMMERVILLE DEVELOPMENT, INC., a Florida corporation, sues
defendant, MANUEL DORTA-DUQUE, and alleges:

1. This is an action for declaratory relief pursuant to Florida Statutes
Chapter 86 pertaining to the Contract and Addendum between the parties of
this action. The Contract is attached hereto as Plaintiff's Exhibit "A" and the
Addendum is attached hereto as Plaintiff's Exhibit "B." The amount in
controversy under the terms of the attached agreement is within the
jurisdictional amount for this court and, accordingly, this court has jurisdiction
pursuant to section 86.011, Florida Statutes.

2. On or about April 10, 2002, defendant and G.C. Homes, Inc., entered
into a contract for the purchase and sale of real property as described in
Plaintiff's Exhibit "A." In May, 2002, defendant and G.C. Homes, Inc., entered

into an addendum to such contract, Plaintiff's Exhibit "B."

3. The property described in Plaintiff's Exhibit "A" was a portion of larger parcels plaintiff was acquiring from other sellers.

4. The interest of G.C. Homes, Inc., in and to the attached Contract and Addendum thereto were assigned to plaintiff, Summerville Development, Inc.

5. Pursuant to the terms of the Contract, defendant was to have paid Steel, Hector & Davis, LLP, Escrow Agent, a \$50,000.00 deposit.

6. As stated in the Addendum, attached, plaintiff was acquiring the subject property from Claude F. Daigle, Jr., and the transaction between plaintiff and defendant was to take place on the same date as the closing between plaintiff and Claude F. Daigle, Jr.

7. The Addendum to the Contract, Plaintiff's Exhibit "B," provides in paragraph 11 thereof:

11. Notices. Notices under the Contract, as amended by this Addendum, shall be deemed served when deposited in the United States mail, registered or certified mail, return receipt requested, with sufficient postage attached and directed to the party in question at the address specified in the Contract, or when delivered to Federal Express or other overnight delivery service during normal business hours, and addressed to the party in question at the address specified in the Contract.

8. Because of contingencies pertaining to a land acquisition loan, plaintiff did not know of a firm closing date until February 11, 2003, for a closing to

take place on Friday, February 14, 2003. Notice was not given to defendant in the manner in which notice would be "deemed served" pursuant to paragraph 11 of the Addendum, but attorney for defendant, Thomas V. Egan, Esq., who is also a member of the firm serving as escrow agent, received notice by facsimile transmission ("fax") on February 11, 2003, along with copies of all closing documents all with a copy of a prior commitment to insure title. Mr. Egan did not respond to the fax but later acknowledged receipt of same. A copy of such fax is attached hereto as Plaintiff's Exhibit "C."

9. Ray Castellanos, an officer of plaintiff, discussed the proposed closing with defendant by cellular telephone and defendant told Ray Castellanos that defendant knew that his attorney, Mr. Egan, was attempting to contact him. Defendant had previously been informed that the closing was imminent.

10. Time was of the essence under the terms of the attached agreement.

11. Both defendant and his attorney had actual notice of the time and place of the closing.

12. Plaintiff caused all necessary closing papers to be prepared, had a deed prepared directly from Claude F. Daigle, Jr., to defendant, had a survey prepared and certified to, among other persons, defendant, and complied with all conditions precedent to close the transaction with defendant other than the giving of notice in a manner which would have been "deemed served" as set

forth in paragraph 11 of the addendum.

13. Plaintiff has attempted on many occasions to obtain confirmation from the escrow agent that the \$50,000.00 deposit was actually paid. See Plaintiff's composite Exhibit "D." Plaintiff has received no confirmation that the deposit was, in fact, paid.

14. Defendant has taken the position that because notice of the closing was not given in the manner in which it would have been "deemed served" pursuant to paragraph 11, he did not have to close the transaction on February 14, 2003.

15. Although defendant knew that plaintiff acquired title to the property in February, 2003, defendant did not request a closing until correspondence from his attorney was received dated May 27, 2003, stating that defendant was ready, will and able to close on the transaction. Such correspondence was delivered by fax and not in the manner "deemed served," as set forth above. See Plaintiff's Exhibit "E." See also plaintiff's response to such correspondence, Plaintiff's Exhibit "F."

