

Agenda Item #: **4A**

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY**

Meeting Date: October 21, 2009

Consent Regular
 Public Hearing

Department

Submitted By: COUNTY ATTORNEY

Submitted For: COUNTY ATTORNEY

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to: adopt an ordinance repealing Ordinance 2005-35, the Simon II/"B" Road-NW Property Comprehensive Plan Amendment (No. LGA 2005-00014.)

Summary: Palm Beach County adopted a Comprehensive Plan Amendment for the creation of the Central Western Communities Sector Plan by Ordinance No. 2005-034 on August 22, 2005. At the same time, the County adopted ordinance 2005-035, providing for a site-specific Comprehensive Plan Amendment for 96.73 acres of land located on the north side of Southern Boulevard between "A" Road and "B" Road, commonly referred to as the Simon II/ "B" Road-NW property, which is presently located within the municipality of Loxahatchee Groves. The Department of Community Affairs found both the Sector Plan Amendment and the Simon II/ "B" Road-NW Property Plan Amendment "not in compliance," and filed an administrative petition challenging the Plan, on November 15, 2005. The County ultimately repealed Ordinance 2005-034, mooting the pending administrative challenge relating to the Sector Plan. However, the parties continued to negotiate a possible settlement regarding the Simon II/ "B" Road-NW property. The applicant has advised the County in writing that he now wishes to withdraw his application for the Simon II/ "B" Road-NW Property Plan Amendment, due to changed circumstances. Based on the applicant's request, County staff recommends that the Board of County Commissioners adopt an ordinance repealing Ordinance 2005-035. Adoption of the Ordinance will render the remainder of the pending administrative challenge moot. District 6 (ATP)

Continued on Page 3

Attachments:

1. Ordinance XX-XX.
2. September 15, 2008 Letter from Applicant

Recommended by: _____


County Attorney

9/19/08
Date

Approved by: _____

N/A

Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2007	2008	2009	2010	2011
Capital Expenditures	___	___	___	___	___
Operating Costs	___	___	___	___	___
External Revenues	___	___	___	___	___
Program Income (County)	___	___	___	___	___
In-Kind Match (County)	___	___	___	___	___
NET FISCAL IMPACT	___	___	___	___	___
# ADDITIONAL FTE POSITIONS (Cumulative)	___	___	___	___	___

Is Item Included in Current Budget? Yes ___ No ___

Budget Account No.: Fund ___ Department ___ Unit ___ Object ___

Reporting Category ___

B. Recommended Sources of Funds/Summary of Fiscal Impact:

C. Departmental Fiscal Review: _____

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Development and Control Comments:

OFMB

Contract Development and Control

B. Legal Sufficiency:


Assistant County Attorney

C. Other Department Review:

Department Director

THIS SUMMARY IS NOT TO BE USED AS A BASIS FOR PAYMENT.

Background and Justification: Palm Beach County adopted a Comprehensive Plan Amendment for the creation of the Central Western Communities Sector Plan by Ordinance No. 2005-034 on August 22, 2005. At the same time, the County adopted Comprehensive Plan Amendment No. LGA 2005-00014 (Simon II/ "B" Road-NW Property Plan Amendment") by Ordinance No. 2005-035. The Simon II/ "B" Road-NW Property Plan Amendment proposed to re-designate approximately 96.73 acres of land located on the north side of Southern Boulevard between "A" Road and "B" Road from Rural Residential ("RR-10"), to Rural Residential Planned Development ("RR 2.5 PD.") The property is presently located within the municipality of Loxahatchee Groves.

The Department of Community Affairs found both the Sector Plan Amendment and the Simon II/ "B" Road-NW Property Plan Amendment "not in compliance," and filed an administrative petition challenging the Plan Amendments, on November 15, 2005, in the administrative challenge styled Department of Community Affairs et. al. v. Palm Beach County et. al., DOAH Case No. 05-4163 GM. Several intervenors joined the administrative challenge, both for and against the amendments.

The County ultimately repealed the Sector Plan Ordinance, mooting the pending administrative challenge relating to the Sector Plan. Since then, the parties have continued to negotiate a possible settlement regarding the Simon II/ "B" Road-NW property, including the Town of Loxahatchee Groves. The applicant has advised the County in writing that he now wishes to withdraw his application for the Simon II/ "B" Road-NW Property Plan Amendment, due to changed circumstances. Based on the applicant's request, County staff recommends that the Board of County Commissioners adopt an ordinance repealing Ordinance 2005-035. Adoption of the Ordinance will render the remainder of the pending administrative challenge moot.

RONALD K. KOLINS
WEST PALM BEACH OFFICE

DIRECT DIAL: (561) 650-7984
Email: kolinsr@gtlaw.com

RECEIVED
SEP 16 2008
P.B. COUNTY ATTORNEY

September 15, 2008

Amy T. Petrick, Esq.
Office of County Attorney
Palm Beach County
301 North Olive Avenue, 6th Floor
West Palm Beach, FL 33401

**Re: Comprehensive Plan Amendment
No. LGA2005-00014
Ordinance No. 2005-035**

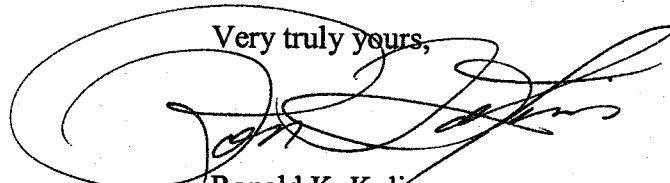
Dear Ms. Petrick:

This office represents the applicant in the captioned Comprehensive Plan Amendment, Robert L. Crane, Trustee (hereinafter "Applicant"). That application was approved by the County Commission of Palm Beach County by Ordinance No. 2005-035 on August 22, 2005. Subsequently, the Department of Community Affairs of the State of Florida issued its Statement and Notice of Intent on October 31, 2005. The matter is presently the subject of hearings before the Florida Division of Administrative Hearings in its Case No. 05-4163GM. The hearing in that matter has been continued to allow for a potential settlement of the matter.

