

TOWN OF LOXAHATCHEE GROVES

ORDINANCE NO. 2008-010

AN ORDINANCE OF THE TOWN OF LOXAHATCHEE GROVES, FLORIDA, APPROVING ZONING APPLICATION PDD-2006-188 (CONTROL NO. 2004-061) OFFICIAL ZONING MAP AMENDMENT TO THE TOWN OF LOXAHATCHEE GROVES UNIFORM LAND DEVELOPMENT CODE FROM AGRICULTURAL RESIDENTIAL TO MULTIPLE USE PLANNED DEVELOPMENT DISTRICT FOR PROPERTY CONSISTING OF APPROXIMATELY 9.3 ACRES LOCATED GENERALLY AT THE NORTHWEST CORNER OF SOUTHERN BOULEVARD AND "E" ROAD (SOUTHERN CROSSING MUPD); PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICT; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the Town Council, as the governing body of the Town of Loxahatchee Groves (hereinafter referred to as the "Town"), Palm Beach County, Florida, pursuant to the authority vested in Chapter 163 and Chapter 166, Florida Statutes, is authorized and empowered to consider petitions relating to zoning; and

WHEREAS, the notice and hearing requirements, as provided for in Article 2 (Development Review Procedures) of the Town of Loxahatchee Groves Unified Land Development Code, as amended, and Section 166.041, Florida Statutes, have been satisfied; and

WHEREAS, Zoning Application PDD-2006-188 was presented to the Town Council at a public hearing conducted on November 18, 2008; and

WHEREAS, the Town Council has considered the evidence and testimony presented by the petitioner and other interested parties, the recommendation of the various review agencies and the recommendation of the Town staff; and

WHEREAS, the Town Council considered the findings contained in the staff report and desire to amend the zoning designation for the property referenced in this ordinance.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF LOXAHATCHEE GROVES, FLORIDA,

Section 1. The foregoing "Whereas" clauses are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this Ordinance upon adoption

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hereof.

Section 2. The Town Council of the Town of Loxahatchee Groves has considered the findings in the staff report and the following findings of fact:

1. This official zoning map amendment (rezoning) is consistent with the Town's Comprehensive Plan as adopted by the Town's Charter;
2. This official zoning map amendment (rezoning) is consistent with the requirements of the Town of Loxahatchee Groves Unified Land Development Code;
3. This official zoning map amendment (rezoning) with approved conditions is compatible with surrounding uses and zones, as defined in the Town of Loxahatchee Groves Unified Land Development Code, is generally consistent with existing uses and zones surrounding the subject land, and is the appropriate zoning district for the land;
4. This official zoning map amendment (rezoning) with approved conditions does not result in significantly adverse impacts on the natural environment including but not limited to water, air, storm water, management, wildlife, vegetation, wetlands, and the natural functioning of the environment;
5. This official zoning map amendment (rezoning) with approved conditions will result in a logical and orderly development pattern;
6. This official zoning map amendment (rezoning) complies with Article 2.F, (Adequate Public Facilities) of the Town of Loxahatchee Groves Unified Land Development Code; and
7. This official zoning map amendment (rezoning) with approved conditions is consistent with the requirements of all other applicable local land development regulations.

That Zoning Application PDD-2006-188, the application of Royals OK Lunch, Inc. by Miller Land Planning, agent for an Official Zoning Map Amendment from the Agricultural Residential to the Multiple Use Planned Development District on a parcel of land legally described in **Exhibit "A"**, which is attached hereto and incorporated herein by reference, and generally located as indicated on a vicinity sketch as depicted in **Exhibit "B"**, which is attached hereto and incorporated herein by reference, was approved on November 18, 2008, subject to the conditions of approval described in **Exhibit "C"**, which is attached hereto and incorporated herein by reference.

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Section 3. All local laws and ordinances applying to the Town of Loxahatchee Groves in conflict with any provision of this ordinance are hereby repealed to the extent of such conflict.

Section 4. If any section, paragraph, sentence, clause, phrase, or word of this Ordinance is for any reason held by the Court to be unconstitutional, inoperative, or void, such holding shall not affect the remainder of this Ordinance.

