



To: Meighan Alexander
Village Clerk

Date: December 04, 2013

From: Darby P. Delsalle, AICP, Director
Department of Planning and Zoning

RE: VPB-13-001 South Motor
Company of Dade County

Pursuant to Section 30-30.12(a), Simon Ferro of Gunster, PA, on behalf of the applicant has submitted the following supplemental information. Attached please find the following documents to be distributed as part of South Motor Company of South Dade, Co. public hearing application:

Email correspondence with attachments, between the applicant and the Department of Planning and Zoning, responding to staff's analysis.

Revised staff reports, resolutions, and ordinances reflective of the email correspondence above.

Updated survey

Darby Delsalle

From: Ferro, Simon <SFerro@gunster.com>
Sent: Monday, December 02, 2013 7:31 AM
To: Darby Delsalle; Travis Kendall
Cc: Ricardo.Lujan@southmotors.net; LoumietJ@gtlaw.com
Subject: Comments to Staff Reports, Ordinances and Resolutions
Attachments: 4142367_1.docx

Good morning Darby, hope you had a great Thanksgiving. Attached is our response and comments to the hearing package we received last week relating to the application by South Motor Company of Dade County (South Motor), PH VPB-13-001 (Application), which will be heard by the Village Council on December 16, 2013. The package included a Zoning Analysis, a staff report on South Motor's FLUM and Rezoning applications, a staff report on the Village's FLUM and Rezoning applications for the park property, and various ordinances and resolutions related to the Application. In addition, the hearing package contained copies of backup material for the Application.

Many of the comments relate to typos and grammatical issues, but some are more substantive. I'm available all day if you wish to discuss them. I can also drop by your office this morning if you're available. Please let me know what's convenient for you.

Thanks and best,

Simon



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FLORIDA'S LAW FIRM FOR BUSINESS

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<http://www.gunster.com/terms-of-use/>

Good ___ Darby, hope you had a great Thanksgiving. Below is our response and comments to the hearing package we received last week relating to the application by South Motor Company of Dade County (South Motor), PH VPB-13-001 (Application), which will be heard by the Village Council on December 16, 2013. The package included a Zoning Analysis, a staff report on South Motor's FLUM and Rezoning applications, a staff report on the Village's FLUM and Rezoning applications for the park property, and various ordinances and resolutions related to the Application. In addition, the hearing package contained copies of backup material for the Application.

We have reviewed the Zoning Analysis, staff reports and proposed ordinances and resolution and wish to make the following comments and observations:

Zoning Analysis:

Page 1 of 16: B. Background This paragraph explains South Motor's request as consisting of a site plan modification, which requires a rezoning to B-2, a future land use map (FLUM) amendment and the dedication of the easement for the park. ***Should also include deletion/modification of prior covenants and resolutions.***

Requested language is added.

Page 3 of 16: 4th paragraph This paragraph states South Motor will provide a 35 foot landscape buffer along the east end of the property. ***South Motor is providing a 35-40 foot buffer, which will average to 37 feet.***

Requested language is added.

Page 13 of 16: 1st paragraph This paragraph states that the project is "largely" in compliance. ***We believe the project is in compliance, subject only to the conditions.***

Agreed, the word "largely" is stricken.

Page 16 of 16: H. Recommendation This paragraph outlines conditions for approval. Condition #5 requires execution of a Unity of Title. ***We have not reviewed a Unity of Title form, and such should be reviewed and approved by both the Village and South Motors as soon as possible. Will the Unity of Title include the park property? What will be the release requirements? Will release of any portion of the property require a public hearing? This issues should be discussed and agreed upon prior to the December 16th hearing***

Language is added stating ", or similar agreement or covenant prior to issuance of a building permit".

Condition #8 requires completion of the traffic circle as a condition to approval. ***South Motor has committed to a contribution of \$130,000 to construction of the traffic circle. We do not know if and when the traffic circle will be constructed. Completion of the circle should not be a condition to approval, as South Motor does not have control over its construction. As written, buildings permits or certificates of occupancy could be denied South Motors until the traffic circle is completed. This section should be clarified. Also, there is no mention as to when the contribution needs to be made. It should be made prior to commencement of construction of traffic circle. Finally, we believe the traffic***

circle should be located at approximately SW 164th Street and SW 93rd Avenue, not SW 92 Avenue. SW 92 Avenue is already a 4-way stop intersection and the stop signs constitute an effective traffic calming element. The proper location of the traffic circle is as close to the park as possible. South Motors' monetary contribution to construction of the traffic circle is conditioned on construction of the traffic circle on the SW 93rd Avenue location.

Agreed, conditions 8 and 9 are combined to reflect dedication and circle options only.

Per subsequent telephone conversations, the following condition was added: "11. Property shall comply with Miami-Dade County platting requirements as applicable."

Staff Report on South Motor's FLUM and Re-Zoning, 2d Reading

Page 18 of 21: 2nd paragraph (Finding) This paragraph states that the Application is conditionally consistent if applicant submits a covenant tying the property to the proposed site plan. *While South Motor is providing an Easement Agreement for the park, we are not providing a covenant tying the property to proposed site plan. This has never been requested nor is it a condition to any of the approvals. This language may be a vestige of another application where it was required. This language may mislead the Council and/or the public and should be deleted.*

Agreed, Language is removed.

Page 21 of 21: H. Recommendation This section outlines the conditions to approval. *These conditions should include deletion of all prior plans and resolutions, not just the 1980 resolution and plan. Existing language is correct. It provides for the removal of the necessary language in the 1980 and 1982 resolution, the release of the 1980 declaration, and preserves prior variance approvals granted to existing signage at the property. Further any resolution pertaining to site plan configuration becomes moot once the proposed site plan modification is adopted. No changes made.*

Staff Report Village FLUM and Re-Zoning

Page 2 of 13: A. Background. This paragraph describes the various requests under the Application. *It should include deletion/modification of all prior covenants, site plans and resolutions.*

Language added.

Page 2 Of 13: Last paragraph (Update since first reading) This paragraph states the South Motor is committing \$5,000.00 per year for 10 years for park maintenance. *Per our agreement and the terms of the Easement Agreement, South Motor is committing \$10,000.00 per year for 5 years.*

Incorrect, because the phasing plan provides for delivery of the park in 2 phases separated by 5 years, the easement agreement provides for \$5,000 a year for 5 years the first phase of the park, with the same arrangement when the remaining portion comes on line. Thus, the agreement is \$5,000 a year for 10 years. No changes made.

Page 6 of 13: 1st paragraph This paragraph explains the FLUM approval process and how the FLUM application will be transmitted to DEO. *Per FS 163.3187, small scale amendments are no longer transmitted to the state. The state only gets involved if there is a third part appeal of the application. The appeal period is 30 days after adoption. This language should be deleted or clarified. This*

language appears throughout other ordinances and resolutions and they should all be revised to reflect the same process.

Although the application is under 10 acres and does not include any elements of critical state concern, Florida Statutes still require the 30 day letter before the decision is final. Regardless, slight modifications were provided point to the specific provision of Florida Statutes and the word "forwarding" is used in place of "transmittal."

Page 8 of 13: Subsection II-Future Land Use Amendment This paragraph makes reference to the variance criteria found in Section 30-30.8(b). *This section establishes criteria fro FLUM approval, not variances.*

The word "variance" is struck. Section 30-30.8 is titled "Amendment to the Comprehensive Plan."

Page 13 of 13: H. Recommendation This section outlines the conditions to approval. *These conditions should include deletion of all prior plans and resolutions, not just the 1980 resolution and plan.*

Existing language is correct. It provides for the removal of the necessary language in the 1980 and 1982 resolution, the release of the 1980 declaration, and preserves prior variance approvals granted to existing signage at the property. Further any resolution pertaining to site plan configuration becomes moot once the proposed site plan modification is adopted. No changes made.

Resolution to Amend /Delete Covenant

Page 2 of 3: Line 35 (Section 3. Release) Line 35 states [the declaration] ...is hereby authorized to be released and deleted. *It should read "...is hereby released and deleted."*

Existing language is correct. Subsequent to the Village's action, it shall become incumbent upon the applicant to record a declaration as supported by the resolution which deletes the item in question.

Resolution for Site Plan Modification

Page 3 of 5: Conditions #6 and #9 These conditions to approval deal with the Unity of Title and completion of traffic circle. *As stated above, we have not reviewed a Unity of Title form, and such should be reviewed and approved by both the Village and South Motors as soon as possible. Will the Unity of Title include the park property? What will be the release requirements? Will release of any portion of the property require a public hearing? This issues should be discussed and agreed upon prior to the December 16th hearing*

Language is added stating ", or similar agreement or covenant prior to issuance of a building permit".

As stated above, South Motor has committed to a contribution of \$130,000 to construction of the traffic circle. We do not know if and when the traffic circle will be constructed. Completion of the circle should not be a condition to approval, as South Motor does not have control over its construction. As written, buildings permits or certificates of occupancy could be denied South Motors until the traffic circle is completed. This section should be clarified. Also, there is no mention as to when the contribution needs to be made. It should be made prior to commencement of construction of traffic circle. Finally, we believe the traffic circle should be located at approximately SW 164th Street and SW 93rd Avenue, not SW 92 Avenue. SW 92 Avenue is already a 4-way stop intersection and the stop signs constitute an effective traffic calming element. The proper location of the traffic circle is

as close to the park as possible. South Motors' monetary contribution to construction of the traffic circle is conditioned on construction of the traffic circle on the SW 93rd Avenue location.

Agreed, conditions 9 and 10 are combined to reflect dedication and circle options only.

Ordinance for Village FLUM Park Amendment

This resolution has 5 pages. The all pages are misnumbered. Including pages 4 of 3 and 5 of 3.

Corrected.

Page 1 of 3: Line 35: Applicant is called South Motors Company... *Correct name is South Motor Company ... Delete "s" from Motors.*

Corrected.

Page 1 of 3: Line 39: This paragraph describes the various requests under the Application. *It should include deletion/modification of all prior covenants, site plans and resolutions.*

Requested Language added.

Page 1 of 3: Line 43 This line states South Motor submitted a proposed Easement Agreement together with the Application. *South Motor submitted the Easement Agreement months after submittal of the application.*

The actual language reads as such "South Motors proposes to provide a park to the public, and submits together with its site plan modification application either a covenant, leasehold or easement for said land..."

This statement is correct as it is in fact part and parcel with the application. There are many aspects of the initial submittal that were provided at a later date such as the letter of intent, survey, and plan sets.

No changes made.

Page 2 of 3: Line 43 Wording "...located with the property..." *Should be "...located within the property..."*

Corrected.

Page 3 of 3: Lines 1-20 These Whereas all comment on transmittal to DEO of the park FLUM after approval by the Council. *As stated above, Per FS 163.3187, small scale amendments are no longer transmitted to the state. The state only gets involved if there is a third part appeal of the application. The appeal period is 30 days after adoption. This language should be deleted or clarified. This language appears throughout other ordinances and resolutions and they should all be revised to reflect the same process.*

Although the application is under 10 acres and does not include any elements of critical state concern, Florida Statutes still require the 30 day letter before the decision is final. Regardless, modifications were made to remove any ambiguity.

Page 4 of 3 (sic): Line 4 Legal description language says "...said Tract 7 and a point on a curve..." *Should read" ...said Tract 7 and to a point on a curve..."*

Corrected.

Page 4 of 3 (sic): Lines 17 and 18 *Correct name to South Motor (no "s"). Also, there is a "Co." after Applicant name. Also, on line 18, should delete "...transfer title....", as that will not occur until later.*
Corrected.

Page 4 of 3 (sic): lines 40-44 (Effective Date) Again, reference to transmittal of application approval to DEO. *Same comments as above re small scale amendments.*

Although the application is under 10 acres and does not include any elements of critical state concern, Florida Statutes still require the 30 day letter before the decision is final. Regardless, modifications were made to remove any ambiguity.

Ordinance Village Park Re-Zoning

Page 1 of 4: Lines 21-25 This Whereas describes the requests under the Application. *All requests should be listed, not just site plan modification and re-zoning.*
Language added as requested.

Page 1 of 4: Line 28 Makes reference to applicant submitting Easement Agreement with Application. *Same as above, we submitted Easement Agreement months after Application submittal.*
The actual language reads as such "South Motors proposes to provide a park to the public, and submits together with its site plan modification application either a covenant, leasehold or easement for said land..."
This statement is correct as it is in fact part and parcel with the application. There are many aspects of the initial submittal that were provided at a later date such as the letter of intent, survey, and plan sets.
No changes made.

Page 2 of 4: Line 22 Legal description language says "...said Tract 7 and a point on a curve..." *Should read"...said Tract 7 and to a point on a curve..."*
Corrected.

Page 2 of 4: Line 36 *Delete "Inc." from Applicant name.*
Corrected.

Page 2 of 4: Line 38 Makes reference to "...above described parcel...". *Unclear what parcel is referred to.*

Corrected and clarified to reference Section 2 where the legal description is provided.

Page 2 of 4: Line 42 *After "...above reference (sic) folio numbers." Should read "...above referenced folio numbers and shall further be conditioned on approval of all of South Motors' requests as above described.*

Sentence left unchanged.

Page 3 of 4: Line 14 (Section 8) There is again reference to transmittal to DEO. *As stated above, all reference to transmittal to DEO should be deleted. The following language should be added to the end of Section 8 "In the event approval of any of the above described requests by South Motors is denied this ordinance shall be null and void."*

Although the application is under 10 acres and does not include any elements of critical state concern, Florida Statutes still require the 30 day letter before the decision is final. Regardless, modifications were made to remove any ambiguity.

Ordinance South Motor Zoning to B-2

Page 2 of 4: Line 18 This section cites 30-30.8(b) as the criteria for evaluation of rezoning. **Section 30-30.8(b) is criteria for FLUM approval, not rezoning. Section 30-30.7 is rezoning criteria.**

Corrected.

Page 2 of 4: Lines 39-43 (Section 3) This section states that the 3.0973 park acres are to remain R-1 Single Family Residential and that the park covenant must be recorded within 60 days of approval. **This needs to be reworded, as the park will not remain residential. Also, there should be some flexibility on recording time. If there is an appeal of either the rezonings or FLUM amendments the recording must be tolled. Easement Agreement should not be recorded until entire South Motor application is approved and expiration of all appeal deadlines without an intervening appeal.**

Corrected with regard to the R-1 designation. Recordation of easement must be achieved prior to building permit.

Ordinance South Motor FLUM Amendment

Page 2 of 4: Line 7 "...located with the property..." **Should read "...located within the property..."**

Corrected.

Page 2 of 4: Lines 11-29 These Whereas all make reference to transmittal of the small scale amendment to DEO. **Same as above, there is no transmittal of small scale amendments to DEO. Although the application is under 10 acres and does not include any elements of critical state concern, Florida Statutes still require the 30 day letter before the decision is final. Regardless, modifications were made to remove any ambiguity.**

Page 3 of 4: Line 4 (Section 3) **Word "rezoning" should be changed to "FLUM amendment."**

Page 3 of 4: Lines 17-21 This section states that the 3.0973 park acres are to remain R-1 Single Family Residential and that the park covenant must be recorded within 60 days of approval. As above, **this needs to be reworded, as the park will not remain residential. Also, there should be some flexibility on recording time. If there is an appeal of either the rezonings or FLUM amendments the recording must be tolled. Easement Agreement should not be recorded until entire South Motor application is approved and expiration of all appeal deadlines without an intervening appeal.**

Corrected with regard to the R-1 designation. Recordation of easement must be achieved prior to building permit.

Page 3 of 4: Lines 31-35 (Transmittal) Again, section requires transmittal of small scale amendment to DEO. **Should be deleted or reworded.**

Existing language is correct.

Page 3 of 4: Lines 40-43 (Section 8) Again, reference to transmittal to DEO. **Should be deleted or reworded.**

Although the application is under 10 acres and does not include any elements of critical state concern, Florida Statutes still require the 30 day letter before the decision is final. Regardless, modifications were made to remove any ambiguity.



Village of Palmetto Bay

ZONING ANALYSIS

APPLICANT: South Motor Company of Dade County **PH:** VPB-13-001
ADDRESS: 16215 South Dixie Hwy **ZIP:** 33157
 9271 SW 164 Street
SECTION: 28-55-40 **HEARING:** 12/16/13
COUNCIL DISTRICT: 2 **ITEM:** 1

A. GENERAL INFORMATION

REQUEST: As per the Applicant's Fifth Amended Letter of Intent submitted on November 6, 2013¹, South Motor Company of Dade County, is requesting deletion or modification of previous resolutions and declaration of restrictions, a Zoning district boundary change, a Future Land Use Map (FLUM) amendment, and a modification of a previously approved site plan.

ADDRESS: 16215 South Dixie Highway
 9271 SW 164 Street

LOT SIZE: 576,399 sq. ft. (13.23 Acres)

FOLIO #: 33-5028-002-0030, 33-5028-002-0070, 33-5028-002-0080

B. BACKGROUND

In an effort to fulfill the branding requirements and specifications of BMW, South Motor Company of Dade County (South Motors) is proposing a significant investment to the facility identified above. The property consists of three lots, 13.23 acres of land, and currently houses Honda, Mini Cooper and BMW new car dealerships, with associated typical accessory uses including used cars sales and minor repair facilities. The Applicant's request consists of a site plan modification, which requires a rezoning to B-2, a future land use map (FLUM) amendment, deletion/modification of prior resolutions and declarations, and the dedication via a perpetual easement of a park facility available for use by the community. Although the project was initiated by the required rebranding efforts of BMW, South

¹ The original letter was submitted on December 19, 2012 with subsequent revisions on February 13th, April 21st, and July 29th, 2013. Revisions to the site plans were also submitted to the Village.

Motors' proposal offers upgrades that will be enjoyed by all the brands represented at the property.

The Property. The project consists of three parcels of land under the following folio numbers: 33-5028-002-0030, -0070 and -0080 and legal descriptions:

Parcel A (Folio No. 33-5028-002-0030)

The parcel is 3.80 acres in size and contains existing sales, showroom, parts, customer service and administrative uses. This parcel is Future Land Use designated *Business and Office* and zoned B-2.

Parcel B (Folio No. 33-5028-002-0070) a/k/a Tract 7

The parcel is 4.51 acres in size and contains the 3-story new car parking building.. This parcel is Future Land Use designated *Business and Office* on the north 287 feet and *Low Density Residential* on the south 351 feet. The entire parcel is zoned R-1. The northern portion of the parcel previously obtained an unusual use authorization from Miami-Dade County, which use is predominantly consistent with B-2 zoning.

Parcel C (Folio No. 33-5028-002-0080) a/k/a Tract 8

The parcel is 4.94 acres in size and contains surface parking for new cars on the north. This parcel is Future Land Use designated *Business and Office* on the north 287 feet and *Low Density Residential* on the south 351 feet. The entire parcel is zoned R-1. As with Parcel B, the northern portion of the parcel previously obtained an unusual use authorization from Miami-Dade County, which use is predominantly consistent with B-2 zoning.

The following is a fuller description of the project in the order the different elements will be heard during the public hearing.

Resolution and Declarations. As detailed in the Zoning Hearing History Section, the property is currently subject to certain resolutions (Resolution No. Z-198-80 and Resolution No. Z-38-82) and a declaration of restrictions (Off Rec. Book 10973 Page 1003 through 1009, as recorded December 31, 1980) which must be deleted or modified before the project can proceed to a final vote. Specifically with regard to the two resolutions, that language therein which required the property owner to record a declaration of restrictions as a condition of approval, must be deleted for the project to proceed. The declaration of restrictions in question was established to the benefit of the applicable local governing body (the Village, upon incorporation) and to the adjacent residents as further described therein. The declaration provides a process for requesting a release of the provisions therein, upon Applicant's obtaining the required amount of signatures from the identified surrounding community. South Motors successfully secured the requisite authorizations/signatures, as confirmed by Miami-Dade County's Regulatory and Economic Development Department. The Applicant is now seeking to strike the applicable language from the two resolutions and eliminate the declaration of restrictions, so that they may now attain approval for the proposed modified site plan, FLUM amendment and rezoning. If removal/deletion/modification of the resolutions and declaration of restrictions is approved,

the property would be governed by the modified site plan and current applicable code provisions, if approved by the Village Council during the public hearing process.