16. Plaintiff, from its own funds and through its lender, paid all sums necessary to acquire the property as well as adjoining parcels. Because defendant's funds were not used, contrary to expectations and because of defendant being dilatory, plaintiff does not desire to convey any interest in the

property to defendant; however, plaintiff cannot develop such property until the rights of defendant under the terms of the attached agreement are determined.

17. Although plaintiff is of the opinion that defendant breached the agreement by failing to timely close the transaction and, possibly, by failing to pay the deposit required under the terms of the agreement, plaintiff is in doubt of its position because:

a. Although defendant and his attorney received actual notice of the closing, defendant's attorney has contended that plaintiff did not give notice of the closing in the manner in which such notice would be "deemed served" pursuant to paragraph 11 of the agreement and therefore did not have to close on the purchase transaction; and

b. Plaintiff is unaware as to whether or not the deposit required under the terms of the agreement was, in fact, paid.

18. Plaintiff was required to retain the services of the undersigned attorney to bring this action and has agreed to pay its attorney a reasonable fee for his services.

19. Defendant or his attorney is in possession of duplicate originals or copies of all exhibits attached hereto.

WHEREFORE, plaintiff requests this Court to enter a declaratory judgment stating that defendant breached its agreement, that defendant has no right, title

of interest in and to the lands described in the attached agreement and that the deposit should be delivered to plaintiff as agreed upon and liquidated damages along with reasonable attorney's fees and the costs of this action.

ELLIOTT HARRIS, P.A.
Attorney for Plaintiff
111 S.W. 3rd Street
Sixth Floor McCormick Bldg.
Miami, Florida 33130
Tel #: 305-358-0146
Fax #: 305-358-0149

By: 

ELLIOTT HARRIS, ESQ.

1 IN THE CIRCUIT COURT OF THE 11TH
2 JUDICIAL CIRCUIT IN AND FOR
3 MIAMI-DADE COUNTY, FLORIDA

4 GENERAL JURISDICTION DIVISION

5 CASE NO.: 03-17048 CA 25

6 MANUEL DORTA-DUQUE,

7 Plaintiff,

8 -VS.-

9 G. C. HOMES, INC., a
10 Florida corporation and
11 SUMMERVILLE DEVELOPMENT, INC.,
12 a Florida corporation as
13 assignee of G. C. HOMES, INC.,

14 Defendant.

15 SUMMERVILLE DEVELOPMENT, INC., CASE NO.: 03-16813 CA 25
16 a Florida corporation,

17 Plaintiff,

18 -VS.-

19 MANUEL DORTA-DUQUE,

20 Defendant.

21
22 2950 Southwest 27th Avenue,
23 Miami, Florida,
24 October 8, 2003,
25 9:20 o'clock a.m.

26 **DEPOSITION OF RAY CASTELLANOS**

27 Taken before DOLLY MAY PENICK, Notary Public
28 in and for the State of Florida, pursuant of Notice of
29 Taking Deposition filed in the above-styled cause.
30

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CZAB # 15 Exhibit # 2-14
DEC - 9 2003

CLERK OF THE BOARD

ORIGINAL

1 A No. I have done nothing else.

2 Q Or yes, you've done nothing else. Either way,
3 no or yes. You've done nothing else.

4 Okay. Now, you had an arrangement with Mr.
5 Dorta-Duque to sell him a piece of the property that you
6 were getting from Mr. Daigle; right?

7 A Yes.

8 Q And we're going to get into it in detail but in
9 summary, that came about because of efforts to rezone the
10 property; correct?

11 A Yes.

12 Q Okay. Were you fellows, on the day that you
13 planned to sell this property to Mr. Dorta-Duque, ready,
14 willing and able to close on that property?