Section 5. This Ordinance shall be effective upon adoption.

PASSED AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF LOXAHATCHEE GROVES, FLORIDA ON THE FIRST READING THIS 4th DAY OF November, 2008.

PASSED AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF LOXAHATCHEE GROVES, FLORIDA ON THE SECOND READING THIS 18th DAY OF November, 2008.

TOWN OF LOXAHATCHEE GROVES, FLORIDA

ATTEST:

Matthew Lyman
TOWN CLERK or Authorized Representative

David Browning
Mayor David Browning

Marc Herzog
Vice Mayor Herzog

[Signature]
Council Member Autrey

APPROVED AS TO LEGAL FORM:

[Signature]
Office of the Town Attorney

[Signature]
Council Member Louda

[Signature]
Council Member Lipp

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**Exhibit "A"
Legal Description**

PROPERTY

LOTS 216,217,218,219,220,222,223,224 AND THE (W 1/2) OF LOT 221, LESS LAND IN THAT CERTAIN "ORDER OR TAKING" FOR STATE ROAD 80 RIGHT-OF-WAY AS RECORDED OCTOBER 2B, 1987 IN OFFICIAL RECORD BOOK 5463, PAGE 1333 OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA; BEING THE APPROXIMATE SOUTH 120 FEET OF LOT 216,218,220,222 AND 224, PLAT TWO, LOXAHATCHEE HOMES, A SUBDIVISION/ ACCORDING TO THE PLAT THEREOF ON FILE IN THE OFFICE OF THE CLERK OF THE CIRCUIT COURT IN AND FOR PALM BEACH COUNTY, FLORIDA, RECORDED IN PLAT ~OO~ 23, PAGE 103; SAID LANDS SITUATE LYING AND BEING IN PALM BEACH COUNTY/ FLORIDA. MEASURING AND CONTAINING: 9.13 ACRES MORE OR LESS

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Exhibit "C"

CONDITIONS OF APPROVAL

ALL PETITIONS

1. Development of the site is limited to the site design approved by the Loxahatchee Groves Board. The approved site plan is dated October 13, 2006. All modifications must be approved by the Loxahatchee Groves Board unless the proposed changes are required to meet conditions of approval or are in accordance with the ULDC in effect as of October 2006. (ORO: ZONING -Zoning)

ARCHITECTURAL REVIEW

1. At time of submittal for final approval by the Development Review Officer (ORO), the architectural elevations shall be submitted simultaneously with the site plan for final architectural review and approval. Elevations shall be designed to be consistent with Article 5.C of the ULDC. Development shall be consistent with the approved architectural elevations, the ORO approved site plan, all applicable conditions of approval, and all ULDC requirements. (ORO: ARCH REVIEW - Zoning)

ENGINEERING

1. The Property owner shall:

a. Construct a right turn lane east approach on Southern Boulevard at the projects entrance road. Permits required by Florida Department of Transportation for this construction shall be obtained prior to the issuance of the first Building Permit. (BLDG PERMIT: MONITORING-Eng)

b. Subject to the grant of a variance from the Florida Department of Transportation (FDOT), egress from the project shall be directly onto Southern Boulevard at the project's entrance road. In the event FDOT does not grant the variance, the Property Owner shall request an alternative means of ingress and egress from the Property.

~~b. Construct "E" Road from Southern Boulevard to the projects north property line. This road shall be a minimum of 2-10 foot travel lanes and shall be to Local Street Standards. Permits required by the Town of Loxahatchee Groves for this construction shall be obtained prior to the issuance of the first Building Permit. (BLDG PERMIT: MONITORING-Eng)~~

~~c. Construct Paved access from "E" Road to this commercial site (including the area across the park site).~~

~~d. Construct Loxahatchee Avenue from Southern Boulevard to the projects north property line. This road shall be a minimum of 2-10 foot travel lanes and shall be to Local Street Standards. Permits required by the Town of Loxahatchee Groves for this construction shall be obtained prior to the issuance of the first Building Permit. (BLDG PERMIT: MONITORING-Eng)~~

