

Agenda Item Summary

Item No. 9g(1)

Council Meeting Date	January 23, 2007
Date Submitted	January 17, 2007
Submitted by	Forrest Cotten
Department	Planning
Agenda Section	Resolutions

Name and address of person(s) or business(es) this item affects:

Cleveland Real Estate Investments
Partnership
P.O. Box 1429
Auburn, AL 36831

Description of item under consideration

The Development Agreement, submitted for Council's consideration, is an end product of a development review process authorized by the City Council in April 2005. The Development Committee, comprised of various City Department Heads and chaired by the Planning Director, is tasked with evaluating the impact and expenses associated with certain developments, and formulating an agreement that articulates what those various impacts and expenses are, and how they will be addressed for purposes of ensuring that the infrastructure needs associated with the project, and surrounding area, if appropriate, are secured. An Executive Summary, highlighting the Agreement's contents, is enclosed for Council's review.

Why is Council action needed?

City Council approval is required for development agreements.

Are there any deadlines involved with this item?

No

Is this a budgeted item?

N/A

THE SUMMIT DEVELOPMENT AGREEMENT

EXECUTIVE SUMMARY

The Development Agreement enclosed details infrastructure and other related commitments that would be necessary as the result of the development proposed.

This Agreement, if approved by the City Council, would be between the City of Auburn and Cleveland Real Estate Investments Partnership.

The highlights of the agreement are detailed below:

- The City of Auburn has sanitary sewer service reasonably available to the site through a gravity sewer that extends across the proposed development.
- There are no off-site sanitary sewer system infrastructure improvements required to service this development.
- Water supply is reasonably available to the site for adequate service from the Auburn Water Works Board. (The site is included in the Loachapoka Water Service Area designated by the Lee County Commission.)
- There are no off-site water infrastructure improvements required should Auburn Water Works Board be permitted to serve this development.
- The Developer will pay forty-five (45%) percent of the cost of the installation of a traffic signal that will be needed at the intersection of Shell Toomer Parkway and South College Street. The Alabama Department of Transportation must first approve the installation. The determined dollar amount will be incorporated into the subdivision bond.
- The Developer shall construct, at its sole expense, an eastbound right turn lane at the intersection of Shell Toomer Parkway and Mill Creek Road. This improvement shall be installed as part of the first phase of the development.
- The Developer shall construct, at its sole expense, a westbound left turn lane and eastbound right turn lane at the proposed westerly intersection of the development and Shell Toomer Parkway. The right turn lane will be installed as part of the first phase of the development. The left turn lane will be installed as part of the second phase of the development.
- The Developer shall construct, at its sole expense, an eastbound right turn lane at the proposed easterly intersection of the development and Shell Toomer Parkway. The right turn lane will be installed as part of the first phase of the development.

State of Alabama)
Lee County)

DEVELOPMENT AGREEMENT

This Agreement made and entered into on this the ____ day of _____, 2007, by and between The City of Auburn, Alabama, a municipal corporation, hereinafter referred to as ("City") and Cleveland Real Estate Investments Partnership, hereinafter referred to as the ("Developer").

Statement of Background Information

1. The Developer is the owner of the land more particularly described as follows:

Commence at the Northeast corner of Section 13, Township 18 North, Range 25 East, Lee County, Alabama, and run thence South 00°00'00" East, 150.0 feet; thence North 90°00'00" West, 2,058.2 feet to a point on the South right of way of Shell Toomer Parkway for a corner and point of beginning of the parcel here intended to be described; from this point of beginning, thence South 88°52'12" West along said right of way for a distance of 623.67; thence leaving said right of way, South 05°59'29" East, 347.61 feet; thence along a curve, concave to the Northwest, having a radius of 40.40 feet, a length of 63.25 feet, and being subtended by a chord which bears South 38°37'04" West, 56.99 feet; thence South 83°13'56" West, 126.97 feet; thence South 83°14'12" West, 38.03 feet; thence South 55°22'57" West, 82.77 feet; thence South 38°41'41" West, 59.98 feet; thence South 15°41'31" West, 84.77 feet; thence South 85°03'31" West, 57.00 feet; thence South 60°01'31" West, 77.00 feet; thence South 76°10'28" West, 44.69 feet; thence North 75°11'10" West, 29.74 feet; thence North 45°32'04" West, 40.01 feet; thence North 54°58'39" West, 55.19 feet; thence South 84°42'49" West, 140.12 feet; thence South 05°38'32" East, 516.94 feet; thence South 13°33'07" East, 196.27 feet; thence North 81°14'54" East, 21.91 feet; thence South 16°37'50" East, 175.64 feet; thence South 20°48'09" East, 39.87 feet; thence South 88°40'38" East, 361.13 feet; thence South 02°39'06" West, 216.11 feet; thence North 87°51'09" East, 389.05 feet; thence North 32°18'53" East, 247.55 feet; thence South 89°49'39" East, 678.88 feet; thence North 48°11'57" East, 277.53 feet; thence North 44°09'52" West, 754.90 feet; thence North 00°15'52" West, 586.70 feet; thence North 24°25'00" West, 212.86 feet to the point of beginning; LESS AND EXCEPT THE FOLLOWING PARCEL: Commence at the Northeast corner of Section 13, Township 18 North, Range 25 East, Lee County, Alabama, and run thence South 00°00'00" East, 150.0 feet; thence North 90°00'00" West, 2,058.2 feet to a point on the South right of way of Shell Toomer Parkway; thence South 25°37'43" West, 1,168.55 feet to the point