FLUM and Rezoning. The analysis portion of Applicant's request that seeks a FLUM amendment from Low Density Residential to Business Office for approximately 1.9344± acres which runs roughly through the middle of Parcels B and C, and the request to rezone that portion subject to the FLUM amendment, and the remaining northern portions of Parcels B and C, as identified above as being associated with the unusual use from R-1, Residential Single Family to B-2, Business District, is provided for under a separate report (approximately 6.3705± acres of the 9.4678± total acres for Parcels B and C).

The Village is the Applicant for that portion of the project involving a FLUM amendment from "Low Density Residential" to "Parks and Recreation" and rezoning from R-1, Residential Single-Family to I, Interim District, which involves approximately 3.0973± acres of the total 9.4678± acres that comprise Parcels B and C.

The Applicant's FLUM's and rezoning requests were heard on September 16, 2013, and passed on first reading. The Village's FLUM and rezoning requests were heard on October 7th, 2013, and passed on first reading. All four items are to be heard, on second reading, with public hearing, in conjunction with the Applicant's request for the release of the County resolutions and declaration of restrictions, and the request for site plan modification.

South Motors' rezoning and FLUM requests are reflective primarily of the commercial development boundaries granted them in a 1980 use variance request. Their current request adds an additional 1.9344± acres of area (from Parcels B and C) available for commercial use with the remaining 3.0973± acres to be developed as a park (southern portion of parcels B and C). The intent of offering a park facility is to screen and buffer the proposed commercial structures from the adjacent residential uses to the east and south. The landscape plan proposed by the Applicant provides a 35-40 foot landscape buffer (average of 37 feet) along the east end of the property where there is existing residential development, and includes a dense planting area along the northern edge of the park element thus screening from view any commercial buildings (within the proposed rezoned B-2 parcel). The park facility will be privately owned by South Motors, however through an easement agreement, shall be managed and operated by the Village. The Village will have the option to obtain title to the park area, for a nominal fee (\$1.00).

Staff supports both proposed FLUM amendments and re-zonings. Please note, that all four requests are contingent upon approval of South Motors' request for a modified site plan, together with the modification or release of the existing prior resolutions and the recorded declaration of restrictions, dated December 31, 1980. Failure to release/modify/delete the declaration of restrictions and associated county resolutions, would preclude the site plan modification request, and preclude enactment of the FLUM amendments and rezoning requests.

Site Plan Modification. The Applicant is seeking to expand its new car sales center facility and expand the service facilities area. The majority of the repair services are provided off-

site. In 1980, Miami-Dade County approved an unusual use for a portion of Parcels B and C allowing certain BU-2 (B-2 under Village Code) uses, but specifically excluded car repair from the unusual use approval. The Applicant's FLUM amendment and re-zoning requests are required in order to seek the site plan modification to include the repair facility on site, within the Parcel B and C area previously subject to the unusual use, together with the addition 1.9344± acres just south thereof. The proposed site plan modification is projected to reduce daily vehicle trips to the site by 300 per day, as Applicant's staff will no longer have to drive cars to and from an external repair facility in unincorporated Miami-Dade County. The modified service facility will be located within the existing three story (131,998 sq. ft.) parking structure. The modified parking structure (201,537 sq. ft. in total, when completed) will also provide a vehicle storage display area, and a "wrap-around" building for an inventory garage, two floors of parts, support spaces for technicians, training rooms, service bays, and provide additional inventory storage parking areas. The Applicant's stated objective is to streamline and consolidate operations; reduce vehicle trips to and from an existing off-site maintenance and repair facility for the BMW portion of the site; and create a large park (approximately 3.0973± acres), which will act as a buffer to the residential areas adjacent to the development. Please see above as to the 1980 and 1982 County resolutions (Resolution No. Z-198-80 and Resolution No. Z-38-82) and associated declaration of restrictions (Off Rec. Book 10973 Page 1003 through 1009, as recorded December 31, 1980), which will require release prior to approving the site plan modification. Upon meeting certain signature requirements, as a condition precedent, the Applicant is able to request release of that declaration and seek the above site plan modifications.

C. ZONING HEARING HISTORY:

On July 5, 1956, the Dade County Board of County Commissioners, pursuant to **Resolution No. 9996**, rezoned most of what was known as Parcel A (along US 1) from AU (Agricultural Use) to BU-3A (Liberal Business Masonry).

On June 17, 1964, the Dade County Board of County Commissioners, pursuant to **Resolution No. 2-ZAB-347-64**, granted a sign setback variance for an automobile dealership.

On September 11, 1973, the Dade County Board of County Commissioners, pursuant to **Resolution No. Z-256-73**, granted a rezoning from AU to RU-3M and EU-M for tracts 7 & 8 (Parcels B and C); and denied the special exception requests.

On May 5, 1977, the Dade County Board of County Commissioners, pursuant to **Resolution No. Z-115-77**, granted a use variance for the purpose of expanding and existing automotive use (northern portion of Parcels B and C).

On October 11, 1979, the Dade County Board of County Commissioners, pursuant to **Resolution No. 4-ZAB-408-79**, granted non-use variances pertaining to signage and fencing, and a special exception to store vehicles in an AU district.

On September 4, 1980, the Dade County Board of County Commissioners, pursuant to **Resolution No. Z-198-80**, granted the Applicant's request to rezone a portion of the property from AU to BU-3 (western portion of property, at Tract 4) and another portion of the property from EU-M to RU-1 (parcel that is subject of current application, Tracts 7 & 8 also known herein as Parcels B and C); and a special exception to permit a cluster development to be serviced by a private drive on the portion of the property that was rezoned to RU-1 at a density of 5.6 units per net acre (southern portions of Parcels B and C). The resolution also authorized the RU-1 property to be used for an "unusual use" for the outdoor storage of cars (along the northern portions of Parcels B and C), as would otherwise be approved in a BU-3 district, although the BU-3 rezoning request had been denied. As part of the application, a covenant was proffered and recorded.

On or about May 28, 1980, the Covenant, Declaration of Restrictions, was recorded at Official Record Book 10973 at Pages 1003 through 1009. It provided, amongst other things, that the RU-1 cluster zoning on the south portion of the entire application (property that is the subject of this memorandum - southern portion of Parcels B and C). If a new zoning or rezoning, or use variance is requested, the Applicant is required to obtain a release or revision of the covenant relating to the RU-1 zoning by the [Village Council], at a public hearing, after obtaining the following:

- (a) consent of all fee holders of the following immediately adjacent properties: 9200, 9220, 9240, 9260 and 9280 SW 164th Street; and,
- (b) consent of fee holders of 75% of the separate properties located within the adjoining area bounded by SW 164th Street and SW 94th Avenue.

On February 4, 1982, the Dade County Board of County Commissioners pursuant to **Resolution No. Z-38-82** granted the Applicant's renewed application on the same item as heard in 1980, as there had been an error in the legal description from the original hearing item. Due to the foregoing, the County Commission affirmed the basic intent of the original Resolution Z-198-80, and specifically ruled:

- (1) To allow the rezoning to RU-1, Single-Family Residential, from EU-M, Estate Modified Residential, (the property that is the subject of this pending application - Parcels B and C);
- (2) To allow the rezoning to BU-3, Liberal Business District from AU, Agricultural, (16165 South Dixie Highway), subject to conditions.
- (3) To allow a special exception on a portion of the property that is the subject of this pending application, with conditions to allow a cluster development with 5.6 units per net acre (southern portion of Parcels B and C).
- (4) To deny the rezoning to BU-3, Liberal Business District, from RU-1, Single-Family Residential (northern portion of Parcels B and C).
- (5) To grant the use variance for a portion of the RU-1 property (part of the property that is the subject of this pending application) for outdoor car storage (northern portion of Parcels B and C).

- (6) The Applicant in 1980 proffered and recorded a covenant, which was accepted by the County Commission, which provided that the RU-1 cluster plan (along the southern portion of Parcels B and C) could not be modified, and the property could not be rezoned without the approval of the defined community, as provided under the covenant. Additionally, approval number five 5) would preclude structures and mechanical use – only allow car storage). This additional covenant term is this the other major provision contained in the declaration of restriction, recorded at Official Record Book 10973 at Pages 1003 through 1009.

On July 27, 1983, the Metropolitan Dade County Zoning Appeals Board approved **Resolution No. 4-ZAB-229-83**, granting the request to modify the relating to the special exception for the cluster home development on Parcel C, as to the 1980 and 1982 resolutions, to allow the Applicant 42 months to commence development, and 18 months in between stages. The request was granted. The development was never built.

On July 16, 1997, the Metropolitan Dade County Zoning Appeals Board approved **Resolution No. 5-ZAB-230-97**, granting a non-use variance of sign and setback regulations to allow the installation of six Class “B” signs.

In 2010, the Village created its Land Development Code and Comprehensive Zoning Map, and re-designated the subject property as R-1. (Documentation not provided in this back-up as it is voluminous and is existing Code).

Once the Village incorporated, all Miami-Dade County authorized covenants on a property are now to be applied by the Village. Any release of a covenant, would be released according to the Village's Code of Ordinances, Section 30-30.9, which requires a quasi-judicial zoning hearing. The Applicant, in order to apply for the release of that portion of the covenant, as it relates to the Declaration of Restrictions recoded at Official Record Book 10973 at pages 1003-1009, needed to obtain 100% of the signatures of the fee holders of the five parcels located at 9200, 9220, 9240, 9260 and 9280 SW 164th Street; and 75% of all the signatures of all the parcels between SW 164th Street and SW 94th Avenue. The Applicant obtained the requisite signatures. Ileana J. Cea, Computer Services Manager, of the Miami-Dade County Regulatory & Economic Resources Department, was charged with the responsibility of confirming compliance with the requirements of the Declaration of Restrictions. As the signature condition under the declaration was issued by Miami-Dade County, the Village wanted to ensure that the County review the signatures and authorizations to confirm compliance with the underlying declaration's requirements. Per Ms. Cea, she determined the following:

- We extracted (using the latest Miami-Dade County's Property Appraisers File) 161 properties found inside the covenant area.
- Out of these 161 properties, 156 were in the 75% GROUP. From this aforementioned category, we received 118 consent forms that were all OK, and 2 consent forms that were rejected. The “OKs” amount to a 75.64% compliance.

- Out of these 161 properties (same source/area mentioned above), 5 properties were in the 100% GROUP, and for these we received 8 consent forms from all parties involved. The “OKs” here amount to 100% compliance.
- The grand total of the 75% GROUP and the 100% GROUP equals 161 records/properties.

Based upon the foregoing, the Applicant has obtained the requisite signatures to seek the modification of the Declaration of Restrictions recorded at Official Record Book 10973 at pages 1003 - 1009, and Applicant may proceed with requesting a rezoning of the property. The hearing as to the release of the covenant, to allow the rezoning to proceed, will be held prior to the second reading of the ordinance on rezoning the property to B-2, Business District.

D. NEIGHBORHOOD CHARACTERISTICS:

ZONING

LAND USE DESIGNATION

Subject Property:

B-2; Business District
 R-1; Single Family Residential

Business and Office
 Low Density Residential

Surrounding Properties:

NORTH:

B-2; Business District

Business and Office

EAST:

R-3M; Apartment House
 R-1; Single Family Residential District

Low-Medium Density Residential
 (5-13 D.U.'s)
 Low Density Residential (2.5-6 D.U.'s)

SOUTH:

E-M; Estate Modified – Single Family
 R-1; Single Family Residential District
 (2.5 to 6 D.U.'s)
 B-2; Business District – Special
 AG; Agricultural/Residential
 I; Interim District (Perrine Wayside Park)

Low Density Residential
 (2.5 to 6 D.U.'s)
 Business and Office
 Parks and Recreation

WEST:

BU-2; Business District, Special (MDC*)

Business and Office (MDC)

MDC = Miami-Dade County Code
 D.U. = Dwelling Units

E. SITE AND BUILDINGS

Site Plan Review:	Acceptable
Scale/Utilization of Site:	Acceptable
Location of Building(s):	Acceptable
Compatibility:	Acceptable
Landscape Treatment:	Acceptable
Open Space:	Acceptable
Buffering:	Acceptable
Access:	Acceptable
Visibility/Visual Screening:	Acceptable
Circulations:	Acceptable

F. HEARING PROCEDURE

Given the scope of the Applicant's requests for a site plan modification, FLUM amendment and rezoning, together with the existing 1980 and 1982 Resolutions, its corresponding declaration of restrictions, and the Village's Request for a FLUM amendment and rezoning, the hearing process must follow a very specific path. The hearing itself shall consist of one presentation with three submitted reports. The technical analysis of the modification/removal/deletion of the resolutions and declaration of restrictions and the modified site plan request are provided for in this report. The FLUM amendments and rezoning requests are provided for in separate reports. The comments from the presentation, those from the Applicant, and any comments from the public shall be incorporated into all portions of the public hearing by reference.

The first item of business concerns the Applicant's request to modify/remove/delete the county resolutions and declaration of restrictions. Should the vote be for denial, the remainder of South Motors' application will fail as they will no longer be able to proceed with the rezoning request or modified site plan. Further, the Village's FLUM amendment would be moot and would not proceed. Should the release of the resolutions and declaration of restrictions succeed, the zoning hearing is to be tabled so that the Local Planning Agency (LPA) meeting may convene to consider both FLUM amendments followed by both rezoning requests. Upon the conclusion of those four votes, the LPA meeting shall close and the zoning hearing shall resume. The first two votes shall be for the second reading of the two FLUM amendments. Should the FLUM amendments be approved, the next two votes shall be for approval of the rezoning requests. The final vote of the evening shall be for the modified site plan request.

G. ANALYSIS

**SUBSECTION 1 – DELETION/MODIFICATION OF
RESOLUTIONS AND DECLARATION OF RESTRICTIONS**

The following is a review of the request to delete, remove, or modify the two resolutions and their underlying declaration of restrictions pursuant to the Village's criteria, found at Section 30-30.9(c) of the Land Development Code. The Background Section and the Zoning History Section of this report are hereby incorporated by reference into this analysis.

Criteria (1) The extent to which the Village, the Applicant and the Applicant's predecessor(s) in title are responsible for the failure of the covenant to be timely recorded (if applicable), including whether the failure to record the covenant is a result of clerical or other error.

Analysis: The resolutions from 1980 and 1982 were properly adopted and the declaration of restrictions recorded on December 31, 1980, was timely recorded and there were no apparent errors therein applicable to the Applicant's request. The Applicant is seeking to dissolve the declaration of restrictions consistent with the threshold established therewith. In so doing, the prior provisions of the preceding resolutions requiring the declaration of restrictions need also be deleted. This portion of the request however becomes ministerial as those resolutions become null should the Applicant's modified site plan be approved by the Mayor and Village Council.

Finding: Complies.

Criteria (2) Whether there was an intent to deceive or mislead the Village in connection with the prior resolution containing the covenant proviso.

Analysis: There appears to be no intent to deceive or mislead the Village on behalf of the Applicant in connection with the prior resolutions containing the requirement to record the declaration of restrictions. The Applicant sought and received the necessary consent from the prescribed adjacent properties owners as required by the declaration of restrictions. These signatures were submitted to the Village upon which, they, together with the declaration, were forwarded to Miami-Dade County's Regulatory and Economic Development Department which determined that the Applicant fulfilled the requirements of the declaration of restrictions.

Finding: Complies.

Criteria (3) Any detriment which the granting of the application may cause to the Village, or the public, including the area affected. The consideration of detriment shall include, but not be limited to (a) whether granting relief will impair the Village's ability to obtain compliance with the covenant proviso by the

Applicant or other property owners to the extent that the covenant proviso may remain in effect after a revision; and (b) whether the Applicant will proffer a new, recordable covenant addressing the concerns that were to have been addressed by the prior covenant.

Analysis: See Criteria (1) and (2). The declaration of restrictions was established to the benefit of the applicable local governing body and to the adjacent residents as further described therein. As discussed in Criteria (2) above, the Applicant successfully secured the requisite authorizations/signatures, as confirmed by Miami-Dade County's Regulatory and Economic Development Department. The Applicant now seeks to strike the language in the two resolutions, (Resolution Nos. Z-198-80 and Z-38-82) and in turn delete the declaration of restrictions so as to attain approval for a modified site plan which includes a rezoning request as presented in the overall zoning application. If deletion/modification is approved, future compliance to the development and maintenance of the site shall be governed by the modified site plan and current applicable code provisions.

Finding: Complies.

SUBSECTION 2 – SITE PLAN

The following is a review of the request to modify the existing site plan, pursuant to the Comprehensive Plan and of the criteria at Section 30-30.5(j)(1) of the Village's Code of Ordinances. Under state law all zoning items must be consistent with the Village's Comprehensive Plan, and Section 30-30.5(j)(1) specifically incorporates that requirement. The Background Section, the Zoning History Section of this report, and the traffic engineering review respectively, are hereby incorporated into this analysis by reference.

Sec. 30-30.5(j)(1). – Site Plan Review Requiring Public Hearing: The project was reviewed for consistency with the relevant Sections of 30-30.5(j)(1), of the Village Code of Ordinances. The following is an analysis of that review.

Criteria a: In what respects the plan is or is not consistent with the Comprehensive Plan and the purpose and intent of the zoning district in which it is located.

Analysis: **Goal 1.** To guide the Village of Palmetto Bay from birth to early maturity as an outstanding and truly livable community in southeast Florida by building on, and improving, the existing land use blueprint through visionary planning and place-making, cost efficient provision of high quality facilities and services, quality neighborhood protection, and enhancement of its unique and beautiful coastal environmental resources.

Policy 1.1.12: Encourage balanced future land use patterns along the US-1 commercial corridor that would ensure a natural buffer or transition area between the commercial uses and the single family residential areas, thus

ensuring the concentration of future development in areas with adequate infrastructure and facilities.

Policy 2A.1.1: The Village of Palmetto Bay recognizes the Urban Development Boundary designated by Miami-Dade County within its municipal limits. The minimum acceptable p.m. peak period operating level of service for all State and County roads within the Urban Development Boundary shall be the following:

* * *

- (3) Where extraordinary transit service, such as express bus service exists, parallel roadways within 1/2 mile shall operate at no greater than 120 percent capacity.

Policy 7.1.2: Through the maintenance and expansion of existing park facilities and the acquisition and/or development of new parks and open space, achieve a Level of Service (LOS) Standard of 5.2 acres of developed park area per 1,000 residents by 2009, and an LOS of 5.0 acres by 2025.

In November 2012, the Mayor and Village Council adopted a collection of Land Development Code amendments with the intent to fulfill the directive of Goal 1 of the Comprehensive Plan. The developed portion of the site along US 1 has been operating at this location for over 30 years. According to the Applicant, "The site constitutes one of the Village's most valuable, important and dynamic business and commercial properties." The proposed expansion onto approximately 6.3705± acres of Parcels B and C, meets all of the minimum setbacks for the B-2 zoning, if granted, and provides buffering and screening in excess of minimum requirements to reduce the impacts to the adjacent residential properties. The voluntary inclusion of a park element further buffers and screens the commercial uses to the residential neighborhood.