~~e. Construct a left turn lane north approach on Loxahatchee Avenue at Southern Boulevard including appropriate drainage. Permits required by the Town of Loxahatchee Groves for this~~

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~~construction shall be obtained prior to the issuance of the first Building Permit. (BLDG PERMIT: MONITORING-Eng)~~

Any and all costs associated with the construction shall be paid by the property owner. These costs shall include, but are not limited to, utility relocations and acquisition of any additional required right-of-way. (BLDG PERMIT: Monitoring-Eng)

Construction shall be completed prior to the issuance of the first Certificate of Occupancy. (CO: MONITORING-Eng)

2. Landscape Within the Median of Southern Boulevard

a. The Property Owner shall design, install and perpetually maintain the median landscaping within the median of all abutting right of way of Southern Boulevard. This landscaping and irrigation shall strictly conform to the specifications and standards for the County's Only Trees, Irrigation, and Sod (OTIS) program. Additional landscaping beyond OTIS requires Board of County Commissioners approval. Median landscaping installed by Property Owner shall be perpetually maintained by the Property Owner, his successors and assigns, without recourse to Palm Beach County, unless the Property Owner provides payment for maintenance as set forth in Paragraph 0 below. (ONGOING: ENG -Eng)

b. The necessary permit(s) for this landscaping and irrigation shall be applied for prior to the issuance of the first building permit. (BLDG PERMIT: MONITORING-Eng)

c. All installation of the landscaping and irrigation shall be completed prior to the issuance of the first certificate of occupancy. (CO: MONITORING -Eng)

d. At Property Owner's option, when and if the County is ready to install OTIS on the surrounding medians of this roadway adjacent to the Property Owner installed landscaping, payment for the maintenance may be provided to the County. The payment shall be in the amount and manner that compiles with the schedule for such payments that exists on the date payment is made. Once payment has been provided, Palm Beach County shall assume the maintenance responsibility for the OTIS landscaping and irrigation that has been installed by the Property Owner. The Property Owner shall first be required to correct any deficiencies in the landscaping and irrigation. This option is not available to medians with additional landscaping beyond OTIS standards, unless those medians are first brought into conformance with OTIS standards by the Property Owner. (ONGOING: ENG -Eng)

e. Alternately, at the option of the Property Owner, and prior to the issuance of a Building Permit, the Property Owner may make a contribution to the County's Only Trees Irrigation and Sod, OTIS program, unincorporated thoroughfare beatification program. This payment, for the County's installation of landscaping and irrigation on qualifying thoroughfares shall be based on the project's front footage along Southern Boulevard. This payment shall be in the amount and manner that complies with the schedule for such payments as it currently exists or as it may from time to time be amended. (ONGOING: ENG -Eng)

3. Prior to Final Site Plan approval by the Development Review Officer, the property owner shall record a cross access easement to the property owner to the east as shown on the proposed site plan, subject to approval by the County Attorney and County Engineer. (ORO: ENG-Eng)

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4. ROAD RIGHT OF WAY

The property owner shall provide to the Town of Loxahatchee Groves a road right of way deed and all associated documents as required by the County Engineer for:

- a. A 25 foot "Corner Clip" at the intersection of Loxahatchee Avenue and Tangerine Drive.
- b. Loxahatchee Avenue an additional 10 foot of right of way along the property frontage.
- c. Tangerine Drive an additional 10 foot of right of way along the property frontage. All right of way deed(s) and associated documents shall be provided and approved prior the issuance of the first Building Permit.

Right of way shall be free of all encroachments and encumbrances. Property owner shall provide sufficient documentation to ensure that the property is free of all encumbrances and encroachments. The Grantor further warrants that the property meets all appropriate and applicable environmental agency requirements. In the event of a determination of contamination which requires remediation or clean up on the property now owned by the Grantor, the Grantor agrees to hold the Grantee harmless and shall be responsible for all costs of such clean up, including but not limited to, all applicable permit fees, Engineering or other expert witness fees including Attorney's fees as well as the actual cost of the clean up. The Property Owner shall not record these required deeds or related documents. After final acceptance, Palm Beach County shall record all appropriate deeds and documents. (BLDG PERMIT: MONITORING-Eng)