of beginning of the less and except parcel here intended to be described: from this point of beginning, thence South 86°26'16" West, 205.32 feet; thence South 02°08'18" West, 423.75 feet; thence North 86°27'01" East, 205.20 feet; thence North 02°09'13" East, 423.81 feet to the point of beginning.

All of that property shown as "Mitchell Property 223.59 Acres Future Development" on the plat of Mimms Trail Subdivision, filed of record in Plat Book 24, at Page 83 in the Office of the Judge of Probate of Lee County, Alabama.

Lot 1 of Mimms Trail Subdivision, as shown on the plat filed of record in Plat Book 24, at Page 83 in the Office of the Judge of Probate of Lee County, Alabama.

2. The real property described by the above legal description is being developed into a subdivision known as "The Summit" herein after referred to as the ("Development").

3. The Developer and the City have negotiated certain matters pertaining to public roads, sewer and water facilities, and other City infrastructure which will serve the development known as The Summit under the terms and conditions set forth below.

4. The parties hereto desire to reduce to writing the responsibilities and obligation of each party.

STATEMENT OF AGREEMENT

NOW, THEREFORE, for and in consideration of the above recitations, and the mutual covenants of agreements contained herein, the parties do hereby agree as follows:

SECTION I

SEWER: The City of Auburn has sanitary sewer service reasonably available to the site through a gravity sewer that extends across the proposed development. There are no off-site sanitary sewer system infrastructure improvements required to service this development.

SECTION II

WATER: Water Supply is reasonably available to the site for adequate service from the Auburn Water Works Board. The site is included in Loachapoka Water Service Area designated by the Lee County Commission. There are no off-site infrastructure improvements required should Auburn Water Works Board be permitted to serve this development.

SECTION III

TRAFFIC MATTERS AND OTHER PUBLIC INFRASTRUCTURE:

1. At the intersection of Shell Toomer Parkway and South College Street, a traffic signal will be needed. Alabama Department of Transportation must first approve the installation. The Developer will be expected to pay forty-five (45%) percent of the cost of the installation of the signal. The determined amount will be incorporated into the subdivision bond. The City will design and obtain the permit to install the traffic signal. The signal will be installed at such time as warrants have been met.

2. At the intersection of Shell Toomer Parkway and Mill Creek Road, an eastbound right turn lane will need to be constructed as part of the first phase of the development. The total cost for the construction will be the responsibility of the developer. The Developer will need to obtain the permit for the construction of the right turn lane from the State.

3. At the proposed westerly intersection of the development and Shell Toomer Parkway, a westbound left turn lane and eastbound right turn lane will need to be constructed. The left turn lane will have to be constructed at the start of the second phase of the development. The right turn lane will need to be constructed during the first phase of the development. The total cost for the construction will be the responsibility of the Developer. The Developer will need to obtain the permits for the construction of the left turn and right turn lanes from the State.

4. At the proposed easterly intersection of the development and Shell Toomer Parkway, an eastbound right turn lane will need to be constructed as part of the first phase of the development. The total cost for the construction will be the responsibility of the Developer. The Developer will need to obtain the permit for the construction of the right turn lane from the State.

SECTION IV

PLANNING COMMISSION: The Summit shall be developed in accordance with all requirements and standards set by the Planning Commission of the City of Auburn, in addition to the requirements set forth herein. In the event the Planning Commission of the City does not approve the development known as The Summit, this Agreement shall become null and void. In addition, the Developer shall donate to the City property within the Development which complies with the Greenspace and Greenway Master Plan, 2004, as amended and as required by the Planning Commission.

