CITY COUNCIL AGENDA ITEM

REQUESTED COUNCIL MEETING DATE 02/07/06

SUBJECT: Resolution establishing a need for acquisition in fee simple of a certain parcel of land for drainage and related purposes

DEPARTMENT: Administration

RECOMMENDED MOTION:

Motion to approve Resolution No. 06-17, establishing a need for acquisition in fee simple of a certain parcel of land for drainage and related purposes in the Taylor Road corridor and authorizing eminent domain legal action.

SUMMARY:

Staff recommends approval of the attached resolution. The City intends to improve drainage facilities and functions for the Taylor Road corridor, inadequacies in the drainage functions and facilities relating to the Taylor Woods Subdivision a well as drainage issues relating to South Williamson Boulevard and the Homier Road/Summertrees Road extension and to otherwise benefit the citizens of the City.

ATTACHMENTS: [ ] Ordinance [X] Resolution [ ] Budget Resolution

[ ] Other [ ] Support Documents/Contracts Available for Review in Manager's Office

FINANCE John A. Shelley, Finance Director Date 2-1-06

CITY ATTORNEY Approved as to Form and Legality Date 2-1-06

CITY MANAGER Approved Agenda Item For: 2/7/06

COUNCIL ACTION: [ ] Approved as Recommended [ ] Disapproved [ ] Tabled Indefinitely
[ ] Continued to Date Certain [ ] Approved with Modification:

RESOLUTION NO. 06-17

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA, ESTABLISHING A NEED FOR ACQUISITION IN FEE SIMPLE OF A CERTAIN PARCEL OF LAND FOR DRAINAGE AND RELATED PURPOSES THE PARCEL BEING THAT PARCEL OF REAL PROPERTY DESCRIBED AS PARCEL 1 IN THAT CERTAIN WARRANTY DEED RECORDED AT OFFICIAL RECORDS BOOK 5461, PAGE 4862 OF THE OFFICIAL RECORDS OF VOLUSIA COUNTY, FLORIDA; DELEGATING AUTHORITY TO THE CITY MANAGER TO DETERMINE THAT ACQUISITION OF A SMALLER PORTION OF THE DESCRIBED PARCEL WILL ACCOMMODATE THE CITY PROJECT; ESTABLISHING THE UTILIZATION OF FLORIDA LAW; PROVIDING FOR AUTHORIZATION OF THE SPECIAL LEGAL COUNSEL FOR THE CITY TO NEGOTIATE AND TO FILE AN EMINENT DOMAIN ACTION OR ACTIONS AS NECESSARY TO ACQUIRE THE PARCEL NEEDED BY THE CITY PROJECT; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Port Orange intends to improve drainage facilities and functions for the Taylor Road corridor, inadequacies in the drainage functions and facilities relating to the Taylor Woods Subdivision as well as drainage issues relating to South Williamson Boulevard and the Homier Road/Summertrees Road extension and to otherwise benefit the citizens of the City; and

WHEREAS, the constitutional home rule powers of the City of Port Orange including, but not limited to, Article VIII, Section 2, *Constitution of the State of Florida*, and Chapter 166, *Florida Statutes*, and other applicable law vests authority in the City to provide drainage facilities to the citizens of the City; and

WHEREAS, the provisions of Section 163.01, *Florida Statutes*, and other

applicable law, authorize the joint exercise by agreement of two (2) or more public agencies of any power common to them; and

WHEREAS, the City is collaborating with Volusia County Government relative to the Taylor Road Widening and the Airport Road Widening Project by cooperating in the provision of necessary drainage functions and facilities; and

WHEREAS, the City Council of the City of Port Orange desires to accomplish the goals, objectives and policies of its Comprehensive Plan and provide highly functional and beneficial drainage and transportation facilities for the benefit of the citizens of the City of Port Orange and to collaborate and cooperate with Volusia County Government to provide transportation and drainage facilities for the benefit of the traveling public; and

WHEREAS, the City Council of the City of Port Orange desires to utilize the provisions of Florida law to the fullest extent possible in order to accomplish the public purpose of acquiring necessary lands for City drainage purposes at a price that is both fair to the property owner and prudent in terms of spending the tax revenues and other public funds which fund the improvements of the City; and

