

**Lee County Board of County Commissioners  
Agenda Item Summary**

Blue Sheet No. 20021351

**1. REQUESTED MOTION:**

**ACTION REQUESTED:** Approve request to amend the Miromar Lakes DRI Development Order .

**WHY ACTION IS NECESSARY:** Approval is necessary to revise the applicable standard for adjusting the unpaid balance of the proportionate share assessment .

**WHAT ACTION ACCOMPLISHES:** Revises the standard for the annual adjustment of the unpaid balance of the transportation proportionate share assessment. The annual adjustment of the outstanding balance ensures the developer absorbs the increased cost of road improvements incurred due to the developer's election to pay the transportation assessment over time rather than in a lump sum.

**2. DEPARTMENTAL CATEGORY:**  
**COMMISSION DISTRICT #** 9:30

**3. MEETING DATE:** 12-10-2002

**4. AGENDA:**

- CONSENT
- ADMINISTRATIVE
- APPEALS
- PUBLIC
- WALK ON

**1hr TIME REQUIRED:** 9:30 a.m. or as soon thereafter

**5. REQUIREMENT/PURPOSE:**  
(Specify)

- STATUTE 380.06(19)
- ORDINANCE
- ADMIN. CODE
- OTHER

**6. REQUESTOR OF INFORMATION:**

- A. COMMISSIONER
- B. DEPARTMENT County Attorney
- C. DIVISION Donna Marie Collins
- BY: Donna Marie Collins  
Assistant County Attorney

**7. BACKGROUND:**

as may be heard.

In November 1999, the Board approved the Miromar Lakes Development of Regional Impact. Miromar Lakes is a mixed use development consisting of 2,600 dwelling units, 450 hotel rooms, 36 holes of golf, and 630,000 square feet of commercial uses (office and retail). The proportionate share obligation for the transportation impacts of the project was determined to be \$10,914,866.00

Pursuant to Lee County Land Development Code, the County offers concurrency vesting to developments of regional impact that pay the transportation assessment in advance through a time certain schedule specified in a development agreement. At the request of Miromar, the County agreed to issue a certificate of concurrency vesting valid until December 2009 (projected build out), based on the execution of a development agreement with a 4-year payment schedule of the full transportation assessment in three installments. Miromar offered the County a promissory note in the face amount of \$10,914,866.00 as a guarantee of full payment. (Continued on Page 2)

**8. MANAGEMENT RECOMMENDATIONS:**

**9. RECOMMENDED APPROVAL:**

A Department Director	B Purchasing or Contracts	C Human Resources	D Other	E County Attorney	F Budget Services				G County Manager								
N/A	N/A	N/A	N/A	<i>DMC 11/26/02</i>	<i>WMA 11/26/02</i> <table border="1"> <tr> <td>OA</td> <td>OM</td> <td>RISK</td> <td>GC</td> </tr> <tr> <td><i>RK 11/26</i></td> <td><i>11/27/02</i></td> <td><i>11/26/02</i></td> <td><i>11/26/02</i></td> </tr> </table>				OA	OM	RISK	GC	<i>RK 11/26</i>	<i>11/27/02</i>	<i>11/26/02</i>	<i>11/26/02</i>	<i>DAS 11-26-02</i>
OA	OM	RISK	GC														
<i>RK 11/26</i>	<i>11/27/02</i>	<i>11/26/02</i>	<i>11/26/02</i>														

**10. COMMISSION ACTION:**

- APPROVED
- DENIED
- DEFERRED
- OTHER

CO. ATTY.  
FORWARDED  
TO CO. ADMIN.  
11/26/02 WMA

RECEIVED BY  
COUNTY ADMIN. *RK*  
11/26/02  
*1140 an*  
COUNTY ADMIN.  
FORWARDED TO: *SS*  
11/26/02

Miromar also agreed to compensate the County for fluctuations in the cost of road improvements incurred by virtue of the passage of time. Based on Miromar's commitments, the county earmarked the funds and programmed the Koreshan Boulevard Extension, reflecting the payment schedule in the agreement.

Road costs are a key part of a DRI proportionate share calculation. Typically, the cost of road improvements consist of two components: land acquisition and construction costs. Construction costs are usually the larger component. Protection against increased costs of road improvements was to be accomplished by an adjustment to the unpaid portion of the transportation assessment each year to reflect the changes in the cost of road construction as reflected in the State Highway Bid Price Index for the State of Florida. No protection was offered against increases in land acquisition costs.

