

RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

WHEREAS, Cypress Lake Associates, represented by Wal-Mart, Inc., in reference to Wal-Mart Expansion at Cypress Lake Center, have properly filed an application to amend Phase I CPD (Resolution Z-87-196/1); and

WHEREAS, the subject property is located at 7101 Cypress Lake Drive, described more particularly as:

LEGAL DESCRIPTION: In Section 23, Township 45 South, Range 24 East, Lee County, Florida:

PHASE I .

A parcel of land situated in the State of Florida, County of Lee, Section 23, Township 45 South, Range 24 East, and further bounded and described as follows:

Lot 2, Cypress Lake Center, Phase II, as recorded in Plat Book 39 at Pages 22 through 24, inclusive, Public Records of said Lee County.

Containing 1.96 acres, more or less.

AND

Parcel A

A tract or parcel of land situated in the State of Florida, County of Lee, being a part of the Southeast Quarter (SE1/4) of Section 23, Township 45 South, Range 24 East, and further bounded and described as follows:

Starting at the Northeast corner of said Southeast Quarter (SE1/4);
THENCE S89°08'26"W along the centerline of Cypress Lake Drive for 132.00 feet;
THENCE S01°16'00"E along the Westerly right-of-way line of us 41 (Tamiami Trail - SR 45) 116.00 feet to the Southerly right-of-way line of Cypress Lake Drive;
THENCE continue S01°16'00"E along said Westerly right-of-way line for 580.00 feet to the POINT OF BEGINNING;
THENCE continue S01°16'00"E along said right-of-way line for 183.45 feet;
THENCE S88°44'00"W for 157.96 feet;
THENCE S00°51'34"E for 280.00 feet;
THENCE N89°08'26"E for 159.95 feet to the West line of said right-of-way;
THENCE S01°16'00"E along said right-of-way line for 108.74 feet;
THENCE S89°08'26"W for 1,126.61 feet to the East line of former Iona Drainage District Canal "I";
THENCE N00°47'20"W along said East line for 733.18 feet;
THENCE N89°08'26"E for 228.46 feet;
THENCE N00°51'34"W for 103.00 feet;
THENCE N89°08'26"E for 65.00 feet;
THENCE S00°51'34"E for 65.89 feet;
THENCE N89°08'26"E for 364.00 feet;
THENCE S00°51'34"E for 42.00 feet;

continued...

THENCE **N89°08'26"E** for 195.05 feet;
THENCE **S00°51'34"E** for 154.98 feet;
THENCE **N89°08'26"E** for 269.12 feet to the POINT OF BEGINNING.

Said parcel contains 17.34 acres, more or less.

Said parcel subject to all other easements, rights-of-way and restrictions of record.

Bearings are based on the centerline survey of US 41.

AND

Parcel A1

A tract or parcel of land situated in the State of Florida, County of Lee, being a part of the Southeast Quarter (**SE1/4**) of Section 23, Township 45 South, Range 24 East, and further bounded and described as follows:

Starting at the Northeast corner of said Southeast Quarter (**SE1/4**);
THENCE **S89°08'26"W** along the centerline of Cypress Lake Drive for 132.00 feet;
THENCE **S01°16'00"E** along the Westerly right-of-way line of US 41 (Tamiami Trail'- . SR 45) 116.00 feet to the Southerly right-of-way line of Cypress Lake Drive;
THENCE **S89°08'26"W** along said Southerly line for 465.00 feet to the POINT OF BEGINNING;
THENCE continue **S89°08'26"W** along said right-of-way line for 702.39 feet to the West line of the Northeast Quarter (**NE1/4**) of said South, east Quarter (**SE1/4**);
THENCE **S00°35'38"E** along said West line for 245.00 feet;
THENCE **N89°08'26"E** for 51.23 feet to the East line of former Iona Drainage District Canal "I";
THENCE **N00°47'20"W** along said East line for 89.14 feet;
THENCE **N89°08'26"E** for 196.08 feet
THENCE **N00°51'34"W** for 60.00 feet;
THENCE **N89°08'26"E** for 456.10 feet;
THENCE **N00°51'34"W** for 95.86 feet to the POINT OF BEGINNING.