WHEREAS, the City has secured the legal services of Lonnie N. Groot, Esquire and the Law Firm of Stenstrom, McIntosh, Colbert, Whigham, Reishchmann & Partlow, P.A. as Special Legal Counsel for the City for eminent domain proceedings for the Projects described in this Resolution; and

WHEREAS, the City Council of the City of Port Orange hereby determines

that the actions taken herein are consistent with the goals, policies and objectives of the *City of Port Orange Comprehensive Plan* and other applicable law.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA, as follows:

SECTION 1: The above recitals are hereby adopted as findings and incorporated into the text of this Resolution as legislative and administrative findings of the City Council of the City of Port Orange.

SECTION 2: That the acquisition of the land needed are described as follows: that certain parcel described as Parcel 1 in that certain Warranty Deed, dated December 16, 2004, and recorded at Official Records Book 5461, Page 4862 of the Official Records of Volusia County, Florida. The Warranty Deed relating to the property is attached hereto be and the same is hereby ratified and confirmed as part of this Resolution. Additionally, the subject property is assigned Tax Parcel Identification Number 19-16-33-00-00-0220 by the Volusia County Property Appraiser and the printouts of the Property Appraiser relating to the Tax Parcel are attached hereto be and the same is hereby ratified and confirmed as part of this Resolution. The said land is found to be necessary in fee simple for drainage and related purposes. The City Council of the City of Port Orange hereby finds and determines that the acquisition of the parcel is necessary and serves a City purpose and public purpose. If the City Manager determines that a smaller portion of Parcel 1 will accommodate the City Project, then the City

Council hereby delegates authority to the City Manager to find and determine that the smaller portion is necessary and serves a City purpose and public purpose for the Projects.

SECTION 3: That the Special Legal Counsel for the City is hereby authorized and directed to negotiate for the acquisition of the parcel and, if necessary, is hereby authorized and directed to institute a suit or suits in the name of the City of Port Orange and fully exercise the City of Port Orange's power of eminent domain for the purpose of acquiring the parcel described in Section 2 and in the documents attached hereto in fee simple and is further authorized and directed to do all things necessary to prosecute such suit or suits to final judgment by settlement or adjudication. In pursuit of such authorization and direction, the Special Legal Counsel is specifically authorized to sign and file a Declaration of Taking in order that the City of Port Orange may avail itself of the provisions of Chapter 74, *Florida Statutes*, and is further authorized to accomplish the acquisition of the parcel by settlement and compromise at such terms that it may deem advisable under the circumstances of the litigation in those instances where same can be effected in accordance with the terms, conditions and limitations if any are established from time-to-time by the City Council of the City of Port Orange. The Special Legal Counsel is authorized and directed to utilize and assert any and all constitutional and statutory authority of the City of Port Orange and the City Council of the City of Port Orange relative to the acquisition of the subject parcel including, but not

limited to, the provisions of Chapters 73, 74, and 166, *Florida Statutes*.

SECTION 4: Prior to or after the institution of any suits filed by the City's Special Legal Counsel, the Special Legal Counsel or his designee is authorized to negotiate for the purchase and sale of any of the property described in Section 2 and the documents attached to this Resolution at a value consistent with the authority granted by the City Council of the City of Port Orange and to bring back for execution by the Mayor or, in his absence, the Vice Mayor, without further Council action, an Agreement to consummate the sale to the City of Port Orange at an amount not to exceed the fair market value of the highest appraisal received, or to bring to the City Council of the City of Port Orange from owners in excess of the authority granted.

SECTION 5: This Resolution shall become effective immediately upon its passage and adoption.

PASSED AND ADOPTED this ____ day of _____, 2006.

CITY OF PORT ORANGE CITY COUNCIL

_____
MAYOR ALLEN GREEN

ATTEST:

_____
Kenneth W. Parker, City Manager

(Resolution No. _____)

Adopted on the ____ day of _____, 2006.