The Applicant's traffic study indicates that the number of trips generated by the proposed use does not cause the adjacent roadway to exceed the maximum capacity thresholds established by Miami-Dade County. By consolidating service operations under the proposed site plan, South Motors is removing 300 trips per day that currently occur at the site. A 2009 traffic calming study identified the value of locating a traffic circle at SW 164 Street and SW 93 Avenue to slow traffic along that segment, however Miami-Dade County prefers the circle be located at the SW 92 Avenue intersection where there is an existing four-way stop. The applicant has offered to contribute \$130,000 towards the construction of a traffic circle. Staff supports either location. Additionally, the project shall conform to the conditions requested

by the Village and Miami-Dade County as identified in the review of the Applicant's traffic study which provide for the following:

1. The intersection at SW 160 Street and South Dixie Highway is recommended that the shared through and right-turn movement should be evaluated for the westbound outside lane to replace existing right-turn movement.
2. It is required that the existing ramps be updated according to ADA standards, and the county-down pedestrian signal heads should be provided to replace any existing conventional pedestrian signal heads.

Provided the above conditions are met, the Village's traffic engineering consultant and the Traffic Engineering Division of Miami-Dade County accepts the Applicant's Traffic Study.

Based on the current Village population (approximately 24,100) and inventory of existing Village parks (85 acres), current LOS equals approximately 3.41 acres per 1,000 residents. South Motors proposes to convert the approximately south three acres of the property to park land to serve as a transition area to the adjacent Single-Family residential to the south and east. This addition will result in an increase LOS of .13 for a total LOS of 3.54 acres per 1,000 residents.

The Village originally adopted its Future Land Use Map Element (FLUM) in 2005 to reflect Business Office for approximately half of Parcels B and C, consistent with the previously approved unusual use (Resolution Nos. Z-198-80 and Z-38-82) authorized by Miami-Dade County. As such, it appears that the Village intended to permit a commercial use of at least approximately 50% of Parcels B and C, per the 2005 FLUM amendment. The addition of the approximately 1.9344± acres of BO FLUM designation, and rezoning of approximately 6.7 acres of Parcels B and C, would allow the Applicant's site plan modification to proceed as designed, and would largely fulfill the Village's vision for the future intended use of the land.

Finding: Conditionally consistent provided Resolution Nos. Z-198-80, Z-38-82, and the declarations of restrictions (Off Rec. Book 10973 Page 1003 through 1009 as recorded December 31, 1980) is modified/released/deleted, any conditions provided by the Village of Palmetto Bay's Public Works Department, the Villages Traffic Engineer, and Miami-Dade County Traffic Engineering Division are met, and the Applicant provides a covenant, easement or leasehold document running with the land relating to the park use of the 3.0973± acres in a form to be approved by the Village Attorney.

Criteria b: In what respects the plan is or is not in conformance with all applicable regulations of the zoning district in which it is located.

Analysis: The review of the project was based upon the proposed zoning as requested by the Applicant and as proposed by the Village for the park portion of the site. The comments from the Villages Public Works Department, the Village's Engineer, and Miami-Dade County's Traffic Engineering Division shall serve as a supplement to this analysis. The project is subject to review under the Sections 30-30.5, Site Plan Approval, 30-50.17, B-2, Business District, 30-70, Parking and Loading Standards, and 30-100, Environmental Regulations, of the Village's Land Development Code. The project is largely in compliance/consistent with those Sections and conforms with the B-2 district development standards including all setbacks, height, lot coverage, floor to area ratio, buffers, parking and landscaping. However, the following conditions must be met prior to the issuance of permits:

Any remaining construction related standards shall be reviewed for Code compliance at time of permitting and include the following:

1. A 125% of estimated cost performance bond for any required public right-of-way improvements.
2. Compliance with all DERM requirements.
3. Compliance with all requirements of Chapter 24 of the County Code.
4. The Applicant shall have recorded, in a form approved by the Village Attorney, a unity of title for the site, or similar agreement or covenant prior to issuance of a building permit.

Finding: Conditionally consistent as provided for in the Findings of Criteria "a", as provided for in the analysis of this criterion, and that the proposed site plan is developed in substantial compliance with plans stamped dated November 15, 2013, as prepared by WHA Design, Inc.

Criteria c: In what respects the plan is or is not in conformance with the Village subdivision regulations and all other applicable Village requirements including the design and construction of streets, utility facilities and other essential services.

Analysis: See Criteria "a" and "b". The plan meets and exceeds the minimum development regulations. The Applicant has taken significant steps to reduce the impact on the adjacent residential property owners. The Applicant has obtained the required signatures as delineated in the declaration of restrictions, and has additionally obtained signatures from a larger area of the Village in support of the application. The Applicant has held several recent meetings with the community, including a meeting over three years ago, held at the Edward and Arlene Feller Community Room, to obtain resident feedback and suggestions. In addition, the Applicant proposes converting the remaining residentially designated areas to park usage thus providing a buffer to the adjacent residential uses. Inclusion of the park element may in turn have a positive effect on the neighboring property values. Finally, estimated

at \$30 million in construction improvements to the site, the project, when completed will contribute approximately one million dollars in ad-valorem revenue over the next 10 years, potentially resulting in reducing the tax burden to the adjacent and Village-wide residential properties.

As per discussions with the Applicant, the car dealership could be put at risk if certain fundamental upgrades are not achieved. Failure to complete the improvements may actually result in a devaluation of the property values for the over 13 acre site. Loss of the BMW, Mini Cooper and Honda franchises could represent a loss in property value to the development itself and the surrounding commercial properties. In this scenario, the real estate tax burden would shift to the residential properties of the Village.

A traffic study was completed by the Applicant and reviewed by the Village's traffic consultant and Miami-Dade's Traffic Engineering Department and was found to be acceptable.

Finding: Conditionally consistent as provided for in the Findings of Criteria "a" and "b", as provided for in the analysis of this criteria, and that the proposed site plan is developed in substantial compliance with plans stamped dated November 15, 2013, as prepared by WHA Design, Inc.

Criteria d: In what respects the plan is or is not consistent with good design standards in respect to all external relationships including but not limited to:

- i. Relationship to adjoining properties.
- ii. Internal circulation, both vehicular and pedestrian.
- iii. Disposition of open space, use of screening, buffering and/or preservation of existing natural features, including trees.
- iv. Building arrangements between buildings in the proposed development and those adjoining the site.

Analysis: See Criteria "a", "b", and "c". The application is consistent with the permitted heights of the zoning district in which it is located. Additionally the Applicant has incorporated a number of landscape features such as an eight foot wall, and a significant number of trees and shrubs well above the required minimums in an attempt to reduce the impact on adjacent residential property owners.

Finding: Conditionally consistent as provided for in the Findings of Criteria "a" and "b", as provided for in the analysis of this criteria, and that the proposed site plan is developed in substantial compliance with plans stamped dated November 15, 2013, as prepared by WHA Design, Inc.

Criteria e: In what respects the plan is or is not in conformance with the Village policy in respect to sufficiency of ownership, guarantee for completion of all required improvements and the guarantee for continued maintenance.

Analysis: See Criteria “a”, “b”, and “c”. The proposed site plan provides for significant improvements in the public right-of-way such as driveway, sidewalks and street trees. Further, the Applicant has offered, as part of its development, to contribute to the cost for the construction of a traffic circle at SW 92 Avenue and SW 164 Street. To that end, the Applicant’s offer includes a contribution of \$130,000 to be donated to the Village for the traffic circle’s construction. The Applicant has also agreed to tie the property under a unity of title and their plan dated stamped received November 15, 2013, as prepared by WHA Design, Inc. includes a seven year phasing plan. The submitted Letter of Intent and site plan proposes a phasing plan to occur in five stages.

Finding: Conditionally consistent as provided for in the Findings of Criteria “a” and “b”, as provided for in the analysis of this criteria, that the property is tied under a unity of title, and that the improvements and implementation of the phasing plan are as delineated in the plans dated stamped received November 15, 2013, as prepared by WHA Design, Inc. as further described in the applicant’s Fifth Amended Letter of Intent Dated November 6, 2013.

C. NEIGHBORHOOD SERVICES

Code Compliance	No Objection
DERM	Required
Building and Capital Projects	Required
Public Works	Required

H. RECOMMENDATION

Deletion/Modification of Resolutions and Declaration of Restrictions Request.

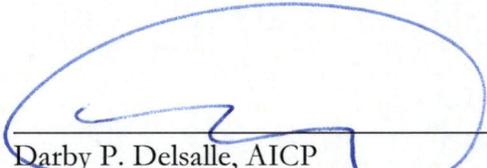
Staff recommends approval.

Modified Site Plan Request.

Staff recommends conditional approval, pursuant to Section 30-30.5(j)1, and the Village’s traffic engineer and Miami-Dade County’s Transportation Engineering Division’s review of the Applicant’s traffic study. Staff conditions approval upon the following:

1. The property is developed in substantial compliance with the plans dated stamped received November 15, 2013, as prepared by WHA Design, Inc. as further described in the applicant’s Fifth Amended Letter of Intent Dated November 6, 2013, together with the traffic study, prepared by Richard Garcia & Association, Inc., dated stamped received November 1, 2013.

2. The Applicant shall comply with the requirements of all other applicable departments/agencies as part of the Village of Palmetto Bay building permit submittal process.
3. The Applicants shall comply with all DERM requirements and the requirements of Chapter 24 of the Code of Miami-Dade County.
4. A 125% of the estimated cost performance bond for any required public right-of-way improvements.
5. The Applicant shall have recorded, in a form approved by the Village Attorney, a unity of title for the site, or similar agreement or covenant prior to issuance of a building permit.
6. The intersection at SW 160 Street and South Dixie Highway is recommended that the shared through and right-turn movement should be evaluated for the westbound outside lane to replace existing right-turn movement.
7. It is required that the existing ramps be updated according to ADA standards, and the county-down pedestrian signal heads should be provided to replace any existing conventional pedestrian signal heads.
8. Condition 8 is now combined with condition 9 below. Completion of necessary traffic calming elements as described Village of Palmetto Bays' Public Works Department Dated November 22, 2013, which include the construction of a traffic circle at SW 164th street and SW 93rd Avenue or in the alternative SW 164th Street and SW 92nd Avenue.
9. The applicant shall contribute up to \$130,000 towards the construction costs of the traffic calming elements as described Village of Palmetto Bays' Public Works Department Dated November 22, 2013, which include the construction of a traffic circle at SW 164th street and SW 93rd Avenue or in the alternative SW 164th Street and SW 92nd Avenue. traffic circle identified in condition 8.
10. Covenant, easement or leasehold type document running with the land relating to that portion of the property intended for park use totaling 3.0973± acres, in a form to be approved by the Village Attorney.
11. Property shall comply with Miami-Dade County platting requirements as applicable.



Darby P. Delsalle, AICP
Director of Planning & Zoning

1 RESOLUTION NO. _____
2

3 A RESOLUTION OF THE MAYOR AND VILLAGE COUNCIL OF THE
4 VILLAGE OF PALMETTO BAY, FLORIDA, RELATING TO ZONING;
5 PURSUANT TO SECTION 30-30.9, ENTITLED "AMENDMENT OR
6 DELETION OF COVENANT PROVISO OF RESOLUTION";
7 MODIFYING/RELEASING/DELETING CERTAIN PROVISIONS
8 FROM RESOLUTION NOS. Z-198-80 ADOPTED IN 1980, AND Z-38-82,
9 ADOPTED IN 1982, BY THE DADE COUNTY BOARD OF COUNTY
10 COMMISSIONERS, WHICH REQUIRED THE RECORDATION OF A
11 DECLARATION OF RESTRICTIONS AS CONDITION OF THEIR
12 APPROVAL; AND AUTHORIZING THE RELEASE/DELETION OF
13 THAT DECLARATION OF RESTRICTIONS AS RECORDED AT
14 OFFICIAL RECORDS, BOOK 10973, PAGES 1003 THROUGH 1009, ON
15 DECEMBER 31, 1980; FOR THE PROPERTY LOCATED AT 16215
16 SOUTH DIXIE HIGHWAY BEARING, FOLIO NUMBER 33-5028-002-
17 0030, AND 9271 SW 164 STREET, BEARING FOLIO 33-5028-002-0070,
18 AND THE ADJACENT PROPERTY, BEARING FOLIO 33-5028-002-0080,
19 IN PALMETTO BAY, FLORIDA; AND PROVIDING AN EFFECTIVE
20 DATE

21
22 WHEREAS, in 1980, South Motor Company of Dade County (South Motors), sought and
23 was granted by the Dade County Board of County Commissioners, an unusual use variance (Z-198-
24 80), which permitted, among other items, limited commercial usage on a RU-1, Residential Single
25 Family District, zoned land, for the property located at 9271 SW 164 Street, bearing folio number
26 33-5028-002-007, together with folio number 33-5028-002-008; and,
27

28 WHEREAS, a condition of that approval required South Motors to record a declaration of
29 restrictions, limiting the use of the property as prescribed in the resolution; and,
30

31 WHEREAS, the Declaration of Restrictions, as recorded at Official Record Book 10973,
32 Pages 1003 through 1009, on December 31, 1980, required any request to rezone the property to
33 first receive written consent from 9200, 9220, 9240, 9260, and 9280 SW 164 Street, together with
34 75% of the separate properties located within the adjoining area bounded by SW 164 Street, SW 168
35 Street, SW 90 Avenue, and SW 94 Avenue; and,
36

37 WHEREAS, in 1982, the Dade County Board of County Commissioners passed and
38 adopted Resolution No. Z-38-82, which reaffirmed the 1980 resolution and corresponding
39 Declaration of Restrictions; and,
40

41 WHEREAS, the Village incorporated in 2002, thus becoming the successor enforcing local
42 governing body to the prior resolutions and declarations of restrictions; and in 2009, the Village
43 largely rezoned all lands previously designated RU-1, Residential Single Family, by the Miami-Dade
44 County to R-1, Residential Single Family; and,

1 **WHEREAS**, in the intervening years, South Motors collected the required written consent
2 as provided for in the declaration of restrictions; and, subsequently submitted to the Village of
3 Palmetto Bay, a zoning application for site plan modification, which included, among other items, a
4 request to rezone a portion of their property from R-1, Residential Single Family, to B-2, Business
5 District; and,
6

7 **WHEREAS**, the requisite signatures were submitted by South Motors to the Village as part
8 of their zoning application, which, in turn, were forwarded by the Village to Miami-Dade County's
9 Regulatory & Economic Resources Department, who concluded the requirements of the declaration
10 of restrictions were met; and,
11

12 **WHEREAS**, before South Motors' rezoning request can be adopted, the prior resolutions
13 and declaration of restrictions must be modified/released/deleted; and, until such time, the request
14 for site plan modification cannot proceed.
15

16 **NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND VILLAGE**
17 **COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, AS FOLLOWS:**
18

19 **Section 1.** **Recitals.** The above referenced recitals are true and correct and are
20 incorporated herein by this reference.
21

22 **Section 2.** **Confirmation.** The conclusion of Miami-Dade County's Regulatory &
23 Economic Resources Department is hereby confirmed and approved, as to the fulfillment of the
24 declaration of restrictions as recorded at Official Record Book 10973, Pages 1003 through 1009,
25 regarding the attainment of the required signatures, prior to modification/release/deletion of those
26 portions of Resolution No. Z-198-80, passed and adopted on September 4, 1980, and all portions of
27 Resolution No. Z-38-82 passed and adopted on February 4, 1982, that reference or require the
28 recordation of a declaration of restrictions.
29

30 **Section 3.** **Release.** All portions of Resolution No. Z-198-80, passed and adopted on
31 September 4, 1980, and all portions of Resolution No. Z-38-82, passed and adopted on February 4,
32 1982, that reference or require the recordation of a declaration of restrictions, are hereby deleted,
33 and hence forth be governed by this resolution. The Declaration of Restrictions recorded at Official
34 Record Book 10973, Pages 1003 through 1009, and as required by Resolutions Z-198-80 and Z-38-
35 82, is hereby authorized to be released and deleted.
36

37 **Section 4.** **Authorization.** The Village Council, acting in its capacity as the Village's
38 governing body, approves the actions contained herein.
39

40 **Section 6.** **Effective Date.** This Resolution shall take effect immediately upon
41 enactment.
42
43
44
45

1 **PASSED AND ENACTED** this _____ day of December, 2013.

2
3
4 Attest: _____

5 Meighan Alexander
6 Village Clerk

Shelley Stanczyk
Mayor

7
8
9 APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE
10 USE AND RELIANCE OF THE VILLAGE OF PALMETTO BAY ONLY:
11

12
13 _____
14 John R. Herin, Jr.
15 Interim Village Attorney

16
17
18 FINAL VOTE AT ADOPTION:

19
20 Council Member Patrick Fiore _____

21
22 Council Member Tim Schaffer _____

23
24 Council Member Joan Lindsay _____

25
26 Vice-Mayor John DuBois _____

27
28 Mayor Shelley Stanczyk _____

29
30 This Resolution was filed in the Office of the Village Clerk on this ___ day of December, 2013.
31

32
33 _____
34 Meighan Alexander
35 Village Clerk

1 RESOLUTION NO. _____
2

3 ZONING APPLICATION VPB-13-001
4

5 A RESOLUTION OF THE MAYOR AND VILLAGE COUNCIL OF THE
6 VILLAGE OF PALMETTO BAY, FLORIDA, RELATING TO ZONING;
7 APPROVING SOUTH MOTOR COMPANY OF DADE COUNTY'S SITE
8 PLAN MODIFICATION REQUEST; REPLACING/SUPERSEDING
9 PRIOR SITE PLAN RESOLUTIONS Z-198-80, Z-38-82, AND 4-ZAB-229-83
10 FOR THE PROPERTY LOCATED AT 16215 SOUTH DIXIE HIGHWAY,
11 BEARING FOLIO NUMBER 33-5028-002-0030, AND 9271 SW 164 STREET,
12 BEARING FOLIO NUMBER 33-5028-002-0070, TOGETHER WITH THE
13 ADJACENT PROPERTY TO THE EAST BEARING FOLIO NUMBER 33-
14 5028-002-0080; AND, PROVIDING AN EFFECTIVE DATE.
15

16 WHEREAS, the Applicant, South Motor Company of Dade County, made an application
17 for a site plan modification, as previously approved pursuant to Zoning Resolution Nos. Z-198-80,
18 Z-38-82, and 4-ZAB-299-83, for the property located at 16251 South Dixie Highway, bearing folio
19 number: 33-5028-002-0030, and 9271 SW 164 Street, bearing folio number: 33-5028-002-0070,
20 together with the adjacent property to the east, bearing folio number: 33-5028-002-0080, as further
21 described in the Village of Palmetto Bay Department of Planning and Zoning recommendation; and,
22

23 WHEREAS, the Village Council of the Village of Palmetto Bay conducted a quasi-judicial
24 hearing on the application at Village Hall, 9705 East Hibiscus Street, on December 16, 2013; and,
25

26 WHEREAS, the Mayor and Village Council finds, based on substantial competent evidence
27 in the record, that the application for the site plan modification is consistent with the Village of
28 Palmetto Bay's Comprehensive Plan and the applicable Land Development Regulations; and,
29

30 WHEREAS, based on the foregoing finding, the Mayor and Village Council determined to
31 grant the application, as provided in this resolution.
32

33 NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND VILLAGE
34 COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, AS FOLLOWS:
35

36 Section 1. Public Hearing.
37

38 A public hearing on the present application was held on December 16, 2013, in accordance
39 with the Village's "Quasi-judicial Hearing Procedures". Pursuant to the testimony and evidence
40 presented during the hearing, the Village Council makes the following findings of fact, conclusions
41 of law, and final order.
42