15 A I don't understand the question. What day
16 exactly are we talking about, the closing day?

17 Q Yes.

18 A The day that we were scheduled to close?

19 Q Yes, sir.

20 A Were we ready, willing and able, of course.

21 Q And you were in complete compliance with the
22 agreement that you had entered into with Mr.
23 Dorta-Duque?

24 A Well, to the best of my knowledge, yes.

25 Q Was one of the requirements of that agreement

1 buy the land minus the five point seven-seven acres.
2 Now, you know, the difference is the cash to close. How
3 much -- well, you know, Manny never showed up to closing
4 so now instead of, you know, coming in with 35,000
5 dollars, we got to come in with 300,000 dollars. We're
6 using numbers just to say numbers. Numbers are not
7 accurate but that was what happened.

8 Q Okay. When -- you originally signed -- let me
9 show you what I'm going to have marked as 2.

10 (Thereupon, the referred to document was marked
11 as Plaintiff's Exhibit No. 2 for Identification.)

12 BY MR. JOSEPHS:

13 Q I'm going to show you what's been marked as
14 Plaintiff's 2 and ask you if you've seen that document
15 before.

16 A Okay. Yes.

17 Q And is that the contract by which the land that
18 we're here about today was purchased from Mr. Daigle?

19 A Yes. This is the west side of 117th.

20 Q And a portion of that west side --

21 A Is the five point seven-seven.

22 Q Okay. This contract was signed, it
23 says, January 17th, 2001. Does that sound about right to
24 you?

25 A Yes.

1 Q How come it took so long to close?

2 A The zoning process.

3 Q Okay. So you weren't going to close on this
4 until you had the zoning in place.

5 A Right.

6 Q That was one of the contingencies.

7 A Right.

8 Q When was the first time you realized that you
9 were going to be closing?

10 A Well, we -- we always knew we were going to be
11 closing as long as we got the zoning. So we were going
12 through the process. I felt pretty comfortable of the
13 zoning, of the outcome because of our design. And Mr.
14 Daigle was a very, very nice and incredible person and he
15 cooperated with us and told me, you know, hey, I will
16 extend until -- until need be. And we were approved in
17 October, appealed in December and December was the County
18 Commission and that's when the property was officially
19 approved. After that is another appeal period that was
20 some talk in the County about a further appeal by the
21 neighbors. And sometime in the end of January, I guess,
22 that appeal period was up. And that's when we knew that
23 we were home free with the zoning.

24 Q Okay. When is the first time anybody told
25 Manny that the closing was going to happen?

1 A Well, obviously we knew all along the closing
2 was going to happen after approval. I spoke with Manny
3 end of January and beginning of February.

4 Q Okay. Do you have dates of these
5 conversations?

6 A I have -- I have the dates of February 12 and
7 13 because of my cell phone bill. Other than that, you
8 know, no, I don't have official dates.

9 Q Did you -- what was the date you told him the
10 closing was going to happen?

11 A I don't know that date. I don't know that
12 date. It was, you know, sometime the end of
13 January, beginning of February.

14 Q Could it have been the 12th or 13th?

15 A It would -- it -- we spoke before the actual
16 closing date was set up. The closing date was set up in
17 the week of the closing, I believe. I believe. I don't
18 know what day February 14th fell.

19 And that was, you know, when we actually had a
20 date. But, before then, I spoke with Manny that the
21 closing was imminent, we're trying to get it together and
22 Elliott was trying to contact Mr. Eagan.

23 Q Why did you set it up for the 14th when you
24 knew Manny was going to be out of town?

25 A I didn't know Manny was going to be out of

1 town. And the closing was set up by the bank, not
2 ourselves.

3 Q You had no idea he was going out of the
4 country?

5 A Manny, I know, goes and comes. I had seen him
6 on the street sometime relatively close to that date and
7 he waved at me as he passed by and that was the last I
8 saw of Manny. I didn't know Manny was going to be out of
9 town or if he was out of town.

10 Q Did you know that he was with some degree of
11 regularity going out of town?

12 A Well, we had been in -- in our conversations
13 back and forth. He had been out of town a few times.

14 Q Did he tell you he was going out every other
15 week?

16 A No.

17 Q Did he tell you that he was concerned to make
18 sure that the closing didn't take place when he was out
19 of town?

