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FLAGLER COUNTY

RESOLUTION 2001-135

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF FLAGLER COUNTY, AMENDING THE HAMMOCK DUNES DEVELOPMENT OF REGIONAL IMPACT (DRI) DEVELOPMENT ORDER TO REFLECT THE EXCLUSION OF A FIRE STATION WITHIN THE DRI PROVIDING FUNDING A FIRE STATION TO BE CONSTRUCTED ON COUNTY PROPERTY, AND EXTENDING THE COUNTY OBLIGATION OF COMPLETING CONSTRUCTION OF THE PARK IMPROVEMENTS TO APRIL 30, 2006.

WHEREAS, on March 30, 1984, the Board of County Commissioners of Flagler County, Florida ("Flagler County"), pursuant to Section 380.06, Florida Statues, adopted Resolution 84-7 approving a Development Order for the Development of Regional Impact known as Hammock Dunes ("Development Order"); and

WHEREAS, on July 17, 1995 and January 30, 1998, Flagler County adopted Resolutions Nos. 95-50 and 98-10 constituting amendments to the Development Order; and

WHEREAS, the Applicant, Lowe Ocean Hammock Ltd., and Admiral Corporation, on December 17, 2001, submitted a Notification of a Proposed Change to a Previously Approved DRI (the "Notification"); and

WHEREAS, Flagler County has reviewed the proposed changes, held a public hearing, and with the concurrence of the Northeast Florida Regional Planning Council and the Florida Department of Community Affairs, has determined the following:

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RT. Finance Rm114 Cheryl Dukes

NOW, THEREFORE, BE IT RESOLVED BY FLAGLER COUNTY AS FOLLOWS:

Section 1. Proper notice of a public hearing has been published with respect to this matter.

Section 2. Flagler County conducted a public hearing on December 17, 2001 regarding the proposed changes set forth in the Notification and has determined that the proposed changes do not constitute a major amendment or a substantial deviation to the previously approved Development Order.

Section 3. Section 3.0 of Resolution 84-7 is hereby amended as follows:

3.0 ECONOMY AND INFRASTRUCTURE

3.1 The approval by the County of this development order is based on the fact that the project will be served by certain capital facilities. These capital facilities are:

- Surface water management system
- Internal potable water distribution and fire hydrant system
- Wastewater collection, treatment and disposal systems
- Major north/south arterial roads (main road network)
- ~~An on-site public safety complex including a fire and police station~~
- ~~On-site fire, police, emergency medical and secondary security equipment including vehicles and apparatus~~
- Intracoastal Waterway Bridge

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12.3 The ~~Applicant~~ County shall construct, or cause to be constructed, a public safety complex ~~consisting of a two-bay facility of approximately 5,000 square feet~~ on County owned property. The Developer agrees to make a contribution in the amount of $750,000 to Flagler County to construct the public safety facilities or operations which could include, but are not limited to, building construction, enhancements, purchase of equipment or other items as determined by the Board of County Commissioners. Said contribution shall be made immediately and shall be retained separately in an interest bearing account, which interest shall be used for similar purposes. ~~within the convenience/commercial site located at the easterly end of the Intracoastal Waterway bridge. The facility shall be constructed before 1,000 dwelling units are built on site.~~

Section 4. Section 12.3 of Resolution 95-50 is hereby amended as follows:

Amend Condition 12.3, Public Safety:

12.4 The ~~Applicant~~ County shall construct, or cause to be constructed, a public safety complex ~~consisting of a two-bay facility of approximately 5,000 square feet~~ on County owned property. The Developer agrees to make a contribution in the amount of $750,000 to Flagler County to construct the public safety facilities or operations which could include, but are not limited to, building construction, enhancements, purchase of equipment or other items as determined by the Board of County Commissioners. Said contribution shall be made immediately and shall be retained separately in an interest bearing account, which interest shall

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be used for similar purposes. ~~within the convenience/commercial site located at the easterly end of the Intracoastal Waterway bridge. The facility shall be constructed before 1,000 dwelling units are built on site.~~

Section 5. Section 4 of Resolution 98-10 is hereby amended to read as follows:

