

RESOLUTION NO. R-2010- 0153

RESOLUTION APPROVING ZONING APPLICATION Z/COZ-2009-02170
(CONTROL NO. 2009-02465)
an Official Zoning Map Amendment
APPLICATION OF MPC 3 LLC
BY McCraney Property Co., AGENT
(Fun Depot)

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

WHEREAS, the notice and public hearing requirements, as provided for in Article 2 (Development Review Procedures) of the Palm Beach County Unified Land Development Code (Ordinance 2003-067 as amended), have been satisfied; and

WHEREAS, Zoning Application Z/COZ-2009-02170 was presented to the Board of County Commissioners at a public hearing conducted on January 28, 2010; and

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

WHEREAS, the, Board of County Commissioners pursuant to Article 2 (Development Review Procedures) of the Palm Beach County Unified Land Development Code (Ordinance 2003-067 as amended) is authorized and empowered to consider, approve, approve with conditions or deny the request; and

WHEREAS, this approval is subject to Article 2.E (Monitoring), of the Palm Beach County Unified Land Development Code and other provisions requiring that development commence in a timely manner; and

WHEREAS, THE BOARD OF COUNTY COMMISSIONERS hereby incorporates by reference the Findings of Fact in the staff report addressing the standards contained in Article 2.B.1.B.

WHEREAS, Article 2.A.1.K.3.b (Action by BCC) of the Palm Beach County Unified Land Development Code requires that the action of the Board of County Commissioners be adopted by resolution.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, that Zoning Application Z/COZ-2009-02170, the application of MPC 3 LLC, by McCraney Property Co., agent, for an Official Zoning Map Amendment to allow a rezoning from the Planned Industrial Park Development (PIPD) Zoning District to the Commercial Recreation (CRE) Zoning District on a parcel of land legally described in EXHIBIT A, attached hereto and made a part hereof, and generally located as indicated on a vicinity sketch in EXHIBIT B, attached hereto and made a part hereof, was approved on January 28, 2010 subject to the conditions described in EXHIBIT C, attached hereto and made a part hereof.

Commissioner Marcus moved for the approval of the Resolution.

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

Commissioner Burt Aaronson, Chair	-	Aye
Commissioner Karen T. Marcus, Vice Chair	-	Aye

Commissioner Jeff Koons - Aye
Commissioner Shelley Vana - Aye
Commissioner Steven L. Abrams - Aye
Commissioner Jess R. Santamaria - Aye
Commissioner Priscilla A. Taylor - Aye

The Chairperson thereupon declared that the resolution was duly passed and adopted on January 28, 2010.

Filed with the Clerk of the Board of County Commissioners on January 28, 2010.

This resolution is effective when filed with the Clerk of the Board of County Commissioners.

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

PALM BEACH COUNTY, FLORIDA
BY ITS BOARD OF COUNTY
COMMISSIONERS

SHARON R. BOCK,
CLERK & COMPTROLLER

BY:


COUNTY ATTORNEY

BY:


DEPUTY CLERK

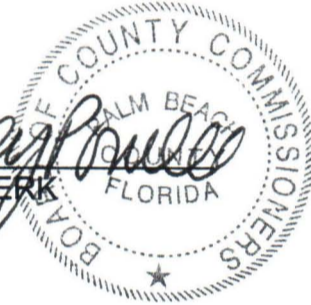


EXHIBIT A

LEGAL DESCRIPTION

LEGAL DESCRIPTION:

