

Lee County Board of County Commissioners
Agenda Item Summary

DATE CRITICAL
Blue Sheet No. 20031225

1. **REQUESTED MOTION:**

ACTION REQUESTED: Execute Extension of Agreement with Lehigh Corporation to improve traffic circulation within Lehigh Acres by constructing two segments of a roadway designed to complete a continuous roadway from the intersection of Beth Stacy Boulevard and 23rd Street to Milwaukee Boulevard at Homestead.

WHY ACTION IS NECESSARY: To extend the agreement for one year for construction of roadway improvements to connect Beth Stacey Boulevard to Milwaukee Boulevard.

WHAT ACTION ACCOMPLISHES: Extends agreement for one year for construction of an East/West Corridor in Lehigh that expires on October 30, 2003.

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

C9C

3. **MEETING DATE:**

10-28-2003

4. **AGENDA:**

- CONSENT
 ADMINISTRATIVE
 APPEALS
 PUBLIC
 WALK ON
TIME REQUIRED:

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

- STATUTE
 ORDINANCE
 ADMIN. CODE
 OTHER

6. **REQUESTOR OF INFORMATION:**

- A. COMMISSIONER
B. DEPARTMENT Transportation
C. DIVISION
BY: Scott Gilbertson, Director

7. **BACKGROUND:** The Lehigh Corporation and a subsequent purchaser of a portion of the property, Copperhead Development, Inc., desire to extend an agreement to improve traffic circulation within Lehigh Acres by completing design and construction of an East/West Corridor through the Community. This agreement was approved by the BOCC on November 24, 1998. The Department of Transportation has no objection to the extension of the agreement for construction of improvements to connect Beth Stacey Boulevard to Milwaukee Boulevard and the dedication of related rights-of-way.

(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
					after 10/7/03				
Amelia P. Davis	N/A	N/A			OA	OM	RISK	GC	10/17/03

10. **COMMISSION ACTION:**

- _____ APPROVED
_____ DENIED
_____ DEFERRED
_____ OTHER

Rec. by CoAtty
Date: 10/17/03
Time: 9:45 AM
Forwarded To: County Admin
10/17/03 10:04 AM

RECEIVED BY
COUNTY ADMIN: RK
10/17
11:00 AM 2003
COUNTY ADMIN
FORWARDED TO:
10/17/03

Pursuant to the Agreement, the Lehigh Corporation and its assigns will construct two segments of the East/West Corridor necessary to complete the roadway from the intersection of Beth Stacey Boulevard and 23rd Street to Milwaukee Boulevard at Homestead Road. The County will review all design plans and perform necessary inspections. At the conclusion of the design, permitting, and construction of each segment of the new East/West Corridor, the County will issue road impact fee credits to Lehigh Corporation and its successors in accordance with the procedures set forth in the Land Development Code.

There will be no road impact fee credits issued for the dedication of right-of-way. The reason for this is that the County already owns the existing right-of-way alignment for the connection of Beth Stacey and Milwaukee. The Lehigh Corporation and Copperhead Development, Inc., desire to realign the roadway to avoid wetlands located within the existing platted alignment.

Staff recommends that the Board of County Commissioners execute the attached Extension Agreement.

- Attachments: (1) Extension to Agreement regarding the Construction of improvements to Connect Beth Stacey Boulevard to Milwaukee Boulevard and the Dedication of Related Rights-of-Way
(2) Agreement regarding the Construction of improvements to Connect Beth Stacey Boulevard to Milwaukee Boulevard and the Dedication of Related Rights-of-Way

**EXTENSION TO AGREEMENT REGARDING THE CONSTRUCTION OF
IMPROVEMENTS TO CONNECT BETH STACEY BOULEVARD TO
MILWAUKEE BOULEVARD AND THE DEDICATION OF RELATED RIGHTS-OF-WAY**

THIS EXTENSION TO AGREEMENT REGARDING THE CONSTRUCTION OF IMPROVEMENTS TO CONNECT BETH STACEY BOULEVARD TO MILWAUKEE BOULEVARD AND THE DEDICATION OF RELATED RIGHTS-OF-WAY is entered and effective this ____ day of _____, 2003; and,

WHEREAS, Lehigh Corporation, a Florida Corporation ("Lehigh") and Lee County, a political subdivision of the State of Florida ("County") have entered into a certain agreement dated October 30, 1998 entitled Agreement Regarding the Construction of Improvements to Connect Beth Stacey Boulevard to Milwaukee Boulevard and the Dedication of Related Rights-of-Way ("Agreement"); and,