Said parcel contains 1.99 acres, more or less.

Said parcel subject to a Florida Power & Light easement as recorded in Official Records Book 1520 at Pages 846-847, over and across the Northerly 6.00 feet.

Said parcel subject to former I.D.D. Canal "I" along the Westerly property line.

Said parcel subject to all other easements, rights-of-way and restrictions of record.

Bearings are based on the centerline survey of US 41.

AND

Parcel B

A tract or parcel of land situated in the State of Florida, County of Lee, being a part of the Southeast Quarter (**SE1/4**) of Section 23, Township 45 South, Range 24 East, and further bounded and described as follows:

Starting at the Northeast corner of said Southeast Quarter (**SE1/4**);
THENCE **S89°08'26"W** along the centerline of Cypress Lake Drive for 132.00 feet;
THENCE **S01°16'00"E** along the Westerly right-of-way line of us 41 (Tamiami Trail ▪ SR 45) for 116.00 feet to the Southerly right-of-way line of Cypress Lake Drive;

continued...

THENCE S89°08'26"W along said Southerly line for 465.00 feet;
THENCE S00°51'34"E for 95.86 feet to the POINT OF BEGINNING;
THENCE continue S00°51'34"E for 134.14 feet;
THENCE N89°08'26"E for 200.00 feet;
THENCE S00°51'34"E for 195.00 feet;
THENCE S89°08'26"W for 195.05 feet;
THENCE N00°51'34"W for 42.00 feet;
THENCE S89°08'26"W for 364.00 feet;
THENCE N00°51'34"W for 65.89 feet;
THENCE S89°08'26"W for 65.00 feet;
THENCE S00°51'34"E for 103.00 feet;
THENCE S89°08'26"W for 228.46 feet to the East line of former Iona
Drainage District (I.D.D.) Canal "I";
THENCE N00°47'20"W along said East line for 264.25 feet;
THENCE N89°08'26"E for 196.08 feet;
THENCE N00°51'34"W for 60.00 feet;
THENCE N89°08'26"E for 456.10 feet to the POINT OF BEGINNING.

Said parcel contains 5.02 acres, more or less.

Said parcel subject to all other easements, rights-of-way and restrictions of record.

Bearings are based on the centerline survey of US 41.

AND

Parcel F

A tract or parcel of land situated in the State of Florida, County of Lee, being a part of the Southeast Quarter (SE1/4) of Section 23, Township 45 South, Range 24 East, and further bounded and described as follows:

Starting at the Northeast corner of said Southeast Quarter (SE1/4);
THENCE S89°08'26"W along the centerline of Cypress Lake Drive for 132.00 feet;
THENCE S00°16'00"E along the Westerly right-of-way line of US 41 (Tamiami Trail - SR 45) for 116.00 feet to the Southerly right-of-way line of Cypress Lake Drive;
THENCE continue S01°16'00"E along said Westerly right-of-way line for 763.45 feet to the POINT OF BEGINNING;
THENCE continue S01°16'00"E along said Westerly line for 281.13 feet;
THENCE S89°08'26"W for 159.95 feet;
THENCE N00°51'34"W for 280.00 feet;
THENCE N88°44'00"E for 157.96 feet to the POINT OF BEGINNING.

Said parcel contains 1.02 acres, more or less.

Said parcel subject to all other easements, rights-of-way and restrictions of record.

Bearings are based on the centerline survey of US 41.

Overall parcel described contains 27.33 acres, more or less.