43 Section 2. Findings of Fact.

- 1 a. The requested site plan modification is consistent with the Village's Comprehensive
2 Plan, as further specified in the Analysis Section of the Village's Staff report.
3
4 b. The rules that govern the conditions upon which such uses are permitted to be
5 configured and operated are principally at Section 30-30.5 Site Plan Approval, which
6 incorporates the zoning development requirements of Section 30-50.17, B-2 Business
7 District, Division 30-70 Parking and Loading Standards, and Division 30-100
8 Environmental Regulations of the Village's Land Development Code. After hearing the
9 applicant and applicant's experts, the Village Council found the site plan modification
10 request consistent with those standards.
11
12 c. The Applicant's traffic study indicates that the number of trips generated by the
13 proposed use does not cause the adjacent roadway to exceed the maximum capacity
14 thresholds established by Miami-Dade County. By consolidating service operations
15 under the proposed site plan, South Motors is reducing approximately 300 trips per day
16 that currently occur at the site. The Village's traffic engineering consultant and the
17 Traffic Engineering Division of Miami-Dade County both accept this finding.
18
19 d. The Village Council accepts the findings of staff as it relates to compliance with of the
20 Village's Code, and the findings of the traffic study as confirmed by the Village's traffic
21 engineering consultant and the Traffic Engineering Division of Miami-Dade County.
22
23 e. The Village adopts and incorporates by reference the Planning & Zoning Department
24 staff report, which expert report is considered competent substantial evidence.
25
26 f. The Village Council did not have any substantive disclosures regarding ex-parte
27 communications and the applicant did not raise any objections as to the form or content
28 of any disclosures by the Council.
29
30 g. The applicant has agreed to all proposed modifications and conditions in the Section
31 entitled, "Order."
32

33 Section 3. Conclusions of Law.

34 The site plan modification for the specific use was reviewed pursuant to Section 30-30.5(j)(1)
35 of the Village of Palmetto Bay's Code of Ordinances and was found to be conditionally consistent.
36

37 Section 4. Order.

38 The Village Council grants the modification request as it would be in keeping with the
39 applicable Land Development Regulations with the Village's Comprehensive Plan. The Village
40 Council, pursuant to Section 30-30.5(j)(1), approves the plans entitled "South Motors", as prepared
41 by WHA Design Inc., consisting of 21 sheets, dated stamped received November 15, 2013, as
42 further described in the applicant's Fifth Amended Letter of Intent Dated November 6, 2013,

1 together with the traffic study, prepared by Richard Garcia & Association, Inc., dated stamped
2 received November 1, 2013, with the following conditions:
3

- 4 1. All previous conditions, approvals, and resolutions shall remain in effect unless
5 otherwise altered by the granting of this request and any conditions assigned therein.
6 The Applicant shall comply with the requirements of all other applicable
7 departments/agencies as part of the building permit submittal process.
8
- 9 2. The property is developed in substantial compliance with the plans dated stamped
10 received November 15, 2013, as prepared by WHA Design, Inc. as further described
11 in the applicant's Fifth Amended Letter of Intent Dated November 6, 2013 together
12 with the traffic study, prepared by Richard Garcia & Association, Inc., dated
13 stamped received November 1, 2013.
14
- 15 3. The Applicant shall comply with the requirements of all other applicable
16 departments/agencies as part of the Village of Palmetto Bay building permit
17 submittal process.
18
- 19 4. The Applicants shall comply with all DERM requirements and the requirements of
20 Chapter 24 of the Code of Miami-Dade County.
21
- 22 5. A 125% of estimated cost performance bond for any required public right-of-way
23 improvements.
24
- 25 6. The Applicant shall have recorded, in a form approved by the Village Attorney, a
26 unit of title for the site or similar agreement or covenant prior to issuance of a
27 building permit.
28
- 29 7. The intersection at SW 160 Street and South Dixie Highway is recommended that
30 the shared through and right-turn movement should be evaluated for the westbound
31 outside lane to replace existing right-turn movement.
32
- 33 8. It is required that the existing ramps be updated according to ADA standards, and
34 the county-down pedestrian signal heads should be provided to replace any existing
35 conventional pedestrian signal heads.
36
- 37 9. ~~Conditions 9 and 10 are now combined. Completion of necessary traffic calming~~
38 ~~elements a described Village of Palmetto Bays' Public Works Department Dated~~
39 ~~November 22, 2013, which include the construction of a traffic circle at SW 164th~~
40 ~~street and SW 93rd Avenue or in the alternative SW 164th Street and SW 92nd Avenue.~~
41
- 42 10. The applicant shall contribution up to \$130,000 towards the construction costs of
43 necessary traffic calming elements a described Village of Palmetto Bays' Public
44 Works Department Dated November 22, 2013, which include the construction of a

1 traffic circle at SW 164th street and SW 93rd Avenue or in the alternative SW 164th
2 Street and SW 92nd Avenue. of the traffic circles identified in condition 7.

- 3
4 11. Covenant, easement or leasehold type document running with the land relating to
5 that portion of the property intended for park use totaling 3.0973± acres, in a form
6 to be approved by the Village Attorney.
7
8 12. Property shall comply with Miami-Dade County platting requirements as applicable.
9

10 This is a final order.

11
12 Section 5. Record.

13 The record shall consist of the notice of hearing, the applications, documents submitted by
14 the applicant and the applicants' representatives to the Village of Palmetto Bay Department of
15 Planning and Zoning in connection with the applications, the County recommendation and attached
16 cover sheet and documents, the testimony of sworn witnesses and documents presented at the
17 quasi-judicial hearing, and the tape and minutes of the hearing. The record shall be maintained by
18 the Village Clerk.
19

20 Section 6. This resolution shall take effect immediately upon approval.

21 PASSED and ADOPTED this _____ day of December, 2013.

22
23 Attest: _____
24 Meighan Alexander Shelley Stanczyk
25 Village Clerk Mayor
26

27 APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE
28 USE AND RELIANCE OF THE VILLAGE OF PALMETTO BAY ONLY:
29
30

31 _____
32 John R. Herin, Jr.
33 Interim Village Attorney
34

1 FINAL VOTE AT ADOPTION:

2
3 Council Member Patrick Fiore _____

4
5 Council Member Tim Schaffer _____

6
7 Council Member Joan Lindsay _____

8
9 Vice-Mayor John DuBois _____

10
11 Mayor Shelley Stanczyk _____

12
13 This Resolution was filed in the Office of the City Clerk on this __ day of December, 2013.

14
15
16 _____

17 Meighan Alexander

18 Village Clerk



Village of Palmetto Bay

To: Mayor and Village Council

Date: December 4, 2013

From: Darby P. Delsalle, AICP
Planning and Zoning Director

Re: BMW Park
2nd Reading Revised

AN ORDINANCE OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, ACTING IN ITS CAPACITY AS THE LOCAL PLANNING AGENCY AND AS THE VILLAGE COUNCIL, RELATING TO A SMALL SCALE AMENDMENT OF THE FUTURE LAND USE MAP CONSISTENT WITH 163.3161, 163.3184 AND 163.3187, FLORIDA STATUTES; CHANGING 3.0973 ACRES (+/-) OF THE TOTAL 9.4678 ACREAGE FROM LOW DENSITY RESIDENTIAL TO PARKS AND RECREATION FOR A PORTION OF THE PROPERTY LOCATED AT 9271 SW 164 STREET BEARING FOLIO 33-5028-002-0070 AND A PORTION OF THE ADJACENT PROPERTY BEARING FOLIO 33-5028-002-0080, PALMETTO BAY, FLORIDA; PROVIDING FOR ORDINANCES IN CONFLICT, CODIFICATION, SEVERABILITY AND AN EFFECTIVE DATE.

AN ORDINANCE OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, RELATING TO ZONING; AMENDING THE OFFICIAL ZONING MAP TO REFLECT A DISTRICT BOUNDARY ZONE; CHANGING 3.0973 ACRES (+/-) OF THE TOTAL 9.4678 ACREAGE, FROM R-1 SINGLE FAMILY DISTRICT TO INTERIM ZONING DISTRICT; FOR A PORTION OF THE PROPERTY LOCATED AT 9271 SW 164 STREET BEARING FOLIO 33-5028-002-0070 AND A PORTION OF THE ADJACENT PROPERTY BEARING FOLIO 33-5028-002-0080, IN PALMETTO BAY, FLORIDA; PROVIDING FOR ORDINANCES IN CONFLICT, CODIFICATION, SEVERABILITY, AND AN EFFECTIVE DATE. [4/5 Vote].

A. BACKGROUND

As part of the master zoning application VPB-13-001, South Motor Company of Dade County, (South Motors) proposes to transfer title, or alternatively, place a covenant, easement or leasehold that would run with the land providing for a park use, as to that portion of the property identified in the plans as 3.0973± acres. The project is located at 16215 South Dixie Highway, and 9271 SW 164 Street, bearing Folio 33-5028-002-0070

together with the adjacent property bearing Folio 33-5028-002-0080. The South Motors master zoning application includes a modification of the existing site plan, the deletion/modification of existing resolutions and declarations, a Future Land Use Map (FLUM) amendment, and a rezoning of the two eastern parcels of the property. The two parcels total 9.4678 acres. The rezoning from R-1, Single Family District to B-2, Business District, comprises of 6.3705 acres of which 1.9344 acres is subject to the FLUM amendment from Low Residential Density to Business Office. The remaining 3.0973± acres is the subject of this request.

The intent of offering a park facility is to buffer the proposed commercial structures from the adjacent residential uses to the east and south. Should the Council accept the land through one of the prescribed instruments, the Village would be required to amend the FLUM to reflect the Park and Recreation land use designation. Staff further suggests the property be rezoned to I, Interim District, to remove the existing residential zoning district thus eliminating the previously approved site plan element which provided for a residential cluster development, and to covenant the land for park use as the property will not be used for a residential zoning purpose. The requests for the FLUM amendment and rezoning are predicated upon the transfer of title, or the recording of a perpetual easement or long-term leasehold that would run with the land authorizing the Village to use the 3.0973± acres as a park accessible to the public. South Motors' donation of the 3.0973± acres in contingent upon approval of their request for a modified site plan, FLUM amendment, and rezoning, together with the modification or release of the existing recorded Declaration of Restrictions, dated May 28, 1980, and associated resolutions and plans. As noted in South Motors' application, South Motors, as per the requirements of its recorded covenant, obtained the required number of signatures authorizing its request for rezoning. The Village is seeking this rezoning to ensure compliance with the Comprehensive Plan and to ensure that the land will be used, in perpetuity, for a park.

As an ordinance involving a rezoning under 10 acres only requires a public hearing during second reading, staff scheduled the public hearing as to the modification of the related covenants and restrictions for that second reading, public hearing date.

Update since first reading. On October 7, 2013, the item was heard on passed on First Reading and forwarded to second reading to be heard in conjunction with South Motors zoning application for modification of an existing site plan and associated FLUM amendment and rezoning. One minor change was subsequently made to the ordinance when it was identified that the word "and" was used as opposed to "an" in the legal description of the property. The rest of the Ordinance and this report remain unchanged.

Attached herein for consideration at second reading is the draft easement agreement between the Village and South Motors which is part of staff conditional support for the FLUM and re-zoning requests. The agreement keeps ownership of the land with South Motors, with operation of the facility to be managed by the Village. The agreement provides for the initial construction of the park and its maintenance costs over the next ten years to borne by South Motors (maintenance provision shall be \$5,000 a year for ten years). Finally, the agreement has an option for purchase by the Village for a nominal fee.

B GENERAL INFORMATION

REQUESTS:

1. A **Future Land Use Map change** (Small Scale Amendment) from Low Density Residential to Parks and Recreation (Pursuant to Section 30-30.8 – Amendment to the Comprehensive Plan).
2. A **Rezoning** from R-1 Single-Family Residential District to I, Interim District (Pursuant to Section 30-30.7 – Amendment to the official zoning map).

Area subject to FLUM Amendment and Rezoning:

A portion of Tract 7 and 8, EAST HILL, according to the plat thereof, as recorded in Plat Book 46, Page 43, of the public records of Miami-Dade County, Florida; more fully described as follows:

Commencing at the Northwest corner of said Tract 7; thence South 00°05'42" East, on the West line of said Tract 7, a distance of 413.79 feet to the Point of Beginning; thence continuing South 00°05'42" East, on the said West line of said Tract 7, a distance of 52.80 feet to the Southwest corner of said Tract 7 and a point on a curve; thence Easterly on the South line of said Tracts 7 and 8 and also on the North right-of-way line of S.W. 164th Street and on said curve to the left, whose radius point bears North 51°49'30", with a radius of 475.00 feet, a central angle of 51°07'36", and arc distance of 423.86 feet; thence South 89°11'33" East, on the South line of said Tract 8 and on said North right-of-way line, a distance of 307.43 feet to the Southeast corner of said Tract 8; thence North 00°10'11" West, on the East line of said Tract 8, a distance of 229.36 feet; thence North 89°14'49" West, on a line 229.33 feet North of and parallel with the South line of said Tract 8 and Westerly extension thereof, a distance of 673.58 feet to the Point of Beginning.

Said lands situate, lying and being in Miami-Dade County, Florida, and containing 134,918 square feet or 3.0973 acres, more or less.

OVERALL LOT SIZE:	13.2347 net acres
AMENDMENT SIZE:	134,918 square feet or 3.0973 acres, more or less.
REZONING:	134,918 square feet or 3.0973 acres, more or less.
FOLIO NUMBERS:	33-5028-002-0070 & 33-5028-002-0080

C. ZONING HEARING HISTORY:

The prior zoning property for the remainder of the property has been consolidated. The full history can be found in the South Motors FLUM, rezoning, site plan modification, and covenant release application hearing file.

On February 4, 1982, the Dade County Board of County Commissioners pursuant to **Resolution No. Z-38-82** heard South Realty Associates' renewed application on the same item as heard in 1980, as there had been an error in the legal description from the original hearing item. Due to the foregoing, the County Commission affirmed the basic intent of the original **Resolution Z-198-80**, and specifically ruled:

- (1) To allow the rezoning to RU-1, Single-Family Residential, from EU-M, Estate Modified Residential, (the property that is the subject of this pending application);
- (2) To allow the rezoning to BU-3, Liberal Business District from AU, Agricultural, (16165 South Dixie Highway), subject to conditions.
- (3) To allow a special exception on a portion of the property that is the subject of this pending application, with conditions to allow a cluster development with 5.6 units, per net acre.
- (4) To deny the rezoning to BU-3, Liberal Business District, from RU-1, Single-Family Residential.
- (5) To grant the use variance for a portion of the RU-1 property (part of the property that is the subject of this pending application) for outdoor car storage.
- (6) The Applicant in 1980 proffered and recorded a covenant, which was accepted by the Commission, which provided that the RU-1 cluster plan could not be modified, and the property could not be rezoned without the approval of the defined community, as provided under the covenant. Additionally, approval no. (5) would preclude structures that would permit automobile repairs, painting, cleaning body and top work. This additional covenant term is the other major provision contained in the Declaration of Restriction, recorded at Official Record Book 10973, at Pages 1003 through 1009.

On or about May 28, 1980, the Covenant, Declaration of Restrictions, was recorded at Official Record Book 10973 at Pages 1003 through 1009. It provided, amongst other things, that the RU-1 cluster zoning on the south portion of the entire application (property that is the subject of this memorandum). If a new zoning or rezoning, or use variance is requested, the Applicant is required to obtain a release or revision of the covenant relating to the RU-1 zoning by the Board of County Commissioners, at a public hearing, after obtaining the following:

- (a) consent of all fee holders of the following immediately adjacent properties: 9200, 9220, 9240, 9260 and 9280 SW 164th Street; and,
- (b) consent of fee holders of 75% of the separate properties located within the adjoining area bounded by SW 164th Street and SW 94th Avenue.

In 2010, the Village created its Land Development Code and Comprehensive Zoning Map, and re-designated the subject property as R-1. (Documentation not provided in this back-up as it is voluminous and is existing Code).

Once the Village incorporated all covenants on a property are to be applied by the Village. Any release of a covenant, would be released according to the Village's Code of Ordinances, Section 30-30.9, which requires a quasi-judicial zoning hearing. South Motors, has requested to rezone 6.3705+/- acres of its property in order to expand the car dealership use. Before obtaining the rezoning, it is required they first seek the release of that portion of an existing covenant, recorded at Official Record Book 10973, at pages 1003-1009. The same applies to the park rezoning. South Motors has obtained the required signatures as delineated in the recorded covenant and may proceed with the rezoning request. The acquired signatures equally apply to the proposed park rezoning. Ultimately, prior to second reading of the park rezoning ordinance, the Village will need to hear and rule upon releasing South Motor's existing covenant. The hearing as to the release of the covenant, to allow the rezoning to proceed, will be held during second reading of the ordinance on rezoning the property to B-2, Business District.

D. NEIGHBORHOOD CHARACTERISTICS:

ZONING

LAND USE DESIGNATION

Subject Property:

R-1; Single Family Residential

Low Density Residential

Surrounding Properties:

NORTH:

R-1

Business and Office

(Pending B-2; Business District)

EAST:

R-1; Single Family Residential District

Low Density Residential (2.5-6 D.U.'s)

SOUTH:

E-M; Estate Modified – Single Family

Low Density Residential

R-1; Single Family Residential District

(2.5 to 6 D.U.'s)

(2.5 to 6 D.U.'s)

AG; Agricultural/Residential

WEST:

B--2; Business District Business and Office

D.U. = Dwelling Units

E. REZONING/FLUM AMENDMENTS – PROCEDURALLY

The Village's companion FLUM amendment and rezoning requests to South Motor's master zoning application, is a small-scale (less than 10 acres) amendment to the FLUM, to change approximately 3.0973± acres to the Parks and Recreation designation. Without the Future Land Use Map modification, the 3.0973± acres could not be used for park, as doing so would be inconsistent with the Future Land Use Map designations and intensities of use.

Consistent with the Village's Code requirements and State law, a public hearing must be held on the Comprehensive Plan amendment to the FLUM. The state, for a small-scale amendment, only requires one public hearing on the ordinance, which public hearing would occur at second reading. As the Village is to enact an Ordinance to allow for the FLUM modification to the 3.0973± acres, the Council will hold two readings on the ordinance, with the public hearing held during second reading. At that time the Council will hold with the public hearing to release the Declaration of Restriction and its associated resolutions and plans. There shall also be a hearing of the Council acting as the Land Planning Agency. After the necessary public hearings, the Village Council shall take action to deny or approve the application, or approve it with modifications or conditions for purposes of ~~transmittal~~ forwarding to the Florida Department of Community Affairs [now known as the Department of Economic Opportunity (DEO)] pursuant to the requirements of Section 163.318764, Florida Statutes. If denied, the Village may resubmit the application as provided under Section 30-30.2, of the Village's Code. If approved for purposes of transmittal, the Village shall thereafter provide the necessary administrative support for the DEO's review process required under Section 163.318764, et seq., Florida Statutes, and the Village's ordinance would go into effect.

Pursuant to Village Charter, Section 10.2.2, four affirmative votes are required to rezone any lands that have an initial Land Use designation of Residential. As such, the rezoning request must receive a minimum of four affirmative votes. The land use change would ensure that the land would always be utilized as park land and would provide assurances to the community of the Village's intent as to this land. In order to proceed with the modification of the Future Land Use Map, the Applicant must comply with the Village's procedures for authorizing the changes. The following section provides a review of the request pursuant to the Village's Land Development Code and applicable elements of the Village's Comprehensive Plan.

The proposed amendment to the FLUM would be contingent upon approval of the underlying zoning application requests, as the 3.0973± acres is currently owned by the Applicant, and is being dedicated for a park purpose, only if the applications proceed and are approved in substantial form.

F. GENERAL DISCUSSION OF FLUM AND ZONING

Future Land Use Map (FLUM). The current designation of the two parcels subject to the FLUM amendment is Low Density Residential (LDR). The LDR designation permits residential densities to range from a minimum of 2.5 to a maximum of 6.0 dwelling units per gross acre. This density category is generally characterized by detached single-family homes. It can also include large fee-simple town homes with extensive surrounding open space or a mixture of both housing types, provided that the maximum gross density is not exceeded.

The adopted 2009 Village of Palmetto Bay Comprehensive Plan, Future Land Use Element (FLUE), as amended, identifies Parks and Recreation (PR) as a category that accommodates a full range park/recreational activities in a manner compatible with the surrounding area.

The maximum intensity of ancillary structures and building within PR shall not exceed a floor to area ratio (FAR) of 0.2.