WHEREAS, Copperhead Development, Inc., ("Copperhead") purchased from Lehigh real property that includes Segment 1 and is an assignee under the Agreement; and,

WHEREAS, Lehigh and Copperhead have not completed construction of Segments 1 and 2 as described under the terms of the Agreement and the completion of the improvements will not occur prior to October 30, 2003; and,

WHEREAS, the parties hereto are agreeable to an extension of the completion date in accomplishing the mutual benefits contained with this Agreement;

NOW THEREFORE, in consideration of the mutual covenants and benefits contained herein and in the Agreement, the sufficiency of which is acknowledged by all parties, the parties do hereby agree as follows:

1. The Agreement is hereby amended and the date for the completion of construction of segments 1 and 2 is hereby extended to October 30, 2004.
2. All other provisions of the Agreement not affected by this amendment are to remain in full force and effect.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals intending to be bound as of the date first written above.

Witnesses:

LEHIGH CORPORATION

[Signature]

BY: _____

[Signature]

[Type or print name]

[Typed or printed name]

[Signature]

[Title]

[Type or print name]

**Extension to Agreement regarding the Construction of
Improvements to Connect Beth Stacey Boulevard to
Milwaukee Boulevard and the Dedication of Related Rights-of-way
Page 2**

STATE OF _____

COUNTY OF _____

The foregoing agreement was acknowledged before me this _____ day of
2003 by _____ as _____ of Lehigh Corporation,
a Florida corporation. He/she is personally known to me or has produced _____
_____ (type of identification) as identification.

[Signature of notary]

[Typed or printed name]

[Commission Number]
Stamp or seal

**Extension to Agreement regarding the Construction of
Improvements to Connect Beth Stacey Boulevard to
Milwaukee Boulevard and the Dedication of Related Rights-of-way
Page 3**

Witnesses:

COPPERHEAD DEVELOPMENT, INC.

[Signature]

BY: _____

[Signature]

[Type or print name]

[Typed or printed name]

[Signature]

[Title]

[Type or print name]

STATE OF _____

COUNTY OF _____

The foregoing agreement was acknowledged before me this _____ day of
2003 by _____ as _____ of Copperhead
Development, Inc., a Florida corporation. He/she is personally known to me or has produced ____
_____ (type of identification) as identification.

[Signature of notary]

[Typed or printed name]

[Commission Number]
Stamp or seal

**Extension to Agreement regarding the Construction of
Improvements to Connect Beth Stacey Boulevard to
Milwaukee Boulevard and the Dedication of Related Rights-of-way
Page 4**

Approved and accepted for and on behalf of Lee County, Florida, this ____ day of ____
_____, 2003.

**BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA**

BY: _____
Ray Judah, Chairman

ATTEST:
CHARLIE GREEN, EX-OFFICIO CLERK

APPROVED AS TO FORM:

BY: _____
[Signature]

[Type or Print Name]
Deputy Clerk

Joan C. Henry
Assistant County Attorney

AGREEMENT REGARDING THE CONSTRUCTION OF IMPROVEMENTS TO
CONNECT BETH STACEY BOULEVARD TO MILWAUKEE BOULEVARD AND
THE DEDICATION OF RELATED RIGHTS-OF-WAY.

This is an agreement by and between Lehigh Corporation, a Florida Corporation,
(Lehigh), and Lee County, a political subdivision of the State of Florida (County).

RECITALS

1. An additional east/west road corridor through Lehigh Acres would afford relief to certain Lehigh Acres roads as well as address a long standing public transportation need.
2. The County has examined the feasibility of constructing an alternate east/west corridor *other than* the Beth Stacey/Milwaukee Corridor and has concluded that the extension of the Beth Stacey Boulevard to Milwaukee Boulevard is the best alternative in light of costs, safety, and environmental considerations.
3. The County and Lehigh desire to collaborate on the construction of two segments of roadway designed to complete a continuous roadway from the intersection of Beth Stacey Boulevard and 23rd Street to Milwaukee Boulevard at Homestead Road in accordance with the terms and conditions of this agreement.
4. As part of the collaboration, Lehigh Corporation will be responsible for constructing the two segments of the east/west corridor necessary to complete the roadway from the intersection of Beth Stacey Boulevard and 23rd Street to Milwaukee Boulevard at Homestead. The County will be responsible for reviewing all design plans and inspections. The County will issue road impact fee credits for the new construction in accordance with Section D of this agreement.
5. The Board of County Commissioners has the authority under the Florida Statutes and the Lee County Land Development Code to issue road impact fee credits in exchange for roadway construction by private entities.
6. The County is willing to issue road impact fees credits for the construction of the two roadway segments needed to connect Beth Stacey Boulevard to Milwaukee Boulevard.