WHEREAS, the applicant has indicated the property's current STRAP numbers are: 23-45-24-00-00000.0010 - Parcel A, 23-45-24-00-00002.0030 - Parcel B, 23-45-24-00-00002.0060 - Parcel F, 23-45-24-44-00000.0020 - Lot 2; and

WHEREAS, proper authorization has been given to Bean, Whitaker, Lutz & Barnes by Frank J. Cannon, General Partner, Cypress Lake Associates, the owner, and Curtis H. Barlow, Vice President, Wal-Mart Stores, the contract purchaser of the subject parcel, to act as agent to pursue this zoning application; and

WHEREAS, a public hearing was legally and properly advertised and held before the Lee County Hearing Examiner, with full consideration of all the evidence available, and the Lee County Hearing Examiner fully reviewed the matter in a public hearing held on February 4, 1992, and subsequently continued to May 29, 1992; and

WHEREAS, a public hearing was legally and properly advertised and held before the Lee County Board of County Commissioners, and in the legislative process the Lee County, Board of County Commissioners gave full and complete consideration to the recommendations of the staff, the Hearing Examiner, the documents on file with the county, and the testimony of all interested persons.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS, that the Board of County Commissioners does hereby APPROVE WITH CONDITIONS the request to amend Phase I CPD.

The Master Concept Plan, which deviates from certain Lee County Standards, is subject to the following conditions:

1. This development shall be in accord with the three-page Master Concept Plan "Wal-Mart at Cypress Lake Center" stamped received May 19, 1992, except as modified herein.
2. WITHDRAWN
3. Phase I CPD, Resolution **Z-87-196/1**, is amended to permit 250,923 square feet of retail commercial use instead of 240,000 square feet and to approve Deviations **(1), (2), (3) and (4)** as conditioned.
4. Phase I CPD, Resolution **Z-87-196/1**, is amended to include the Phase II CPD Lot 2 in the legal description. By including Lot 2 in Phase I CPD, all deviations and conditions approved in Resolution **Z-87-196/1** shall apply to Lot 2 except condition **#5** of Resolution **Z-87-196/1** shall not apply to Lot 2 (condition **#5** - minimum required open space for commercial planned development of 30% [Section **461.C.4.a.**] to 20%).
5. Lot 2 shall provide 30% open space. All new construction on Phase I CPD, Parcel A (Wal-Mart, including Lot 2) shall comply with the DRI Development Order **#7-8384-47** requirement to preserve 15% of native vegetation and all applicable open space requirements of the Development Standards Ordinance.
6. Phase I CPD shall be permitted a maximum of 6,500 square feet for restaurant and/or bar/cocktail lounge uses. This area reflects existing square footage used for restaurants in the Rental Retail Space and would allow replacement of an existing restaurant use while maintaining an acceptable level of parking. This restriction shall not apply to any outparcel.
7. The existing fenced-in area behind and part of **Scotty's** shall not be roofed, enclosed or expanded.
8. Invasive exotics shall be removed from all open space areas of the Phase I CPD, including Lot 2. These areas shall also be maintained free from invasive exotic vegetation. For purposes of this provision, invasive exotics shall include Melaleuca species (punk tree, cajeput tree, paperbark tree), Schinus terebinthifolius (Brazilian **pepper**, Florida **holly**), and Casuarina species (Australian pines). Additionally, Acacia auriculiformis (**earleaf** acacia) shall be removed and maintained free in all areas designated as "Undisturbed Open Space" as shown on the

"Site and Buffering" plan for Cypress Lake Center, as amended and approved on August 25, 1989. The removal of exotics shall occur within twelve months of **adoption** of this Resolution.

