

ST. JOHNS COUNTY, FLORIDA

ORDER ON APPEAL

NAME OF APPLICANT

APPLICATION NUMBER

IML PROPERTIES
c/o LEVENSHON COMPANIES
8350 N. W. 52nd STREET
SUITE 102
MIAMI, FL 33166-0000

APPEAL: MINOR
MODIFICATION TO
FINAL DEVELOPMENT
PLAN

DECISION OF
COUNTY COMMISSION

GRANTED

GRANTED WITH
CONDITIONS

DENIED

QUESTION ON APPEAL: MINOR MODIFICATION TO FINAL DEVELOPMENT PLAN, SAWGRASS VILLAGE, PHASE TWO, LOCATED OFF TPC BOULEVARD - REQUEST WAS TO MODIFY APPROVED FINAL DEVELOPMENT PLAN TO ALLOW CONVERSION OF A PORTION OF THE AREA PREVIOUSLY DESIGNATED AS FUTURE PARKING AND TO ALLOW THAT AREA TO BECOME FUTURE FAST FOOD RESTAURANT WITH DRIVE-THROUGH, AND TO MODIFY THE PHASE DESIGNATION TO THREE AND FOUR.

Following the testimony from the owner, members of the public, and staff and discussion, the Board of County Commissioners upholds the decision of the Planning & Zoning Agency to deny the request for minor modification due to incompatibility with the neighborhood and because the proposed use seriously interferes with the health, safety, and welfare of the people in the community.

*See Attached (Minutes of
January 28, 1992 Board of
County Commissioners'
meeting)

DATE OF COMMISSION ACTION: January 28, 1992

BOARD OF COUNTY COMMISSIONERS
OF ST. JOHNS COUNTY, FLORIDA

By: J. J. B. [Signature]
Chairman

ATTEST: CARL "BUD" MARKEL, CLERK

BY: [Signature]
DEPUTY CLERK

(Pursuant to St. Johns County Zoning Code, Section 11-9-5b: failure to exercise an exception or variance by commencement of the use or action approved thereby within one year, or such longer time as approved by the Board, shall render the exception or variance invalid and all rights granted thereunder shall terminate)

mobile home is on the property. Motion by Floyd, died for lack of a second, to amend the previous motion by placing a stockade fence around the mobile home.

(01/28/92 - 8 - 2.3400)

