

**Board of County Commissioners**

Ken L. Foster, Chairman  
Burt Aaronson, Vice Chairman  
Karen T. Marcus  
Carol A. Roberts  
Warren H. Newell  
Mary McCarty  
Maude Ford Lee

County Attorney  
Joe Mount



R95 436D

**MEMORANDUM**

**DATE:** March 20, 1995  
**TO:** Willa Oswald,  
Minutes Department  
**FROM:** Barbara Alterman *BA*  
Assistant County Attorney  
**RE:** AGENDA ITEM FOR 3/30/95, ITEM B-26 SA86-106(E) - 94-77

FILE COPY

Please find enclosed two (2) original stipulated settlement agreements for Minto Communities, Inc. After execution, please return one (1) original to this office.

Thank you for your consideration in this matter.

BA/cs  
Enc.

Board of County Commissioners

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MEMORANDUM

**DATE:** March 20, 1995

**TO:** Honorable Ken L. Foster, Chair  
Members of the Board of County Commissioners

**FROM:** Barbara Alterman *BA*  
Assistant County Attorney

**RE:** AGENDA ITEM FOR 3/30/95, BCC ZONING MEETING  
STIPULATED SETTLEMENT AGREEMENT

Attached for your review is a stipulated settlement agreement between Minto Communities, Inc. and Palm Beach County. On January 26, 1995, the Board of County Commissioners approved amendments to the Smith Dairy DRI Zoning Petition No. 86-106(E) and approved a zoning map amendment for Petition 94-77, upon application of Minto Communities, Inc. As part of those approvals, the Board of County Commissioners denied Minto Communities, Inc. access to Hypoluxo Road and imposed a median landscaping condition on Petition 94-77, requiring landscaping to the medians to Hypoluxo Road, Lantana Road and Jog Road.

On or about February 27th, Minto Communities, Inc. filed a petition of Writ of Certiorari to the Circuit Court, challenging the conditions of approval which denied access to Hypoluxo Road and which imposed the median landscaping condition. In an attempt to settle the lawsuit, Minto Communities has proposed the following terms to a stipulated settlement agreement:

1. Palm Beach County will consider granting access to Hypoluxo Road.
2. Palm Beach County will consider an amendment to the median landscaping condition which would require landscaping on the medians on Hypoluxo Road from Jog Road to the project's entrance and Lantana Road from Jog Road to Hagen Ranch Road.

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Page 2

March 20, 1995

Minto Communities, Inc.

Staff recommends approval of the stipulated settlement agreement and further recommends that the Board grant approval to the Development Order Amendments to implement the terms of the settlement agreement.

BA/cs

Enc.

cc: Joe Mount, County Attorney  
Bevin Beaudet, Deputy County Administrator  
L. Martin **Hodgkins**, Sr., Director, Zoning Division, PZ&B Admin  
Julio **Dumas**, Principal Planner, PZ&B  
Minutes Department, w/ (2) org. settle. agree.

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R95-436D

STIPULATED SETTLEMENT AGREEMENT

This Stipulated Settlement Agreement ("Agreement") dated this 30th day of March, 1995, by and between Minto Communities, Inc. (hereafter "Minto") and Palm Beach County, a political subdivision of the State of Florida (hereafter "County").

RECITALS

WHEREAS, on January ~~26~~, 1995, the Palm Beach County Board of County Commissioners passed Resolution 95-121 which amended the DRI for Smith Dairy and Resolution 95-122 approving Minto's application to re-zone the approximately **445** acres which now constitute the Smith Dairy West PUD;

WHEREAS, the Board of County Commissioners imposed as conditions to its approval that Minto's property be denied an access point at Hypoluxo Road and that Minto install and maintain landscaping on specified segments of Jog, Hypoluxo and Lantana Roads, which are set forth as Conditions **E-8** and E-9 of the Zoning Resolution;

WHEREAS, Minto has filed a petition for a writ of certiorari against the County in the case styled Minto Communities, Inc. v. Palm Beach County Board of County Commissioners, Case No. 95-1650, pending in the Circuit Court in and for Palm Beach County, Florida which seeks a writ of certiorari deleting Conditions **E-8** and E-9 from Zoning Resolution 95-122; and

WHEREAS, Minto and the County have agreed to settlement of all issues arising out of Zoning Resolutions 95-121 and 95-122 in accordance with the terms of this Agreement.

WHEREAS, to effectuate this Settlement it will also be necessary to replace Maps H-1, **H-2** and G approved in **Zoning** Resolution 95-121 (considered by the County

concurrently with Zoning Resolution 95-122) with Maps H-1, H-2 and **G** contained in Minto's Application No. **DOA86-106(E)**, to reflect an access point from Minto's property to Hypoluxo Road.