20 A Not that I remember.

21 Q I mean, that would be a natural courtesy to
22 begin with; right?

23 A Again, the last conversation I had with -- with
24 Manny about the closing date, I told him Elliott was
25 getting together -- was trying to get together with Mr.

1 about non response.

2 A The -- most of the answers I got from Manny
3 were round about non response.

4 Q So you must have been very nervous on the 12th
5 about whether Manny was going to be there or not.

6 A Yes.

7 Q And what did you do as nervous as you were?

8 A We prepared two closing statements.

9 Q Okay.

10 A One if Manny shows up and one if Manny doesn't
11 show up.

12 Q As of the 12th?

13 A I don't know exactly which date but I'm sure --

14 Q That's the day you got nervous?

15 A I'm sure that the -- that we have paperwork to
16 show exactly when that was done.

17 Q But it was before -- it was a couple of days
18 before the closing that you got --

19 A I didn't prepare them. I don't know exactly
20 what day it was prepared before.

21 Q But it was a couple days, the best of your
22 recollection, that you asked your lawyer to prepare for
23 two different scenarios; correct?

24 A That's correct.

25 Q And that was after you spoke to Manny that you

1 just saw that right now.

2 BY MR. JOSEPHS:

3 Q Okay. We've agreed that you'll sort them out
4 and get this back to us.

5 MR. DORTA-DUQUE: This is not the record for
6 January.

7 THE WITNESS: Again --

8 MR. DORTA-DUQUE: No, it is not.

9 THE WITNESS: It has January 4th.

10 MR. DORTA-DUQUE: There is two calls that the
11 January invoice is not there.

12 MR. JOSEPHS: He'll find it. We'll get it.

13 BY MR. JOSEPHS:

14 Q Did Manny tell you that he had reason to be in
15 San Juan on a fairly regular basis while all this was
16 going on?

17 MR. HARRIS: Asked and answered.

18 THE WITNESS: While all this was going on, no.
19 In general, I know he has a place in San Juan.

20 BY MR. JOSEPHS:

21 Q Okay. And you didn't know that he was going
22 there every couple of weeks?

23 A No. I didn't know the pattern of when he was
24 going.

25 Whenever it was that you got concerned that

1 Manny wasn't going to appear for the closing, who did you
2 speak to?

3 Who did you discuss that with?

4 A Mr. Harris, my father-in-law.

5 Q Okay. Anybody else?

6 A Not to my recollection.

7 Q Did you care?

8 A My -- in my previous dealings with Manny, my
9 experience was very, as we said earlier, round about
10 answers and I kind of expected that.

11 Q You kind of expected him not to show.

12 A Yes.

13 Q You expected that he would not appear for the
14 closing.

15 A Let me rephrase that. Everything that
16 happened from day one, I had my doubts on.

17 Let me not say I expected. I had my doubts.
18 When I got the round about answer on the phone
19 conversations, I had my doubts. Did I care? We had to
20 bring more money to the closing. I wasn't sure if we
21 were ready for that at that given moment. Then I made
22 sure that we could.

23 Q You knew you would be in a position to close?

24 A Immediately after. Immediately after I did my
25 -- my homework on that.

1 Q Yes. So, the answer is yes, you knew you
2 would be able to close on this deal with or without
3 Manny.

4 A Not immediately. The answer is after my
5 doubts, I had to make sure.

6 Okay. Now, the land that Manny was going to
7 buy, as part of your master plan was going to serve as a
8 buffer zone; right?

9 A That's correct.

10 Q Whose idea was that buffer zone?

11 A Manny's.

12 Q And whose idea was it that Manny buy that land?

13 A Manny's.

14 Q And why did he want the buffer zone?

15 A To create separation from his personal property
16 to the more dense community.

17 Q Now, in order -- and that made sense, didn't
18 it?

19 A Yes. It makes sense.

20 Q And in order to get your overall project
21 approved, part of the sales pitch to the Commission was
22 the buffer zone, wasn't it?

