



CITY COUNCIL AGENDA FORM

REQUESTED COUNCIL MEETING DATE 7/24/07

**SUBJECT: FIRST AMENDMENT TO PCD - AIRPORT OAKS PCD
CASE NO. 07-4000002**

DEPARTMENT: COMMUNITY DEVELOPMENT

RECOMMENDED MOTION:

To deny Ordinance No. 2007-~~32~~³³, adopting the First Amendment to the Master Development Agreement (MDA) for the Airport Oaks Planned Commercial Development (PCD), as recommended by the Planning Commission.

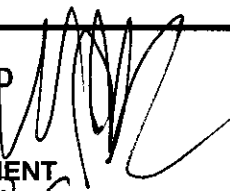
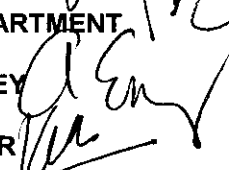

SUMMARY:

PLANNING COMMISSION ACTION: June 28, 2007

Recommended **denial**, 4-3 of the request to approve the First Amendment to the Master Development Agreement (MDA) for the Airport Oaks Planned Commercial Development (PCD). If approved, the amendment would to extend the hours of operation for the convenience store business to 24 hours a day. Included with the motion were two conditions as follows:

1. The MDA being amended to allow the City to return the hours of operation back to 5:00 a.m.-11:00 p.m. if the number of complaints or crime reports in the area increases significantly, as determined by the Chief of Police and/or City manager.
2. Review by the City Attorney as to legal form and content.

ATTACHMENTS: Ordinance Resolution Budget Resolution
 Other Support Documents/Contracts Available for Review in Manager's Office

DEPARTMENT HEAD		Wayne Clark Community Development Director	Date 7/13/07
FINANCE DEPARTMENT		Approved as to Budget Requirements	Date
CITY ATTORNEY		Approved as to Form and Legality	Date 7/13/07
CITY MANAGER		Approved Agenda Item For:	7/24/07

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

ORDINANCE NO. 2007-33

AN ORDINANCE OF THE CITY OF PORT ORANGE,
VOLUSIA COUNTY, FLORIDA, APPROVING AIRPORT
OAKS PLANNED COMMERCIAL DEVELOPMENT FIRST
AMENDMENT TO THE MASTER DEVELOPMENT
AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City and Developer desire to enter into a First Amendment to the Airport Oaks PCD Master Development Agreement; and

WHEREAS, the developer submitted a request to the Planning Commission to approve a First Amendment to the Airport Oaks PCD Master Development Agreement; and

WHEREAS, a public hearing was held following public notice as prescribed by ordinance; and

WHEREAS, the Planning Commission has by majority vote recommended denial of the First Amendment to the Airport Oaks PCD Master Development Agreement; and

WHEREAS, the City Council has approved by a majority vote of the members present the approval of the First Amendment to the Airport Oaks PCD Master Development Agreement.

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

Section 1. The City Council of the City of Port Orange does hereby approve the First Amendment to the Airport Oaks PCD Master Development Agreement (attached hereto as Exhibit A).

Section 2. The Mayor and City Manager are hereby authorized to execute said

First Amendment to the Airport Oaks PCD Master Development Agreement on behalf of the City of Port Orange.

Section 3. This ordinance shall become effective immediately upon adoption by the City Council.

MAYOR ALLEN GREEN

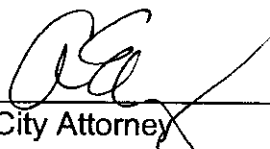
ATTEST:

Kenneth W. Parker, City Manager

Passed on first reading on the day of

Passed and adopted on second and final reading on the day of

Reviewed and Approved: _____



City Attorney

This instrument Prepared by and Return to:

Name: Robert J. Riggio, Esq.
RIGGIO & MITCHELL, P.A.
Address: 400 South Palmetto Avenue
Daytona Beach, FL 32114

Exhibit A

Parcel ID No.: 6332-00-00-0011

-----[Space Above This Line For Recording Data]-----

AIRPORT OAKS PLANNED COMMERCIAL DEVELOPMENT FIRST AMENDMENT TO THE MASTER DEVELOPMENT AGREEMENT

THIS FIRST AMENDMENT TO THE MASTER DEVELOPMENT AGREEMENT FOR THE AIRPORT OAKS PLANNED COMMERCIAL DEVELOPMENT, is made and entered into this _____ day of _____, 2007, by and between the CITY OF PORT ORANGE, a Florida municipal corporation (the "City"), whose address is 1000 City Center Circle, Port Orange, Florida 32129, and CJ OFFICE PLAZA, INC., (the "Owner"), a Florida corporation, whose address is 6760 West Commercial Boulevard, Suite 1, Lauderhill, Florida 33319.