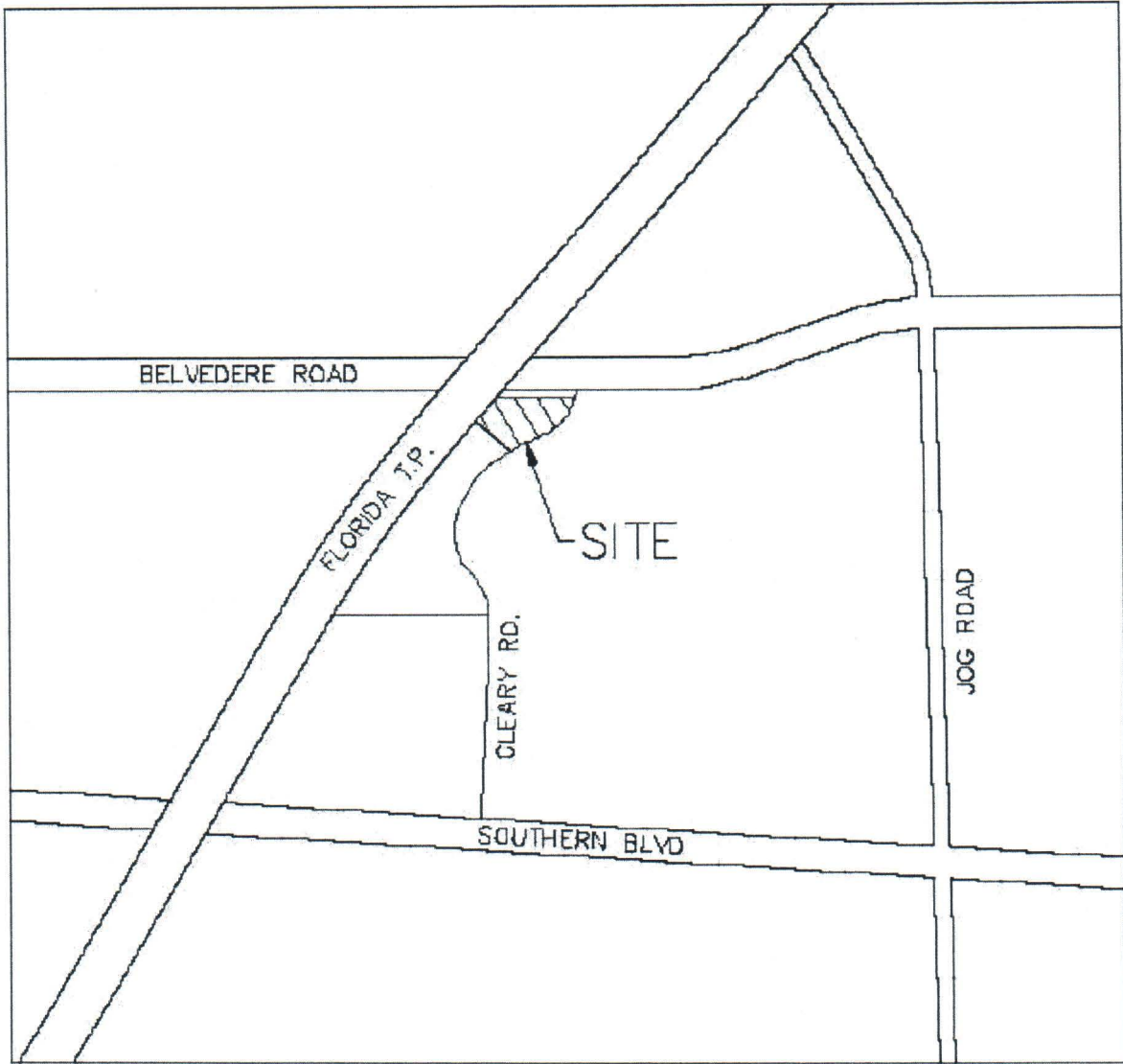
BEING A PARCEL OF LAND BEING A PORTION OF TRACTS 9, 10 AND 11, BLOCK 5, PALM BEACH FARMS COMPANY PLAT No. 3 AS RECORDED IN PLAT BOOK 2 AT PAGES 45 THROUGH 54, OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA. BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHWEST CORNER OF TRACT "LW-3", TERRACINA, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 101, PAGES 91 THROUGH 105, INCLUSIVE, OF THE PUBLIC RECORDS OF PALM BEACH COUNTY; THENCE SOUTH 89°02'42" WEST, ALONG THE WESTERLY PROLONGATION OF THE SOUTH LINE OF SAID TRACT "LW-3, A DISTANCE OF 40.80 FEET TO THE INTERSECTION THEREOF WITH THE EASTERLY PROLONGATION OF THE SOUTH LINE OF TRACT 24, BLOCK 6, OF SAID PALM BEACH FARMS COMPANY PLAT No. 3; THENCE SOUTH 89°04'57" WEST, ALONG SAID PROLONGED LINE AND SOUTH LINE OF TRACT 24, A DISTANCE OF 39.20 FEET TO A POINT ON THE WEST RIGHT OF WAY LINE OF THAT 80.00 FOOT RIGHT OF WAY FOR CLEARY ROAD AS RECORDED IN OFFICIAL RECORDS BOOK 18457 AT PAGE 0961, OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA; THENCE ALONG SAID WEST RIGHT OF WAY OF CLEARY ROAD THE FOLLOWING SEVEN (7) COURSES; THENCE NORTH 00°58'54" WEST, A DISTANCE OF 1.10 FEET; THENCE NORTH 02°59'50" WEST, A DISTANCE OF 97.95 FEET TO THE POINT OF CURVATURE OF A CURVE CONCAVE TO THE WEST, HAVING A RADIUS 676.00 FEET AND A CENTRAL ANGLE OF 28°17'22"; THENCE NORTHERLY, ALONG THE ARC OF SAID CURVE, A DISTANCE OF 333.77 FEET TO THE POINT OF TANGENCY; THENCE NORTH 31°17'12" WEST, A DISTANCE OF 158.95 FEET TO THE POINT OF CURVATURE OF A CURVE CONCAVE TO THE EAST, HAVING A RADIUS OF 756.00 FEET AND A CENTRAL ANGLE OF 60°02'35"; THENCE NORTHERLY, ALONG THE ARC OF SAID CURVE, A DISTANCE OF 792.25 FEET TO A POINT OF TANGENCY; THENCE NORTH 28°45'23" EAST, A DISTANCE OF 279.44 FEET TO THE POINT OF CURVATURE OF A CURVE CONCAVE TO THE SOUTHEAST, HAVING A RADIUS OF 757.00 FEET AND A CENTRAL ANGLE OF 46°07'23"; THENCE NORTHEASTERLY, ALONG THE ARC OF SAID CURVE A DISTANCE OF 609.38 FEET TO A POINT OF TANGENCY; THENCE NORTH 74°52'47" EAST, 114.61 FEET TO THE POINT OF BEGINNING OF THE FOLLOWING DESCRIBED PARCEL:

THENCE NORTH 34°27'35" WEST, DEPARTING SAID RIGHT OF WAY, A DISTANCE OF 399.38 FEET TO A POINT ON A LINE THAT IS 25.00 FEET SOUTHEAST OF AND PARALLEL WITH THE EAST LINE OF THE FLORIDA TURNPIKE RIGHT OF WAY AS SHOWN ON THE SUNSHINE STATE PARKWAY RIGHT OF WAY MAP STATION 2630+00 TO STATION 2703+28.33 PALM BEACH COUNTY, DATED JULY 12, 1955, SHEET 12 OF 13 AND DESCRIBED AS PARCEL 39 IN LIS PENDENS BOOK 25, PAGES 582-584; THENCE NORTH 40°39'09" EAST, ALONG SAID PARALLEL LINE, A DISTANCE OF 361.75 FEET TO A POINT ON A LINE THAT IS 99.00 FEET SOUTH OF AND PARALLEL WITH THE SOUTH LINE OF THE NORTH 28.00 FEET OF SAID TRACTS 9 AND 10, BLOCK 5; THENCE NORTH 89°03'22" EAST, ALONG SAID PARALLEL LINE, A DISTANCE OF 723.06 FEET TO A POINT ON THE PREVIOUSLY DESCRIBED WEST RIGHT OF WAY LINE OF CLEARY ROAD, SAID POINT ALSO BEING A POINT ON A CURVE NON-TANGENT TO THE LAST-DESCRIBED LINE, SAID CURVE BEING CONCAVE TO THE NORTHWEST, HAVING A RADIUS OF 677.00 FEET, A CENTRAL ANGLE OF 66°08'52" AND A RADIAL LINE TO SAID POINT BEARS SOUTH 81°16'05" EAST; THENCE SOUTHWESTERLY, ALONG SAID WEST RIGHT OF WAY LINE AND ALONG THE ARC OF SAID CURVE, A DISTANCE OF 781.59 FEET TO A POINT OF TANGENCY; THENCE SOUTH 74°52'47" WEST, CONTINUING ALONG SAID WEST RIGHT OF WAY LINE, A DISTANCE OF 248.70 FEET TO THE POINT OF BEGINNING.