23 A Since we were doing the buffer zone it was
24 definitely a point we used.

25 Q And that buffer zone and your overall project

1 Three questions.

2 CROSS EXAMINATION

3 BY MR. HARRIS:

4 Q Did you ever, up to today, ever get a copy of
5 the bid that was obtained from Manny to do the wall?

6 A No.

7 Q Did Manny ever tell you that he was assigning
8 his interest in the contract?

9 A No.

10 Q After the closing in February on February
11 14th, the balance of February, March, April, 2003, and
12 May, did Manny ever contact you about requesting a
13 closing?

14 A No.

15 Q Did you ever receive any certified mail or any
16 delivery by Federal Express or any document that needed a
17 receipt from Manny?

18 A No.

19 MR. HARRIS: I have no other questions.

20 REDIRECT EXAMINATION

21 BY MR. JOSEPHS:

22 Q Would you have closed in May if he had called
23 you up and said I want to close?

24 A We would have been in the same position we are
25 today.

1 Q Which means you wouldn't have.

2 A Our expenses and our difficulties happened on
3 February 14th.

4 Q You wouldn't have closed if he would have
5 written you on the 15th, the 16th of February, the 20th
6 of May or the 19th of June.

7 A We would have been right here at this table.

8 Q In a lawsuit.

9 A Arguing about why they didn't show up to the
10 closing.

11 Q So the answer -- so the answer is the day after
12 you closed, you're not doing business with Manny?

13 A Unless Manny convinced me of some drastic thing
14 that happened why he didn't show up.

15 Q Like being in Puerto Rico?

16 A Again, we didn't even get a call -- I found out
17 through Mr. Mayol months later saying, hey, Manny's now
18 wanting to close.

19 MR. JOSEPHS: That's it.

20 MR. HARRIS: Waive, but we'll take a copy.

21 MR. JOSEPHS: Mini, ASCII.

22 MR. HARRIS: The same thing.

23 (Thereupon, the deposition was concluded at
24 11:45 o'clock a.m., reading and signing were waived.)
25

IN THE CIRCUIT COURT OF
THE ELEVENTH JUDICIAL CIRCUIT IN
AND FOR MIAMI-DADE COUNTY, FLORIDA
GENERAL JURISDICTION DIVISION

CASE NO. 03-17048 CA25

RECEIVED BY CLERK
Item # 03-262
CZAB # 15 Exhibit # 2-15
DEC - 9 2003
CLERK OF THE BOARD

MANUEL DORTA-DUQUE,

Plaintiff,

vs.

COPY

G.C. HOMES, INC., a Florida
corporation, and SUMMERVILLE
DEVELOPMENT, INC., a Florida
corporation, as assignee of
G.C. HOMES, INC.,

Defendant.

DEPOSITION OF JUAN J. MAYOL, JR.

taken before Maria J. Torre-Verdejo, Court
Reporter and Notary Public in and for the State
of Florida at Large, at 2950 Southwest 27th
Avenue, Suite 100, Miami, Florida, on Thursday,
October 9, 2003, commencing at 9:00 a.m.,
pursuant to Re-Notice of Taking Deposition Duces
Tecum.

Miami (305) 373-8404
St. Lauderdale (954) 463-2933
W. Palm Beach (561) 835-0220
Tampa (813) 876-4722
Jacksonville (904) 351-9583
Orlando (407) 649-9193

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00030

1 Q. That would be the smart business
2 thing to do and it would also be the gentlemanly
3 thing to do.

4 Correct?

5 A. Yes.

6 Q. And you would give him as much
7 notice as possible when he was needed?

8 A. Yes.

9 Q. You tried to avoid giving him short
10 notice because you know he is a busy guy?

11 A. These hearing are set thirty days
12 in advance.

13 Q. And that, you think, would give him
14 enough time?

15 A. Thirty days is a pretty reasonable
16 time.

17 Q. Did there come a point in time
18 where you guys planned as best you could and he
19 was out of the country when one hearing got
20 scheduled?

21 A. Yes, I think that one --

22 I think there might have been two
23 occasions when he was out of town.

24 In one of them I believe he was
25 traveling to Chile, to go skiing.

00037

1 taking place.

2 Q. Were you told why?

3 A. My understanding from talking to
4 Rey is that -- I don't know who exactly, but
5 someone on behalf of G. C. Homes tried to get
6 ahold of Manny to come to closing and either
7 they weren't successful or Manny didn't show up
8 for closing.