Zoning Designation. The existing zoning of the undeveloped land that is the subject of this application is R-1, Single-Family Residential District, which principally permits single-family homes and associated accessory structures. The district also permits certain places of congregation as further regulated by Section 30-110 of the Land Development Code. The proposed zoning district, I, Interim District, permits the consideration of a “trending” of the development pattern. The ultimate trend for this property will be park use.

G. ANALYSIS

This analysis is provided in three parts. The first subsection completes a review of the relevant Comprehensive Plan’s Goals, Policies, and Objectives. The second subsection reviews the FLUM amendment request, and third subsection reviews the rezoning request. The analysis portion of both the FLUM and rezoning requests incorporate all portions of Subsection I below. Further, the Background Section of this report is hereby incorporated into all parts of the analysis and is incorporated herein by reference.

All "Findings" in each of the analysis subsections delineated below for the FLUM amendment and the rezoning request, shall include the following specific conditions: that the South Motors master application be approved in substantial form, as failure to approve the master application would result in South Motors' withdrawal of the offer of donating 3.0973± acres of park land to the Village. Also, the 3.0973± acres would be tied to a recorded document running with the land, in a form approved by the Village Attorney, ensuring the perpetual park use.

SUBSECTION I – COMPREHENSIVE PLAN

The application was reviewed for consistency with the Villages Comprehensive Land Use Plan and corresponding Goals, Objectives and Policies thereof. The following is an analysis of that review.

Future Land Use Element

Goal 1: To guide the Village of Palmetto Bay from birth to early maturity as an outstanding and truly livable community in southeast Florida by building on, and improving, the existing land use blueprint through visionary planning and place-making, cost efficient provision of high quality facilities and services, quality neighborhood protection, and enhancement of its unique and beautiful coastal environmental resources.

Analysis: South Motors' master application (VPB-13-001) plan provides a 3.0973± acre park buffer to the single-family residential properties just south of the project site. The park plan reflects landscape treatments for the enhancement of the neighborhood. The proposed park functions as a buffer, contributes to the Village’s LOS park requirement, and removes the potential a future

residential cluster development on the 3.0973± portion of the site as approved per Resolution No. Z-38-82.

Finding: Conditionally consistent provided South Motors provides a covenant, easement or leasehold document running with the land relating to the park use of the 3.0937± acres in a form to be approved by the Village Attorney.

Parks Element

Policy 7.1.2: Through the maintenance and expansion of existing park facilities and the acquisition and/or development of new parks and open space, achieve a Level of Service (LOS) Standard of 5.2 acres of developed park area per 1,000 residents by 2009, and an LOS of 5.0 acres by 2025.

Analysis: Based on the current Village population (approximately 24,100) and inventory of existing Village parks (85 acres), current LOS equals approximately 3.41 per 1,000 residents. The South Motors proposes, via covenant to the Village, to convert the south three acres of the property to park land to serve as a transition area to the adjacent single-family residential to the south. This addition will result in an increase LOS of .13 for a total LOS of 3.54 per 1,000 residents.

Finding: Conditionally consistent provided South Motors provides a covenant, easement or leasehold document running with the land relating to the park use of the 3.0973± acres in a form to be approved by the Village Attorney.

SUBSECTION II – FUTURE LAND USE AMENDMENT

The following is a review of the request pursuant to the Village's ~~variance~~ criteria found at Section 30-30.8(b) of the Land Development Code. The Background Section and the Analysis Section, at Subsection I of this report is hereby incorporated by reference into this analysis.

Criteria (1) Whether the proposal is internally consistent with the Comprehensive Plan, including the adopted infrastructure minimum levels of service standards and the concurrency management program.

Analysis: Please see Subsection I of this Analysis. If the 3.0973± acres is to be transferred to the Village for park purposes, the Village would be moving forward with complying with Policy 7.1.2 of the Comprehensive Plan.

Finding: Conditionally consistent as per the findings of Subsection I of this Analysis.

Criteria (2) Whether, and the extent to which, land use and development conditions have changed since the effective date of the existing Comprehensive Plan, and whether the changes support or work against the proposed amendment.

Analysis: The History Section is hereby incorporated as back-up to this analysis herein by reference. As presented in the History Section of this report, a number of events have occurred regarding conditions that affect the existing and future development of the site starting with Resolution No. Z-38-82 and the associated Declaration of Restrictions, which granted an "unusual use" variance to a portion of the property and required a written consent from surrounding residents prior to seeking a rezoning or another unusual use request.

South Motors' master zoning application was permitted to proceed because they were successful in securing the requisite number of signatures from the surrounding community allowing them to request a rezoning, and therefore, to also seek the site plan modification. Their site plan modification is not precluded by the Declaration of Restrictive Covenants, except to the extent that the covenant required a cluster home development on that portion of land, and required the community "sign-off" to request the rezoning. It is where the cluster development was to be located that South Motors' is offering to the Village for use as a park. Addition of the park land would provide a buffer to the adjacent residential uses.

Finding: Consistent.

Criteria (3) Whether, and the extent to which, the proposal would result in any incompatible land uses, considering the type and location of uses involved, the impact on adjacent or neighboring properties, consistency with existing development, as well as compatibility with existing and proposed neighboring property land use.

Analysis: Goal 1 for Subsection I, above, is incorporated into this analysis herein by reference. The area subject to the FLUM amendment is proposed to convert the south 3.0973± acres of residentially designated land as a park to be dedicated to Village via a covenant, leasehold or easement. The park buffer would result in a buffer of over 200 feet (north to south). The park would not only provide screening of the proposed commercial use but may also increase property values of the single-family homes adjacent to the use.

Finding: Consistent.

Criteria (4) Whether, and the extent to which, the proposal would adversely affect the property values in the affected area, or adversely affect the general welfare.

Analysis: Please see Criteria 2 and 3. Development of a park would buffer the residential community and increase property values.

Finding: Consistent.

Criteria (5) Whether the proposal would result in an orderly and compatible land use pattern. Any positive and negative effects on such pattern shall be identified.

Analysis: The south 3.0973± acres of residentially designated land of South Motors' proposed project is to be dedicated as a park to the Village via a covenant, or other legal instrument. The park would serve as a buffer and covers a distance of over 200 feet (north to south). The park would not only provide screening of the commercial use but may also increase property values of the single-family homes adjacent to the use.

Finding: Consistent

Criteria (6) Whether the proposal would be in conflict with the public interest, and whether it is in harmony with the purpose and interest of the Comprehensive Plan.

Analysis: The History Section, Subsection I, and Criteria 1, 3, 4, and 5 are incorporated herein by reference.

Finding: Consistent.

Criteria (7) Whether the proposed amendment meets the requirements of Section 163.3161, Florida Statutes, entitled "The Local Government Comprehensive Planning and Land Development Regulation Act."

Analysis: Recent changes to Florida land use laws leveraged greater authority in the review and processing of small-scale land use amendments (those less than 10 acres). Submission, review and proposed implementation of the application is consistent with those provisions. The proposed small-scale amendment to amend the 3.0973± acre area from Low Density Residential to Parks and Recreation meets the requirements of Section 163.3161, Florida Statutes, as amended.

Finding: Consistent.

Criteria (8) Other matters which the Local Planning Agency or the Village Council, in its legislative discretion, may deem appropriate.

Finding: Decision for the Village Council.

SUBSECTION III – REZONING

The following is a review of the request pursuant to the Village's rezoning criteria found at Section 30-30.7(b), of the Land Development Code. The Background Section and the Analysis Subsection I and II of this report is hereby incorporated by reference into this analysis.

Criteria (1) Whether the proposal is consistent with the Comprehensive Plan, including the adopted infrastructure minimum levels of service standards and the Village's concurrency management program.

Analysis: Please see Subsection I and Subsection II, Criteria 1, of this Analysis.

Finding: Consistent.

Criteria (2) Whether the proposal is in conformance with all applicable requirements of Chapter 30.

Analysis: Please see Subsection II, Criteria 2, and provided a covenant or other legal instrument runs with land tying the property to the park use for the south 3.0973± acres.

Finding: Consistent.

Criteria (3) Whether, and the extent to which, land use and development conditions have changed since the effective date of the existing regulations, and whether the changes support or work against the proposed change in land use policy.

Analysis: Please see Subsection II, Criteria 2.

Finding: Consistent.

Criteria (4) Whether, and the extent to which, the proposal would result in any incompatible land uses, considering the type and location of uses involved, the impact on adjacent or neighboring properties, consistency with existing development, as well as compatibility with existing and proposed land uses.

Analysis: Please see Subsection II, Criteria 5.

Findings: Consistent.

Criteria (5) Whether, and the extent to which, the proposal would result in demands on transportation systems, public facilities and services; would exceed the capacity of the facilities and services, existing or programmed, including: transportation, water and wastewater services, solid waste disposal, drainage, recreation, education, emergency services, and similar necessary facilities and services.

Analysis: Please see Subsection I and Subsection II, Criteria 1 of this Analysis and provided a covenant or other legal instrument runs with land tying the property to the park use for the south 3.0973± acres.

Finding: Consistent.

Criteria (6) Whether, and to the extent to which, the proposal would result in adverse impacts on the natural environment, including consideration of wetland protection, preservation of groundwater aquifer, wildlife habitats, and vegetative communities.

Analysis: The south 3.0973± acres of residentially designated land of South Motors' proposed project is to be dedicated as a park to the Village via a covenant, or other legal instrument. The park would serve as a buffer and covers a distance of over 200 feet (north to south).

Finding: Consistent.

Criteria (7) Whether, and the extent to which, the proposal would adversely affect the property values in the affected area, or adversely affect the general welfare.

Analysis: Please see Subsection II, Criteria 4.

Finding: Consistent.

Criteria (8) Whether the proposal would result in an orderly and compatible land use pattern. Any positive and negative effects on land use pattern shall be identified.

Analysis: Please see Subsection II, Criteria 5.

Finding: Consistent.

Criteria (9) Whether the proposal would be in conflict with the public interest, and whether it is in harmony with the purpose and intent of Chapter 30.

Analysis: Please see Subsection II, Criteria 2. The proposed park will buffer the adjacent residential areas from South Motor's proposed development plan.

Finding: Consistent.

Criteria (10) Other matters which the Local Planning Agency or the Village Council in its legislative discretion may deem appropriate.

Finding: Decision for the Village Council.

H. RECOMMENDATION

The FLUM amendment and rezoning are consistent, with the Zoning, Land Development Regulations and Comprehensive Plan provided the following conditions are met:

1. Prior to second reading of the rezoning, the Village Council authorizes the release of the exiting Declaration of Restrictive Covenants, dated May 28, 1980, and recorded at Official Record Book 10973 at Pages 1003 through 1009.
2. Approve, in substantial form, the master plan application of South Motors for the FLUM amendment to BO; the rezoning to B-2; and the site plan modification under VPB-13-001. Failure to approve the master zoning application requests, would result in South Motors withdrawing its offer of providing the Village with 3.0973± acres of land for park purposes.
3. Covenant, easement or leasehold type document running with the land relating to the park use of the 3.0973± acres in a form to be approved by the Village Attorney.
4. Prior to second reading of the rezoning the FLUM amendment must be approved.

1 **WHEREAS**, should the Village accept the park area, the Village desires to designate the
2 area as Parks and Recreation under the Village's Future Land Use Map and modify the land use to
3 reflect Park and Recreation; and,
4

5 **WHEREAS**, establishment of the park shall serve as a buffer from South Motors' proposed
6 site plan to the adjacent residential areas to the east and south; and,
7

8 **WHEREAS**, the Village has copyrighted the term "The Village of Parks" representing the
9 Village's support for parks and recreation; and,
10

11 **WHEREAS**, the Village, at its Recreation and Open Space Element, at Goal 7 is to provide
12 a system of parks that meets or exceed the needs of Village residents, businesses and visitors; and,
13

14 **WHEREAS**, Policy 7.1.2 requires the village to expand existing park facilities and to acquire
15 or develop new parks and open space to achieve a Level Of Service Standard of 5.2 acres of
16 developed park area per 1,000 residents; and a Level of Service of 5.0 acres per 1,000 residents by
17 2025; and,
18

19 **WHEREAS**, the Village currently provides 3.41 acres of park land per 1,000 residents (85±
20 acres), and the addition of 3.0973± acres will contribute to another .13 acres per 1,000 residents
21 resulting in a total LOS of 3.54; and,
22

23 **WHEREAS**, by designating the proposed park area to be donated by South Motors as
24 Parks and Recreation, the Village will move closer towards accomplishing policy 7.1.2 of the
25 Comprehensive Plan; and,
26

27 **WHEREAS**, Policy 7.4.1 indicates that development of acquired park land shall be done in
28 a way to be cost efficient; fulfill spatial and functional needs of the Village; enhance the Village's
29 appearance; and establish visible Village focal points which reinforce a sense of community; and,
30

31 **WHEREAS**, the adoption of an ordinance requires two readings, a public hearing as the
32 Land Planning Agency, and a public hearing for second reading of the ordinance.
33

34 **WHEREAS**, a small scale amendment to the Comprehensive Plan for the Village of
35 Palmetto Bay has been prepared to be fully consistent with Chapter 163, Florida Statutes; and,
36

37 **WHEREAS**, the Village Council acting in its capacity as the Local Planning Agency has
38 acted in accordance with state law, and in specific compliance with Section 163.3174, Florida
39 Statutes and has reviewed and recommends approval of its small scale amendment to its
40 Comprehensive Plan; and,
41

42 **WHEREAS**, the Village desires to amend its FLUM to provide the Parks and Recreation
43 Designation for the 3.0973 acres located within the property located at 9271 SW 164 Street bearing
44 folio 33-5028-002-0070 and a portion of the adjacent property bearing folio 33-5028-002-0080; and,
45

1 **WHEREAS**, after receiving extensive input and participation by the public, the Village
2 Council shall forward ~~transmit~~ the proposed new Comprehensive Plan to the Florida Department of
3 Economic Opportunity and to all other agencies, as required under law, ~~for their review~~ pursuant to
4 Section ~~163.3187-163.3184~~, Florida Statutes; and,
5

6 ~~**WHEREAS**, the Florida Department of Economic Opportunity (DEO) shall review the
7 proposed Comprehensive Plan and return its Objections, Recommendations and Comments (ORC)
8 Report to the Village; and,~~
9

10 **WHEREAS**, the Village Council conducted a duly noticed public hearing on the
11 Comprehensive Plan as required under law and upon receipt ~~of approval~~ by the DEO, shall within
12 30 days thereafter make the designation law; and,-
13

14 **WHEREAS**, the proposed FLUM amendment shall be included in the "2013-2025 Future
15 Land Use Map"; and,-
16

17 ~~**WHEREAS**, the Village Council shall consider the ORC and make certain changes to the
18 proposed amendment to the Comprehensive Plan, which changes shall be incorporated in the
19 Comprehensive Plan of the Village of Palmetto Bay, as applicable, which may require a subsequent
20 hearing;~~
21

22 **NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND VILLAGE
23 COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, ACTING IN ITS
24 CAPACITY AS THE LOCAL PLANNING AGENCY OF THE VILLAGE OF
25 PALMETTO BAY, FLORIDA, AS FOLLOWS:**
26

27 **Section 1.** Recitals. The above referenced whereas clauses are true and correct and are
28 incorporated into this ordinance by reference. The amended Future Land Use Map and Element are
29 incorporated by reference and attached hereto as Exhibit 1, and shall be included in the "2013-2025
30 Future Land Use Map."
31

32 **Section 2.** Compliance with Criteria. In evaluating an application for a FLUM
33 amendment, from Low Residential to Parks and Recreation for the 3.0973± acres out of a total of
34 9.4678± acres for the location known as 9271 SW 164 Street, bearing folio 33-5028-002-0070
35 together with adjacent property bearing folio 33-5028-002-0080, Palmetto Bay the Village Council is
36 to apply the standard under 30-30.8(b), of the Village's Code. Applicant has met the criteria of 30-
37 30.8(b). The map amendment is attached and incorporated by reference herein as Exhibit 1.
38

39 **Section 3.** Legal Description. The property that is the subject of the rezoning bears the
40 following legal description:
41

42 A portion of Tract 7 and 8, EAST HILL, according to the plat thereof, as recorded in Plat
43 Book 46, Page 43, of the public records of Miami-Dade County, Florida; more fully
44 described as follows:
45

1 Commencing at the Northwest corner of said Tract 7; thence South 00°05'42" East, on the
2 West line of said Tract 7, a distance of 413.79 feet to the Point of Beginning; thence
3 continuing South 00°05'42" East, on the said West line of said Tract 7, a distance of 52.80
4 feet to the Southwest corner of said Tract 7 and to a point on a curve; thence Easterly on the
5 South line of said Tracts 7 and 8 and also on the North right-of-way line of S.W. 164th
6 Street and on said curve to the left, whose radius point bears North 51°49'30", with a radius
7 of 475.00 feet, a central angle of 51°07'36", and arc distance of 423.86 feet; thence South
8 89°11'33" East, on the South line of said Tract 8 and on said North right-of-way line, a
9 distance of 307.43 feet to the Southeast corner of said Tract 8; thence North 00°10'11"
10 West, on the East line of said Tract 8, a distance of 229.36 feet; thence North 89°14'49"
11 West, on a line 229.33 feet North of and parallel with the South line of said Tract 8 and
12 Westerly extension thereof, a distance of 673.58 feet to the Point of Beginning.

13
14 Said lands situate, lying and being in Miami-Dade County, Florida, and containing 134,918
15 square feet or 3.0973 acres, more or less.

16
17 **Section 4.** Covenant, Leasehold or Easement. The South Motors Company of Dade
18 County, ~~Co.~~, shall be required to transfer title, place a covenant, easement or leasehold document
19 running with the land relating to the park use of the 3.0973± acres of the above reference folio
20 numbers. Failure to obtain the title, covenant, easement, or leasehold as part of the FLUM and
21 rezoning application, shall result in withdrawal of this proposed Parks and Recreation designation.

22
23 **Section 5.** ~~Transmittal. The Village Council, acting in its capacity as the local planning~~
24 ~~agency, approves the above amendment, as further modified herein, to the Comprehensive Plan,~~
25 ~~which amendment is attached to this ordinance. The Village Council, acting in its capacity as the~~
26 ~~local planning agency, further recommends to the Village Council that it authorize the Village Clerk~~
27 ~~to transmit the attached amendments to the Comprehensive Plan to the State of the Florida~~
28 ~~Department of Economic Opportunity (DEO) and all other governmental bodies, agencies, or~~
29 ~~private individuals as required by State law.~~

30
31 **Section 56.** Severability. The provisions of this ordinance are declared to be severable,
32 and if any section, sentence, clause or phrase of this ordinance shall for any reason be held to be
33 invalid or unconstitutional, such decision shall not affect the validity of the remaining sections,
34 sentences, clauses, and phrases of this ordinance but they shall remain in effect, it being the
35 legislative intent that this ordinance shall stand notwithstanding the invalidity of any part.

36
37 **Section 67.** Conflicts. All ordinances or parts of ordinances in conflict with the
38 provisions of this ordinance are repealed.

39
40 **Section 78.** Effective date. This ordinance shall take effect the later of compliance with
41 the above referenced conditions or within 30 days of approval receipt of the proposed
42 Comprehensive Plan Amendment, associated with the application, by the Florida Department of
43 Economic Opportunity as required under Section 163.3187 ~~163.3184~~, Florida Statutes, which
44 amendment would modify the FLUM from Low Density Residential to Business Office.

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PASSED and ENACTED this ____ day of _____, 2013.