SAID LANDS CONTAINING 393,118 SQUARE FEET OR 9.02 ACRES MORE OR LESS.

EXHIBIT B
VICINITY SKETCH



LOCATION MAP

EXHIBIT C

CONDITIONS OF APPROVAL

ALL PETITIONS

1. Development of the site is limited to the uses and site design approved by the Board of County Commissioners. The approved Preliminary Site Plan is dated December 14, 2009. All modifications to the development order must be approved by the Board of County Commissioners or Zoning Commission, unless the proposed changes are required to meet conditions of approval. (DRO: ZONING - Zoning)

2. All conditions of approval associated with Control Number 2002-011 for the MPC III Turnpike Business Park are not applicable to Control Number 2009-2465 for the Indoor and Outdoor Entertainment uses known as Fun Depot. (ONGOING: ZONING - Zoning)

DEPARTMENT OF AIRPORTS (DOA)

1. Due to the proximity of the subject area to the airport and the corridor of the commercial area is aligned with the runway of PBI, on occasion residents of this community will observe aircraft arriving at and departing from Palm Beach County International Airport. The area of the subject properties lie beneath the arrival and departure corridor for Palm Beach County International Airport. (ONGOING: AIRPORTS - Airports)

ARCHITECTURAL REVIEW

1. At time of submittal for final Development Review Officer (DRO) approval, the architectural elevations for all buildings shall be submitted simultaneously with the site plan for final architectural review and approval. Elevations shall be designed to be consistent with Article 5.C of the ULDC. Development shall be consistent with the approved architectural elevations, the DRO approved site plan, all applicable conditions of approval, and all ULDC requirements. (DRO: ARCH REVIEW - Zoning)

ENGINEERING

1. In order to comply with the mandatory Traffic Performance Standards, the Property owner shall be restricted to the following phasing schedule:

a. No Building Permits for the site may be issued after January 1, 2013. A time extension for this condition may be approved by the County Engineer based upon an approved Traffic Study which complies with Mandatory Traffic Performance Standards in place at the time of the request. This extension request shall be made pursuant to the requirements of Article 2, Section E of the Unified Land Development Code. (DATE: MONITORING-Eng)

2. The concurrency approval is subject to the project aggregation rule set forth in the Traffic Performance Standards Ordinance. (ONGOING: ENGINEERING-Eng)

3. The property Owner shall fund 25% of the cost of signal installation, if warranted, as determined by the County Engineer at Belvedere Rd and Cleary Rd. Signalization shall be a mast arm structure installation. The cost of signalization shall also include all design costs and any required utility relocation and ROW or easement acquisition.