9 Q. Would you agree with me that Manny
10 was entitled to a reasonable notice about the
11 closing?

12 You were respective of his efforts
13 in this project?

14 A. Yes, I would agree with you.

15 Q. Would you agree with me that at
16 least gentility would dictate that given his
17 efforts on behalf of G. C. Homes he deserved a
18 little bit more slack than the average guy, a
19 little bit more notice or an attempt to give
20 more notice than the average guy?

21 A. I don't know what that means.

22 I can tell you that he deserved
23 reasonable notice of the closing date so that he
24 could make whatever arrangements he needed to
25 make to be at the closing.

00038

1 Q. What would you think is "reasonable
2 notice" when a guy has to come up with the
3 better part of \$300,000?

4 A. For me a couple of years, but --

5 Q. And you are a high-priced lawyer
6 and he is a farmer, so maybe it takes a decade
7 for him.

8 A. A couple of weeks.

9 Q. The fact of the matter is that the
10 one document that exists in your file discussing
11 the kind of notice that Manny received says
12 that?

13 A. Which one is that -- the one page?

14 Q. I will find it, because I want to
15 show it to you.

16 MR. JOSEPHS: Let's mark this No.

17 4.

18 (The document titled Copy Request dated
19 8/29/03 was thereupon marked as
20 Plaintiff's Exhibit Number 4 to Mayol's
21 deposition for Identification)

22 Q. (BY MR. JOSEPHS) The one document
23 in your file that I've been able to find that
24 discusses the kind of notice that Manny got
25 characterizes that notice as short notice.

00039

1 Let me show you what has been
2 marked as Exhibit No. 4, which is a fax from Mr.
3 Harris to you?

4 MR. SANCHEZ: You did not see that?
5 MR. HARRIS: No, I don't recall that.

6 Q. (BY MR. JOSEPHS) Correct?

7 A. Yes.

8 Q. That is just flat out wrong, isn't
9 it?

10 A. I mean I don't know what "short
11 notice" means -- short two weeks, two days, a
12 day?

13 Q. Short is short.

14 A. Short is short, yes.

15 Q. Reasonable is reasonable.

16 A. Ah'hum.

17 Q. The two are not the same, are they?

18 A. They don't tend to be.

19 Q. You said they don't --

20 A. They don't tend to be the same.

21 Q. In fact, Exhibit No. 4 was part of
22 your file and was received in the ordinary
23 course of business from Mr. Harris.

24 A. Yes.

25 Q. Mr. Harris you know as the attorney

MANUEL C. & EMILIA DIAZ ZONING HEARING APPLICATION # 02-377
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1. SITE PLAN AND ELEVATIONS.
2. HIGHLIGHTS OF APPLICATION.
3. LETTER FROM DIANE O'QUINN DATED 8/18/03.
4. DECLARATION OF RESTRICTIONS OF SILVER PALM.
5. RESUME OF GUILLERMO OLMEDILLO.
6. SUMMARY OF TESTIMONY BY GUILLERMO OLMEDILLO.
7. RESUME OF RAMON ALVAREZ, P.E.
8. SUPPORT LETTERS FROM COMMUNITY LEADERS.
9. LETTER TO RAUL PINO REGARDING STREET CLOSURE.
10. LENNAR OUTREACH LETTERS TO NEIGHBORS.
11. G.C. HOMES LAWSUIT V. MANUEL DORTA-DUQUE.
12. MANUEL DORTA-DUQUE LAWSUIT V. G.C. HOMES.
 - (a) ADDENDUM TO CONTRACT FOR SALE AND PURCHASE.
13. "SECRET" SETTLEMENT AGREEMENT BETWEEN MANUEL DORTA-DUQUE AND G.C. HOMES.
14. ANALYSIS OF TAINTED "PETITION IN OPPOSITION".
15. EXCERPTS FROM 8/21/03 HEARING TRANSCRIPT.
16. RECOMMENDATION.