First Reading: _____

Second Reading: _____

Attest: _____
Meighan Alexander
Village Clerk
Shelley Stanczyk
Mayor

APPROVED AS TO FORM:

John H. Herin, Jr.
Interim Village Attorney

FINAL VOTE AT ADOPTION:

Council Member Patrick Fiore _____

Council Member Tim Schaffer _____

Council Member Joan Lindsay _____

Vice-Mayor John DuBois _____

Mayor Shelley Stanczyk _____

1 **WHEREAS**, to approve a rezoning, the request must be consistent with the Village's
2 Comprehensive Plan and a basic finding of compatibility must be rendered by the Council.
3

4 **BE IT ENACTED BY THE MAYOR AND VILLAGE COUNCIL OF THE**
5 **VILLAGE OF PALMETTO BAY, FLORIDA, AS FOLLOWS:**
6

7 **Section 1.** In evaluating an application for a rezoning, from R-1, Single Family
8 Residential to the I, Interim Zoning District for 3.0973± acres out of a total of 9.4678± acres for the
9 location known as 9271 SW 164 Street, bearing folio 33-5028-002-0070, together with adjacent
10 property bearing folio 33-5028-002-0080, the Palmetto Bay Village Council is to apply the standard
11 under 30-30.8(b) of the Village's Code. Applicant has met the criteria of 30-30.8(b). The map
12 amendment is attached and incorporated by reference herein as Exhibit 1.
13

14 **Section 2.** The property that is the subject of the rezoning bears the following legal
15 description:
16

17 A portion of Tract 7 and 8, EAST HILL, according to the plat thereof, as recorded in Plat
18 Book 46, Page 43, of the public records of Miami-Dade County, Florida; more fully
19 described as follows:
20

21 Commencing at the Northwest corner of said Tract 7; thence South 00°05'42" East, on the
22 West line of said Tract 7, a distance of 413.79 feet to the Point of Beginning; thence
23 continuing South 00°05'42" East, on the said West line of said Tract 7, a distance of 52.80
24 feet to the Southwest corner of said Tract 7 and to a point on a curve; thence Easterly on the
25 South line of said Tracts 7 and 8 and also on the North right-of-way line of S.W. 164th
26 Street and on said curve to the left, whose radius point bears North 51°49'30", with a radius
27 of 475.00 feet, a central angle of 51°07'36", and arc distance of 423.86 feet; thence South
28 89°11'33" East, on the South line of said Tract 8 and on said North right-of-way line, a
29 distance of 307.43 feet to the Southeast corner of said Tract 8; thence North 00°10'11"
30 West, on the East line of said Tract 8, a distance of 229.36 feet; thence North 89°14'49"
31 West, on a line 229.33 feet North of and parallel with the South line of said Tract 8 and
32 Westerly extension thereof, a distance of 673.58 feet to the Point of Beginning.
33

34 Said lands situate, lying and being in Miami-Dade County, Florida, and containing 134,918
35 square feet or 3.0973 acres, more or less.
36

37 **Section 3. Covenant, Leasehold or Easement.** As a condition to proceed with the
38 rezoning, the current property owner, South Motors Company of Dade County, ~~Inc.~~, has submitted
39 an application for a Land Use FLUM Amendment, Rezoning request for the remainder of the
40 6.3705± acres ~~of above described parcel~~ described at Section 2, to B-2, and as part of that
41 application, and site plan modification, South Motors is required to provide a perpetual covenant,
42 leasehold or easement to the Village for a park use. As such, the proposed rezoning of the 3.0973±
43 acres shall require the placement of such covenant, easement or leasehold document running with
44 the land relating to the passive park use of the 3.0973± acres on a portion of the above reference

1 folio numbers. Failure to do so shall preclude the modification of the site to the Interim zoning
2 designation.

3
4 **Section 4.** The Village Council in compliance with Chapter 166, Florida Statutes, after
5 the first reading approved/denied the applicant's request to rezone.

6
7 **Section 5.** All ordinances or parts of ordinances in conflict with the provisions of this
8 ordinance are repealed.

9
10 **Section 6.** This ordinance shall be codified and included in the Code of Ordinances
11 upon the above conditions being fulfilled.

12
13 **Section 7.** If any section, clause, sentence, or phrase of this ordinance is for any reason
14 held invalid or unconstitutional by a court of competent jurisdiction, the holding shall not affect the
15 validity of the remaining portions of this ordinance.

16
17 **Section 8.** This ordinance shall take effect upon the later of compliance with the above
18 conditions, or within 30 days of ~~approval receipt~~ of the proposed Comprehensive Plan Amendment,
19 associated with the application, by the Florida Department of Economic Opportunity as required
20 under Section ~~163.3187~~ ~~163.3184~~, Florida Statutes, which amendment would modify the FLUM
21 from Low Density Residential to Parks and Recreation; and upon release of the covenant recorded
22 on May 28, 1980, the Covenant, Declaration of Restrictions, at Official Record Book 10973 at Pages
23 1003 through 1009.

24
25
26
27
28 **PASSED and ENACTED** this ____ day of _____, 2013.

29
30 First Reading: _____

31
32
33 Second Reading: _____

34
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36
37 Attest: _____
38 Meighan Alexander Shelley Stanczyk
39 Village Clerk Mayor

40
41 APPROVED AS TO FORM:
42
43 _____
44 John H. Herin, Jr.
45 Interim Village Attorney

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3 FINAL VOTE AT ADOPTION:
4
5 Council Member Patrick Fiore _____
6
7 Council Member Tim Schaffer _____
8
9 Council Member Joan Lindsay _____
10
11 Vice-Mayor John DuBois _____
12
13 Mayor Shelley Stanczyk _____
14
15



Village of Palmetto Bay

To: Mayor and Village Council

Date: December 4, 2013

From: Darby P. Delsalle, AICP
Planning and Zoning Director

Re: South Motors
FLUM and Re-Zoning
2nd Reading Revised

AN ORDINANCE OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, ACTING IN ITS CAPACITY AS THE LOCAL PLANNING AGENCY AND AS THE VILLAGE COUNCIL, RELATING TO A SMALL SCALE AMENDMENT OF THE FUTURE LAND USE MAP CONSISTENT WITH 163.3161, 163.3184 AND 163.3187, FLORIDA STATUTES; CHANGING 1.9344 ACRES (+/-) OF THE TOTAL 9.4678 ACREAGE FROM LOW DENSITY RESIDENTIAL TO BUSINESS OFFICE FOR A PORTION OF THE PROPERTY LOCATED AT 9271 SW 164 STREET BEARING FOLIO 33-5028-002-0070 AND A PORTION OF THE ADJACENT PROPERTY BEARING FOLIO 33-5028-002-0080, PALMETTO BAY, FLORIDA; PROVIDING FOR ORDINANCES IN CONFLICT, CODIFICATION, SEVERABILITY AND AN EFFECTIVE DATE.

AN ORDINANCE OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, RELATING TO ZONING; AMENDING THE OFFICIAL ZONING MAP TO REFLECT A DISTRICT BOUNDARY ZONE; CHANGING 6.3705 (+/-) ACRES OF THE TOTAL 9.4678 ACREAGE, FROM R-1 SINGLE FAMILY DISTRICT TO B-2, BUSINESS DISTRICT; FOR THE PROPERTY LOCATED AT 9271 SW 164 STREET BEARING FOLIO 33-5028-002-0070 AND THE ADJACENT PROPERTY BEARING FOLIO 33-5028-002-0080, IN PALMETTO BAY, FLORIDA; PROVIDING FOR ORDINANCES IN CONFLICT, CODIFICATION, SEVERABILITY, AND AN EFFECTIVE DATE. [4/5 Vote].

SCOPE OF ZONING APPLICATION:

As per the Applicant's submitted Fifth Amended Letter on November 6, 2013¹, South Motors Company Of Dade County (South Motors), is requesting a map amendment to the

¹ The original letter was submitted on December 19th, 2012, with subsequent revisions on February 13th, April 21st, and July 31, 2013. Revisions to the site plan was also submitted to the Village.

Future Land Use Map (FLUM) changing approximately 1.9344± acres from the land use designation of Low Density Residential to Business Office; and is requesting a rezoning of approximately 6.3705± acres from R-1, Single-Family Residential District to B-2, Business District, for the property located at 9271 SW 164 Street. This request is part of a larger zoning application submittal, which seeks modification of a previously approved master site plan and associated resolutions and covenants for the existing South Motors facility. This report provides an analysis to the rezoning and land use amendment portions of the zoning application request. Further analysis regarding the modified site plan and its existing resolutions and covenants shall be provided in conjunction with the second readings of the rezoning and FLUM amendment.

Update since first reading. On September 16, 2013, the item was heard and passed on First Reading and forwarded to second reading to be heard in conjunction with South Motors zoning application for modification of an existing site plan and associated FLUM amendment and rezoning. No changes were made to the proposed FLUM and re-zoning ordinances.

Attached herein for consideration at second reading is the draft easement agreement between the Village and South Motors which is part of staff conditional support for the FLUM and re-zoning requests. The agreement keeps ownership of the land with South Motors, with operation of the facility to be managed by the Village. The agreement provides for the initial construction of the park and its maintenance costs over the next ten years to borne by South Motors (maintenance provision shall be \$5,000 a year for ten years). Finally, the agreement has an option for purchase by the Village for a nominal fee (\$1.00).

A. GENERAL INFORMATION

REQUESTS:

1. **A Future Land Use Map change** (Small Scale Amendment) from *Low Density Residential* to *Business Office* (Pursuant to Section 30-30.8 – Amendment to the Comprehensive Plan).

A portion of Tract 7 and 8, EAST HILL, according to the plat thereof, as recorded in Plat Book 46, Page 43, of the public records of Miami-Dade County, Florida; lying South of a line that is 287.00 feet South of and parallel with the North line of said Tracts 7 and 8; AND is North of a line that is 229.33 feet North of and parallel with the East-West portion of the South line of said Tract 8 and Westerly Easterly extension thereof.

Said lands situate, lying and being in Miami-Dade County, Florida, and containing 84,264 square feet or 1.9344 acres more or less.

2. A **District Boundary change** (a/k/a "rezoning") from R-1 Single-Family Residential District to B-2 Business District (Pursuant to Section 30-30.7 – Amendment to the official zoning map).*

A portion of Tract 7 and 8, EAST HILL, according to the plat thereof, as recorded in Plat Book 46, Page 43, of the public records of Miami-Dade County, Florida; more fully described as follows:

Beginning at the Northwest corner of said Tract 7; thence South 88°58'26" East, on the North line of said Tracts 7 and 8, a distance of 673.10 feet to the Northeast corner of said Tract 8; thence South 00°10'11" East, on the East line of said Tract 8, a distance of 410.59 feet; thence North 89°14'49" West, on a line 229.33 feet North of and parallel with the South line of said Tract 8, and Westerly extension thereof, a distance of 673.58 feet; thence North 00°05'42" West, on the West line of said Tract 7, a distance of 413.79 feet to the Point of Beginning.

Said lands situate, lying and being in Miami-Dade County, Florida, and containing 277,498 square feet or 6.3705 acres, more or less.

The requested rezoning is predicated upon the modification or release of the existing recorded Declaration of Restrictions, dated May 28, 1980, and associated resolutions and plans, after receipt of the required number of signatures authorizing the request for rezoning as provided under the covenant. As an ordinance involving a rezoning under 10 acres only requires a public hearing during second reading, staff scheduled the public hearing as to the modification of the related covenants and restrictions for that second reading, public hearing date.

OVERALL LOT SIZE:	13.2347 net acres
AMENDMENT SIZE:	84,264 square feet or 1.9344 acres +/-
REZONING:	277,498 square feet or 6.3705 acres +/-
FOLIO NUMBERS:	33-5028-002-0030, 33-5028-002-0070* & 33-5028-002-0080*

* Portions subject to the FLUM Amendment and rezoning.

B. BACKGROUND

The property in question consists of several lots, 13.2347 acres of land, and currently houses the Honda, Mini Cooper, and BMW new car dealerships with typical accessory uses including used cars sales and repair facilities. The Applicant is seeking to expand its new car sales center facility and expand the service facilities area, as a majority of the repair service is provided off-site, resulting in an additional 300 vehicle trips, per day. The service facility will be located within the proposed modification to the existing three story parking structure. That structure will also provide a vehicle storage display area, and a "wrap-around" building for existing inventory garage, two floors of parts, support spaces for technicians, training rooms, service bays and added inventory storage parking. The Applicant's stated objective is to streamline and consolidate operations; reduce vehicle trips to and from an existing off-site

maintenance and repair facility for the BMW portion of the site; and create a large proposed park (approximately 3.0973 acres), which will act as a buffer to the residential areas adjacent to the development.

The project consists of three parcels of land under the following folio numbers: 33-5028-002-0030, -0070 and -0080 and legal descriptions:

Parcel A (Folio No. 33-5028-002-0030)

The parcel is 3.80 acres in size and contains existing sales, showroom, parts, customer service and administrative uses totaling 77,887 sq. ft. This parcel is Future Land Use designated *Business and Office* and zoned B-2.

Parcel B (Folio No. 33-5028-002-0070) aka Tract 7

The parcel is 4.51 acres in size and contains the 3-story inventory car parking building encompassing 135,988 sq. ft. This parcel is Future Land Use designated *Business and Office* on the north 287 feet and *Low Density Residential* on the south 351 feet. The entire parcel is zoned R-1.

Parcel C (Folio No. 33-5028-002-0080) aka Tract 8

The parcel is 4.94 acres in size and contains surface parking for new cars on the north. This parcel is Future Land Use designated *Business and Office* on the north 287 feet and *Low Density Residential* on the south 351 feet. The entire parcel is zoned R-1.

C. ZONING HEARING HISTORY:

On July 5, 1956, the Dade County Board of County Commissioners, pursuant to **Resolution No. 9996**, rezoned most of what was known as Parcel A (along US 1) from AU (Agricultural Use) to BU-3A (Liberal Business Masonry).

On June 17, 1964, the Dade County Board of County Commissioners, pursuant to **Resolution No. 2-ZAB-347-64**, granted a sign setback variance for an automobile dealership.

On September 11, 1973, the Dade County Board of County Commissioners, pursuant to **Resolution Z-256-73**, granted a rezoning from AU to RU-3M and EU-M for tracts 7 & 8 (Parcels B and C); and denied the special exception requests.

On May 5, 1977, the Dade County Board of County Commissioners, pursuant to **Resolution No. Z-115-77**, granted a use variance for the purpose of expanding and existing automotive use (northern portion of Parcels B and C).

On October 11, 1979, the Dade County Board of County Commissioners, pursuant to **Resolution No. 4-ZAB-408-79**, granted non-use variances pertaining to signage and fencing, and a special exception to store vehicles in an AU district.

On September 4, 1980, the Dade County Board of County Commissioners, pursuant to **Resolution No. Z-198-80**, granted the Applicant's request to rezone a portion of the property from AU to BU-3 (western portion of property, at Tract 4) and another portion of the property from EU-M to RU-1 (parcel that is subject of current application, Tracts 7 & 8 also known herein as Parcels B and C); and a special exception to permit a cluster development to be serviced by a private drive on the portion of the property that was rezoned to RU-1 at a density of 5.6 units per net acre (southern portions of Parcels B and C). The resolution also authorized the RU-1 property to be used for an "unusual use" for the outdoor storage of cars (along the northern portions of Parcels B and C), as would otherwise be approved in a BU-3 district, although the BU-3 rezoning request had been denied. As part of the application, a covenant was proffered and recorded.

On or about May 28, 1980, the Covenant, Declaration of Restrictions, was recorded at Official Record Book 10973 at Pages 1003 through 1009. It provided, amongst other things, that the RU-1 cluster zoning on the south portion of the entire application (property that is the subject of this memorandum - southern portion of Parcels B and C). If a new zoning or rezoning, or use variance is requested, the Applicant is required to obtain a release or revision of the covenant relating to the RU-1 zoning by the [Village Council], at a public hearing, after obtaining the following:

- (a) consent of all fee holders of the following immediately adjacent properties: 9200, 9220, 9240, 9260 and 9280 SW 164th Street; and,
- (b) consent of fee holders of 75% of the separate properties located within the adjoining area bounded by SW 164th Street and SW 94th Avenue.

On February 4, 1982, the Dade County Board of County Commissioners pursuant to **Resolution No. Z-38-82** granted the Applicant's renewed application on the same item as heard in 1980, as there had been an error in the legal description from the original hearing item. Due to the foregoing, the County Commission affirmed the basic intent of the original Resolution Z-198-80, and specifically ruled:

- (1) To allow the rezoning to RU-1, Single-Family Residential, from EU-M, Estate Modified Residential, (the property that is the subject of this pending application - Parcels B and C);
- (2) To allow the rezoning to BU-3, Liberal Business District from AU, Agricultural, (16165 South Dixie Highway), subject to conditions.
- (3) To allow a special exception on a portion of the property that is the subject of this pending application, with conditions to allow a cluster development with 5.6 units per net acre (southern portion of Parcels B and C).
- (4) To deny the rezoning to BU-3, Liberal Business District, from RU-1, Single-Family Residential (northern portion of Parcels B and C).
- (5) To grant the use variance for a portion of the RU-1 property (part of the property that is the subject of this pending application) for outdoor car storage (northern portion of Parcels B and C).

- (6) The Applicant in 1980 proffered and recorded a covenant, which was accepted by the County Commission, which provided that the RU-1 cluster plan (along the southern portion of Parcels B and C) could not be modified, and the property could not be rezoned without the approval of the defined community, as provided under the covenant. Additionally, approval number five 5) would preclude structures and mechanical use – only allow car storage). This additional covenant term is the other major provision contained in the declaration of restriction, recorded at Official Record Book 10973 at Pages 1003 through 1009.

On July 27, 1983, the Metropolitan Dade County Zoning Appeals Board approved **Resolution No: 4-ZAB-229-83**, granting the request to modify the relating to the special exception for the cluster home development on Parcel C, as to the 1980 and 1982 resolutions, to allow the Applicant 42 months to commence development, and 18 months in between stages. The request was granted. The development was never built.

On July 16, 1997, the Metropolitan Dade County Zoning Appeals Board approved **Resolution No: 5-ZAB-230-97**, granting a non-use variance of sign and setback regulations to allow the installation of six Class “B” signs.

In 2010, the Village created its Land Development Code and Comprehensive Zoning Map, and re-designated the subject property as R-1. (Documentation not provided in this back-up as it is voluminous and is existing Code).

Once the Village incorporated, all Miami-Dade County authorized covenants on a property are now to be applied by the Village. Any release of a covenant, would be released according to the Village's Code of Ordinances, Section 30-30.9, which requires a quasi-judicial zoning hearing. The Applicant, in order to apply for the release of that portion of the covenant, as it relates to the Declaration of Restrictions recoded at Official Record Book 10973 at pages 1003-1009, needed to obtain 100% of the signatures of the fee holders of the five parcels located at 9200, 9220, 9240, 9260 and 9280 SW 164th Street; and 75% of all the signatures of all the parcels between SW 164th Street and SW 94th Avenue. The Applicant obtained the requisite signatures. Ileana J. Cea, Computer Services Manager, of the Miami-Dade County Regulatory & Economic Resources Department, was charged with the responsibility of confirming compliance with the requirements of the Declaration of Restrictions. As the signature condition under the declaration was issued by Miami-Dade County, the Village wanted to ensure that the County review the signatures and authorizations to confirm compliance with the underlying declaration's requirements. Per Ms. Cea, she determined the following:

- We extracted (using the latest Miami-Dade County's Property Appraisers File) 161 properties found inside the covenant area.
- Out of these 161 properties, 156 were in the 75% GROUP. From this aforementioned category, we received 118 consent forms that were all OK, and 2 consent forms that were rejected. The “OKs” amount to a 75.64% compliance.

- Out of these 161 properties (same source/area mentioned above), 5 properties were in the 100% GROUP, and for these we received 8 consent forms from all parties involved. The “OKs” here amount to 100% compliance.
- The grand total of the 75% GROUP and the 100% GROUP equals 161 records/properties.

Based upon the foregoing, the Applicant has obtained the requisite signatures to seek the modification of the Declaration of Restrictions recorded at Official Record Book 10973 at pages 1003 - 1009, and Applicant may proceed with requesting a rezoning of the property. The hearing as to the release of the covenant, to allow the rezoning to proceed, will be held prior to the second reading of the ordinance on rezoning the property to B-2, Business District.