APPEAL: MINOR MODIFICATION TO FINAL DEVELOPMENT PLAN, SAWGRASS VILLAGE, PHASE TWO, LOCATED OFF TPC BOULEVARD - REQUEST WAS TO MODIFY APPROVED FINAL DEVELOPMENT PLAN TO ALLOW CONVERSION OF A PORTION OF THE AREA PREVIOUSLY DESIGNATED AS FUTURE PARKING AND TO ALLOW THAT AREA TO BECOME FUTURE FAST FOOD RESTAURANT WITH DRIVE-THROUGH, AND TO MODIFY THE PHASE DESIGNATION TO THREE AND FOUR. PZA DENIED, UNANIMOUS: Proof of publication of notice of hearing to consider an appeal to the Zoning Board decision on IML Properties for a Minor Modification to Final Development Plan, Sawgrass Village, Phase Two, located off TPC Boulevard was received having been published in The St. Augustine Record on December 27, 1991. Attorney Terry Moore, 3100 Barnett Center, was present representing the applicant of the appeal. Moore explained the issue for the appeal is the denial by P&Z of the reallocation of commercial development area from an area that was shown on the original Phase II final development plan to a new area at the intersection of Sawgrass Village Drive and TPC Boulevard. Moore expressed that they would like to take exception to the fact that the Board is sitting for this matter in a quasi-judiciary fashion. He hopes an unbiased hearing can be obtained for all the information he will present. Moore requested that any member of the Board that has taken a public stance, before any public boards or bodies, subject to the advice of the County Attorney, that they consider disqualifying themselves; to the extent that any member of the Board cannot render an unbiased opinion on the information to be presented, he's reserved his rights as the appellant. Balsavage stated that she feels she is being challenged because at the PZA she stood up and said that her constituents did not want a McDonalds and she supported their views. She requested an opinion from Sisco because she understood that unless it was a personal gain to her, she was required by law to vote. Sisco stated that case law that deals with zoning lawsuits that has stated that personal beliefs of the commissioners, their previous statements, and their motives, unless they are fraudulent, do not disqualify them from voting on what they are charged to do by being a county commissioner. Sisco further stated that zoning is not a popularity contest, the courts have routinely said that the "clamor of the crowd" should not influence a zoning matter; zoning is quasi-judicial there are certain rights that a landowner has, should be based on the facts and the law but not necessarily on a popularity contest or the clamor of the crowd. (3.0277) It was the general consensus of the Board to proceed. Moore requested the objection be put on the record that any of the members of this Body approach this quasi-judicial obligation having made up their mind and not giving us a chance to present our case. Moore addressed the question of legal entitlements and outlined the legal documents existing that establish zoning, uses, and a site plan for this particular piece of property. Moore stated that as to the undeveloped portion of Sawgrass Village, Phase II, according to the density that was approved in the final development plan, the undeveloped area (Phase III), could have 34,325 square feet of commercial retail space; the infrastructure providing support to that facility was designed for that. Moore stated that he believes he can show that it does not materially affect the safety or the welfare of anyone living in the Sawgrass Village area. Moore pointed out that the applicant is willing to drop from 34,325 square feet down to approximately 27,000 square feet of developed commercial retail space in Phase III, of which this constitutes 4,000; the net effect being that the space, when it's totally developed out, will not provide any more burden on the infrastructure than the infrastructure was designed to handle initially. Moore clarified that although the Planning and Zoning Staff Report makes reference to 23,000 square feet of total commercial space, it must have been mentioned in error in the report, because what is being talked about is a total of 23,000 square feet. Moore expressed concern that the PZA exceeded the scope of their authority at the first public hearing on this matter. Moore presented the Planning and Zoning Staff Report as Exhibit I, for the record. Moore referred to the case of Bailey vs The City of St. Augustine, and entered it into the record as Exhibit 2. Moore referred to the case of Foff vs City of South Miami and entered it into the record as Exhibit 3. Moore also made reference to Florida Statute Section 380.0615 (c)(3). Moore stated that at the PZA it was stated that TPC Boulevard was intended to be a residential access way for the residential areas there, an exclusively residential access way; pointed out that it was never intended to be exclusively a private road, a private residential access way for Sawgrass Village development. Moore explained his basis for that and reviewed and discussed the Declaration of Covenants for Sawgrass Village as were recorded for Public Record. (3.1142) Ira Levenshon, Sawgrass Village Drive, was present representing ABG Property Development. Levenshon presented a video of the property in question and the surrounding properties. (3.1381) Don Smith of BHR, 1900 Corporate Square

Boulevard, further explained the surrounding property in the video. Discussion followed. (3.1576) Charles Space, 1900 Corporate Square Boulevard, summarized the Traffic Impact Study by using charts and pictorials of the subject property and surrounding areas. Space reported that the project meets all of the County's current standards and it exceeds the standards that were in effect at the time of the 1989 zoning. Commissioner Balsavage stated that she had spoken with Sheriff Perry and since he was unable to attend the meeting today she read his concerns on this project into the record as follows: Sheriff Perry is concerned about the traffic as it relates to Vickers Landing, Kinder Care, and the children within the community. His concerns were not the numbers in the traffic but the quality of the drivers that would be attracted to a fast food restaurant; younger less experienced drivers and people in a hurry, verses the people who would normally be attracted to that type of a shopping center would tend to be more mature, drivers who would not be in that much of a rush and would not arrive in the numbers that would arrive at that time. Space continued with the traffic analysis. Moore entered into the record, as Exhibit 5, the minutes of the Sawgrass Players Club Association, Inc. Architectural Review Committee Meeting of August 29, 1991, approving McDonalds.