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Item # 03-262
CZAB # 15 Exhibit # 2-16
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CZAB # 15 Exhibit # 2-10
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EXHIBIT LIST

COMMUNITY ZONING APPEALS BOARD 15

DECEMBER 9, 2003

RESOLUTION # CZAB15-03

ITEM#	HEARING#	APPLICANT'S NAME	SS-TT-RR
2	03-262	SUMMERVILLE DEVELOPMENT, INC.	19-56-40

DEFERRAL TO JANUARY 20, 2004

EX. #	EXHIBIT DESCRIPTION	IN FILE
2-1	Summerville Site Plan & Tabular Data (foam board mounted)	NO ✓
2-2	Aerial of subject area & surrounding terrain (mounted on glossy foam board)	NO ✓
2-3	Photograph of house proposed to be used as sales office (mounted on glossy foam board)	NO ✓
2-4	Series of 7 large photographs (foam board mounted)	NO ✓
2-5	Summerville Location Site with Adjacency (foam board mounted)	NO ✓
2-6	Summerville Five Minute Walk (partial arc) (foam board mounted)	NO ✓
2-7	Objectors' locations map (noted in pink) (foam board mounted)	NO ✓
2-8	Series of 12 photos of vicinity, roadways, etc. (stapled together)	YES ✓
2-9	Artist's Rendition of Entrance to Summerville	YES ✓
2-10	Artist's Rendition of Entrance to Summerville	YES ✓
2-11	Copy of Settlement Agreement (GC Homes & Manuel Dorta-Duque)	YES ✓
2-12	Copy of fax memo from Elliot Harris, esq. to Thomas Egan, esq.	YES ✓
2-13	Copy of Complaint for Declaratory Relief (Summerville v Dorta-Duque)	YES ✓
2-14	Copy of selected portions of the Deposition of Ray Castellanos	YES ✓
2-15	Copy of selected portions of the Deposition of Juan Mayol	YES ✓
2-16	Pg., titled "Manuel C & Emilia Diaz Zoning Hearing Application #02-377 Index"	YES ✓
2-17		
2-18		

9/13/05 As per clerk of the court, Michelle, no Exhibits were submitted on 3/3/04 & 2/24/05 to Tom P.

EXHIBIT LIST

COMMUNITY ZONING APPEALS BOARD 15

DECEMBER 9, 2003

RESOLUTION # CZAB15- -03

ITEM#	HEARING#	APPLICANT'S NAME	SS-TT-RR
2	03-262	SUMMERVILLE DEVELOPMENT, INC.	19-56-40

DEFERRAL TO JANUARY 20, 2004

EX. #	EXHIBIT DESCRIPTION	IN FILE
2-1	Summerville Site Plan & Tabular Data (foam board mounted)	NO
2-2	Aerial of subject area & surrounding terrain (mounted on glossy foam board)	NO
2-3	Photograph of house proposed to be used as sales office (mounted on glossy foam board)	NO
2-4	Series of 7 large photographs (foam board mounted)	NO
2-5	Summerville Location Site with Adjacency (foam board mounted)	NO
2-6	Summerville Five Minute Walk (partial arc) (foam board mounted)	NO
2-7	Objectors' locations map (noted in pink) (foam board mounted)	NO
✓ 2-8	Series of 12 photos of vicinity, roadways, etc. (stapled together)	YES
✓ 2-9	Artist's Rendition of Entrance to Summerville	YES
✓ 2-10	Artist's Rendition of Entrance to Summerville	YES
✓ 2-11	Copy of Settlement Agreement (GC Homes & Manuel Dorta-Duque)	YES
✓ 2-12	Copy of fax memo from Elliot Harris, esq. to Thomas Egan, esq.	YES
✓ 2-13	Copy of Complaint for Declaratory Relief (Summerville v Dorta-Duque)	YES
✓ 2-14	Copy of selected portions of the Deposition of Ray Castellanos	YES
✓ 2-15	Copy of selected portions of the Deposition of Juan Mayol	YES
✓ 2-16	Pg., titled "Manuel C & Emilia Diaz Zoning Hearing Application #02-377 Index"	YES
✓ 2-17		
✓ 2-18		