NOW THEREFORE, in light of the foregoing recitals, the parties agree as follows:

A. DEFINED TERMS

When used herein, each of the following terms will have the meaning set forth for it as follows:

1. "East/West Corridor" means the continuous roadway from the existing intersection of Beth Stacey Boulevard and 23rd Street southerly to and including the existing Milwaukee Boulevard located in Section 7, Township 45 S, Range 27 E, and continuing from the southern end of existing Milwaukee Boulevard in Section 7 Township 45 S, Range 27 E southerly then easterly to connect to Homestead Road at the existing intersection with Milwaukee Boulevard from the east.
2. "East/West Corridor - Segment 1" means the segment of the east/west corridor from the current southern terminus of Beth Stacey Boulevard at the intersection of 23rd Street connecting to the northern terminus of Milwaukee Boulevard at the south line of Section 6, Township 45 South, Range 27 East, for a distance of approximately 3,630 feet, as shown on Exhibit "A".
3. "East/West Corridor - Segment 2" means the segment of the east/west corridor from the current southern terminus of Milwaukee Boulevard in Section 7, Township 45 S, Range 27 E, near Preston Street connecting to the western terminus of Milwaukee Boulevard at the intersection with Homestead Road, for a distance of approximately 8,175 feet, as shown on Exhibit "A".
4. "County" means Lee County, a political subdivision of the State of Florida.
5. "DOT" means the Lee County Department of Transportation.
6. "Lehigh" means Lehigh Corporation, a Florida corporation or its successors or assigns.

B. DEDICATION OF RIGHT-OF-WAY

1. Right-of-way for Segments 1 and 2 of the new east/west corridor are currently platted and dedicated to Lee County. Lehigh proposes to realign the roadway by acquiring new right-of-way. The purpose of the realignment is to avoid wetlands located within the existing platted alignment. The realignment will be in accordance with the County's short and long range plans for the segments.
2. After the County reviews and approves the new alignment, Lehigh will commence design of a two-lane collector roadway in accordance with good engineering principles and practices and subject to Lee County DOT review and approval.

3. Lehigh will dedicate the new right-of-way alignment for segments 1 and 2 of the new east/west corridor within 30 days of the issuance of a Certificate of Completion on the roadway improvements. The dedication to the County will be in the form of a warranty deed conveying unencumbered title in fee simple. The County will accept the right-of-way dedication of the newly aligned segments 1 and 2 of the east/west collector roadway. Lehigh will pay documentary stamp taxes and prorated ad valorem taxes on the dedicated right-of-way. Lehigh will also pay for all costs associated with preparing the deed for recording, including surveys. The County will pay for recording costs and the title insurance policy premium, if necessary.
4. There will be no road impact fee credits issued for the right-of-way dedicated for Segments 1 and 2 because the County already owns the existing right-of-way alignments.

C. DESIGN AND CONSTRUCTION OF ROADWAY IMPROVEMENTS

1. Lehigh will design a two-lane collector road within the right-of-way of segments 1 and 2 of the new east/west collector.
2. The roadway design is subject to the approval of Lee County DOT.
3. No development order for construction may be issued until Lehigh obtains written documentation of DOT's approval of the proposed design.
4. Upon receipt of the development order and other required permits, Lehigh will diligently pursue the construction of the roadway segments.
5. If Lehigh constructs a two-lane roadway within newly dedicated right-of-way brought about by the realignment of the road, Lehigh may, at their expense, pursue the vacation of the unused portions of the existing County right-of-way.

D. ISSUANCE OF CREDITS

1. In consideration for the design, permitting, and construction of segments 1 and 2 of the new east/west corridor, the County will issue to Lehigh road impact fee credit in the amount of 53 percent of the costs associated with those tasks and in accordance with the Land Development Code. The creditable amount will be based on the cost of the design, permitting and construction of a two-lane undivided, at grade collector roadway, and will be based on an engineer's certification and subject to Lee County DOT review and approval. If Lehigh chooses to design, permit and construct an alternative configuration (i.e. a two-lane divided collector), any additional costs associated with that alternative configuration would be solely Lehigh's responsibility.

