

# BOARD OF COUNTY COMMISSIONERS

## INTER-OFFICE MEMORANDUM

Attachment # 2  
Page 1 of 11

To: Luis Serna, Development Review Administrator  
Department of Growth & Environmental Management

From: Herbert W.A. Thiele, Esq.   
County Attorney

Date: March 6, 2000

Subject: Killearn Lakes DRI Amended Development Order, Third Amendment

---

Enclosed for your files is a certified copy of the Killearn Lakes DRI Amended Development Order, Third Amendment. Certified copies have also been sent this date to Nancy G. Linnan, Esq., as the authorized representative of the applicant; to Mike Donovan, DRI Coordinator, at Apalachee Regional Planning Council; and to Colin Roopnarine, Esq., at the Department of Community Affairs.

HWAT:mal

Attachment

*C. Reginald  
signed  
copy - keep.*

KILLEARN LAKES DRI AMENDED DEVELOPMENT ORDER  
THIRD AMENDMENT

A THIRD AMENDMENT TO AN AMENDED DEVELOPMENT ORDER OF THE BOARD OF COUNTY COMMISSIONERS OF LEON COUNTY, FLORIDA, PURSUANT TO CHAPTER 380, FLORIDA STATUTES, FOR THE KILLEARN LAKES DEVELOPMENT OF REGIONAL IMPACT

I. FINDINGS OF FACT

1. On November 14, 1974, Killearn Properties, Inc. ("Killearn") filed a Development of Regional Impact ("DRI") Application for Development Approval ("ADA") for the portion of its Killearn Lakes Plantation development not vested from DRI review. On March 23, 1976, the Board of County Commissioners of Leon County ("Leon County") adopted the DRI Development Order approving the project "as stated."
  
2. On July 13, 1990, the Florida Department of Community Affairs ("DCA") in DCA Case No. 90-NOV-5, filed a Notice of Violation against Killearn and others seeking to halt development of the Killearn Lakes DRI. Killearn and others petitioned for a formal administrative hearing pursuant to Section 120.57(1), Florida Statutes (FS).

Following a Division of Administrative Hearing Officer's Recommended Order on August 28, 1991, DCA issued a Final Order on January 23, 1992. That Final Order was appealed to the First District Court of Appeal ("Court") by Killearn and others and the court issued a final disposition in its Case No. 92-00251, 92-00309 and 92-00370 (Consolidated) on August 16, 1993. The court held there was no build-out date as that term is contemplated in Section 380.06(19), FS, but directed Killearn to provide sewer service to certain named subdivisions.

3. Following this history, the DCA entered its Amended Final Order on October 6, 1993. It held that Killearn would have two years from August 26, 1993, in which to provide sewer service to Mallard Point, Units I and II; Kinhega Oaks; Kinhega Landings; Kinhega Estates; Kinhega Lodge and Mallard Bluff subdivisions unless the DRI Development Order was modified. It also gave Killearn one year, until August 26, 1994, within which to file for and receive "a new final DRI development order for all changes to the Killearn Lakes DRI plan of development . . ."

4. As a result, Killearn, its successor Capital First, Inc. ("Capital First"), T.O.N. Realty Partnership and the

developers of the Kinhega Landing and Kinhega Oaks subdivisions, through their authorized agent, on March 4, 1994, filed an NOPC to a previously approved DRI pursuant to Section 380.06(19), ES, and 9J-2.025(11), Florida Administrative Code, (FAC). Additionally, Killearn was directed by DCA to file for a change on all other DRI property on which changes have occurred since the original approval. These changes and the actual level of development as reflected in recorded and unrecorded plats was confirmed by the Board of County Commissioners of Leon County, Florida ("County") by approval of the Amended Development Order (ADO) dated July 12, 1994. The resolution also directed the Developer to prepare a traffic study of the Tekesta Drive/Bannerman Road intersection when the development achieved 75% of its build-out.

5. Pursuant to FDCA's Amended Final Order, Killearn and Capital First, through their authorized agent, on May 2, 1995 filed an NOPC to a previously approved DRI pursuant to Section 380.06 (19), ES and 9J-2.025 (11), FAC. The purpose of the NOPC was to modify the July 12, 1994 DRI Amended Development Order to remove the requirement for the Developer to provide central sewer service to any of the subdivisions and parcels named in FDCA's Amended Final Order. The Leon County Commission issued a

resolution dated July 11, 1995 which deleted the requirement for central sewer for four of the five subdivisions but required the developer to provide central sewer service to the Kinhega Landings subdivision. Central sewer for any future development of the Kinhega Lodge property was also required.

6. Subsequently, on March 5, 1997, Capital First, through their authorized agent, filed an NOPC to a previously approved DRI pursuant to Section 380.06 (19), ES and 9J-2.025 (11), EAC. The NOPC had two purposes. First, the NOPC provided information to satisfy the July 12, 1994 amendment to the Killearn Lakes development order requiring a traffic study be prepared for the Tekesta Drive/Bannerman Road intersection when the development is 75% built out. The second purpose of the NOPC was to modify the plan of development for the Killearn Lakes DRI to delete 255 condominium single family attached units, add 75 single family detached residential units and designate a parcel for a church and school use, the school use being provided for in the original DRI DO. The designation would provide for a church facility of 39,650 square feet and a church elementary and middle school of 95,010 square feet and a capacity of 950 students on a maximum of 3.12 acres for the school and 7.77 acres for the church. The church and school

designation encompasses the entire parcel known as the Homeowners' Association parcel. The Leon County Commission issued a resolution dated May 13, 1997 requiring the Developer to install an eastbound left turn lane on Bannerman Road by December 31, 1998. The resolution also approved the revised development plan identified in the NOPC.