This matter has been ongoing for approximately three years and, due to changed circumstances, including the creation of the municipality of Loxahatchee Groves, the Applicant wishes to, in effect, withdraw its application. This letter, therefore, is our request to Palm Beach County to repeal Ordinance No. 2005-035. Once this is done, we anticipate a filing with DOAH and the Administrative Law Judge suggesting that the DOAH proceeding is moot.

If there is anything further that is required to bring this matter to closure, please advise. I look forward to this request being scheduled before the Board of County Commissioners at its earliest opportunity.

Thank you for your cooperation.

Very truly yours,

Ronald K. Kolins

RKK/gw

- ALBANY
- AMSTERDAM
- ATLANTA
- BOCA RATON
- BOSTON
- BRUSSELS*
- CHICAGO
- DALLAS
- DELAWARE
- DENVER
- FORT LAUDERDALE
- HOUSTON
- LAS VEGAS
- LONDON*
- LOS ANGELES
- MIAMI
- MILAN*
- NEW JERSEY
- NEW YORK
- ORANGE COUNTY
- ORLANDO
- PHILADELPHIA
- PHOENIX
- ROME*
- SACRAMENTO
- SILICON VALLEY
- TALLAHASSEE
- TAMPA
- TOKYO*
- TYSONS CORNER
- WASHINGTON, D.C.
- WEST PALM BEACH
- ZURICH

*Strategic Alliance

Amy T. Petrick, Esq.
September 15, 2008
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cc: Robert P. Banks, Esq.
Denise Nieman, Esq.
Mr. Joseph Lelonek
Mr. Robert A. Bentz
David Tolces, Esq.

381,895,166v1/WPB/102423.010100

ORDINANCE NO. 2008 -

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, REPEALING ORDINANCE 2005-035, WHICH AMENDING THE 1989 COMPREHENSIVE PLAN AS ADOPTED BY ORDINANCE NO. 89-17, AS AMENDED; BY AMENDING THE FUTURE LAND USE ATLAS (FLUA) FOR PRIVATELY INITIATED AMENDMENT SIMON II/'B' ROAD-NW (lga 2005-00014), MODIFYING PAGE 61 OF THE FLUA BY CHANGING THE FUTURE LAND, GENERALLY LOCATED ON THE NORTH SIDE OF SOUTHERN BOULEVARD BETWEEN 'A' ROAD AND 'B' RAD, FROM RURAL RESIDENTIAL 1 UNIT PER 10 ACRES (RR-10) TO RURAL RESIDENTIAL, 1 UNIT PER 2.5 ACRES PLANNED DEVELOPMENT (RR 2.5 PD), SUBJECT TO CONDITIONS; PROVIDING FOR INCLUSION IN THE 1989 COMPREHENSIVE PLAN; PROVIDING FOR REPEAL OF LAWS IN CONFLICT, PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, on August 31, 1989, the Palm Beach County Board of County Commissioners adopted the 1989 Comprehensive Plan by Ordinance No. 89-17;

WHEREAS, the Palm Beach County Board of County Commissioners amends the 1989 Comprehensive Plan as provided by Chapter 163, Part II, Florida Statutes; and

WHEREAS, Palm Beach County adopted an amendment to the Comprehensive Plan on August 22, 2005, in Ordinance No. 2005-035; and

WHEREAS, the Department of Community Affairs issued a statement of intent to find the Comprehensive Plan amendment in Ordinance 2005-035 Not in Compliance on October 31, 2005 ; and

WHEREAS, The Department of Community Affairs filed a Petition on November 15, 2005, for an administrative hearing on its allegations that Ordinance 2005-035 did not comply with state statute and administrative rule; and

WHEREAS, several parties intervened in the administrative challenge, both in opposition and in support of the Plan Amendment; and

WHEREAS, Palm Beach County has attempted to mediate with the Department of Community Affairs and the other intervenors to resolve the allegations set forth in the Petitions; and

WHEREAS, the applicant for the Plan Amendment has advised the Palm Beach County Board of County Commissioners, as the governing body of Palm Beach County, that he wishes to withdraw his application for the Plan Amendment; and

WHEREAS, the Palm Beach County Board of County Commissioners, as the governing body of Palm Beach County, has determined that the Plan Amendment, as adopted in Ordinance 2005-035, no longer represents the planning goals for the specific site;

WHEREAS, this Ordinance repeals Ordinance No. 2005-035, as adopted on August 22, 2005, that amended Palm Beach County's Comprehensive Plan; but never became effective, as a result of the pending administrative challenge;

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, that:

Part I. Repeal of Ordinance 2005-035

Ordinance 2005-035 is hereby repealed.

APPROVED AND ADOPTED by the Board of County Commissioners of Palm Beach County, on the ____ day of _____, 2008.

ATTEST:
SHARON R. BOCK, CLERK
& COMPTROLLER

PALM BEACH COUNTY, FLORIDA,
BY ITS BOARD OF COUNTY COMMISSIONERS

By: _____ By _____
Deputy Clerk Addie L. Greene, Chairperson

APPROVED AS TO FORM AND LEGAL SUFFICIENCY


COUNTY ATTORNEY

Filed with the Department of State on the ____ day of _____, 2008.