5. In order to comply with the mandatory Traffic Performance Standards, the Property owner shall be restricted to the following phasing schedule:

- a. No Building Permits for the site may be issued after January 1, 2009. A time extension for this condition may be approved by the County Engineer based upon an approved Traffic Study which complies with Mandatory Traffic Performance Standards in place at the time of the request. This extension request shall be made pursuant to the requirements of Article 2, Section E of the Unified Land Development Code. (DATE: MONITORING-Eng)
- b. Building Permits for more than 7552 square feet of gross leasable general commercial floor area and 11500 feet of gross leasable medical office floor area (equivalent of 102 PM Peak Hour Trips) shall not be issued until the contract has been awarded for the construction of intersection improvements at Forest Hill Boulevard and Crestwood Boulevard to provide for a separate north approach through lane plus the appropriate paved tapers. (BLDG PERMIT: MONITORING-Eng)
- c. A third east approach and a third west approach through lane plus the appropriate paved tapers. (BLDG PERMIT: MONITORING-Eng)

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6. Acceptable surety required for the intersection improvements at Forest Hill Boulevard and Crestwood Boulevard shall be posted with the Office of the Land Development Division on or before April 25, 2008. Surety in the amount of 110% shall be based upon a Certified Cost Estimate provided by the Property owner's Engineer. (TPS -Maximum 6 month time extension) (DATE: MONITORING-Eng)

ENVIRONMENTAL

1. All existing native vegetation, including understory, depicted on the site plan to remain shall be maintained in perpetuity. Areas where existing native vegetation have been incorporated into the site plan shall be maintained free from invasive, exotic and non-native species. No grade changes, or the toe of proposed grade changes, shall occur within the drip line of existing native vegetation depicted to remain. (ONGOING: ERM -ERM)

ZONING -LANDSCAPING STANDARDS

1. A minimum of seventy-five (75) percent of canopy trees to be planted in the landscape buffers shall be native and meet the following minimum standards at installation:

- a. Tree height: fourteen (14) feet;
- b. Trunk diameter: three and one-half (3.5) inches measured at four and one-half (4.5) feet above ground;
- c. Canopy diameter: seven (7) feet -diameter shall be determined by the average canopy radius measured at three (3) points from the trunk to the outermost branch tip. Each radius shall measure a minimum of three and one-half (3.5) feet in length; and credit may be given for existing or relocated trees provided they meet ULDC requirements. (BLDG PERMIT: LANDSCAPE -Zoning)

2. All palms required to be planted on the property by this approval, shall meet the following minimum standards at installation:

- a. Palm heights: twelve (12) feet clear trunk;
- b. Clusters: Staggered heights twelve (12) to eighteen (18) feet; and,
- c. Credit may be given for existing or relocated palms provided they meet current ULDC requirements. (BLDG PERMIT: LANDSCAPE -Zoning)

ZONING -LANDSCAPING INTERIOR

3. The following planting treatment shall be provided on both sides of the main access point on Southern Boulevard and Loxahatchee Avenue.

- a. A minimum ten (10) foot wide landscape strip. No easement encroachment shall be permitted;
- b. A minimum of three (3) flowering trees along each side of the access point; and appropriate ground cover and native shrubs;
- c. All plant materials shall be planted in a naturalistic and meandering pattern. (BLDG PERMIT: LANDSCAPE -Zoning)

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ZONING -LANDSCAPING ALONG THE NORTH PROPERTY LINE

1. Landscaping and buffering along the north property line shall be upgraded to include:
 - a. A minimum fifty (50) foot wide buffer strip;
 - b. A six (6) foot high opaque wood fence;
 - c. One (1) native canopy tree for each twenty (20) linear feet of the property line, alternating on both sides of the fence; and,
 - d. An equestrian trail running east and west along the entire north property line. (CO: LANDSCAPE -Zoning)