RECITALS

WHEREAS, USA Development Corporation entered into a Master Development with the City to develop the project named the Airport Oaks Planned Commercial Development; and

WHEREAS, that project located on the real property described in the attached Exhibit "A" was subject to a Master Development Agreement recorded at Official Records Book 5191 Pages 4273 et seq., Public Records of Volusia County, which runs with the land; and

WHEREAS, the project was sold in November 2005 to the Owner who is a successor in interest to the original developer; and

WHEREAS, Paragraph 4.C of the original Master Development Agreement provided that the hours of operation for the retail convenience store with gas pumps and car wash operating on the real property would be from 5:00 a.m. to 11:00 p.m.; and

WHEREAS, Owner has been and is experiencing difficulty in receiving deliveries of gasoline and other business goods owing to congestion on Airport Road during the current hours of operation and providing for alternative hours would assist Owner's suppliers and also help relieve congestion on Airport Road; and

WHEREAS, Owner wishes to provide a true convenience to the residents of the area by having essential items available for them at all times when they may be needed; and

WHEREAS, extending the hours of operation of this business would accomplish these purposes and make the operation of this business the same as other similar businesses in the City; and

WHEREAS, the business is well set back from any neighboring properties and is extremely well buffered; and

WHEREAS, extending the hours of operation of this business would be of benefit to both the residents of the surrounding area as well as the business owner; and

WHEREAS, the City is desirous of entering into this agreement to amend the permitted hours of operation for the retail convenience store with gas pumps and car wash and accessory uses on the property,

NOW THEREFORE, the City and Owner hereby agree, in consideration of the mutual premises and covenants contained herein, and with the intent to be legally bound and to bind their successors and assigns, do hereby agree as follows:

1. Recitals Incorporated

The premises set forth above are true and correct, form a material part of this First Amendment, and are incorporated herein by reference.

2. Hours of Operation

Paragraph 4.C. of the Master Development Agreement is hereby amended to read:

The hours of operation for the retail convenience store with gas pumps and car wash and accessory uses as more fully described in the CDP shall be twenty four hours per day.

3. All Other Provisions of the Master Development Agreement to remain the same.

IN WITNESS WHEREOF, the parties hereto affix their signatures and seals on the dates set forth below.

WITNESSES:

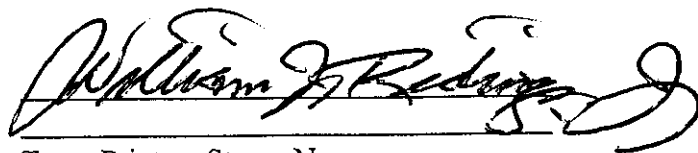
CITY OF PORT ORANGE,
a Florida municipal corporation

By: _____
Allen Green, Mayor

Print name: _____

Print name: _____

has produced _____ as identification and did (did not) take an oath.



Type, Print or Stamp Name
My commission expires:



Schedule A

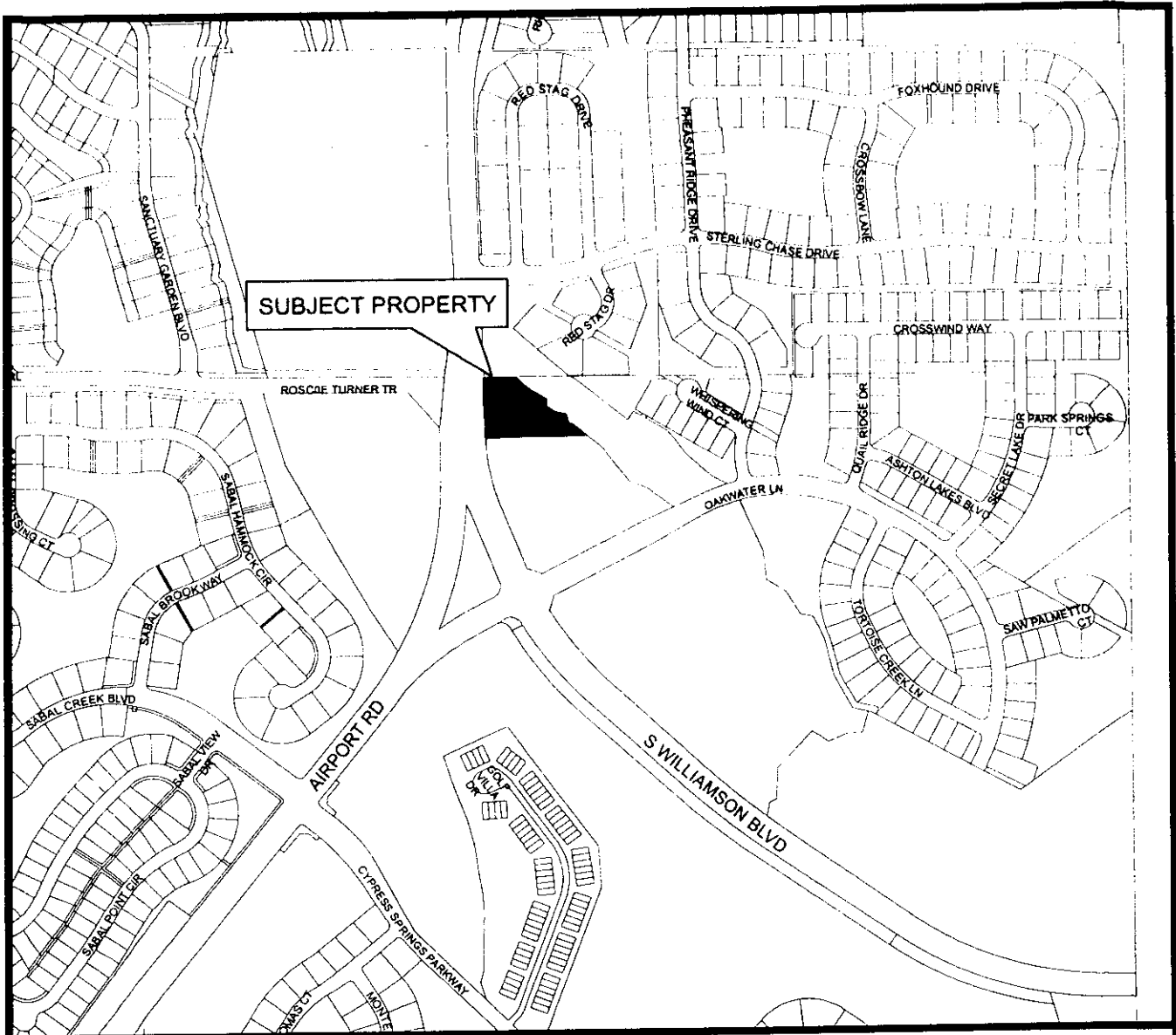
A portion of the Northwest 1/4 of the Northwest 1/4 of Section 32, Township 16 South, Range 33 East, Volusia County, Florida, being more particularly described as follows:

As a point of reference commence at the Northwest corner of said Section 32, run thence South 89 degrees 53' 38" East along the North line of said Section 32 for a distance of 80.91 feet to the East Right of Way line of Williamson Blvd. as shown on the Map of Cypress Head Phase 1A, as recorded in Map book 44, page 37, Public Records of Volusia County, Florida, said point being the Point of Beginning; thence continue South 89 degrees 53' 38" East along the North line of said Section 32 for a distance of 124.97 feet; thence leaving said section line and along the East line of subject property South 49 degrees 07' 43" East a distance of 61.61 feet; thence South 61 degrees 06' 02" East a distance of 73.20 feet; thence South 03 degrees 03' 57" West a distance of 28.47 feet; thence South 48 degrees 42' 25" East a distance of 33.28 feet; thence South 78 degrees 50' 17" East a distance of 54.37 feet; thence South 18 degrees 04' 06" East a distance of 40.39 feet; thence South 60 degrees 04' 11" East a distance of 46.09 feet; thence South 49 degrees 36' 32" East a distance of 40.32 feet to the South line of this herein described property; thence South 89 degrees 00' 56" West along said South property line for a distance of 59.91 feet to a point labeled "A" for future use in this description; thence continuing South 89 degrees 00' 56" West along said South property line for a distance of 345.43 feet to the Point of Tangency of a curve on the East Right of way line of said Williamson Blvd.; thence North 01 degrees 09' 18" West along the said East right of way line of Williamson Blvd. for a distance of 247.18 feet to the Point of Beginning. Together with a 20 foot wide utility Easement described from Point "A" as previously mentioned as the Point of Beginning; run thence South 27 degrees 22' 31" East a distance of 372.46 feet; thence North 62 degrees 37' 29" East a distance of 61.98 feet; thence South 27 degrees 22' 31" East a distance of 70.00 feet to a point on the North right of way line of Oakwater Lane (proposed); thence South 62 degrees 37' 29" West along the North right of way line thereof, a distance of 20.00 feet; thence North 27 degrees 22' 31" West a distance of 50.00 feet; thence South 62 degrees 37' 29" West for a distance of 61.98 feet; thence North 27 degrees 22' 31" West a distance of 402.39 feet to the South line of subject property; thence North 89 degrees 00' 56" East along said South line a distance of 22.33 feet to the Point of Beginning.

