

RESOLUTION NUMBER Z-96-070

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

WHEREAS, Wal-Mart Stores, Inc., represented by Accord Real Estate Group, Inc. filed an application for an amendment of the Cypress Lake Center Commercial Planned Development, in reference to Cypress Lake Center, Phase I; and

WHEREAS, the subject property is located at 7090 Cypress Terrace, and is described more particularly as:

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

Parcel A

A tract or parcel of land situated in the State of Florida, County of Lee, being a part of the Southeast Quarter (SE¼) 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 (SE¼);
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"E 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;
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 (SE¼);
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 S89°08'26"W along said right-of-way line for 702.39 feet to the West line of the Northeast Quarter (NE¼) of said Southeast Quarter (SE¼);
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 IDD 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

A tract or parcel of land situated in the State of Florida, County of Lee, being a part of the Southeast Quarter (SE¼) 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 (SE¼);
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;
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"W 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 (IDD) 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 (SE¼) of Section 23, Township 45 South, Range 24 East, and further bounded and described as follows:

Starting at the Northeast corner of said Southwest Quarter (SW¼);
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;
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.

WHEREAS, the applicant has indicated the property's current STRAP number is 23-45-24-44-00000.0020; and

WHEREAS, Wal-Mart Stores, Inc., the owner of the subject parcel, authorized Accord Real Estate Group, Inc., to act as agent to pursue this zoning application; and

WHEREAS, Accord Real Estate Group, Inc., authorized Pavese, Garner, Haverfield, Dalton, Harrison & Jensen and Johnson Engineering, Inc., to act as agents to pursue this zoning application; and

WHEREAS, a public hearing was advertised and held on November 19, 1996 before the Lee County Hearing Examiner who gave full consideration of the evidence available; and

WHEREAS, a public hearing was advertised and held on December 16, 1996 before the Lee County Board of County Commissioners who 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 **APPROVES with conditions** the Applicant's request for an amendment of the Cypress Lake Center Commercial Planned Development granted by Zoning Resolution Z-90-070 and amended in Zoning Resolution Z-92-011/1, to remove Lot 2 from Phase I, to place it in Phase II. The action reverses the original action taken in Zoning Resolutions Z-92-011/1 and Z-92-011/2.

SECTION A. CONDITIONS:

The rezoning and Master Concept Plan are subject to the following conditions:

1. The development of this project must be in accordance with the three-page Master Concept Plan entitled "Zoning Concept Plan - Cypress Lake Center," prepared by Howell F. Davis & Associates, Inc. Project #87-113, dated 7/29/87, revised 9/1/87 & 9/3/87 and stamped received September 9, 1987, except for Site and Buffering Plan, dated 1/7/87, last revised 7/15/87, except as modified by the conditions below. This approval does not alleviate the need to comply with all state and county development regulations, except as specifically modified by this approval. If changes to the MCP are subsequently pursued, appropriate approvals will be necessary.
2. The uses and development regulations for this property are limited to the uses listed in Zoning Resolution Z-87-196/1 which include the following:

All uses permitted by right in the CG zoning district, as well as the following:

Variety Store
Wholesale Establishments (Group III & IV)
Insurance Companies
Social Services (Groups I & II)
Non-store Retailers (Groups I, II, & III)

3. All terms and conditions of any previous actions on the part of the County remain fully binding upon Phase I of Cypress Lake Center, unless specifically addressed and modified by this amendment. [The only action addressed as part of this request is the removal of Lot 2 from Phase I and its inclusion in Phase II.] This project must fully comply with all commitments and conditions of the DRI Development Order, any previous zoning resolutions, including, but not limited to Z-87-196/1 and Z-92-001/1.
4. Phase I CPD is amended to permit only 240,000 square feet of retail commercial uses instead of 250,923 square feet.

SECTION B. FINDINGS AND CONCLUSIONS:

The following findings and conclusions were made in conjunction with the approval of the requested rezoning:

1. The applicant has proved entitlement to this amendment by demonstrating compliance with the Lee Plan, the Land Development Code, and other applicable codes and regulations.
2. The requested amendment:
 - a) meets or exceeds all performance and locational standards set forth for the potential uses allowed by the request;
 - b) is consistent with the densities, intensities and general uses set forth in the Lee Plan;
 - c) is compatible with existing or planned uses in the surrounding area; and
 - d) will not adversely affect environmentally critical areas and natural resources.
3. Approval of the request will not place an undue burden upon existing transportation or planned infrastructure facilities, and the site will be served by streets with the capacity to carry traffic generated by the development.
4. Urban services, as defined in the Lee Plan, are, or will be, available and adequate to serve the proposed land use.
5. The proposed use or mix of uses is appropriate at the subject location.
6. The recommended conditions to the concept plan and other applicable regulations provide sufficient safeguards to the public interest.
7. The recommended conditions are reasonably related to the impacts on the public's interest created by or expected from the proposed development.

The foregoing resolution was adopted by the Lee County Board of County Commissioners upon a motion by Commissioner Ray Judah, and seconded by Commissioner John E. Manning and, upon being put to a vote, the result was as follows:

John E. Manning	AYE
Douglas R. St. Cerny	AYE
Ray Judah	AYE
Andrew W. Coy	AYE
John E. Albion	AYE

DULY PASSED AND ADOPTED this 16th day of December, A.D., 1996.

ATTEST:
CHARLIE GREEN, CLERK

BY: *Charlie Green*
Deputy Clerk

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

BY: *Andrew W. Coy*
Chairman

Approved as to form by:

Ann Marie Collins, Assistant County Atty
County Attorney's Office

FILED

DEC 18 1996

CLERK OF CIRCUIT COURT
BY: *Charlie Green* D.C.