WHEREAS, Minto and County have agreed to a Settlement in full of all **issues** arising out of Zoning Petition Nos. 86-106(E) and **PDD** 94-77, in accordance with the **terms** of this Stipulated Settlement Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the sufficiency of which are acknowledged by the parties by their signatures below, it is hereby expressly agreed **as** follows:

1. The above recitals are true and correct and incorporated herein by reference.
2. The County agrees to consider at its March **30**, 1995 meeting, (a) a resolution amending condition **E-8** **as** provided in paragraph **3** of this Agreement and deleting Condition E-9, both of which are contained in Zoning Resolution 95-122, (b) making a finding of no substantial deviation for DOA 86-106(E), and (c) a resolution replacing Maps H-1, H-2 and **G** approved in Zoning Resolution 95-121 with Maps H-1, H-2 and **G** contained in Minto's Application No. **DOA86-106(E)**.
3. Condition **E-8** of Zoning Resolution 95-122 will be amended to delete its present text and replace it with the following:

Prior to the issuance of a building permit (except for dry models), the property owner shall apply to the Palm Beach County Engineering and Public Works Department for a permit to landscape the median of Hypoluxo Road from the Project entrance east to Jog Road. Within three months of notification by Palm Beach County of completion of the construction of Lantana Road from Jog Road to Hagen Ranch Road, the property owner shall apply to Palm Beach County Engineering

and Public Works Department for a permit to landscape the median of the aforementioned section of Lantana Road. When permitted by Palm Beach County Engineering and Public Works, landscaping shall, at a minimum, consist of the "Low Cost Planting Concept" outlined in the Palm Beach County Engineering and Public Works Department March 1994 Streetscape Standards. All requirements shall be subject to the standards set forth in the Streetscape Standards. If all Xeriscape material is utilized, the watering of the plant material during the initial heal-in **period** shall be the responsibility of the property owner. Alternative species other than those listed in the County Standards may be allowed subject to approval by the County Engineer.

*All* median landscaping required **by** the above paragraph, including an irrigation system if required, shall be installed at the property owner's expense. All landscape material shall also be the perpetual maintenance obligation of the petitioner and its successors, heirs or assigns. Perpetual maintenance includes, but is not limited to pruning, fertilizing, irrigation, and alternate watering of Xeriscape material during periods of drought in order to maintain healthy plant material. All landscape material shall be installed on Hypoluxo Road on or before the issuance of a Certificate of Occupancy for anything other than dry models. All landscape material shall be installed on Lantana Road within ~~six~~ months of receipt of the landscaping permit.

Declaration of Covenants and Restriction Documents shall be established or amended, **as** required, prior to the issuance of a Certificate of Occupancy to reflect this obligation.

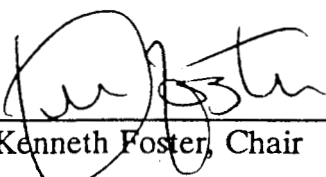
4. Upon the Board of County Commissioners' amendment to Condition E-~~€~~and deletion of Condition E-9 from Resolution 95-122, the finding of no substantial deviation, and the substitution of Maps H-1, H-2 and G, all **as** provided in paragraphs 2 and 3 at ove, Minto shall dismiss with prejudice its petition for certiorari.

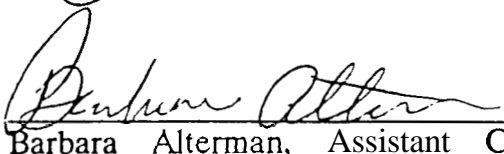
5. Each party to this Settlement Agreement agrees to bear its attorneys' fees and costs incurred in connection with Zoning Resolution Nos. 95-121 and 95-122 and the Circuit Court case initiated by Minto seeking a writ of certiorari.

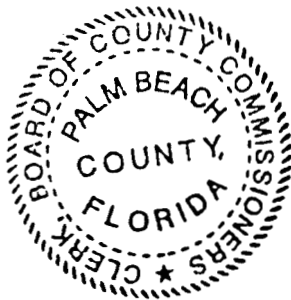
6. In the event, the Palm Beach County Board of County Commission does not take the actions set forth in paragraphs 2 and 3 above at its March 30, 1995 meeting, the terms of this Settlement Agreement shall be null and void and of no further force and effect.

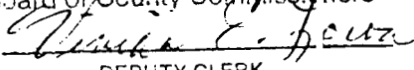
PALM BEACH COUNTY **BOARD** OF  
COUNTY COMMISSIONERS  
P.O. Box 1989  
West Palm Beach, Florida 33402-1989

R95 436D

By:   
Kenneth Foster, Chair MAR 30 1995

By:   
Barbara Alterman, Assistant County  
Attorney



DOROTHY H. WILKEN, CLERK  
Board of County Commissioners  
By:   
DEPUTY CLERK


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(305) 377-2330

By: \_\_\_\_\_

  
Michael D. Joblove

MINTO COMMUNITIES, INC.

By: \_\_\_\_\_

  
Michael Greenberg, President

R95 436D