(3.1962) Attorney Baron Bartlett, 127 N. Roscoe, Palm Valley, was present representing the Sawgrass Players Club Owners Association. Bartlett pointed out that the Planning and Zoning Agency and the Board has a duty and obligation to review by exception, commercial general usages; they must in analyzing a planned unit development (PUD), analyze and state that the PUD will not effect adversely the health and safety of residents or workers in the area and will not be detrimental to the natural environment, or the use or development of adjacent properties, or to the general neighborhood. Bartlett reported that in reviewing the record and the history of this PUD, Arvida had an overview and comprehensive study and plan of how the commercial development was to begin; in an application to apply for usage of the Sawgrass north access road in September 1982, it was reported that the Village would contain a major grocery store, drug store, liquor store, restaurant, and speciality shops but it does not say fast food. Bartlett stated that at no point in the original plan and development of this design was there a plan to access and come through with commercial usage on Sawgrass Village; in the 1982 application discussing the north access it was reported that the new north access road would relieve potential congestion at State Road A1A and TPC Boulevard by distributing traffic over two (2) roads; the TPC Boulevard entrance will still remain primarily for access to the residential development. Bartlett stated that therefore, there is something on record, in their own application, that the intention in the early stages of development was to use and preserve TPC Boulevard for residential access. Bartlett expressed that he was concerned with the McDonald motive for selecting this particular site. Bartlett stated that he was prepared to show that the access is being impeded by the continued commercial growth in this area; the people that live in the Sawgrass community have rights also to that access. Bartlett reported that regarding staff's report, he has several comments he wants entered into the record. Bartlett further stated that he has not personally or professionally solicited or met with any of the Commissioners relative to this cause or action. Bartlett reported that he takes exception with the staff report and certainly to statements, such as, objections due to general esthetic incompatibility; feels the facts he will produce today are not esthetic; feels the applicant has failed to bring out some of the major points that are objectionable, what about the impact on Kinder-Care. At this time Bartlett presented a petition by 70% of the Kinder-Care parents, objecting to the location of the McDonalds entrance. (3.2679) Anthony Castlone an engineer with J. W. Buckholz Traffic Engineering of Jacksonville, representing the Sawgrass Players Club Owners Association, was present. Castlone reported on the traffic study his firm conducted and compared information found in their report with the traffic report provided by the applicant. Castlone presented his report with the aid of pictorials and charts.

(3.3383) Curtiss Hoffman, 121 Nandina Circle, Ponte Vedra Beach, representing Sawgrass Players Club Property Owners Association (SPCPOA), discussed a ballot, they submitted last year, regarding McDonalds, to all the residents within the Players Club, about 1,400 residents. Hoffman spoke in opposition.

(3.3629) Rennie Fonham, 142 Bermuda Court, presented a copy of a map and discussed the property in the area; spoke in opposition.

(4.0286) Henry Frampton, 96 Veranda Lane, spoke in opposition.

(4.0360) Gus Pocius, 113 Camino Trail, spoke in opposition. He also presented petitions with 1300 signatures, to be entered into the record, that were opposed to allowing the proposed McDonalds at Sawgrass Village.

(4.0470) Ray Johnson, 110 Dogwood Drive, Executive Director of Vicars Landing, expressed concern of the proposed McDonalds site; stated that they were very opposed to the proposed site.

(4.0561) John Ditzel, 18 N. Julia Drive, was present representing the Sawgrass County Club Property Owners Association; stated that they are very opposed to the proposed site for McDonalds at Sawgrass Village.

(4.0735) John McDonald, 2434 Burgandy Court, was present representing the L'Atrium Home Owners Association; spoke in opposition to the proposed McDonalds location.

(4.0820) Robert White, 24620 Deer Trace Drive, was present representing the Marsh Landing Home Owners Advisory Board; requested the Board deny the appeal for McDonalds.

(4.0845) Edward Pierce, 8 Tarpon Road, was present representing DeLeon/Wellington Community Association; voiced concerns and opposition to the proposed McDonalds site.