D. NEIGHBORHOOD CHARACTERISTICS:

ZONING

Subject Property:

B-2; Business District
 R-1; Single Family Residential

Surrounding Properties:

NORTH:

B-2; Business District

EAST:

R-3M; Apartment House
 R-1; Single Family Residential District

SOUTH:

E-M; Estate Modified – Single Family
 R-1; Single Family Residential District
 (2.5 to 6 D.U.’s)
 B-2; Business District – Special
 AG; Agricultural/Residential
 I; Interim District (Perrine Wayside Park)

WEST:

BU-2; Business District, Special (MDC*)

LAND USE DESIGNATION

Business and Office
 Low Density Residential

Business and Office

Low-Medium Density Residential
 (5-13 D.U.’s)
 Low Density Residential (2.5-6 D.U.’s)

Low Density Residential
 (2.5 to 6 D.U.’s)
 Business and Office
 Parks and Recreation

Business and Office (MDC)

MDC = Miami-Dade County Code

D.U. = Dwelling Units

E. REZONING/FLUM AMENDMENTS – PROCEDURALLY.

Comprehensive planning is a term used in the United States by land use planners to describe a process that determines community goals and aspirations in terms of community development. The outcome of comprehensive planning is the Comprehensive Plan which dictates public policy in terms of transportation, utilities, land use, recreation, public schools, and, often, housing. Comprehensive plans typically encompass large geographical areas, a broad range of topics, and cover a long-term time horizon. The Future Land Use Element (FLUE) and associated Future Land Use Map (FLUM) provide the future vision for the land within a community. Each designation on the FLUM tells the community what the future land uses for the area should be. The Village's FLUM for approximately half of the vacant land that is the subject of this application reflects the Business Office designation, which is consistent with the US 1 corridor map designations as to intensity of use. The remainder of the vacant parcel reflects the Low Density Residential designation, consistent with the prior zoning resolution for the property, which reflects a cluster single-family home development.

The state legislature created Chapter 163, Florida Statutes to provide guidelines to communities in dealing with such issues as the development of land. Chapter 163 provides the policies as to "Growth Management" and guidelines for the development of Comprehensive Plans. Once the plan is developed, the municipality is to enact zoning laws, consistent with the proposed designation under the Future Land Use Map (FLUM) and the Future Land Use Element (FLUE) definitions for the Map, from the Comprehensive Plan. In other words, if a parcel is designated Business Office, the zoning should be modified, over time to reflect zoning that is consistent with the intensity of use proposed in the FLUE and FLUM.

The Applicant is seeking a small-scale (less than 10 acres) amendment to the FLUM, to add approximately 1.9 acres to the existing Business Office future land use designation for a portion of the property. If the modification is made to the 1.9344 acres, then that portion, along with the remainder of the parcel that is designated Business Office could then be eligible for a rezoning to the B-2, Business District. Without the Future Land Use Map modification, the 1.9344 acres could not be rezoned to B-2, as doing so would be inconsistent with the Future Land Use Map designations and intensities of use.

Consistent with the Village's Code requirements and State law, a public hearing must be held on the Comprehensive Plan amendment to the FLUM. The state, for a small-scale amendment, only requires one public hearing on the ordinance, which public hearing would occur at second reading. As the Village is to enact an Ordinance to allow for the FLUM modification to the 1.9344 acres, the Council will hold two readings on the ordinance, with the public hearing held during second reading. At that time the Council will hold with the public hearing to release the Declaration of Restriction and its associated resolutions and plans, as presented in the Request Section of this report. There shall also be a hearing of the Council acting as the Land Planning Agency. After the necessary public hearings, the Village Council shall take action to deny or approve the application, or approve it with modifications or conditions for purposes of transmittal to the Florida Department of Community Affairs [now known as the Department of Economic Opportunity (DEO)] pursuant to the requirements of Section 163.3161, Florida Statutes. If denied, the Applicant may resubmit the application as provided under Section 30-30.2, of the Village's Code. If

approved for purposes of transmittal, the Village shall thereafter provide the necessary administrative support for the DEO's review process required under Section 163.3161, et seq., Florida Statutes, and the Village's ordinance would go into effect.

Pursuant to Village Charter, Section 10.2.2, four affirmative votes are required to rezone any lands that have an initial Land Use designation of Residential. As such, those portions of the rezoning request which overlap with the FLUM amendment, must receive a minimum of four affirmative votes. In order to proceed with the modification of the Future Land Use Map, the Applicant must comply with the Village's procedures for authorizing the changes. The following section provides a review of the request pursuant to the Village's Land Development Code and applicable elements of the Village's Comprehensive Plan.

F. GENERAL DISCUSSION OF FLUM AND ZONING

Future Land Use Map (FLUM). The current designation of the two parcels subject to the FLUM amendment is Low Density Residential (LDR). The LDR designation permits residential densities to range from a minimum of 2.5 to a maximum of 6.0 dwelling units per gross acre. This density category is generally characterized by detached single-family homes. It can also include large fee-simple town homes with extensive surrounding open space or a mixture of both housing types, provided that the maximum gross density is not exceeded.

The adopted 2009 Village of Palmetto Bay Comprehensive Plan, Future Land Use Element (FLUE), as amended, defines Business and Office (BO) as a category that accommodates a full range of sales service activities including retail, wholesale, personal and professional services, commercial and professional offices, hotels, motels, hospitals, theaters, medical buildings, nursing homes, entertainment and cultural facilities, amusements and commercial recreational establishments (such as private commercial marinas). These uses may occur in self-contained centers, high rise structures, campus parks and municipal centers business districts. The specific range and intensity of uses appropriate in the BO areas vary by location as a function of such factors as availability of public services, roadway access and neighborhood compatibility.

Special limitations may be imposed on uses in BO designated areas where necessary to protect environmental resources including wellfield protection areas. Through the assignment of zoning districts and special conditions, the specific range and intensity of uses appropriate for a particular site will be determined. Strip commercial shopping centers with inadequate lot depth, which allow only a single row of commercial structures and parking in front, are discouraged in this designation. The floor area ratio (FAR) is 0.4 for the first story, .51 for the 2nd, .62 for the 3rd.

Mixing of residential use with commercial, office and hotels is also permitted in BO areas provided that the scale and intensity is not out-of-character with adjacent and nearby development, and the project does not negatively impact any area neighborhoods. Where these conditions are met, residential density may be approved up to one density category higher than the average land use density of adjacent parcels. If no residentially-designated parcels exist adjacent to a BO parcel or no higher density categories exist on the Village

FLUM, the maximum density allowed shall be 13 units per gross acre. Development in this category must adhere to and incorporate the concepts and standards in the Village's Urban Design Manual to the maximum extent possible.

Zoning Designation. The existing zoning of the undeveloped land that is the subject of this application is R-1, Single-Family Residential District, which principally permits single-family homes and associated accessory structures. The district also permits certain places of congregation as further regulated by Section 30-110 of the Land Development Code. The proposed zoning district, B-2, Business District, permits a full array of office and commercial uses and is one of the most intense use districts within the Village.

G. ANALYSIS

This analysis is provided in three parts. The first subsection completes a review of the relevant Comprehensive Plan's Goals, Policies, and Objectives. The second subsection reviews the FLUM amendment request, and third subsection reviews the rezoning request. The analysis portion of both the FLUM and rezoning requests incorporate all portions of Subsection I below. Further, the Background Section of this report is hereby incorporated into all parts of the analysis and is incorporated herein by reference.

SUBSECTION I – COMPREHENSIVE PLAN:

The application was reviewed for consistency with the Villages Comprehensive Land Use Plan and corresponding Goals, Objectives and Policies thereof. The following is an analysis of that review.

Future Land Use Element

Goal 1: To guide the Village of Palmetto Bay from birth to early maturity as an outstanding and truly livable community in southeast Florida by building on, and improving, the existing land use blueprint through visionary planning and place-making, cost efficient provision of high quality facilities and services, quality neighborhood protection, and enhancement of its unique and beautiful coastal environmental resources.

Analysis: The principal request addressed in this analysis pertains to a FLUM amendment and the rezoning request, however the overall request to be presented at second reading shall also include a request for a site plan modification and release of Declarations of Restrictions and prior site plans/resolutions (hereinafter "master application"). The "master application" plan provides a 3.0973± acre park buffer to the single-family residential properties just south of the project site. The plan reflects landscape treatments and traffic calming elements for the enhancement of the neighborhood and removes surface level parking areas.

Finding: Conditionally consistent provided applicant provides a covenant, easement or leasehold document running with the land relating to the park use of the 3.0937± acres in a form to be approved by the Village Attorney.

Transportation Element

Policy 2A.1.1: The Village of Palmetto Bay recognizes the Urban Development Boundary designated by Miami-Dade County within its municipal limits. The minimum acceptable p.m. peak period operating level of service for all State and County roads within the Urban Development Boundary shall be the following:

* * *

- (3) Where extraordinary transit service, such as express bus service exists, parallel roadways within ½ mile shall operate at no greater than 120 percent capacity.

Analysis: The front of the property faces and adjoins US-1 which runs parallel to the South-Dade Bus Way, which bus way provides for express bus service. Demand capacity is a function of a specific development type and configuration. The property currently operates as an automobile dealership showcasing the BMW, Mini Cooper and Honda brands. Existing accessory services include a vehicle maintenance facility, vehicle storage, and used car sales. Any proposed expansion of the existing uses will require transportation concurrency review at time of site plan consideration.

Finding: Not applicable for purpose of FLUM amendment or rezoning as such impact cannot be properly measured until site plan review.

Policy 1.1.12: Encourage balanced future land use patterns along the US-1 commercial corridor that would ensure a natural buffer or transition area between the commercial uses and the single family residential areas, thus ensuring the concentration of future development in areas with adequate infrastructure and facilities.

Analysis: This application is consistent with the land use designation and zoning of the properties to the North, which include a parcel leased to the Applicant for auto sales and a large big box retail shopping center. Additionally the Applicant proposes, via covenant, easement, or leasehold document to the Village, to convert the south 3.0973± acres of the property to park land to serve as a transition area to the adjacent single-family residential to the South.

Finding: Conditionally consistent provided applicant provides a covenant, easement or leasehold document running with the land relating to the park use of the 3.0973± acres in a form to be approved by the Village Attorney.

Infrastructure Element

Obj. 4A.1.1: The adopted level-of-service standard established by the Miami-Dade County Water and Sewer Department (WASD), for potable water service within the Village of Palmetto Bay is:

- a. Regional Treatment. System shall operate with a rated capacity that is no less than 2% above the maximum daily flow for preceding year.
- b. User LOS. Maintain capacity to produce and deliver 200 gallons, per capita, per day.
- c. Water Quality. Meet all Federal, State and County primary potable water standards.
- d. Countywide Storage. Storage capacity for finished water shall equal no less than 15% of countywide average daily demand.

Analysis: Per the Village's Comprehensive Plan's Data and Inventory Analysis, the 2005 WASD sanitary sewer system exceeded the 2% of maximum daily flow requirement and will continue to through 2020. As of 2002, Miami Dade-County possessed excess capacity of 63.5 million gallons, per day of potable water. Projections provided by the Comprehensive Plan show Village population growth through 2029 will consume less than 2 million gallons of that excess capacity. Any project constructed will require compliance with water quality standards. Specific demand generated by any proposed site plan will be evaluated at time of permitting by Miami-Dade County's WASD.

Finding: Consistent.

Policy 4B.1.1: The adopted level-of-service standard established by the Miami-Dade County Water and Sewer Department (WASD) for sanitary sewer service within the Village of Palmetto Bay is 100 gallons, per capita, per day.

Analysis: As of 2005, the Village of Palmetto Bay generates approximately .52% of the total demand countywide for sanitary sewer service. That results in approximately 99 gallons, per capita, per day. Per the Village's Comprehensive Plan, the County's capacity grew by 25 million gallons per day through 2010. Assuming the Village's available share remains constant and usage remains stable as compared against Village's current population of approximately 24,000 residents, the result is an additional capacity of 130,000 gallons per day or 5.4 gallons, per capita, per day. Specific demand generated by any proposed site plan will be evaluated at time of permitting by Miami-Dade County's WASD.

Finding: Consistent.

Policy 4B.2.1: Encourage future development into areas that are already served, or programmed to be served, by Miami-Dade County WASD sanitary sewer facilities.

Analysis: The area is served by an 8 inch sanitary sewer gravity main line.

Finding: Consistent.

Obj. 4C.1 Maintain Adopted Level-of-Service Standards.
Coordinate with the Federal Emergency Management Agency (FEMA), South Florida Water management District (SFWMD), and Miami-Dade County Department of Environmental Resource Management (DERM) to ensure the Village's stormwater management system meets or exceed adopted LOS design standards over the planning period.

Analysis: The Village currently is seeking certification to participate in the Community Rating System (CRS) flood management program for the benefit of its property owners. Evaluation of water retention and stormwater drainage is incorporated into all of the Village's plan reviews. This evaluation shall occur at the time of site plan review and permitting to ensure compliance.

Finding: Not applicable as such review occurs at the time of site plan review (in the form of a note committing to compliance) and at building permitting.

Policy 4D.1.1 The adopted level-of-service standards maintained by the Miami-Dade County Department of Solid Waste Management for solid waste services within the Village of Palmetto Bay is 9.9 pound, per capita, per day and to maintain solid waste disposal capacity sufficient to accommodate waste flows committed to the system through long-term interlocal agreements or contracts along with anticipated non-committed waste flows for a period of five (5) years in accordance with Miami-Dade County's Comprehensive Development Master Plan.

Analysis: The Village of Palmetto Bay generates approximately 41,000 tons of solid waste annually which equals a rate of approximately 9.3 pounds, per-capita, per day. This accounts for only approximately 1.5% of total waste generated. As of 2003, the South Dade Landfill has a capacity of 9.148 million tons with a life expectancy through 2032. Actual impact to LOS of any site plan shall occur at site plan review and building permitting.

Finding: Consistent.

Parks Element

Policy 7.1.2: Through the maintenance and expansion of existing park facilities and the acquisition and/or development of new parks and open space, achieve a

Level of Service (LOS) Standard of 5.2 acres of developed park area per 1,000 residents by 2009, and an LOS of 5.0 acres by 2025.

Analysis: Based on current Village population (approximately 24,100) and inventory of existing Village parks (85 acres), current LOS equals approximately 3.41 per 1,000 residents. The Applicant proposes, via covenant to the Village, to convert the south three acres of the property to park land to serve as a transition area to the adjacent single-family residential to the south. This addition will result in an increase LOS of .13 for a total LOS of 3.54 per 1,000 residents. Further, because of the proposed park covenant, leasehold or easement that portion of the project which is to remain with land use and zoning designations of residential shall dilute the Park LOS. The Village could designate the park land as "Parks and Recreation", under the FLUM, which would resolve this "dilution."

Finding: Conditionally consistent provided applicant provides a covenant, easement or leasehold document running with the land relating to the park use of the 3.0973± acres- in a form to be approved by the Village Attorney.

Capital Improvements Element

Obj. 9.3: Concurrency and Level-of-Service (LOS) Standards.

Make the availability of high-quality public facilities at adopted LOS standards concurrent with the impacts of development, an important basis for future land planning and capital decisions.

Analysis: Please see all Goals, Objectives and Policies reviewed in this Subsection. The proposed FLUM amendment and rezoning does not negatively impact minimum Level of Service for sanitary sewer, solid waste, drainage, potable water and transportation. Actual LOS of the project shall be reviewed at time of site plan and building permit review.

Finding: Conditionally consistent as provided for in each element of this Subsection herein.

Education Element

Obj. 10.1 Work with Miami-Dade County Public Schools towards the Reduction of the overcrowding which currently exists in Miami-Dade County Public Schools, while striving to attain and optimum level of service pursuant to Objective 2. Provide additional solutions to overcrowding so that countywide enrollment in Miami-Dade County's public schools will meet state requirements for class size by September 1, 2010.

Analysis: The Applicant proposes, via covenant to the Village, to convert the south 3.0973± acres of the property to park land to serve as a transition area to the adjacent single-family residential properties to the South. All public schools within the Village are under capacity and the proposed site plan proposal of

the Applicant is to not include residential construction. As such, there is no impact provided the property is not developed for residential use.

Finding: Conditionally consistent provided applicant provides a covenant, easement or leasehold document running with the land relating to the park use of the 3.0973± acres- in a form to be approved by the Village Attorney.

SUBSECTION II – FUTURE LAND USE AMENDMENT

The following is a review of the request pursuant to the Village's variance criteria found at Section 30-30.8(b) of the Land Development Code. The Background Section and the Analysis Section, at Subsection I of this report is hereby incorporated by reference into this analysis.

Criteria (1) Whether the proposal is internally consistent with the Comprehensive Plan, including the adopted infrastructure minimum levels of service standards and the concurrency management program.

Analysis: Please see Subsection I of this Analysis. Site specific LOS calculations shall be performed at the time of site plan and building permit as appropriate.

Finding: Conditionally consistent as per the findings of Subsection I of this Analysis.

Criteria (2) Whether, and the extent to which, land use and development conditions have changed since the effective date of the existing Comprehensive Plan, and whether the changes support or work against the proposed amendment.

Analysis: The Zoning History Section is hereby incorporated as back-up to this analysis herein by reference. As presented in the Zoning History Section of this report, a number of events have occurred regarding conditions that affect the existing and future development of the site starting with Resolutions No. Z-198-80 and No. Z-38-82 and the associated Declaration of Restrictions, which granted an "unusual use" variance to a portion of the property and required a written consent from surrounding residents prior to seeking a rezoning or another unusual use request.

In 2005, the Village Council adopted the FLUM designations for the Village, and provided a Business Office designation for those areas that were already developed for car dealership use along US 1, and for the area that was being used for the unusual use, relating to the car dealership. This was a change from the Miami-Dade County designation for the back-half of the property, which previously had a residentially designation under the County Comprehensive Master Plan.

Since that time, the Village amended its zoning code to eliminate the practice of allowing "use variances." In so doing, the Applicant's property became legal non-conforming, in that the use, if discontinued or ceased, would not be entitled to be re-established. The Business Office designation, however, is consistent, with the current use. Therefore, by rezoning those portions of the land currently approved for commercial operations, the property would come into conformance with both the land use designation and zoning.

Another change since the 1980 and 1982 approval which imposed the Declaration of Restrictive Covenants, is that the Applicant was successful in securing the requisite number of signatures from the surrounding community to permit the Applicant to request a rezoning, and therefore, to also seek the site plan modification. The site plan modification is not precluded by the Declaration of Restrictive Covenants, except to the extent that the covenant required a cluster home development on that portion of land, and required the community "sign-off" to request the rezoning. Before either the rezoning or site plan can be approved, approximately 1.9344 acres of the FLUM must be changed from Low Density Residential to Business Office, hence, the Applicant's reason for this request.

Finding: Consistent.

Criteria (3) Whether, and the extent to which, the proposal would result in any incompatible land uses, considering the type and location of uses involved, the impact on adjacent or neighboring properties, consistency with existing development, as well as compatibility with existing and proposed neighboring property land use.

Analysis: Goal 1 for Subsection I, above, is incorporated into this analysis herein by reference. The area subject to the FLUM amendment will be utilized, if approved by the Village Council, for an expansion southward of the existing auto dealership use, which is appropriately designated Business Office under the FLUM. Further, the Applicant proposes converting the remaining 3.0973± acres of residentially designated land South thereof as a park to be dedicated to Village via a covenant, leasehold or easement. The park buffer covers a distance of over 200 feet (north to south). The park would not only provide screening of the commercial use but may also increase the property values of the single-family homes adjacent to the use.

Finding: Conditionally consistent provided Applicant provides a covenant, easement or leasehold document running with the land relating to the park use of the 3.0973± acres in a form to be approved by the Village Attorney.

Criteria (4) Whether, and the extent to which, the proposal would adversely affect the property values in the affected area, or adversely affect the general welfare.

Analysis: Please see Criteria 2 and 3. Statistical data was not produced that provides a clear projection of property values to the adjacent residential neighborhood, however, conventional wisdom would suggest a rise in value of adjacent commercial properties should the Applicant's project move forward. Conversion of the remaining residentially designated areas to park usage should provide buffering to the adjacent residential uses, which may in turn have a positive effect on those property values. Finally, estimated at \$30 million worth of construction, the project, if completed, and its corresponding increase in property values of adjacent commercial parcels, may have the effect of reducing the tax burden of the adjacent and Village-wide residential properties.

As per discussions with the Applicant, the car dealership could be put at risk if certain fundamental upgrades are not timely achieved. Failure to do so may actually result in a devaluation of the property values for the over 13 acres of land that constitute the entire property. Loss of the BMW, Mini Cooper and Honda franchises could represent a loss in property value to the development itself and the surrounding commercial properties. In this scenario, real estate tax burden is shifted to residential properties.

Finding: Conditionally consistent provided Applicant provides a covenant, easement or leasehold document running with the land relating to the park use of the 3.0973± acres- in a form to be approved by the Village Attorney.

Criteria (5) Whether the proposal would result in an orderly and compatible land use pattern. Any positive and negative effects on such pattern shall be identified.

Analysis: The proposed FLUM amendment is compatible with the existing BO designation just north thereof. Further, the remaining 3.0973± acres of residentially designated land south thereof is to be dedicated as a park to the Village via a covenant, or other legal instrument. The park buffer covers a distance of over 200 feet (North to South). The park would not only provide screening of the commercial use but may also increase the property values of the single-family homes adjacent to the use.

The FLUM amendment along with the requests for rezoning and site plan approval will result in a more cohesive and orderly development plan. A positive effect of the amendment and modified site plan would render the existing dealership use and proposed expansion consistent with the proposed land use designation. A potential negative effect, unless regulated further by the Village Council or the development plan, would be to allow via the land use designation multiple uses such as hospital, or commercial recreational facility should the proposed plan not be implemented.

Finding: Conditionally consistent provided a covenant or other legal instrument runs with land tying the property to the park use for the 3.0973± acres.

Criteria (6) Whether the proposal would be in conflict with the public interest, and whether it is in harmony with the purpose and interest of the Comprehensive Plan.

Analysis: The History Section, Subsection I, and Criteria 1, 3, 4, and 5 are incorporated herein by reference. Pursuant to the existing Declaration of Restrictions any rezoning of the property requires consent of a certain portion of the property owners within a certain distance to the site (100% of 5 properties and 75% of the remaining "neighborhood" area as defined in the covenant). The required number of signed letters of consent, as confirmed by Miami-Dade County, are submitted with this application and authorize the Applicant to seek a rezoning to B-2. Before the rezoning may proceed, the approximately 1.9344 acres of the land requires a modification to its land use designation from Low Density Residential to Business Office.

Finding: Conditionally consistent provided, however, the signatures remain valid, a covenant runs with land tying the property to the Applicant's proposed site plan, and the remaining residentially designated portions of the property are designated for park use. In light of the Applicant's ability to attain the required signatures from the community, and due to the referenced analysis above, the request is consistent with the public interest, and is in harmony with the purpose and interest of the Comprehensive Plan.

Criteria (7) Whether the proposed amendment meets the requirements of Section 163.3161, Florida Statutes, entitled "The Local Government Comprehensive Planning and Land Development Regulation Act."

Analysis: Recent changes to Florida land use laws leveraged greater authority in the review and processing of small-scale land use amendments (those less than 10 acres). Submission, review and proposed implementation of the application is consistent with those provisions. The proposed small-scale amendment to amend the 1.9344 acre area from Low Density Residential to Business Office meets the requirements of Section 163.3161, Florida Statutes, as amended.

Finding: Consistent.

Criteria (8) Other matters which the Local Planning Agency or the Village Council, in its legislative discretion, may deem appropriate.

Finding: Decision for the Village Council.

SUBSECTION III – REZONING

The following is a review of the request pursuant to the Village's rezoning criteria found at Section 30-30.7(b), of the Land Development Code. The Background Section and the Analysis Subsection I of this report is hereby incorporated by reference into this analysis.

Criteria (1) Whether the proposal is consistent with the Comprehensive Plan, including the adopted infrastructure minimum levels of service standards and the Village's concurrency management program.

Analysis: Please see Subsection I and Subsection II, Criteria 1 of this Analysis.

Finding: Conditionally consistent as per the findings of Subsection I, and Subsection II, Criteria 1 of this Analysis.

Criteria (2) Whether the proposal is in conformance with all applicable requirements of Chapter 30.

Analysis: Please see Subsection II, Criteria 2.

Finding: Conditionally consistent provided the signatures remain valid and the Land Use amendment is approved.

Criteria (3) Whether, and the extent to which, land use and development conditions have changed since the effective date of the existing regulations, and whether the changes support or work against the proposed change in land use policy.

Analysis: Please see Subsection II, Criteria 2.

Finding: Conditionally consistent provided the signatures remain valid and the Land Use amendment is approved.

Criteria (4) Whether, and the extent to which, the proposal would result in any incompatible land uses, considering the type and location of uses involved, the impact on adjacent or neighboring properties, consistency with existing development, as well as compatibility with existing and proposed land uses.

Analysis: Please see Subsection II, Criteria 5. Approximately half of the vacant land portion of the application is already designated for the Business Office (BO) use. If the 1.9344 additional acres of BO Land Use is authorized, then that entire area may be rezoned. The rezoning would allow the continued, conforming use, of that portion of the property for the car dealership and proposed associated repair facility uses. Although there may be an impact, as the land was previously vacant, the use would be buffered through the development of a park, would allow for better traffic flow, and would be consistent with surrounding existing uses and proposed land uses. US-1 has

the greatest intensity of uses within the Village. The car dealership site plan use would preclude additional residential units from being developed, and would ensure that the residential properties behind and to the side of the proposed park are provided a natural barrier from the commercial intensities of US-1.

Findings: Conditionally consistent provided a covenant or other legal instrument runs with land tying the property to the park use for the 3.0973± acres.

Criteria (5) Whether, and the extent to which, the proposal would result in demands on transportation systems, public facilities and services; would exceed the capacity of the facilities and services, existing or programmed, including: transportation, water and wastewater services, solid waste disposal, drainage, recreation, education, emergency services, and similar necessary facilities and services.

Analysis: Please see Subsection I and Subsection II, Criteria 1 of this Analysis.

Finding: Conditionally consistent as per the findings of Subsection I, and Subsection II, Criteria 1 of this Analysis.

Criteria (6) Whether, and to the extent to which, the proposal would result in adverse impacts on the natural environment, including consideration of wetland protection, preservation of groundwater aquifer, wildlife habitats, and vegetative communities.

Analysis: The majority of the site subject to this rezoning request, 6.7305 net acres, is currently developed with a 3-story new car parking garage and surface parking. The remaining portion is open field with sparse landscaping. Only 1.9344 acres of the lot which is subject to the rezoning request is designated Low Density Residential with the remaining portions Business Office. That portion not subject to the rezoning is to remain Low Density Residential and be dedicated via covenant, leasehold or easement as a park use to buffer any future commercial development.

Finding: Consistent.

Criteria (7) Whether, and the extent to which, the proposal would adversely affect the property values in the affected area, or adversely affect the general welfare.

Analysis: Please see Subsection II, Criteria 4.

Finding: Conditionally consistent provided the remaining residentially designated portions of the property are designated for park use.

Criteria (8) Whether the proposal would result in an orderly and compatible land use pattern. Any positive and negative effects on land use pattern shall be identified.

Analysis: Please see Subsection II, Criteria 5.

Finding: Conditionally consistent provided a covenant or other legal instrument runs with land tying the property to the park use for the 3.0973+ acres.

Criteria (9) Whether the proposal would be in conflict with the public interest, and whether it is in harmony with the purpose and intent of Chapter 30.

Analysis: Please see Subsection II, Criteria 2. The existing Declaration of Restrictions requires concurrence by certain property owners of any changes to the existing zoning at the property. Once the required signatures were obtained and submitted the Village Council is then authorized to consider the Applicant's request for rezoning to B-2.

Finding: Conditionally consistent provided the signatures remain valid, and prior to second reading of the rezoning the FLUM amendment must be approved and the Village Council votes to release the exiting Declaration of Restrictive Covenants, dated May 28, 1980, and recorded at Official Record Book 10973 at Pages 1003 through 1009.

Criteria (10) Other matters which the Local Planning Agency or the Village Council in its legislative discretion may deem appropriate.

Finding: Decision for the Village Council.

H. RECOMMENDATION:

The FLUM amendment and rezoning are consistent, with the Zoning, Land Development Regulations and Comprehensive Plan provided the following conditions are met:

1. Prior to second reading of the rezoning, the Village Council deletes/modifies the 1980 and 1982 resolutions and authorizes the release of the exiting Declaration of Restrictive Covenants, dated May 28, 1980, and recorded at Official Record Book 10973 at Pages 1003 through 1009.
2. Covenant, easement or leasehold document running with the land relating to the park use of the 3.0973± acres in a form to be approved by the Village Attorney.
3. Prior to second reading of the rezoning the FLUM amendment must be approved.

1 **WHEREAS**, the Village Council acting in its capacity as the Local Planning Agency has
2 acted in accordance with state law, and in specific compliance with Section 163.3174, Florida
3 Statutes and has reviewed and recommends approval of its small scale amendment to its
4 Comprehensive Plan; and,
5

6 **WHEREAS**, the Village desires to amend its FLUM to provide the Business Office
7 Designation for the 1.9344 acres located within the property located at 9271 SW 164 street bearing
8 folio 33-5028-002-0070 and a portion of the adjacent property bearing folio 33-5028-002-0080, as
9 per the Applicant's request; and,
10

11 **WHEREAS**, after receiving extensive input and participation by the public, the Village
12 Council shall forward ~~transmit~~ the proposed new Comprehensive Plan to the Florida Department of
13 Economic Opportunity and to all other agencies, as required under law, ~~for their review~~ pursuant to
14 Section ~~163.3187~~ 163.3184, Florida Statutes; and,
15

16 ~~**WHEREAS**, the Florida Department of Economic Opportunity (DEO) shall review the~~
17 ~~proposed Comprehensive Plan and return its Objections, Recommendations and Comments (ORC)~~
18 ~~Report to the Village; and,~~
19

20 **WHEREAS**, the Village Council conducted a duly noticed public hearing on the
21 Comprehensive Plan as required under law and upon receipt ~~of approval~~ by the DEO, shall within
22 30 days thereafter make the designation law; and,
23

24 **WHEREAS**, the proposed FLUM shall be entitled 2013-2025 Future Land Use Map; ~~and,~~
25

26 ~~**WHEREAS**, the Village Council shall consider the ORC and make certain changes to the~~
27 ~~proposed amendment to the Comprehensive Plan, which changes shall be incorporated in the~~
28 ~~Comprehensive Plan of the Village of Palmetto Bay, as applicable, which may require a subsequent~~
29 ~~hearing.~~
30

31 **NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND VILLAGE**
32 **COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, ACTING IN ITS**
33 **CAPACITY AS THE LOCAL PLANNING AGENCY OF THE VILLAGE OF**
34 **PALMETTO BAY, FLORIDA, AS FOLLOWS:**
35

36 **Section 1.** Recitals. The above referenced whereas clauses are true and correct and are
37 incorporated into this ordinance by reference. The amended Future Land Use Map and Element are
38 incorporated by reference and attached hereto as Exhibit 1, and shall be identified as the "2013-2025
39 Future Land Use Map."
40

41 **Section 2.** Compliance with Criteria. In evaluating an application for a FLUM
42 amendment, from Low Residential to B-2, Business Office for 1.9344± acres out of a total of
43 9.4678± acres for the location known as 9271 SW 164 Street, bearing folio 33-5028-002-0070
44 together with adjacent property bearing folio 33-5028-002-0080, Palmetto Bay the Village Council is

1 to apply the standard under 30-30.8(b), of the Village's Code. Applicant has met the criteria of 30-
2 30.8(b). The map amendment is attached and incorporated by reference herein as Exhibit 1.
3

4 **Section 3.** Legal Description. The property that is the subject of the ~~rezoning~~ FLUM
5 amendment bears the following legal description:
6

7 A portion of Tract 7 and 8, EAST HILL, according to the plat thereof, as recorded in Plat
8 Book 46, Page 43, of the public records of Miami-Dade County, Florida; lying South of a
9 line that is 287.00 feet South of and parallel with the North line of said Tracts 7 and 8; AND
10 is North of a line that is 229.33 feet North of and parallel with the West portion of the
11 South line of said Tract 8 and Easterly extension thereof.
12

13 Said lands situate, lying and being in Miami-Dade County, Florida, and containing 84,264
14 square feet or 1.9344 acres more or less.
15

16
17 **Section 4.** Covenant, Leasehold or Easement. The Applicant shall be required to place
18 a covenant, easement or leasehold document running with the land relating to the park use of the
19 3.0973± acres of the above reference folio numbers ~~that is to remain R-1, Single Family Residential.~~
20 The Village Attorney shall approve the form of the covenant, easement or leasehold document,
21 which must be recorded prior to issuance of a building permit. ~~within 60 days of the effective date~~
22 ~~of this ordinance.~~
23

24 **Section 5.** ~~Transmittal. The Village Council, acting in its capacity as the local planning~~
25 ~~agency, approves the above amendment, as further modified herein, to the Comprehensive Plan,~~
26 ~~which amendment is attached to this ordinance. The Village Council, acting in its capacity as the~~
27 ~~local planning agency, further recommends to the Village Council that it authorize the Village Clerk~~
28 ~~to transmit the attached amendments to the Comprehensive Plan to the State of the Florida~~
29 ~~Department of Economic Opportunity (DEO)] and all other governmental bodies, agencies, or~~
30 ~~private individuals as required by State law.~~
31

32 **Section 56.** Severability. The provisions of this ordinance are declared to be severable,
33 and if any section, sentence, clause or phrase of this ordinance shall for any reason be held to be
34 invalid or unconstitutional, such decision shall not affect the validity of the remaining sections,
35 sentences, clauses, and phrases of this ordinance but they shall remain in effect, it being the
36 legislative intent that this ordinance shall stand notwithstanding the invalidity of any part.
37

38 **Section 67.** Conflicts. All ordinances or parts of ordinances in conflict with the
39 provisions of this ordinance are repealed.
40

41 **Section 78.** Effective date. This ordinance shall take effect within 30 days of receipt
42 ~~approval~~ of the ~~proposed~~ Comprehensive Plan Amendment, associated with the application, by the
43 Florida Department of Economic Opportunity as required under Section 163.3184, Florida Statutes,
44 which amendment would modify the FLUM from Low Density Residential to Business Office.
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PASSED and ENACTED this ____ day of _____, 2013.

First Reading: _____

Second Reading: _____

Attest: _____
Meighan Alexander
Village Clerk
Shelley Stanczyk
Mayor

APPROVED AS TO FORM:

John H. Herin, Jr.
Interim Village Attorney

FINAL VOTE AT ADOPTION:
Council Member Patrick Fiore _____
Council Member Tim Schaffer _____
Council Member Joan Lindsay _____
Vice-Mayor John DuBois _____
Mayor Shelley Stanczyk _____

- 1 (a) consent of all fee holders of the following immediately adjacent properties: 9200,
2 9220, 9240, 9260 and 9280 SW 164th Street; and,
3
4 (b) consent of fee holders of 75% of the separate properties located within the adjoining
5 area bounded by SW 164th Street and SW 94th Avenue.
6

7 Thereafter, the Village Council is to hold a separate hearing and evidentiary ruling on the site plan
8 application.
9

10 BE IT ENACTED BY THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE
11 OF PALMETTO BAY, FLORIDA, AS FOLLOWS:
12
13

14 **Section 1.** In evaluating an application for a rezoning, from R-1, Single Family
15 Residential to B-2, Business District for 6.3705 ± acres out of a total of 9.4678 ± acres for the
16 location known as 9271 SW 164 Street, bearing folio 33-5028-002-0070) together with adjacent
17 property bearing folio 33-5028-002-0080, Palmetto Bay the Village Council is to apply the standard
18 under 30-30.8(b), of the Village's Code. Applicant has met the criteria of 30-30.78(b). The map
19 amendment is attached and incorporated by reference herein as Exhibit 1.
20

21 **Section 2.** The property that is the subject of the rezoning bears the following legal
22 description:
23

24 A portion of Tract 7 and 8, EAST HILL, according to the plat thereof, as recorded in Plat
25 Book 46, Page 43, of the public records of Miami-Dade County, Florida; more fully
26 described as follows:
27

28 Beginning at the Northwest corner of said Tract 7; thence South 88°58'26" East, on the
29 North line of said Tracts 7 and 8, a distance of 673.10 feet to the Northeast corner of said
30 Tract 8; thence South 00°10'11" East, on the East line of said Tract 8, a distance of 410.59
31 feet; thence North 89°14'49" West, on a line 229.33 feet North of and parallel with the
32 South line of said Tract 8, and Westerly extension thereof, a distance of 673.58 feet; thence
33 North 00°05'42" West, on the West line of said Tract 7, a distance of 413.79 feet to the
34 Point of Beginning.
35

36 Said lands situate, lying and being in Miami-Dade County, Florida, and containing 277,498
37 square feet or 6.3705 acres, more or less.
38

39 **Section 3.** Covenant, Leasehold or Easement. The Applicant shall be required to place
40 a covenant, easement or leasehold document running with the land relating to the park use of the
41 3.0973± acres of the above reference folio ~~numbers that is to remain R-1, Single Family Residential.~~
42 The Village Attorney shall approve the form of the covenant, easement or leasehold document,
43 which must be recorded prior to issuance of a building permit. ~~within 60 days of the effective date~~
44 ~~of this ordinance.~~
45

1
2 **Section 4.** The Village Council in compliance with Chapter 166, Florida Statutes, after
3 the first reading approved/denied the applicant's request to rezone.
4

5 **Section 5.** If any section, clause, sentence, or phrase of this ordinance is for any reason
6 held invalid or unconstitutional by a court of competent jurisdiction, the holding shall not affect the
7 validity of the remaining portions of this ordinance.
8

9 **Section 6.** All ordinances or parts of ordinances in conflict with the provisions of this
10 ordinance are repealed.
11

12 **Section 7.** This ordinance shall be codified and included in the Code of Ordinances.
13

14 **Section 8.** If any section, clause, sentence, or phrase of this ordinance is for any reason
15 held invalid or unconstitutional by a court of competent jurisdiction, the holding shall not affect the
16 validity of the remaining portions of this ordinance.
17

18 **Section 9.** This ordinance shall take effect within 30 days of ~~transmittal receipt~~ of the
19 proposed Comprehensive Plan Amendment, associated with the application, by the Florida
20 Department of Economic Opportunity as required under Section ~~163.3187~~ 163.3184, Florida
21 Statutes, which amendment would modify the FLUM from Low Density Residential to Business
22 Office; and upon release of the covenant recorded on May 28, 1980, the Covenant, Declaration of
23 Restrictions, at Official Record Book 10973 at Pages 1003 through 1009.
24
25

26 **PASSED and ENACTED** this ____ day of _____, 2013.

27
28 First Reading: _____

29
30 Second Reading: _____

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34 Attest: _____
35 Meighan Alexander Shelley Stanczyk
36 Village Clerk Mayor
37

38 APPROVED AS TO FORM:
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41 _____
42 John H. Herin, Jr.
43 Interim Village Attorney
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FINAL VOTE AT ADOPTION:

- Council Member Patrick Fiore _____
- Council Member Tim Schaffer _____
- Council Member Joan Lindsay _____
- Vice-Mayor John DuBois _____
- Mayor Shelley Stanczyk _____