14.1 **Exchange**

a. Exchange of Parks. The Applicant shall convey, or cause to be conveyed to the County, within thirty (30) days of the effective date of these amendments to the Hammock Dunes DRI as provided in Section 8 of this Resolution, those two properties known as the Malacompra Beach Front Park, a 47.01 acre parcel of property legally described in Resolution 98-10 as Exhibit "B" hereto (the "Beachfront Park") and a 306.98 acre parcel of property located along SR A 1 A known as the Malacompra Greenway, legally described in Resolution 98-10 as Exhibit "C" hereto (the "Malacompra Greenway [sic]) ~~(~~The Beachfront Park, along with the 5 acre Oceanfront National Experience Site and the appropriate adjacent publicly owned lands north of Malacompra Road in the Johnson Beach Subdivision and the Malacompra Greenway Park shall be herein after collectively referred to as the "Parks"). Simultaneous with the Applicant's conveyance of the Parks to the County, the County shall convey to the Applicant 33 acres of property, the majority of which was previously donated by the Applicant to the County, which property is legally described in Resolution 98-10 as Exhibit "D" hereto (the "16" Road Park"). Simultaneously with the County's conveyance of the 16th Road Park to the

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Applicant, the Applicant shall grant an easement to the County for the benefit of the general public over the property described on Exhibit E hereto (the "Access and Parking Easement"), which shall grant the right of ingress and egress, parking and beach access for pedestrians and motor vehicles and public restroom facilities. The terms and conditions of the Access and Parking Easement shall contain, among other matters, the following: (i) The easement shall run in perpetuity and shall not be canceled or terminated without the express written approval of the Flagler County Board of Commissioners; (ii) The Applicant shall at all times maintain and provide public access to the beach and comparable restroom and parking facilities, either over the easement area; (iii) The Applicant shall have the sole right and obligation to construct the necessary roadway, parking lot improvements, and public restroom facilities which shall be constructed in a manner consistent with the development of Applicant's surrounding property and concurrently with the development of the clubhouse intended to be located adjacent to the easement area; (iv) The Applicant shall be responsible for the installation of the landscaping within and adjacent to the easement area; (v) The Applicant shall be responsible for the on-going maintenance of the improvements, including the landscaping, at the Applicant's sole cost and expense; and (vi) At such time as the Applicant has completed construction of the roadway improvements, parking area and public restroom facilities, the Applicant shall convey said improvements and the

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land on which they are located to the County subject, however, to a reservation by the Applicant of the right and obligation to continue maintaining the improvements and the right to use the land and improvements in any manner which is consistent with the public's use of the improvements for beach access and parking. The deed shall contain additional terms and conditions to provide that the County may not change the public use of the improvements without the express written consent of the Applicant or its successors and assigns. The County shall, concurrently with its acceptance of the conveyance, execute a Release and Termination of the Access and Parking Easement. The legal description of the improvements and land to be conveyed shall be based on an as built survey to be obtained by Applicant once the improvements have been completed. Attached hereto as Exhibit F is a legal description of the 16th Road right-of-way as it traverses the Applicant's property and the 16th Road Park. Applicant has advised the County that a portion of said 16th road right-of-way will need to be vacated in order to enable Applicant to develop its property in a manner consistent with the Development Order. Accordingly, the County agrees to cooperate with Applicant in completing the vacation of this 16th Road right-of-way provided that Applicant has, prior to the commencement of the vacation process, granted the Access and Parking Easement. The conveyances to the County contemplated herein shall be by a deed of conveyance in accordance with Chapter 125, F.S. The County shall be responsible for

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procuring all evidence of title and title information necessary to examine title to the properties described herein being conveyed to the County. The County shall further be responsible for procuring the owner's commitment for title insurance and the final owner's title insurance policy for the properties being conveyed to the County. The County shall choose its title agent in its sole discretion. Title to the property must be marketable as defined by Standard A of the Florida Association of Realtors/Florida Bar Real Estate Contract. The Applicant shall be responsible for paying for the cost of the title evidence and cost of the commitment and policy obtained by the County. The charge for said commitment and policy shall be at the promulgated rate. At least 15 days prior to any conveyance as contemplated herein the Applicant, shall provide the County with a Phase I Environmental Assessment covering all the property being conveyed to the County.

b. Improvement of Parks. The County shall design and construct certain improvements to the Parks for the use and enjoyment of the public (the "Park Improvements"). Simultaneously with conveyance of the Parks contemplated above, the Applicant shall contribute one million seventy five thousand dollars ($1,075,000) to the County to cover the cost of the Park Improvements. The Applicant hereby agrees to indemnify and hold the County harmless in the event the applicable governmental agency requests repayment of the following sums: (i) $150,000 received by Flagler County pursuant to that certain agreement by and between the