SECTION V

LEGAL EFFECT AND LIMITATIONS OF THIS DEVELOPMENT AGREEMENT: The parties hereto shall be bound by the following:

1. This Development Agreement supersedes and replaces that certain Development Agreement between the parties dated the 6th day of June, 2006, which said Development Agreement shall be null and void.

2. This Development Agreement shall be binding on the parties hereto, their successors and assigns.

3. All conditions, restrictions, stipulations, and safeguards contained in this Development Agreement may be enforced by either party hereto by action at law or equity; and all costs of such proceedings, including reasonable attorney fees, shall be paid by the defaulting party.

4. The approval granted by this Development Agreement is limited. Such approval shall not be construed to obviate the duty of the Developer to comply with all applicable local review and permitting procedures, except where otherwise specifically provided. Such approval shall not be construed to obviate the duty of the Developer to comply with all applicable state review and permitting procedures. Such approval shall not obviate the duty of The Developer to comply with any City ordinance or other regulation adopted after the effective date of this Development Agreement.

5. The Developer shall explicitly comply with all ordinances and regulations of the City as the same pertains to this Development, including but not limited to all zoning, subdivision, sediment and erosion control, planning and engineering ordinances and regulations.

6. The provisions of this Development Agreement shall terminate in ten (10) years from the date of approval of this Agreement by the City Council unless an extension is approved by the City Council of the City of Auburn and its Planning Commission.

SECTION VI

SEVERABILITY: In the event that any portion or section of this Agreement is determined to be invalid, illegal or unconstitutional by a court of competent jurisdiction, such decision shall in no manner affect the remaining portions or sections of this agreement, which shall remain in full force and effect.

SECTION VII

ENFORCEABILITY: This Agreement shall become effective upon its adoption by the City Council of the City of Auburn, Alabama and execution by a duly authorized officer of Cleveland Real Estate Investments Partnership, and shall be binding upon the parties hereto, their successors and assigns.

SECTION VIII

BINDING EFFECT: This Agreement shall be recorded in the office of the Judge of Probate of Lee County, Alabama, and shall run with the land and shall be binding upon the parties hereto, their successors and assigns.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto in duplicate, each of which shall constitute an original on this the _____ day of _____, 2007.

CITY OF AUBURN, A MUNICIPAL CORPORATION

BY: _____
BILL HAM, CITY MAYOR

SEAL AND ATTEST:

By: _____
CHARLIE DUGGAN, CITY MANAGER

CLEVELAND REAL ESTATE INVESTMENTS PARTNERSHIP

By: 
Its: Managing Member

RESOLUTION NO. _____

BE IT RESOLVED, by the City Council of the City of Auburn, Alabama that the certain Development Agreement attached hereto and made a part hereof by reference by and between the City of Auburn, Alabama and Cleveland Real Estate Investments Partnership, is hereby duly accepted and approved and that the Mayor be and is hereby duly authorized, directed, and empowered to execute the Agreement for and on behalf of the City of Auburn.