The adjustment rate for the unpaid balance on the transportation assessment referenced in the development order is tied to the State Highway Bid Price Index. The State Highway Bid Price Index was selected because increases in County road project and construction costs mirror the data reflected in the referenced index. The suitability of this index is underscored by the fact that the County uses similar specifications and standards, is subject to similar market factors, and shares many of the same contractors as FDOT. The existing adjustment rate is related to the State Highway Bid Price Index, which is an index that measures changes in the cost of roadway improvements over time. Miromar asserts the index is volatile on a quarterly basis and noted that the Florida Department of Transportation uses a moving average when referencing the index.

The substance of the proposed amendment to the Miromar Lakes DRI Development Order is that Miromar desires to revise the adjustment standard applicable to the unpaid balance of the transportation assessment. Currently, the adjustment standard is tied to the State Highway Bid Price Index for the State of Florida. Miromar has requested that the annual adjustment rate be revised to a fixed 7.4 percent. Miromar also requests that the proposed 7.4 percent adjustment rate be applied to the unpaid balance for the 2002 year. In exchange for the 7.4 percent fixed rate, Miromar has offered to tender \$6,000,000 as the second installment toward the unpaid balance of the Miromar Lakes DRI transportation assessment. This would result in a \$3,200,000 advance in the payment schedule outlined in the DRI Development Order. The balance of the transportation assessment, \$1,742,938 would then be paid in December 2005. Each year between December 2002 and December 2005, Miromar would tender an additional \$128,977.41 to defray the increased cost of road improvements necessary to mitigate the impacts of the project.

Staff recommends approval of the proposed amendment to the Miromar Lakes DRI Development Order.

*Attachment:*

Proposed revisions to the text of the Miro

DATE CRITICAL  
Must be to Lee Cores  
by 5:00pm today  
(11/26/02.)  
Thanks,  
Ann Polito

## MIROMAR'S REQUESTED CHANGES TO THE DRI DEVELOPMENT ORDER

### II D. TRANSPORTATION

#### 2. MITIGATION

##### c. Traffic Mitigation

The Developer must mitigate its overall project traffic impacts through the payment of the entire project proportionate share obligation of \$10,914,866 for project build out. ~~The details of this payment must be established in a Local Government Development Agreement executed pursuant to Section 163.3220, Florida Statutes, and Chapter 2, Article III of the Lee County Land Development Code. The Developer must submit to Lee County a Development Agreement within 90 days of the effective date of this DRI Development Order.~~

Generally, the payment is to be accomplished in the following manner:

- 1) Within 120 days of the effective date of this DRI Development Order, the Developer must deliver as Maker a promissory note, payable to Lee County, in the original principal amount of \$10,914,866.00, representing the entire proportionate share obligation. The note will provide for payment of the entire amount to be paid the County before ~~the start of Phase II~~ December 30, 2005. Additionally, the note must provide for interest ~~in order to index the total amount due to the increase in construction costs as reflected in the State Highway Bid Price Index for the State of Florida, as published in the Engineering News Record to be paid at a rate of 7.4% on the unpaid balance of the proportionate share assessment.~~
- 2) The promissory note will provide for payments of principal as follows:
  - a. The first principal installment will be in the amount of the Phase I impact fee obligation, \$3,171,928.00, and will be due and payable on or before the earlier of one year from the date of final DRI Development Order approval or the date of the issuance of the first building permit for vertical construction. However, some development such as the golf course, golf clubhouse, information/sales center/model center, and beach club may proceed prior to the first payment. That development will be required to pay road impact fees at the time permits are received. Impact fee payments will be deducted from the first principal payment;
  - b. The second principal installment in the amount of ~~\$2,800,000.00~~

~~\$6,000,000.00~~, will be due and payable on ~~September 1, 2002~~  
December 30, 2002;

- c. The final payment of principal in the amount of ~~\$4,942,938.00~~  
\$1,742,938.00, will be due and payable on the earlier of  
~~September 1, 2004 or the date on which the first building permit for~~  
~~vertical construction is issued within Phase II~~ December 30, 2005.