7. Subsequently, on October 18, 1999, Ephraim Asher, Developer of Plantation Shopping Center in Killearn Lakes DRI, through his authorized agent, filed an NOPC to a previously approved DRI pursuant to Section 380.06 (19), FS and 9J-2.025 (11), FAC. The purpose of the NOPC is to restore 20,700 s.f. of commercial space inadvertently released from Commercial Area "C" of the DRI in Leon County Resolution dated July 12, 1994 and to reassign the 20,700 s.f. to Parcel "G" within Commercial Area "C".

8. Because the Department of Community Affairs has determined that this proposed change is in the nature of a s.380.06(19)(e)2., FS, change, a public hearing is not required.

II. CONCLUSIONS OF LAW

1. Leon County is the governing body having jurisdiction over the review and approval of the NOPC, pursuant to Chapter 380, FS, and is authorized and empowered to issue this Third Amendment to the Killearn Lakes DRI ADO.
2. The property does not lie within an Area of Critical State Concern.
3. The property is consistent with the adopted Leon County Comprehensive Plan and applicable land development regulations.
4. The proposed development would not unreasonably interfere with the objectives of the State Land Development Plan applicable to the area.
5. The proposed development is consistent with the Apalachee Strategic Regional Policy Plan and the State Comprehensive Plan.
6. The provisions of this ADO shall not be construed as a waiver of or exception to any local, state or federal law or regulation.

7. The impacts of this development, as conditioned by this ADO, are adequately addressed pursuant to the requirements of Chapter 380, ES, and the changes as approved by the County do not constitute a substantial deviation to the July 12, 1994 Amended Development Order, the July 11, 1995 Amended Development Order, the May 13, 1997 Amended Development Order or create additional local impacts.
  
8. To the extent that the ADA or NOPC, or any other document is inconsistent with the terms and conditions of this ADO, this ADO shall prevail.

NOW, THEREFORE, having made the aforementioned findings of fact and conclusions of law, the NOPC is hereby approved and incorporated by reference herein, subject to the following modifications and conditions of development set forth in this ADO:

III. GENERAL PROVISIONS

1. The approved plan of development for all property, shall be as set forth in the July 12, 1994 Amended Development Order with the following exceptions:
  - a. The approved plan of development, as set forth in the Master Plan (dated March, 1997), and the

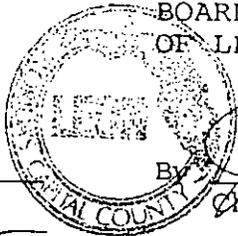
revised Land Use Chart (dated August 1999) attached as COMPOSITE EXHIBIT 1, shall be developed in accordance with the information, data, plans and commitments contained in the NOPC and supplemental documents and revisions to the NOPC and the exhibits and attachments to those documents except where otherwise specifically stated in this ADO.

- b. The amount of commercial s.f. gross buildable area (GBA) within Commercial Area "C" (COMM-C) shall be increased by 20,700 s.f. (GBA). The additional 20,700 s.f. of commercial space shall be allocated to Parcel G on COMM-C as set forth in revised Figure 3 - Commercial Area "C" attached as EXHIBIT 2.
- c. That no site plan for the additional commercial square footage (20,700 square feet) will be approved until the required eastbound left turn lane on Bannerman Road and Tekesta Drive is in place, or until funds for the design and construction for these improvements are paid to Leon County whichever comes first, or until other appropriate mitigation satisfactory to Leon County and approved as a subsequent Notice of Proposed Change to the DRI Development Order is completed.

- d. That the additional commercial square footage (20,700 square feet) shall be subject to the Leon County Environmental Management Act standards (Article VII, Chapter 10 of the Leon County Code of Ordinances) that are in effect at the time of submission of a complete site plan application.
  
2. Within sixty (60) days of the issuance of this Third Amendment to the ADO, the Developer, Ephraim Asher, shall cause a Notice of Adoption of this Amendment to be recorded among the Public Records of Leon County in accordance with Section 380.06(15), ES and shall provide a copy of the recorded Notice to the County, ARPC and DCA.
  
3. The County Attorney is hereby directed to send certified complete copies of this Third Amendment to the ADO within 10 days of the date of this Amendment to the ARPC, the DCA and the authorized representative of the applicant, by certified mail, return receipt requested.
  
4. This Third Amendment to the ADO shall take effect upon transmittal to the parties specified in Subsection 380.07 (2), ES.

DONE AND ORDERED this 29<sup>th</sup> day of Feb., 2000, 1999.

ATTEST:  
By: Dave Lang Clerk  
By: James G. Sauls Chair  
Approved as to form:  
[Signature]  
County Attorney



BOARD OF COUNTY COMMISSIONERS  
OF LEON COUNTY, FLORIDA

A Certified Copy  
Attest.

Dave Lang

Clerk Circuit Court  
Leon County, Florida.

By: [Signature]  
D.C.