a. Acceptable surety in the form of cash bond or escrow agreement must be provided to the Traffic Division in an amount as determined by the Director of Traffic Division prior to issuance of first building permit. (BLDG PERMIT: MONITORING-Eng)

b. In order to be relieved from this requirement and to have the surety posted for the traffic signal at the Belvedere Rd and Cleary Rd intersection returned, the Property Owner shall provide written notice to the Traffic Division stating that the final certificate of occupancy has been issued for this development and requesting that a signal warrant study be conducted at the above intersection. The Traffic Division shall have 24 months from receipt of this notice to either draw upon the surety to construct the traffic signal or release the

surety. (ONGOING: ENGINEERING-Eng)

4. Prior to December 4, 2011 or issuance of the first building permit, the property shall be legally subdivided in accordance with applicable requirements of Article 11, ULDC. (DATE/BLDG PERMIT: ENGINEERING Eng)

LANDSCAPE - GENERAL

1. Prior to the issuance of a building permit, the property owner shall submit a Landscape Plan and/or an Alternative Landscape Plan to the Landscape Section for review and approval. The Plan(s) shall be prepared in compliance with all landscape related conditions of approval as contained herein. (BLDG PERMIT: LANDSCAPE - Zoning)

2. The Landscape Plan or Alternative Landscape Plan shall utilize the mix of plant species and mix of tree and shrub heights allowable by the Unified Land Development Code (ULDC) in order to obstruct outdoor entertainment noise to the greatest extent possible from the residential uses to the east and south of the site as determined by the Landscape Section. (ONGOING: LANDSCAPE - Landscape)

3. Field adjustment of berm and plant material locations may be permitted to provide pedestrian sidewalks/bike paths and to accommodate transverse utility or drainage easements crossings and existing vegetation. (BLDG PERMIT: LANDSCAPE - Zoning)

LANDSCAPE - INTERIOR

1. The Landscape Plan or Alternative Landscape Plan (ALP) shall include a minimum six (6) foot high continuous solid opaque vegetative screen at time of planting and a canopy tree within the area between Building 2 and the north right-of-way buffer to obstruct go-cart noise from residential uses. (ONGOING: LANDSCAPE - Landscape)

2. In addition to ULDC requirements, the terminal islands along both sides of the internal drive aisle adjacent to Cleary Road shall be landscaped with shrubs. (ONGOING: LANDSCAPE - Landscape)

3. A minimum 5-foot wide planting area shall be provided adjacent a 6-foot high wall between Building #1 and Building #2. Areca palms a minimum of 8-feet high at time of planting or an acceptable alternative to the Landscape Section shall be installed to create a solid opaque vegetative screen. (ONGOING: LANDSCAPING - Landscaping)

LANDSCAPE - PERIMETER-ALONG THE NORTH PROPERTY LINE

1. The perimeter landscape buffer width along the north property line shall be a minimum of 10-feet. (ONGOING: LANDSCAPE - Landscape)

LANDSCAPE - PERIMETER-ALONG THE WEST PROPERTY LINE

2. The perimeter landscape buffer width along the west property line shall be a minimum of 20 feet. (ONGOING: LANDSCAPE - Landscape)

LIGHTING

1. In addition to ULDC requirements for illumination levels and luminaire height for outdoor entertainment uses pursuant to ULDC Article 5.E.4.E. Nuisances - Outdoor Lighting and ULDC Article 16.C.1.E.3. Airport Regulations - General Land Use Regulations Off-Airport, the outdoor lighting for the batting cages shall be shielded to control glare and light trespass. (BLDG PERMIT: BLDG - Bldg)

PALM TRAN

1. The location of an easement for a Bus Stop Boarding and Alighting Area, subject to the approval of Palm Tran shall be shown on the Master Plan and/or site plan prior to final approval of the Development Review Officer (DRO). The purpose of this easement is for the future construction of mass transit infrastructure in a manner acceptable to Palm Tran. (DRO: PALM TRAN-Palm Tran)

2. Prior to Plat Recordation, the property owner shall convey and/or dedicate to Palm Beach County an easement for a Bus Stop Boarding and Alighting Area in a form with terms and conditions approved by Palm Tran. Supporting documentation, including but not

not limited to a location sketch, legal description, affidavit of ownership, attorney title opinion and other related documents as deemed necessary by Palm Tran is required. (PLAT:ENG -Palm Tran)

SITE DESIGN

1. Prior to final approval by the Development Review Officer (DRO), the Site Plan shall be revised to relocate the dumpster for Building #1 to minimize turning and back-up movements by pick-up and removal vehicles. (DRO: ZONING - Zoning)

USE LIMITATIONS

1. Prior to Certificate of Completion for the go-cart track, either the Certificate of Completion for Building #2 is required; or, a six (6) foot high wall and a minimum five (5)-foot wide planting area with areca palms a minimum of eight (8) feet in height at time of planting (or other alternative acceptable to the Landscape Section) shall be installed along the east perimeter of the go-cart track to obstruct the go-cart noise from residential uses. (CC: BUILDING - Building)

2. Use of the go-cart track and any maintenance or service of go-carts performed on-site is limited to go-carts owned by the Fun Depot only. (ONGOING: CODE ENF. - Zoning)

3. Outdoor speaker or public address systems shall not be permitted on the property. (ONGOING: CODE ENF - Zoning)

4. Hours of construction activity during all stages of site development shall be limited to 7:00 AM to 6:00 PM Monday through Friday, and 9:00 AM to 4:00 PM Saturday. Construction activity shall be prohibited on Sunday and statutory holidays. (ONGOING: CODE ENF - Zoning)

USE LIMITATIONS-OUTDOOR ENTERTAINMENT

5. Prior to or on July 1, 2011 and again in six (6) months, the property owner shall submit sound level records and documentation to confirm compliance with Unified Land Development Code (ULDC) Table 5.E.4.B-14, Maximum Sound Levels to the Monitoring Section of the Planning, Zoning and Building Department. Sound Level Measurement Compliance shall be determined in accordance with ULDC Article 5.E.4.B.2.a. Maximum Sound Levels to the nearest residential property line. (DATE: MONITORING Zoning)

6. Prior to the issuance of the Certificate of Occupancy (CO) for Building #1, the Building Division shall notify the Zoning Director of the date of the CO. The Zoning Director shall schedule a Status Report to the Board of County Commissioners within one (1) year of the CO to provide an update on the status of the Outdoor Entertainment use and any code enforcement issues reported from the adjacent residential properties related to noise associated with the outdoor activities of this use. (CO: BUILDING Zoning)

COMPLIANCE

1. In granting this approval, the Board of County Commissioners relied upon the oral and written representations of the property owner/applicant both on the record and as part of the application process. Deviations from or violation of these representations shall cause the approval to be presented to the Board of County Commissioners for review under the compliance condition of this approval. (ONGOING: MONITORING - Zoning)

2. Failure to comply with any of the conditions of approval for the subject property at any time may result in:

a. The issuance of a stop work order; the issuance of a cease and desist order; the denial or revocation of a building permit; the denial or revocation of a Certificate of Occupancy (CO); the denial of any other permit, license or approval to any developer, owner, lessee, or user of the subject property; the revocation of any other permit, license or approval from any developer, owner, lessee, or user of the subject property; revocation of any concurrency; and/or

b. The revocation of the Official Map Amendment, Conditional Use, Requested Use, Development Order Amendment, and/or any other zoning approval; and/or

c. A requirement of the development to conform with the standards of the Unified Land Development Code (ULDC) 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; and/or

- d. Referral to code enforcement; and/or
- e. Imposition of entitlement density or intensity.

Staff may be directed by the Executive Director of PZ&B or the Code Enforcement Special Master to schedule a Status Report before the body which approved the Official Zoning Map Amendment, Conditional Use, Requested Use, Development Order Amendment, and/or other zoning approval, in accordance with the provisions of Section 2.E of the ULDC, in response to any flagrant violation and/or continued violation of any condition of approval. (ONGOING: MONITORING - Zoning)