- 3) Interest will be payable on ~~September 1<sup>st</sup>~~ December 30<sup>th</sup> of each year  
beginning ~~September 1~~ December 30, 2000 and continuing until the  
promissory note is paid in full. Upon payment of the six million dollar  
principal payment prior to December 30, 2002, the 2002 interest payment  
will be based on the remaining principal balance of \$1,742,938.00. Each  
payment will be in the amount of all accrued and unpaid interest to the  
date thereof. Except for the year 2002, the amount of interest accrued will  
be based on the daily principal balance outstanding during the preceding  
year. The applicable interest rate will be equal to 7.4% ~~the increase,~~  
~~expressed as a percentage, in the State Highway Bid Price Index for the~~  
~~State of Florida, as published in the latest available edition of the~~  
~~Engineering News Record, from the Base Index applicable for each year.~~  
~~For the payment due September 1, 2000 the Base Index will be the~~  
~~Florida Index published for the second quarter of calendar year 1999.~~  
~~Thereafter the Base Index for each year will be in the index for the~~  
~~calendar quarter which was the index taken into account in calculating the~~  
~~percentage change applicable for the prior interest payment.~~ Interest  
payments will not be due at the time of any prepayment because the  
applicable rate will not have been determined at that time. Interest with  
respect to the amount of the prepayment will be due and payable in  
conjunction with the next interest payment Interest payments are due and  
owing on December 30<sup>th</sup> of each calendar year. All prepayments of  
principal shall be credited to the next installment(s) due. All interest  
payments will be deposited in the District 3 impact fee account.

- 4) The Developer may choose to provide certain improvements such as the  
right-of-way for Koreshan Boulevard Extension along the south property  
line for Miromar Lakes or the six-laning of Ben Hill Griffin Parkway in  
exchange for credits against the overall payment obligation. These  
improvements are subject to concurrence by Lee County DOT on their  
scope and timing, and the contributions will be treated as prepayments of  
principal. Dedication of the Koreshan Boulevard Extension right-of-way  
will be valued consistent with the provisions of the Lee County Land  
Development Code, based on the date prior to DRI Development Order  
approval.

The portion of the payment in lieu of impact fees, estimated at \$5,686,010, will be treated as impact fees as outlined in the Lee County Land Development Code and deposited in the District 3 impact fee account. Cash payments above and beyond those in lieu of impact fees will be applied by Lee County toward the following improvements and in the following priority:

- The list of significantly and adversely impacted roads and intersections from Paragraphs D.1.b and D.1.c.
- ~~Other non-site-related roadway improvements benefitting Miromar Lakes.~~

d. Concurrency

1. If the development agreement and promissory note specified in Paragraph D.2.c. above are provided as described and in the time frames noted, the Miromar Lakes DRI will be granted a concurrency certificate for build out of the project, that is, the certificate will be valid until the project completes the build out development parameters specified in Paragraph D.1.a. or December 31, 2009, whichever is sooner. Thereafter, further development of the project will be subject to the Concurrency Management System, unless the concurrency certificate is extended as provided in Condition D.2.d.2 below. Under the payment schedules identified above, the Developer will not be required to pay road impact fees at the building permit stage, except as previously noted for that limited development that may occur prior to the first payment. If the payments are not made as described, then no further building permits will be issued until the Developer makes the payment. Concurrency vesting is contingent on the payment schedule and amounts set forth in Paragraph D.2.c. If the Developer fails to comply with the payment schedule and amounts due, the project will lose its vested status and will be subject to the County's Concurrency Management System for all future development. The Developer will have a 15 day grace period following the due date for each payment within which to make the required payment without affecting the concurrency vesting.
2. If the developer files a Notice of Proposed Change that results in an extension of project build out beyond December 31, 2009 *and* the developer desires to extend the concurrency certificate in Condition D.2.d.1. above, the developer must provide a detailed traffic assessment to Lee County DOT for review and approval. The assessment must include, but not be limited to, identifying the adjusted phasing, level of development anticipated for the revised phasing, estimated traffic impacts, needed improvements, and the project's proportionate share of those improvements.

The assessment will be a cumulative analysis of the project's traffic

impacts. The County will provide credit against the recalculated proportionate share for all mitigation paid through the date of the new traffic assessment. The proportionate share payments previously made by the Developer will be adjusted to then current year dollars. This will be accomplished by increasing the principal amount paid by an amount equal to the increase as determined in the State Highway Bid Index for the State of Florida, published in the Engineering News Record. This increase will be expressed as a percentage and will be measured from the index published for the second quarter of 1999 to the index published in the then latest available edition. ~~In no event may the adjustment result~~ in a refund of money paid to the County. The assessment must identify mitigation for those roadway segments that are significantly and adversely impacted by cumulative project traffic at the extended build-out year in accordance with the Transportation Uniform Standard Rule in the Florida Administrative Code. Prior to conducting a reassessment analysis, the developer must attend a transportation methodology meeting with the County, and other review agencies as necessary, to establish the appropriate methodology.

The traffic assessment will be prepared by the developer following generally acceptable transportation planning procedures consistent with the standards in effect at the time. Additional mitigation, if any, resulting from the traffic assessment must be paid in a manner generally consistent with that of the original mitigation. For example, the development order and any corresponding development agreement must be amended to reflect the revised phasing and additional mitigation.

**End of Requested Changes to the DO**

Draft dated 11-26-02