2. Road impact fee credits will be issued in two stages on each of the roadway segments. The first disbursement will occur upon commencement of construction. This disbursement will be for 53 percent of the documented costs of design and permitting of a two-lane undivided, at grade collector for each roadway segment. The second disbursement will occur when construction is complete and accepted by the county for maintenance in accordance with AC 11-7 or when the total construction costs have been bonded guaranteeing completion in accordance with Land Development Code Section 2-275(a)(4). This disbursement will be for 53 percent of the documented costs of construction for a two-lane undivided, at grade, collector roadway..
3. Road impact fee credits may be issued separately for each of the two segments for the east/west collector roadway.

E. WAIVER OF PAYMENTS UNDER THE 23RD STREET AGREEMENT

Lehigh waives the \$45,000 potentially due to Lehigh pursuant to paragraph 3(h) of the agreement entitled "Agreement Regarding Alvin Avenue Improvements, 23rd Street SW Improvements, Beth Stacey Boulevard Improvements and related rights of way Dedication" dated June 5, 1996.

F. GENERAL PROVISIONS

1. The County's Impact Fee Coordinator will maintain an accounting of the road impact fee credits to which Lehigh is entitled from time to time in accordance with this Agreement. Any Assignee from Lehigh may also use the road impact fee credits, but only if written notice to the County's Impact Fee Coordinator is signed by both the assignee and Lehigh. This provision shall survive any completion of the terms of this agreement.
2. This Agreement imposes no obligation on any of the parties hereto except as expressly provided for herein.
3. In the event of any action filed in Circuit Court to interpret or enforce this Agreement, any provision hereof or any matter arising here from, the prevailing party shall be entitled to recover its reasonable costs; fees and expenses, including but not limited to, witness fees, expert fees, consultant fees, attorney, paralegal and legal assistant fees, county staff time costs and expenses and any other professional fees, costs and expenses. Venue for any action to interpret or enforce this agreement will be Lee County, Florida. The terms of this agreement will be governed by the laws of the State of Florida.
4. Any notices which may be permitted or required hereunder must be in writing and will be deemed to have been duly given as of the date and time the same are personally delivered, transmitted electronically (Fax'ed) or within three (3)

days after depositing with the United States Postal Service, postage prepaid by registered or certified mail, return receipt requested, or within one (1) day after depositing with Federal Express or other overnight delivery service from which a receipt may be obtained, and addressed as follows:

If to the County: Lee County
 Department of Transportation
 P.O. Box 398
 Fort Myers, Florida 33902-0398

If to Lehigh: Lehigh Corporation
 226 E. Joel Boulevard
 Lehigh Acres, Florida 33936¹²

5. If Lehigh fails to complete the construction of segments 1 and 2 of the new east/west corridor by June 1, 2003, or within five years from the date this agreement is executed, whichever is later, then in that event, this document is null and void and of no further force and effect.
6. The parties hereto agree that Lehigh shall have the right to assign its rights under this Agreement, either in whole or in part, to a third party, provided that said third party assumes Lehigh's duties and obligations under this Agreement.
7. This agreement embodies the entire agreement between the parties and may not be waived or amended except by written instrument signed by both parties.
8. The Exhibits referred to herein are incorporated into the agreement by reference.
9. Lehigh and the County acknowledge that this agreement was prepared after negotiations between them. Accordingly, the agreement will not be interpreted against either party solely because that party's counsel took the lead in drafting the agreement.
10. This agreement may be executed in one or more counterparts, each of which will be deemed an original.
11. The date of this Agreement is the date of the public hearing at which the Board of County Commissioners approves this Agreement by oral motion.

IN WITNESS WHEREOF, Lehigh Corporation and Lee County have executed this agreement on the date set forth below.

Attest

Lehigh Corporation

Jahet Allison
Jahet Allison, Secretary

Gregory M. Morris
By: Gregory M. Morris, President

(SEAL)

NOTARY
State of Florida
County of Lee

The foregoing instrument was acknowledged before me on 10/30/98, 1998 by Gregory M. Morris of Lehigh Corporation, in his capacity as President. He is personally known to me.