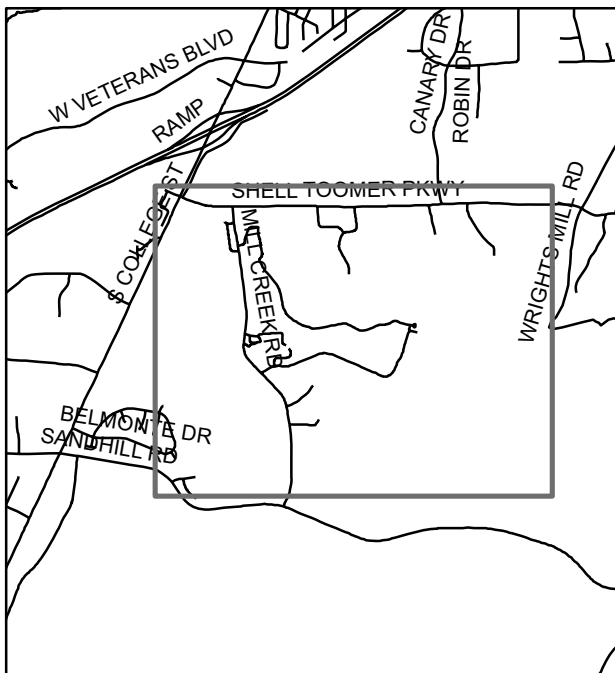
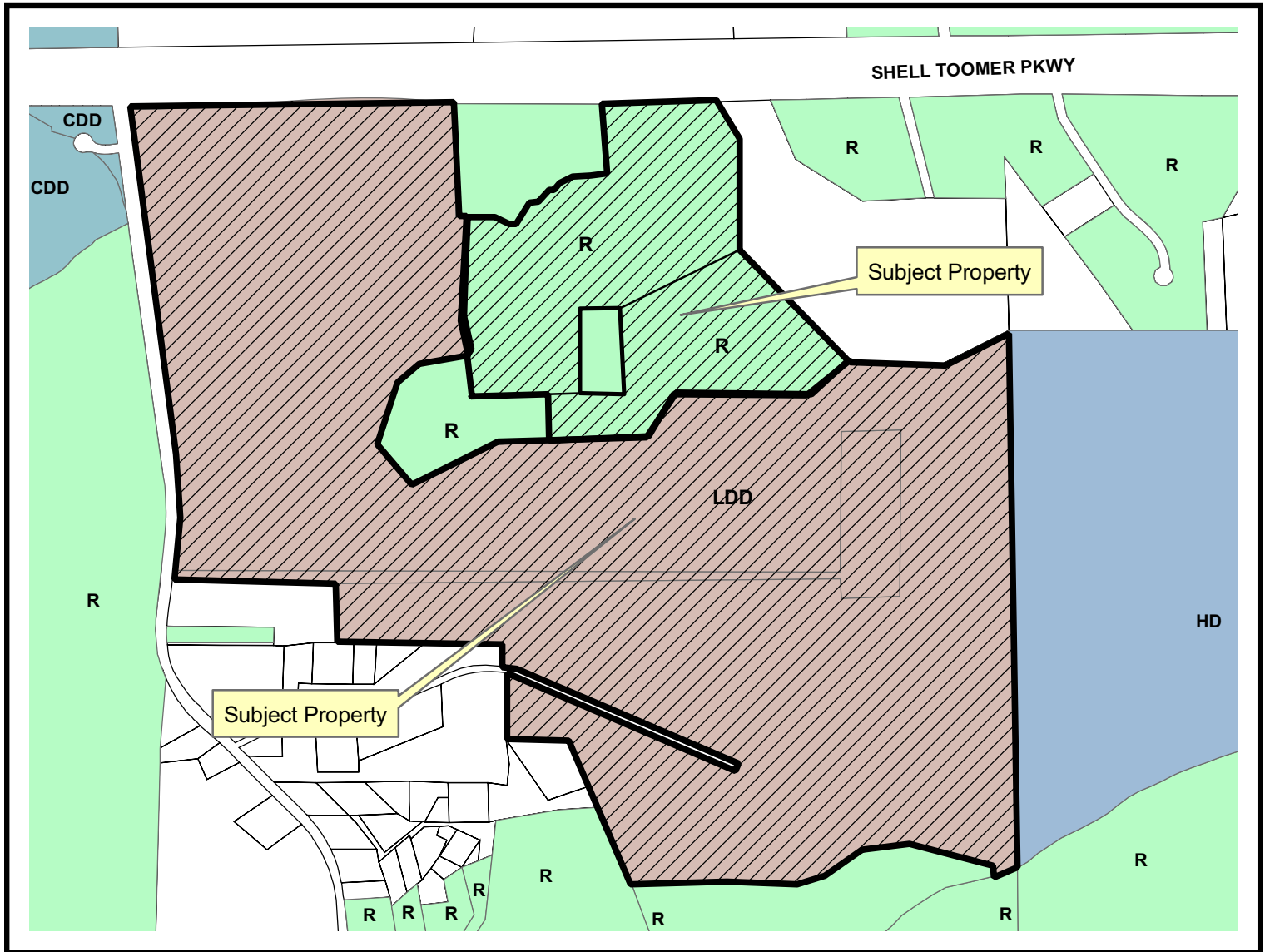
ADOPTED AND APPROVED by the City Council of the City of Auburn, Alabama, this the 23rd day of January 2007.

Mayor

ATTEST:

City Manager

THE SUMMIT DEVELOPMENT AGREEMENT



The applicant is seeking approval of the Development Agreement for 280 acres.



The City of Auburn, Alabama does not guarantee this map to be free from errors or inaccuracies. The City of Auburn, Alabama disclaims any responsibility or liability for interpretations from this map or decisions based thereon. This information contained on this map is a general representation only and is not to be used without verification by an independent professional qualified to verify such information.