Reviewed and Approved: _____
Margaret T. Roberts
City Attorney

CITY OF PORT ORANGE

1000 CITY CENTER CIRCLE
PORT ORANGE, FLORIDA 32129
TELEPHONE 386-506-5500
FAX 386-756-5290
www.Port-Orange.org

January 31, 2006

Mr. Harold C. Hubka
Cobb & Cole
P. O. Box 2491
Daytona Beach FL 32115-2491

Dear Mr. Hubka:

I am in receipt of your most recent letter concerning the acquisition of your client's property. I need to clarify some points in the letter.

First, as you know, the City staff cannot guarantee zoning on a property. As I recall, I told you that I would recommend to the City Council that zoning on the Yorktowne property be changed from its current public permitted uses to commercial uses. The commercial uses were identified on the proposed attachment to a Master Development Agreement Amendment. The uses proposed by the City would be consistent with the underlying land use of the Yorktowne Boulevard property. In fact, the City is prepared to move forward with the zoning document. The proposed amendment is ready to be submitted to the Planning Commission for their consideration. The City staff has prepared the amendment with certain permitted uses that would be consistent with the underlying land use and with the permitted uses allowed in the Gateway PCD. Attached is the proposal the City staff is submitting to the Planning Commission for their consideration. Again, final approval of all zoning action rests slowly with the Port Orange City Council after review by the Port Orange Planning Commission. I have not discussed the potential rezoning of the property with the City Council nor have I sought their position on the potential rezoning. It would be incorrect to state that I have guaranteed the rezoning.

Second, your letter set out conditions for the Taylor Road property. It appears that your client is requesting the transference of development rights from the property the City is proposing to acquire to the frontage on Taylor Road. We are checking the current land development regulations to be sure that the staff has the legal authority to interpret the Land Development Code to allow the transference of development rights to the front of the property, thereby allowing the property to be developed entirely for retail. I should have an answer on this matter within a few days. Although it may be legal to transfer the development rights from the rear of the property to the front of the property, your client will still have to meet all the development code requirements and reviews.

Third, related to the drainage issue, as we discussed, it does make sense to combine the drainage into a master stormwater pond. However, the City needs to be sure that the property it has proposed to acquire will be large enough to accommodate the

stormwater from South Williamson and from the extension of SummerTrees/Homier Road before committing to include your client's property into the retention pond calculation. The property is being acquired for public use, not for private purpose. The property owned by your client is essential for the construction of the two road projects. To the extent possible, the City would work with your client to accommodate the stormwater needs of his adjacent property. I have asked the City's engineers to calculate the volume needs for the City's and County's project as well as to look at the maximum allowed impervious area on your client's remaining property to determine if there is enough land to accommodate the stormwater needs of all three parties. As you can understand, the City's and County's needs must be met first.

Fourth, the City needs to move quickly to acquire your client's property so construction can begin on these essential public improvements. To that end, the City will be enacting the necessary legal resolution to acquire the property by legal action, if necessary, if the City is unable to reach agreement with your client on the purchase of the property necessary for the retention pond to treat stormwater for South Williamson Boulevard and SummerTrees/Homier Road extension. I will be presenting to the City Council the legal resolution to acquire your client's property by legal means, if necessary, on Tuesday night, February 7. If the City Council enacts the necessary legal resolution, it is still our intent to reach agreement with your client rather than resort to legal means.

Should you have questions, please feel free to contact Margaret Roberts or me.

Sincerely,

Kenneth W. Parker
rlg

Kenneth W. Parker
City Manager

Kwp/rlg

Attachment

cc. Margaret Roberts, City Attorney
Donna Steinebach, Community Development Director
Michael Disher, Planning and Development Manager
Warren Pike, Public Works Director
Shirley Kelly, Deputy City Clerk
Matt Greeson, Acting Volusia County Manager
Daniel Eckert, Volusia County Attorney
Gerald Brinton, Volusia County Engineer

This Document Prepared by:
Linda D Johnson CP
Certified Paralegal for City Attorney
1000 City Center Circle
Port Orange FL 32129

Return Recorded Document to:
Attention Records Clerk
City of Port Orange
1000 City Center Circle
Port Orange FL 32129-4144

Affecting Real Property Parcel No. 6318-04-00-0080

FOURTH AMENDMENT
TO
AMENDED AND RESTATED MASTER DEVELOPMENT AGREEMENT
FOR
PORT ORANGE GATEWAY CENTER
PLANNED COMMERCIAL DEVELOPMENT (PCD)