(SEAL)

Tena M. Wyskochil
Signature of Notary

Tena M. Wyskochil

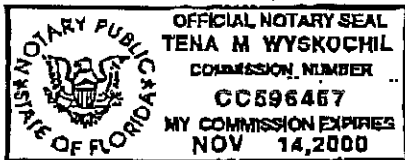
Print Name of Notary

Nov. 14, 2000

Commission Expiration

CC596467

Commissioner Number



ATTEST: Charlie Green, Clerk

BOARD OF COUNTY COMMISSIONERS
LEE COUNTY FLORIDA

By: Charlie Green
Deputy Clerk

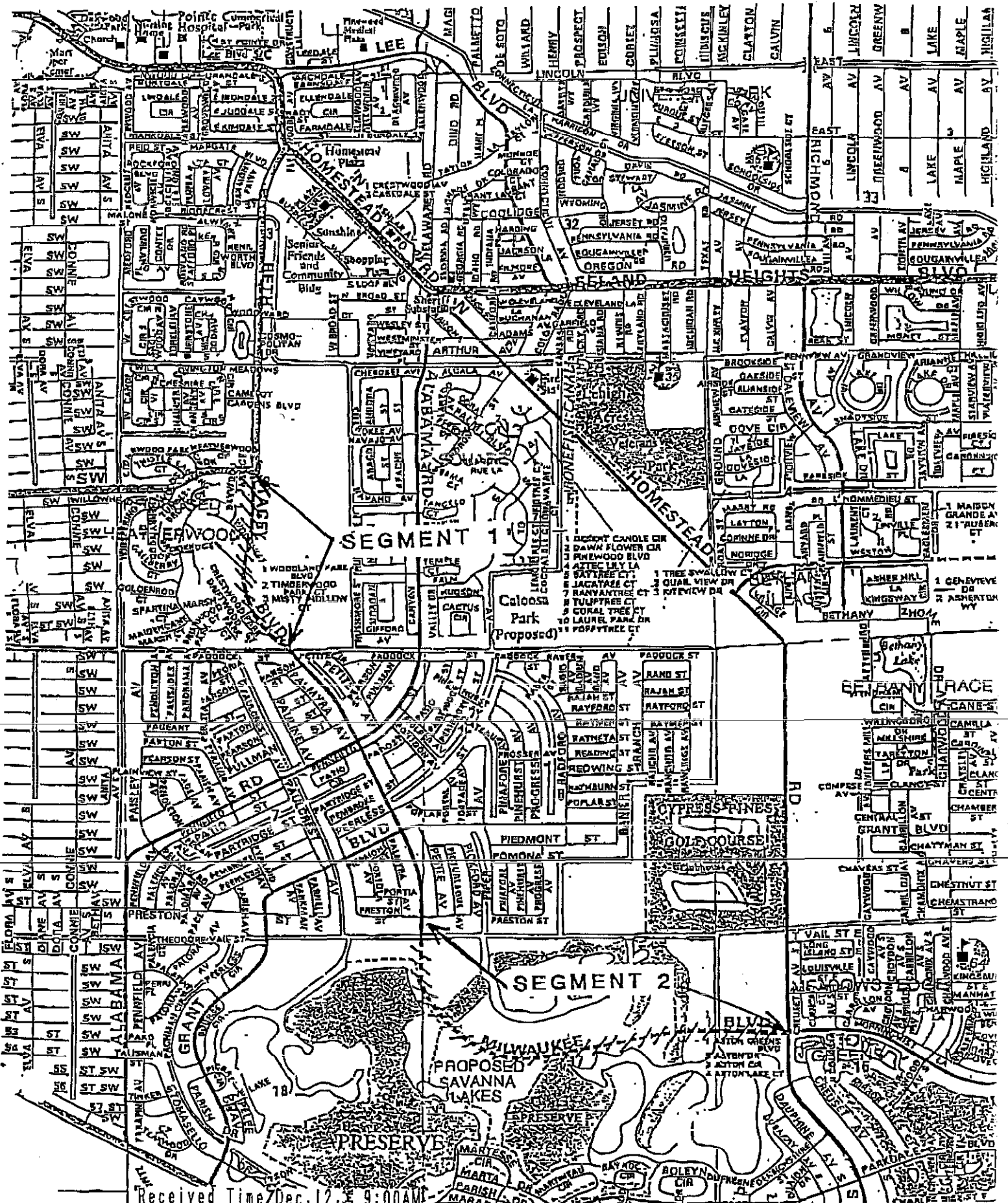
By: Ray Judah
Ray Judah, Chairman

Approved as to form by the
Office of the Lee County Attorney

By: [Signature]

Attachments: Exhibit A, Map of Segments 1 and 2

EXHIBIT 'A'



Received Time/Dec. 12. 9:00AM