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State of Florida Department of Natural Resources and the Board of County Commissioners, Flagler County, Florida dated June 10, 1988 recorded at Official Records Book 0351 Page 0849; and (ii) $35,000 received from the Florida Department of Community Affairs pursuant to grant number 98-CZ-26-04-28-01-001 and to reimburse the County for its expenditures made to match the grant for the project plans which are no longer applicable due to transfer of the present 16th Road Park to the Applicant. This indemnification and hold harmless shall become null and void upon the presentation by Applicant to the County of written confirmation from the Department of Natural Resources (or its successor agency) with respect to the $150,000 funding that no repayment is necessary and from the Department of Community Affairs with respect to the $35,000 grant that there are no ineligible grant expenditures incurred by Flagler County. The Park Improvements within the Malacompra Greenway, Malacompra Beachfront Park, and the Oceanfront Natural Experience Park may consist of restrooms, pavilions, beaches, walkways (at grade and/or elevated), pedestrian and bike paths and picnic areas. The design of such public improvements shall be consistent with ecosystem planning principles and recognize the integrity of the beach dune system, the coastal scrub system and the hardwood hammock system existing in the Malacompra Greenway. The Park Improvements shall also include reconnection of the wetlands bifurcated by Malacompra Road. All site development work (including, without limitation, grading and

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filling), landscaping, the extension of water and sewer service within the Parks, and all costs and fees associated with the planning, design, permitting and construction of the Park Improvements shall be considered Park Improvements. The Applicant shall provide water and sewer utility service to the perimeters of: (i) the four (4) Beachfront Parks, (ii) the ICWW Park; (~~iii~~) ~~the emergency service building~~; (iii) ~~(iv)~~ the Malacompra Greenway where it reaches the intersection of the Northwest corner of Spine Road and 16th Road; and, (~~v~~) (iv) two (2) other locations along the Greenway in order to allow convenient use of the greenway by the public. This utility service shall be installed by the Applicant in conjunction with its construction of subdivision improvements serving that portion of the project immediately adjacent to such public facilities. ~~Within 180 days of the date of conveyance of the Parks to the County t~~ The County shall submit a Conceptual Plan ~~and proposed project budget~~ for the Park Improvements to the Applicant for the Applicant's review and comment. The Applicant shall have thirty (30) days from the date of submission to review and comment regarding the Conceptual Plan. Following the Applicant's review and comment period, the Applicant and County shall jointly review all comments and agree on the finalization of the Conceptual Plan ~~and~~ the proposed project budget. Following finalization of the Conceptual Plan and project Budget, the County shall cause the completion of the construction plans and shall submit construction documents to the Applicant to review and comment. The Applicant shall

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have thirty (30) days in which to review the plans and documents and return any comments to the County. Following that period, the County through its standard purchasing procedures, shall advertise and receive bids for the construction. The County may, however; elect to construct the facility with its own forces or with a combination of its own and contracted forces. If the work is to be done by Contract, ~~A machine copy~~ copies of the bids received shall be furnished to the Applicant. The Applicant shall have 15 days to review and comment on the bids. ~~for review and a fifteen (15) day period allowed for the Applicant to review and comment on the bids~~. ~~following which~~ Tthe County will either award the contract to the lowest responsive bidder, award the contract to another bidder or re-bid the contract whichever, in its sole discretion appears to best serve the interests of the public.

The County shall complete construction of the Park Improvements ~~within three years of the date of conveyance of the Parks to the County.~~ on or before April 30, 2006.

Section 6.

The Clerk of the Board of County Commissioners is authorized to, within ten (10) days of the date of adoption of this Resolution, send certified copies of this Resolution and all related exhibits by certified mail, return receipt requested, to:

FLORIDA DEPARTMENT OF COMMUNITY AFFAIRS
DIVISION OF RESOURCE PLANNING AND MANAGEMENT
Bureau of State Planning
Shumard Oak Blvd.
Tallahassee, Florida 32399-2100

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Northeast Florida Regional Planning Council
Phillips Highway, Suite 350
Jacksonville, Florida 32356

Section 7.

The applicant shall record a notice of adoption of this Resolution in accordance with Section 380.06(15)(f), Florida Statutes and file a Certification of Compliance with the Clerk of the Board of County Commissioners.

Section 8. This Resolution shall become effective upon adoption.

Dated this 17th day of December, 2001.

BOARD OF COUNTY COMMISSIONERS OF FLAGLER COUNTY, FLORIDA

12.21.01

James A. Darby
Chairman

ATTEST:

Lisa Bates, DC
for Gail Wadsworth
Clerk and Ex Officio Clerk to the Board

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