THIS AGREEMENT is entered into by and between the City of Port Orange, a Florida municipal corporation, mailing address: 1000 City Center Circle, Port Orange, Florida 32129, hereinafter sometimes referred to as "Property Owner;" the Port Orange Gateway Center Property Owners' Association, Inc., a Florida non-profit corporation, mailing address: 904 Main Street, Windermere, FL 34786, hereinafter referred to as "POA;" and City of Port Orange, a Florida municipal corporation, mailing address: 1000 City Center Circle, Port Orange, Florida 32129, hereinafter sometimes referred to as "City."

WHEREAS, the parties previously entered into agreements as follows:

(1) Amended and Restated Master Development Agreement for the Port Orange Gateway Center Planned Commercial Development, recorded at Official Records Book 4886, page 3772, Public Records of Volusia County, Florida (the "Restated MDA"); and

(2) First Amendment to the Restated MDA, said amendment being of record at Official Records Book 4904, Page 20, Public Records of Volusia County, Florida; and

(3) Second Amendment to the Restated MDA, said amendment being of record at Official Records Book 5281, Page 2720, Public Records of Volusia County, Florida; and

(4) Third Amendment to the Restated MDA, said amendment being of record at Official Records Book 5389, Page 4833, Public Records of Volusia County, Florida;

All four (4) agreements listed above being collectively referred to herein as the, "Restated MDA as Amended;" and,

WHEREAS, by virtue of warranty deed of record at Official Records Book 5252, Page 285, Public Records of Volusia County, Florida, the City of Port Orange, Florida is the "Owner," of the below described real property, which is a part of the planned commercial development encumbered by the Restated MDA as Amended:

> Lot 8, Port Orange Gateway Center Replat, as per map or plat thereof recorded in Map Book 50, Pages 24 through 27, inclusive, Public Records of Volusia County, Florida.

Said Lot 8 being the subject ("Subject Property") of this Fourth Amendment to the above-referenced Restated MDA as Amended; and

WHEREAS, the City, as the owner of the Subject Property, and as the local governing body having jurisdiction hereof, desire to modify the Restated MDA as Amended with respect to the permitted uses and building criteria applied to the Subject Property; and

WHEREAS, the POA is agreeable to the modifications intended by this Amendment and joins as a signatory hereto as its interests and obligations for storm water drainage and common facilities may be affected.

NOW, THEREFORE, the parties hereto agree as follows:

1. The premises stated above are true, correct, and form a material part of this Fourth Amendment to the Restated MDA as Amended.

2. Paragraph 7, Uses, of the Restated MDA as Amended is hereby amended as follows:

(a) The "Public" use designation previously assigned to Lot 8, is deleted and the following is substituted therefore:

PERMITTED USES	SITE AREA	RETAIL AREA	OTHER AREA
Lot 8 Adult/vocational education Antennas Assisted living facilities Business services Clubs, lodges and fraternal organizations Convenience stores without fuel operation Financial services Fleet-based services Funeral homes Furniture and appliance stores Grocery stores Health/exercise clubs Hotel/Motels	4.8 AC.		30,000 SF

Laboratory, research and development Medical offices and clinics Multi-family dwellings (max. 16 du./acre) Nursing homes Office supplies Offices Personal Services Restaurants Retail Sales and Services Theaters Veterinary Clinics			

(b) The paragraph superscript-numbered "5" describing the conveyance of Lot 8 to the City for public/governmental purposes is deleted in its entirety and no substitution is made therefore.

3. Paragraph 8(d), Property Owners' Association, is hereby amended so as to delete the provision exempting the City as a member of the POA and is that subparagraph (d) is hereby amended to read as follows:

8(d) Each lot owner, including Lowe's, is or shall automatically become a member of the POA by virtue of purchasing or owning a lot or site within the amended PCD Property, and shall thereby be subject to the POA's rules, covenants and restrictions.

4. Paragraph 13, Signage, is hereby amended by the addition of the following subparagraph:

13(c)(4) Lot 8 shall be entitled to one (1) monument sign on Yorktowne Boulevard.