2. The following landscaping requirements shall be installed on the exterior side of the required fence:
 - a. One (1) slash pine for each twenty (20) linear feet of the property line. Pines shall be planted in a group of five (5);
 - b. One (1) small shrub for each two (2) linear feet of the property line. Shrub shall be a minimum height of twenty-four (24) inches at installation; and,
 - c. One (1) medium shrub for each four (4) linear feet of the property line. Shrub shall be a minimum height of thirty-six (36) inches at installation. (CO: LANDSCAPE Zoning)

3. Along the interior side of the required fence, the petitioner shall install twenty-four (24) inch high shrub or hedge material spaced no more than twenty four (24) inches on center, to be maintained at a minimum height of thirty-six (36) inches. (CO: LANDSCAPE -Zoning)

MASS TRANSIT

1. The location of an easement for a Bus Stop Boarding and Alighting Area, subject to the approval of Palm Tran shall be shown on the Master Plan and/or site plan prior to final approval of the Development Review Officer (ORO). The purpose of this easement is for the future construction of mass transit infrastructure in a manner acceptable to Palm Tran. (ORO: PALM TRAN-Palm Tran)

2. Prior to Plat Recordation, the property owner shall convey and/or dedicate to Palm Beach County an easement for a Bus Stop Boarding and Alighting Area in a form with terms and conditions approved by Palm Tran. Supporting documentation, including but not limited to, a location sketch, legal description, affidavit of ownership, attorney title opinion and other related documents as deemed necessary by Palm Tran. (PLAT/BLDG PERMIT: ENG-Monitoring)

PLANNING

1. As required by conditions of approval for the FLUA amendment on this site (LGA 2004-00035), Ordinance No. 2004-068, development on the site shall be limited as follows:
 - a. The site shall be limited to a maximum .1 Floor Area Ratio;
 - b. The eastern 1.5 acres of the subject site shall be limited to Park & Open Space uses; and Buildings on site shall be a maximum of 1 story. (ORO/ONGOING: PLANNING-Planning)

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SIGNS

1. Freestanding sign fronting on Southern Boulevard shall be limited as follows:
 - a. Maximum sign height, measured from finished grade to highest point - 4 feet 2 inches (50 inches);
 - b. Maximum sign face area per side - thirty-three (33) square feet;
 - c. Maximum number of signs - one (1);
 - d. Style - monument style only;
 - e. Location - main entrance from Southern Boulevard; and,
 - f. Signs shall be limited to identification of the center only. (BLDG PERMIT: BLDG - Zoning)
2. Freestanding sign along Loxahatchee Avenue shall be limited as follows:
 - a. Maximum sign height, measured from finished grade to highest point - 4 feet 2 inches (50 inches);
 - b. Maximum sign face area per side - thirty-three (33) square feet;
 - c. Maximum number of signs - one (1);
 - d. Style - monument style only;
 - e. Location - sixty (60) feet north of Southern Boulevard along Loxahatchee Avenue; and,
 - f. Signs shall be limited to identification of the center only. (BLDG PERMIT: BLDG - Zoning)

USE LIMITATION

1. Hours of business operation to include deliveries and trash removal shall be limited to 7:00 a.m. to 7:00 p.m. daily. ATM drive thru lanes may be open twenty-four (24) hours daily. (ONGOING: ZONING / CODE ENF - Zoning)
2. Hours of construction activity during all stages of site development shall be limited to 7:00 a.m. to 7:00 p.m. Monday through Friday. Construction shall be prohibited on Saturday, Sunday, and statutory holidays. (ONGOING: CODE ENF Zoning)
3. Construction traffic shall be prohibited from utilizing "E" Road to access the site. (ONGOING: CODE ENF - Zoning)

UTILITIES

1. If any relocations/modifications to the County's existing facilities are required that are a direct or indirect result of the development, the developer shall pay for the complete design and construction costs associated with these relocations/modifications.

COMPLIANCE

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

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

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

Departmental administrative actions made pursuant to this condition may be appealed as provided in the Unified Land Development Code (ULDC), as amended. Appeals of any revocation of an Official Zoning Map Amendment, Conditional Use, Requested Use, Development Order Amendment or other actions based on a Town Council decision shall be by petition for writ of certiorari to the Circuit Court, Appellate Division, 15th Judicial Circuit of Florida. (ONGOING: MONITORING - Zoning)