(4.0935) Victor McNab, 701 Tournament Road, was present speaking for Fairfield/Carriage Houses; spoke in opposition to the proposed McDonalds site at the Sawgrass Village.

(4.0972) Deputy Clerk Patricia DeGrande reported that the Clerk's Office had received 117 letters opposing the proposed McDonalds at Sawgrass Village and 1 letter was received in favor.

(4.0995) George Rastican, 612 Palmeria Drive, was present and stated that he was in favor of allowing McDonalds at Sawgrass Village and spoke of some of the advantages to having a McDonalds at this location.

(4.1042) Baron Bartlett pointed out that although Moore's argument that the proponent is legally entitled to this particular usage, the Board should remember that that entitlement is subject to review by the PZA and by the Board of County Commissioners pursuant to the existing ordinances; the PZA did not exceed its authority in reviewing this issue and the Board in its quasi judicial mode has the right, duty, and obligation to review the comments that were made by the public but also by the opposition and its supporting engineers. Bartlett further stated that this particular issue is not a matter of no McDonalds in Ponte Vedra, it's the matter of the wrong site, other sites exist in this area that may encourage McDonalds to come to Ponte Vedra.

(4.1106) Moore stated that he feels the information that has been submitted shows factually that this applicant has an entitlement to use the property as they have requested; the development scheme that has existed for Sawgrass from the inception reserved to Arvida Corporation a great many rights. Moore reported that the covenants and restrictions put in by Arvida in Official Records Book 840, page 360 are the covenants for Sawgrass Village, Phase II and they permit all permissible principle uses and permissible uses by exception, which include drive-in restaurants. A fast food restaurant is already permissible so what we're asking for is not a change of use but a shift. What we're talking here is legal rights contrasted to opinion. Moore stated that in an effort to address the concerns that were made by the traffic engineers we would be willing to engage in the restriping of the driving area on Sawgrass Village Drive, willing to put up stop signs, if they are bonafide traffic safety questions we are willing to address them. Moore at this time, requested the Board as a quasi judicial body to look at the issues of law and the rights of the applicant.

(4.1313) Bartlett stated that he feels entitled to place on the record, the authority that Mr. Moore is desperately looking for, in Section 8 of the ordinances that allows and gives the Board the ability to review any PUD application or modification to the PUD application, so that it does not adversely affect the health and safety of any residents in the general vicinity or neighborhood.

(4.1328) Moore reminded the Board that this is a PUD and under Chapter 380 you cannot restrict the intensity of use without a finding that what is proposed is detrimental to the essential services and safety, health, and welfare of the people in the area.

(4.1405) Discussion followed. Herold stated that he was offended and resented the opening remarks by Mr. Moore concerning the ability of the Board to make a fair and unbiased decision; also the threat of a suit, no one should try to intimidate

elected officials. Moore apologized to Mr. Herold if he had done anything to offend him. (4.1639) Motion by Balsavage, seconded by Herold, carried 7/0, to uphold the decision of the Planning and Zoning to deny on the basis of incompatibility with the neighborhood and that it seriously interferes with the health, safety, and welfare of the people in the community.

(01/28/92 - 11 - 4.1722)

APPEAL: E-91-068 DOUGLAS L. PILINKO, LOCATED IN GREENBRIAR SUBDIVISION, 857 ELK RUN, REQUEST WAS FOR THE ALLOWANCE OF MORE THAN FOUR HOUSEHOLD PETS, WHICH INCLUDED DOGS, BIRDS AND CHICKENS. THE APPLICANT IN THE APPEAL HAS AMENDED THE NUMBER AND TYPE OF SPECIES. PZA DENIED, UNANIMOUS: Proof of publication of the hearing for an appeal of the Planning and Zoning Agency decision, E-91-068 Douglas L. Pilinko for the allowance of more than four household pets was received having been published in The St. Augustine Record on December 27, 1991. Douglas L. Pilinko, 857 Elk Run, was present and requested permission to keep six (6) other birds on his land; there would not be any chickens. (4.1900) Mark Jackson, 2654 Foxhunt Trail, was present and stated that the original exception request has been changed and is presently a more acceptable form than the original; feels that if Pilinko was willing not to breed his animals and not replace them when they die, until it gets down to the present form of zoning status, it would be an acceptable compromise. Debbie Willis, 848 Elk Run, was present and stated that she was originally opposed to the zoning request because of the chickens but now she would be in favor of the appeal to allow Pilinko to keep the birds he now has as long as they are not replaced until he comes within the maximum of four (4). Pilinko agreed to the conditions discussed by Jackson and Willis that when the birds die or fly away they will not be replaced. Discussion followed concerning deed restrictions and zoning. (4.2195) Motion by Bailey, seconded by Roberts, carried 7/0, to grant the appeal with the knowledge that Mr. Pilinko will reduce the number of pets to the original desired four (4), through attrition.

(01/28/92 - 11 - 4.2224)

R-PUD-91-018 CYNTHIA MARLER/CHARLES BINNINGER/THOMAS PRESTON REPRESENTED BY KAREN TAYLOR, LAND PLANNER, LOCATED ON WEST SIDE OF SR 207 APPROXIMATELY 3/4 MILE NORTHEAST OF I-95, 40 ACRES TO BE DEVELOPED AS COMMERCIAL/OFFICE PARK, MULTI-FAMILY AND SINGLE FAMILY RESIDENTIAL TO BE KNOWN AS "TWIN LAKES DEVELOPMENT", PZA RECOMMENDED APPROVAL, FINDING THE LAND LOCATED WITHIN THE MIXED USE CORRIDOR OF THE COMP PLAN AND IN COMPLIANCE. PZA APPROVED, UNANIMOUS: Proof of publication of hearing to consider a proposed ordinance on R-PUD-91-018 Cynthia Marler/Charles Binninger/Thomas Preston, "Twin Lakes Development" was received having been published in The St. Augustine Record on December 27, 1991. Karen Taylor was present representing the applicants; reviewed the development and the request. (4.2461) Motion by Roberts, seconded by Herold, to adopt the ordinance. Dante Salamone, 5225 Datil Pepper Road, questioned the size of the single family lot size and the setbacks. (4.2628) Motion by Maguire, seconded by Bailey, adding an amendment to the motion that the developer donate a 30 foot right-of-way along State Road 207 for road widening to the state or county, as appropriate, free of charge. Bill Cline, Elkton, spoke in opposition. Discussion followed. (4.2891) Motion by Roberts, seconded by Herold, carried 6/1, with Bailey dissenting, to table this item until after Item # 15 of today's meeting. (6.0848) Subsequently, Karen Taylor reported that she was unable to contact her clients; requested that this issue be tabled until the next meeting. (6.0863) Motion by Bailey, seconded by Maguire, carried 7/0, to table this agenda item (R-PUD-91-018) until February 11, 1992, at 1:30 pm.

(01/28/92 - 11 - 6.0885)

3:00 P. M. CONSIDERATION TO ADOPT FOUR ORDINANCES READOPTING THE BUILDING CODE, PLUMBING CODE, MECHANICAL CODE AND ELECTRICAL CODE, CONTINUED FROM DECEMBER 10, 1991: (6.0885) Motion by Maguire, seconded by Herold, carried 7/0, to continue this agenda item and also item # 4f until February 11, 1992, at 1:30 pm.

(01/28/92 - 11 - 4.3066)

3:30 P. M. PUBLIC HEARING TO AMEND ORDINANCE NO. 87-57, ROAD IMPACT FEE ORDINANCE, ALLOWING THE IMPACT FEE TO BE REDUCED AND THE PAYMENT THEREOF MAY BE DEFERRED FOR LOW AND MODERATE PRICED RESIDENTIAL UNITS OR FOR RESIDENTIAL UNITS THAT WILL BE OCCUPIED BY LOW OR MODERATE INCOME RESIDENTS: Proof of publication of hearing to consider a proposed ordinance to amend Ordinance No. 87-57 (Road Impact Fee Ordinance) was received having been published in The St. Augustine Record on January 6, 1992.