5. Paragraph 14, Architectural/Design Standards, is amended to address the building orientation and parking requirements for Lot 8 as follows:

14(g) Within Lot 8:

(a) Primary orientation and main entrance facing Yorktowne Boulevard;

(b) Lot function and layout shall be coordinated, once established by the function and layout of the first building to receive site development plan approval. For purposes of this Agreement, lot function and layout includes, but is not limited to, building placement, landscaping layout/design, parking lot layout/design, and access drive layout/design.

6. Exhibit C, Dimensional Requirements, is amended to include minimum building criteria and setbacks within Lot 8 as follows:

Minimum Lot Area	32,000 square feet
Minimum Lot Width	150 feet
Maximum Building Coverage	35%
Standard Parking Space	9 feet x 19 feet
Maximum Building Height	50 feet
Building Setbacks	
From Yorktowne Blvd.	30 feet minimum
From Internal Lot Lines	20 feet minimum
From Rear	20 feet
Building Separation	20 feet
Maximum Impervious Area	70%
Minimum Open Space	30%

7. Amended Conceptual Development Plan. The textual provisions of this Fourth Amendment shall supersede any conflicting information as it may appear on the Amended Conceptual Development Plan in affect and recorded in the public land records of Volusia County, Florida as of the effective date of this Fourth Amendment.

8. The Restated MDA as Amended shall remain in full force and effect except as to those matters specifically amended by this Fourth Amendment.

9. This Fourth Amendment to the Restated MDA as Amended shall be effective as of the date it is executed by all parties named herein.

10. This Fourth Amendment shall be recorded in the Public Records of Volusia County, Florida.

IN WITNESS WHEREOF, the parties have executed this Fourth Amendment by and through their duly authorized representatives on the dates set forth below.

WITNESSES:

PROPERTY OWNER:
CITY OF PORT ORANGE, FLORIDA
A Florida municipal corporation

_____
Witness Signature

By:_____
Allen Green, Mayor

_____
Printed Name of Witness

ATTEST:

_____
Witness Signature

By:_____
Kenneth W. Parker, City Manager

_____
Printed Name of Witness

DATE:_____, 200__

WITNESSES:

_____
Witness Signature

_____
Printed Name of Witness

_____
Witness Signature

_____
Printed Name of Witness

Witnesses as to Both

CITY:
CITY OF PORT ORANGE, FLORIDA
A Florida municipal corporation

By:_____
Allen Green, Mayor

ATTEST:

By:_____
Kenneth W. Parker, City Manager

DATE:_____, 200__

WITNESSES:

_____
Witness Signature

_____
Printed Name of Witness

_____
Witness Signature

_____
Printed Name of Witness

POA:
PORT ORANGE GATEWAY CENTER PROPERTY OWNERS' ASSOCIATION, INC., a Florida non-profit corporation

By:_____
Name and Title:_____ President

ATTEST:

By:_____
Name and Title: _____

DATE: _____, 200__

(*Corporate Seal*)

STATE OF FLORIDA

COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, 200__, by _____ and _____, the President and _____, respectively, duly authorized to execute the foregoing Fourth Amendment to Amended and Restated Master Development Agreement for the Port Orange Gateway Center Planned Commercial Development (PCD) on behalf of the **PORT ORANGE GATEWAY CENTER PROPERTY OWNERS' ASSOCIATION, INC.**, a Florida non-profit corporation, and who are [✓] personally known to me, or [_] have produced _____ as identification.

_____
Notary Public, State of Florida at Large
Printed name, commission seal and expiration:

STATE OF FLORIDA

COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this _____ day of _____, 200__, by Allen Green and Kenneth W. Parker, the Mayor and City Manager, respectively, duly authorized to execute the foregoing Fourth Amendment to Amended and Restated Master Development Agreement for the Port Orange Gateway Center Planned Commercial Development (PCD) on behalf of the **CITY OF PORT ORANGE, FLORIDA**, a chartered municipal corporation, and who are [✓] personally known to me, or [_] have produced _____ as identification.

_____
Notary Public, State of Florida at Large
Printed name, commission seal and expiration: