

ORIGINAL

RESOLUTION NO. R-91- 1711

RESOLUTION APPROVING ZONING PETITION NO. 89-15(A)  
MODIFICATION OF COMMISSION REQUIREMENTS  
PETITION OF DIVOSTA CORP.

WHEREAS, the Board of County Commissioners, as the governing body, pursuant to the authority vested in Chapter 163 and Chapter 125, Florida Statutes, is authorized and empowered to consider petitions relating to zoning; and

WHEREAS, the notice and hearing requirements, as provided for in Chapter 402.5 of the Palm Beach County Zoning Code, have been satisfied; and

WHEREAS, Petition No. 89-15(A) was presented to the Board of County Commissioners of Palm Beach County, sitting as the Zoning Authority, at its Public Hearing conducted on August 29, 1991; and

WHEREAS, the Board of County Commissioners, sitting as the Zoning Authority, has considered the evidence and testimony presented by the applicant and other interested parties, and the recommendations of the various county review agencies and the recommendations of the Planning Commission; and

WHEREAS, this approval is subject to the Zoning Code, Section 402.9 (Mandatory Review of Development Approvals) and other provisions requiring that development commence in a timely manner; and

WHEREAS, the Board of County Commissioners, sitting as the Zoning Authority, made the following findings of fact:

1. This proposal is consistent with the requirements of the Comprehensive Plan and local land development regulations.

WHEREAS, Chapter 402.5 of the Zoning Code, requires that the action of the Board of County Commissioners, sitting as the Zoning Authority, be adopted by resolution.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, that Petition No. 89-15(A), the petition of DIVOSTA CORP., BY DONALDSON E. HEARING, AGENT, for a MODIFICATION OF COMMISSION REQUIREMENTS (GARDEN OAKS PUD) regarding CONDITION NO. 14 (BUILDING PERMITS, TRAFFIC PERFORMANCE STANDARDS, AND COMPREHENSIVE LAND USE PLAN) Of R-89-2232, on a parcel of land lying in Parcel 1: The West 3/4 of the South 1/2 of the Northeast 1/4 and the North 1/2 of the Southeast 1/4 of Section 24, Township 42 South, Range 42 East, less therefrom that certain parcel of land conveyed as in Official Records Book 1301, page 559 and being more particularly described as follows: A parcel of land in the North 1/2 of the Southeast 1/4 of Section 24, Township 42 South, Range 42 East, being more particularly described as follows: Commence at the Point of Intersection of the East right-of-way line of State Road 809, said East right-of-way line being 50.00 feet each side of the West line of said Southeast 1/4 with the South line of the North 1/2 of said Southeast 1/4 for a Point of Beginning; thence Easterly along said South line of the North 1/2 a distance of 663.00 feet to a point; thence Northerly parallel to said East right-of-way line of State Road 809 a distance of 660.00 feet to a point; thence Westerly parallel to said South line of the

North 1/2 to the Intersection thereof with said East right-of-way line of State Road 809; thence Southerly along said East right-of-way line to the Point of Beginning; also, less therefrom that certain parcel of land as set forth in Official Records Book 2137, page 1834 and being more particularly described as follows: A parcel of land in Section 24, Township 42 South, Range 42 East, more particularly described as follows: Commencing at the Northwest corner of the Northeast 1/4 of Section 24, Township 42 South, Range 42 East; thence South 01 degrees 34'16" West along the Centerline of Military Trail a distance of 1327.68 feet to a railroad spike; thence South 88 degrees 11'14" East 50.00 feet to the Point of Beginning; thence South 88 degrees 11'14" East, along the South boundary and Easterly prolongation of the Subdivision of Nicholas Park (unrecorded) Assessors Map No. 64 a distance of 1926.60 feet to the Intersection with the West line of the Subdivision of property for F. J. Guethle (unrecorded) Assessors Map No. 72; thence South 01 degree 48'54" West, along said West line 1326.32 feet; thence South 88 degrees 11'43" East, 506.61 feet; thence South 01 degree 33'47" West, along the Westerly right-of-way line of I-95 a distance of 220.94 feet; thence North 88 degrees 26'13" West, 50.00 feet; thence North 01 degree 33'47" East, 171.15 feet; thence North 88 degrees 11'43" West, 506.82 feet; thence North 01 degree 48'54" East, 1326.32 feet; thence North 88 degrees 11'14" West, 1876.39 feet; thence North 01 degrees 34'16" East, along the Easterly right-of-way line of Military Trail a distance of 50.00 feet to the Point of Beginning; The bearing of South 01 degree 34'16" West, along the Centerline of Military Trail as referred to in this description is an assumed bearing and all others are relative thereto; Also, less therefrom the East 150.00 feet of the Northeast 1/4 of the Southeast 1/4 for right-of-way of State Road 9 (I-95), Also, less therefrom the right-of-way of State Road 809 (Military Trail), and being located ON THE E SIDE OF MILITARY TR., APPROX. .4 MILE N OF SILVER BEACH RD., IN THE RM ZONING DISTRICT, was approved on August 29, 1991, as advertised, subject to the following conditions:

**A. STANDARD CONDITIONS**

1. The petitioner shall comply with all previous conditions of approval, including original deadlines for Zoning Code Section 402.9 compliance, unless expressly modified herein.
2. Prior to certification, the Master Plan and each subsequent site plan shall be amended to indicate compliance with all minimum property development regulations and land development requirements of Palm Beach County.
3. Development of the site is limited to the uses and site design shown on the Master Plan approved by the Board of County Commissioners. Any modifications must be approved by the Board of County Commissioners unless the proposed use or design changes are permitted pursuant to Zoning Code Section 402.7 (E)2(b) (Site Plan Review Committee Powers and Standards of Review) or required by the conditions of approval.

**B. HEALTH**

1. Sewer service is available to the property. Therefore, no septic tank shall be permitted on the site.
2. Water service is available to the property. Therefore, no well shall be permitted on the site to provide potable water.

3. No further utility confirmation is required for this modification.

C. LANDSCAPING - GENERAL

1. Prior to certification, the Master Plan and each subsequent site plan shall be revised to reflect conformance to current Landscape Code requirements and all landscape/vegetation preservation conditions of approval.

D. LANDSCAPE WITHIN MEDIAN

1. Prior to site plan certification for any unit approved by Petition No. 89-15(A), the petitioner shall obtain, if possible, permission from the Florida State Department of Transportation (FDOT) or the County Engineer to landscape the median of all abutting rights-of way. This landscaping shall consist of one (1) twelve (12) foot tall native canopy tree for each thirty (30) linear feet of the adjacent median and appropriate ground cover. Trees may be planted singly or in clusters, with a maximum spacing or sixty (60) feet on center. All landscape material shall be selected according to xeriscape principles from the following list. Alternative species may be allowed subject to approval by the Department of Environmental Resources Management.

Trees :

Turkey Oak  
Live Oak  
Slash Pine  
Sabal Palmettos

Groundcover:

Wedilia  
Bahia Grass

All plant material shall be installed according to xeriscape principles and shall conform with the following:

- a. All plants shall be container grown.
- b. The bottom cushion of the planting area shall include a minimum 3-4 inch thick, high moisture retaining, marl based soil.
- c. Potting soil shall be placed around the plant root balls at time of planting.

This landscaping shall be the daily maintenance obligation, including irrigation, of the property owner for ninety (90) days and shall be installed prior to the issuance of the first certificate of occupancy for any unit approved by Petition No. 89-15(A) for the undeveloped tracts within the PUD.

E. ENGINEERING

1. The Developer shall provide discharge control and treatment for the stormwater runoff in accordance with all applicable agency requirements in effect at the time of the permit application. However, at a minimum, this development shall retain on-site the stormwater runoff generated by a three (3) year-one (1) hour storm with a total rainfall of 3 inches as required by the Permit Section, Land Development Division. In the event that the subject site abuts a Department of Transportation

maintained roadway, concurrent approval from the Florida Department of Transportation will also be required. The drainage system shall be maintained in an acceptable condition as approved by the County Engineer. In the event that the drainage system is not adequately maintained as determined by the County Engineer, this matter will be referred to the Code Enforcement Board for enforcement.

2. Prior to January 1, 1992, the property owner shall verify conveyance to Palm Beach County by Roadway Production Division by road right-of-way warranty deed for Park Avenue, a total of 80 feet of right-of-way free of all encumbrances and encroachments. Developer shall provide Palm Beach County with sufficient documentation acceptable to the Right of Way Acquisition Section to ensure that the property is free of all encumbrances and encroachments.
3. Prior to January 1, 1992, the Property owner shall convey to Palm Beach County an adequate road drainage tract through the project's internal surface water management system to provide legal positive outfall for all runoff from both segments of Park Avenue from Military Trail to 1-95. Said easements shall be no less than 20 feet in width. The drainage system within the project shall have sufficient retention/detention capacity to meet the storm water discharge and treatment requirements of the applicable County Water Control District and South Florida Water Management District for the combined runoff from the project and the ultimate Thoroughfare Plan Road Section(s) of the included segment not in excess of 80 feet. The property owner shall construct concurrent with the construction of drainage improvements for the 184 units being added, a closed piping system with pipe furnished by Palm Beach County. Elevations and location of all construction shall be approved by the County Engineer.
4. The Developer shall pay a Fair Share Fee in the amount and manner required by the "Fair Share Contribution for Road Improvements Ordinance" as it presently exists or as it may from time to time be amended. The Fair Share Fee for this project presently at the time of the Building Permit is \$1,650.00 per approved single family dwelling unit and \$1,155.00 per approved multi family dwelling unit. Credit toward traffic impact fees which are paid on any dwelling units after approval of this project will be given for road construction outlined in Condition No.s E5, E6, E7, and E8.
5. The Property owner shall fund construction plans for:
  - a. The construction of dual left turn lanes, east and west approaches on Blue Heron Boulevard at Military Trail and,
  - b. Right turn lane, south approach on Military Trail at Blue Heron Boulevard plus appropriate tapers to provide for the following geometrics:
    - 1) Dual lefts, 1 thru and 1 thru/right lane west approach.
    - 2) Dual lefts, 1 thru and 1 right turn lane east approach.\*
    - 3) One (1) right, 2 thrus and 1 left turn lane north approach.

- 4) One (1) left, 2 thru and 1 right turn lane south approach.

\*The intersection improvements shall be designed to be compatible with the road improvements to be constructed by the Veterans Administration Hospital on Blue Heron Boulevard between Military Trail and Beeline Highway. The right turn lane on this approach shall therefore be capable of being redesignated as a thru right turn lane upon completion of the Veterans Administration road improvement requirement.

Upon posting for E.5.a. and E.5.b. of surety, prior to January 1, 1992, County Engineer shall prepare the construction plans. The plans shall include all canal crossings (bridges and/or culverts) within the project limits constructed to their ultimate paved configuration. Required utility relocations shall be coordinated through the Engineering Department, Roadway Production Division and funded by this property owner. Plans shall also include all necessary right-of-way acquisition documents including but not limited to surveys, property owners maps, legal descriptions for acquisition, and parcelled right-of-way maps required for the construction of the turn lanes as referenced above. These documents shall include a title search for a minimum of 25 years.

6. The property owner shall provide for the acquisition by funding any necessary right-of-way for the construction as referenced in the Condition above prior to January 1, 1992. This developer shall enter into a written agreement with the Right of Way Acquisition Section for this right-of-way acquisition upon completion of plans and request for funding by the County Engineer. Notification shall be given to Land Development Division.
7. The property owner shall fund the construction of the improvements including traffic signal modifications at the intersection of Military Trail and Blue Heron Boulevard to accomplish the geometrics described in Condition No. 5.

Surety for the road construction shall be posted upon the completion of the plans required to let the road construction or prior to January 1, 1993, whichever shall first occur. The type and amount of surety shall be approved by the County Engineer.

Construction of these improvements shall be accomplished by Palm Beach County after receipt of the funds. All canal crossings within the project limits shall be constructed to their ultimate configuration.

8. The Developer shall install signalization if warranted as determined by the County Engineer at the project's entrance road and Military Trail. Should signalization not be warranted after 12 months of the final Certificate of Occupancy this property owner shall be relieved from this condition.
9. The Developer shall plat the subject property in accordance with provisions of Palm Beach County's Subdivision and Required Improvements Regulations §10-8 as amended. The platting of this property may be phased in accordance with a phasing plan acceptable to the office of the County Engineer. A phase should not be larger than what would reasonably be expected to be completed within the time frame of the posted surety.

10. Petitioner shall include in all written solicitations, advertisements, inducements, and other methods or attempts to encourage any person to purchase a legal or equitable interest in property which is the subject of this petition (or amendment hereto) a disclosure statement identifying all planned roadways adjacent or through the petition property which are included in the County's Thoroughfare Plan or Five Year Road Program. These include future Park Avenue.

F. MODIFICATION OF COMMISSION REQUIREMENTS

1. Condition No. 14 of Resolution No. 89-2232, which 89-15 presently states:

"This project shall be limited to a total of 943 dwelling units (8/acre) of which 236 dwelling units shall be utilized as entitlement density. Building Permits for the remaining 707 dwelling units shall only be available upon future approval by the Board of County Commissioners subject to meeting all future ordinances including but not limited to Traffic Performance Standards and the Comprehensive Land Use Plan".

is hereby amended to state:

"Building Permits for more than 236 Category A and 184 Category B units shall only be available upon future approval by the Board of County Commissioners subject to meeting all future ordinances, including, but not limited to Traffic Performance Standards and the Comprehensive Land Use Plan. Building Permits for dwelling units generating no more than a total of 2,289 trips per day, which was derived from the entitlement density phase of the project, shall be issued until intersection improvements identified in condition E5a and E5b are under construction. Entitlement density shall be defined as being equivalent to a total of 2,289 trips, based upon a generation rate of 9.7 trips per day for single family dwelling units and 7.0 trips per day for multi-family dwelling units."

G. PROPERTY OWNERS ASSOCIATION

1. All property included within the legal description of the petition shall be subjected to a Declaration of Restrictions and Covenants acceptable to the County Attorney's office which shall, among other things, provide for: Formation of a single "master" property owner's association, automatic voting membership in the "master" association by any party holding title to any portion of the property included in the Planned Unit Development (PUD), and assessment of all members of the "master" association for the cost of maintaining the PUD's common areas. The property shall not be subjected to the Declaration of Restrictions in phases, and approval of the Declaration must be obtained from the County Attorney's Office prior to the recordation of the first plat of any portion of the PUD.

H. RECYCLE SOLID WASTE

1. The petitioner shall encourage homeowners to participate in a recycling program for paper, plastic, metal and glass products when the program is available to the area.

I. SCHOOL BOARD

1. All sales contracts on the within development shall include a statement/notice that students may not be assigned to the nearest school and that all prospective buyers are encouraged to contact the Palm Beach County School Board to determine which school assignment will apply to their children.
2. Prior to site plan certification, the petitioner (s) shall demonstrate that they have met with the Palm Beach County School Board and discussed the potential of entering into an agreement to help achieve racial balance and allow the children who reside within the development to attend the nearest available schools.

J. SITE SPECIFIC

1. Prior to certification, the Master Plan shall be revised to reflect the correct tabular information in conformance with the requirements of Zoning Code Section E00.21 relating to planned unit developments, and the conditions of this approval. The revisions shall also include the following:
  - a. The developed area and each undeveloped tract shall be identified on the Master Plan, including the number of units, densities and acreages.
  - b. The tabular information shall clearly indicate the total number of units for which the project is approved, the total number of units the developer is permitted to build by this approval, the number of remaining units, the overall density and the densities for each tract (existing and proposed).

K. COMPLIANCE

1. As provided in Zoning Code Sections 400.2 and 402.6, failure to comply with any of these conditions of approval at any time may result in:
  - a. The denial or revocation of a building permit; the issuance of a stop work order; the denial of a Certificate of Occupancy on any building or structure; or the denial or revocation of any permit or approval for any developer-owner, commercial-owner, lessee, or user of the subject property; and/or
  - b. The revocation of the Special Exception and any zoning which was approved concurrently with the Special Exception as well as any previously granted certifications of concurrency or exemptions therefrom; and/or
  - c. A requirement of the development to conform with updated standards of development, applicable at the time of the finding of non-compliance, or the addition or modification of conditions reasonably related to the failure to comply with existing conditions.

Appeals of any departmental-administrative actions hereunder may be taken to the Palm Beach County Board of Adjustment or as otherwise provided in the Palm Beach County Zoning Code. Appeals of any revocation of Special Exception, Rezoning, or other actions based on a Board of County Commission decision, shall be by petition for writ of certiorari to the Fifteenth Judicial Circuit.

2. The approval of this petition shall not affect any Zoning Code Section 402.9 (Mandatory Review of Development Approval) review date established as the result of a previous approval for this property.

Commissioner Elmquist moved for approval of the Resolution.

The motion was seconded by Commissioner Roberts and, upon being put to a vote, the vote was as follows:

Karen T. Marcus, Chair	--	AYE
Carole Phillips	--	AYE
Carol A. Roberts	--	AYE
Carol J. Elmquist	--	AYE
Mary McCarty	--	AYE
Ken Foster	--	AYE
Maude Ford Lee	--	AYE

The Chair thereupon declared the resolution was duly passed and adopted this 26th day of November, 1991.

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY

PALM BEACH COUNTY, FLORIDA  
BY ITS BOARD OF COUNTY  
COMMISSIONERS

JOHN B. DUNKLE, CLERK

BY:   
COUNTY ATTORNEY

BY:   
DEPUTY CLERK