9. Prior to the issuance of the Final Development Order for this development, the Master Concept Plan shall clearly indicate that the parking area on Lot 2 is **specifically** designated for employee parking and shall 'be designed for assigned employee parking on a permanent and continuing basis for the Wal-Mart store. The developer shall provide the Division of Zoning written documentation that the Wal-Mart employees have been directed through store policy that all employees shall park only in the designated employee parking area.
10. The parking area identified on Lot 2 as indicated on the Master Concept Plan shall be **devoted** to the Wal-Mart store and not be utilized to service any other expansions of the shopping center that may be brought about through an amendment to zoning and/or the DRI Development Order,
11. Additional improvements shall be made to the handicap parking spaces for Wal-Mart, by painting the entire space blue and providing handicap access aisles. Also, **signage** and striping shall be provided for the fire lanes in front of the Wal-Mart store and all access roads to discourage obstruction of traffic circulation, illegal parking, and potential safety hazards.
12. Any theoretical surplus of parking resulting from this Resolution shall not be applicable toward the parking requirements on the Dr. Sparkle Outparcel 'F' Phase II.
13. The removal of the northernmost kiosk and the construction of the 42 parking spaces in its place shall occur no later than December 1, 1993, or within six months after the resolution of the litigation between Cypress Lake Associates and the "Do-A-Dome" Company presently located in said kiosk, whichever comes first.
14. As stated in the covenants and restrictions recorded in Official Records Book 1849, Pages 2699 through 2725 in May 1986; with the approval of the owner of Parcel A, the owners of Parcels A and B shall have the right to designate employee parking. Staff recommends that the owners of Parcels 'A' and 'B' provide designated employee parking as suggested in the above referenced covenants and restrictions.
15. Provide **parking modifications** to increase the number of spaces pursuant to the "Additional Parking Provided by Amendment" listed on the "Conceptual Parking & Retail Square Footage Plan Only" dated April 24, 1992. (Also, see attached Exhibit C to staff report.)
16. Deviation (1) from Section **461.C.2.a.1** of the Lee County Zoning Ordinance which requires all structures and pavements to be set back from the development perimeter a distance equal to the width of a minimum buffer area (where required) or fifteen (15) feet, whichever is greater, to allow all structures and pavements to be set back a distance of zero (0) feet from the development perimeter along the common lot line between Parcel "A", Phase I, and Lot 2, Phase II of Cypress Lake Center, is hereby APPROVED subject to the condition that this will apply to Phase I CPD, Parcel "A" only. Approval of this deviation will promote continuity of the traffic circulation internal to the overall project.
17. Deviation (2) from Lee County Zoning Ordinance 84-18, Section **500.22.F.1** requirement that uses with 10,000 square feet or more gross floor area requiring the receipt or distribution by vehicles of materials or merchandise shall have at least one permanent maintained off-street loading berth for the first 10,000 square feet, and one additional berth for each 20,000 square feet, or fraction thereof, gross floor area above the first 10,000 square feet, to allow a total of two loading bays for the Wal-Mart store (Parcel "A"), is hereby APPROVED subject to the condition that this will apply to the Wal-Mart store only. Approval of this deviation would allow Wal-Mart to maintain their existing loading bays and would avoid additional displacement of parking spaces.

18. Deviation (3) from Lee County Zoning Ordinance 84-18, Section 500.21.1.2 requirement that restaurants provide sixteen (16) spaces for each one thousand (1,000) square feet of total area, to allow six thousand five hundred (6,500) square feet of restaurant use within CPD Z-87-196/1, to be calculated at the commercial retail rate already approved in DRI #7-8384-47 of **4.5/1,000** to allow the existing parking deficit within the CPD for Phase I to be reduced from 171 to 96. This deviation is hereby 'APPROVED subject to the condition that this will apply to the existing 6,500 square **feet** of retail space used for restaurants, presently including 'Lox Stox & Bagels', 'TCBY', 'Bari's Pizza' and 'Miss T's'. Approval of this deviation will act to reduce the parking deficit from 171 spaces to 96 spaces. When the additional spaces are constructed as proposed in the new parking plan, the parking deficit within Phase I CPD will be corrected with a resulting credit of twenty (20) parking spaces.
19. Deviation (4) from DSO Ordinance 82-42, Section C.5.e.4.b requirement that landscaped islands shall be used to subdivide parking areas into parking bays of not over 40 spaces per bay and that no more than 20 spaces occur in an uninterrupted row, to allow up to a maximum of 28 uninterrupted parking spaces in an aisle on Parcel "A" in front of Wal-Mart, is hereby APPROVED subject to the condition that this will **apply** to Phase I, Parcel "A" only. Approval of this deviation would allow resurfacing and re-striping of the parking spaces in front of Wal-Mart which will **alleviate** the existing parking deficit.
20. All conditions of Resolution Z-87-196/1 shall remain in full force and effect except as modified herein. In the case of conflict, this **Resolution** shall control.
21. The requested 20,600 square foot expansion to Wal-Mart is subject to compliance with the approved totals of retail building area contained in the Cypress Lake Center DRI Development Order **#7-8384-47**, as amended, and all conditions of the DRI Development Order shall remain in full force and effect, and are incorporated herein by reference.
22. Approval of this request shall confirm the following site data:
 - a) The existing and approved building square **footages** as modified herein (see Exhibit A);
 - b) The required number of parking spaces and the number provided as modified herein (see Exhibits B and C); and
 - c) The open space required and provided shall be approved as shown on the "Site and Buffering" plan for Cypress Lake Center, as amended and approved August 25, 1989.

Site Plan 92-011 is attached hereto and incorporated herein by reference, as a reduced copy of the Master Concept Plan.

The following findings of fact were made in conjunction with this request:

- A. That the subject Development of Regional Impact (DRI) development order amendment request will not result in any increased use intensity within the development, and merely re-allocates previously approved development rights between component parcels within the overall project.
- B. That the proposed amendment does not affect the project's compatibility with existing or planned uses within the approved DRI project, and will not act to create any hazard, nuisance or other detriment to persons or property within the development or on property situated adjacent to or in the near vicinity of the development.
- C. That, as an approved, vested DRI development, considerations of Lee Plan consistencies and locational standards are not relevant since the request presented in this application does not incorporate any use or intensity increases.

- D. That the deviations are the minimum necessary to advance the purposes of the development while providing for the adequate protection of public interests and for preventing significant adverse impacts on adjacent or near vicinity uses.
- E. That the conditions, together with other applicable regulations, will act to provide sufficient safeguards to insulate public interests from any adverse impacts that could reasonably arise from the requested development amendment.
- F. That the subject requests will have no adverse impacts on environmentally sensitive areas or valued natural resources.
- G. That approval of the subject requests will not result in the imposition of additional burdens on existing transportation facilities serving the subject DRI development, since no additional traffic-generating uses beyond those already approved are proposed.

The foregoing Resolution was adopted by the Lee County Board of County Commissioners upon a motion by Commissioner Manning, and seconded by Commissioner Donald Slisher and, upon being put to a vote, the result was as follows:

John E. Manning	Aye
Douglas R. St. Cerny	Aye
Ray Judah	Aye
Vicki Lopez-Wolfe	Absent
Donald D. Slisher	Aye

DULY PASSED AND ADOPTED this 20th day of July, A.D., 1992.

ATTEST: .
CHARLIE GREEN, CLERK

BY:

Clara J. Wreck,
Deputy Clerk

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

BY:

W. H. H. H.
Chairman

Approved as to form by:

Timothy J. Green
County Attorney's Office

FILED

JUL 31 1992

CLERK CIRCUIT COURT
BY Clara J. Wreck D.C.

TRACT B
SCOTT'S

TRACT C
SCOTT'S

TRACT A
PART OF 2-87-196/1
SEE SHEET 2 OF 3
FOR PARKING & SQUARE FOOTAGE
PLAN OF SHOPPING CENTER

TRACT F
ON SPURVE CAR WASH

EXISTING WAL-MART

20,000 S.F. EXPANSION

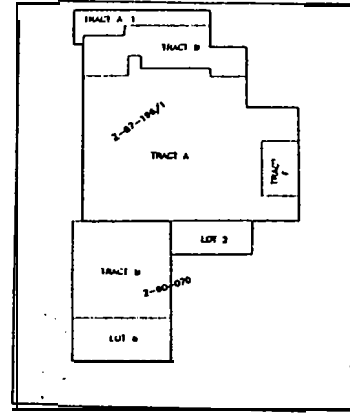
EMPLOYEE PARKING

LOT 2 PART OF

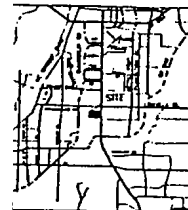
2-90-070

CYPRESS TERRACE 60'

LAKE AVE 60'



LIMITS OF AMENDMENT REQUEST



VICINITY SKETCH
N.T.S.

APPROVED

RECEIVED
MAY 13 1992

Master Concept Plan
See Plan # 2266 Page 1 of 1
Subject to conditions in Resolution 22-01
Zoning Code # 2-2-100

ZONING COUNTER

PRINTED

MAY 14 1992

MASTER CONCEPT PLAN AMENDMENT TO CPD 2-87-196 & 2-90-070
WAL-MART AT CYPRESS LAKE CENTER
LEE COUNTY, FLORIDA

Bean, Whisker, Lutz & Barnes, Inc.

CONSULTING ENGINEERS AND SURVEYORS

STATE-6 CREDENTIAL NO. 10000, FLS. 10000, FLS. 10000

SEE US FOR SURVEYING, ENGINEERING, AND ARCHITECTURAL SERVICES

(FWS 400-100)

(FWS 770-100)

DATE	PROJECT NO.	REVISION	BY	DATE	SCALE	FILE NO.
2-11-92	MCB00000	1	TRL		1"=60'	22-01

Schedule of work includes all work permitted by right in the C6 and C1 zoning districts

144, 90, 11 to 230 423) F of total Commodity was in the amount of
 144, 90, 11 to 230 423) F of total Commodity was in the amount of

Deviation No. 4 will allow resurfacing and restriping of the parking referenced above to help alleviate the existing parking deficit. This deviation implements conditions set forth by the County Zoning staff in their review of the amendment request. Twenty seven additional spaces are possible by approval of this deviation.

A18 discharge, bulkheads and site design to comply with South Florida water management District regulations in anticipation of time at which the project will be completed. The plan has now received final Development Order for drainage and improvements from the Dade County Board of Commissioners. The plan includes Cypress Lake Center Phase II is a plot of record, this amendment affecting lot 2 will in no way affect other land parcels within the lot 2 center phase II. The plan also shows the lot line reconfiguration as standards set forth in resolution 90-078.

A certain design flexibility shall remain for the localities and lots of parking located on lot 2 will final plan approved by the home rule board. The plan was submitted to the lot 2.

The forty two (42) parking spaces proposed in the block map of lot 2 will increase parking space prior than December 1, 1993, or six months after the resolution of pending litigation regarding the shopping center under current litigation. Local Government

Destruction of employee walking and signage will comply with the Department of Public Works and Engineering. The plan was recorded in O.R. Book 184B, Page 2693, through the Cypress Lake Shopping Center.

Affected approval of the plan will include Sparkle Car Wash and Quik-Lube auto repair a total of 2,187 sq ft 2682 sq ft have been constructed for the purpose of the plan. The plan also shows the lot to be built for the Quik-Lube auto repair. AFDO #5 to retire until December 1, 1993 unless amended pursuant to the provisions of the plan.

AFDO #5 12-10-BR requires twelve (12) additional parking spaces based on three vehicles plus four (four) per bay. The plan shows the Quik-Lube auto repair.

RECEIVED
MAY 13 1992
MAY 14 1992
ZONING COUNTER

18163 - 8 McCLACHLAN BOULEVARD, FORT MYERS PALM BEACH, FLORIDA

[illegible]

DATE	NAME	ADDRESS	CITY	STATE
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TD	TL	TR	HTS	Exp. E	Q
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DOI: 10.1002/anie.201607891