File No: 05539

Exhibit A
Legal Description

A portion of the Northwest $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ of Section 32, Township 16 South, Range 33 East, Volusia County, Florida, being more particularly described as follows: As a point of reference commence at the Northwest corner of said Section 32, run thence South $89^{\circ} 53' 38''$ East along the North line of said Section 32 for a distance of 80.91 feet to the East right-of-way line of Williamson Boulevard as shown on Map of Cypress Head Phase 1A, as recorded in map book 44, page 37, Public Records of Volusia County, Florida, said point being; thence continue South $89^{\circ} 53' 38''$ East along the North line of said Section 32 for a distance of 124.94 feet; thence leaving said Section line and along the East line of subject property South distance $49^{\circ} 07' 43''$ East a distance of 81.61 feet; thence South $61^{\circ} 08' 02''$ East a distance of 73.20 feet; thence South $03^{\circ} 03' 57''$ West a distance of 28.47 feet; thence South $48^{\circ} 42' 25''$ East a distance of 33.28 feet; thence South $75^{\circ} 50' 17''$ East a distance of 54.37 feet; thence South $17^{\circ} 04' 08''$ East a distance of 40.39 feet; thence South $60^{\circ} 04' 11''$ East a distance of 46.09 feet; thence South $49^{\circ} 38' 32''$ East a distance 40.32 feet to the South line of the herein described property, thence South $89^{\circ} 00' 56''$ West along said property line for a distance of 59.91 feet to a point labeled "A" for future use in this description; thence continuing South $89^{\circ} 00' 56''$ West along said South property line for a distance of 345.43 feet to the Point of Tangency of a curve on the East right-of-way line of said Williamson Boulevard; thence North $01^{\circ} 08' 18''$ West along said East right-of-way line of Williamson Boulevard for a distance of 247.18 feet to the point of beginning. TOGETHER WITH a 20 foot wide utility easement described from Point "A" as previously mentioned as the Point of Beginning; run these South $27^{\circ} 22' 31''$ East a distance of 372.46 feet; thence North $62^{\circ} 37' 29''$ East a distance of 61.98 feet; thence South $27^{\circ} 22' 31''$ East a distance of 70.00 feet to a point on the North right-of-way line of Oakwater Lane (proposed); thence South $62^{\circ} 37' 29''$ West along the North right-of-way line thereof, a distance of 20.00 feet; thence North $27^{\circ} 22' 31''$ West for a distance of 50.00 feet; thence South $62^{\circ} 37' 29''$ West for a distance of 61.98 feet; thence North $27^{\circ} 22' 31''$ West a distance of 402.39 feet to the South line of the subject property; thence North $89^{\circ} 00' 56''$ East along said South line a distance of 22.33 feet to the Point of Beginning.



Case No.: 07-4000002

Applicant: Robert J. Riggio, Esq.

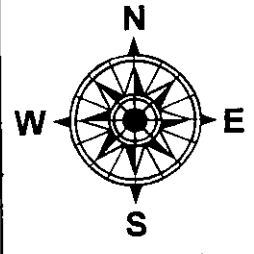
Location: 6223 S. Williamson Blvd.

Requested Action:
 Approval of the first amendment to the Airport Oaks PCD to extend the hours of operation to 24 hours a day.



Exhibit "B" - Location Map
CITY OF PORT ORANGE

DEPARTMENT OF COMMUNITY DEVELOPMENT





STAFF REPORT

CASE NO. 07-4000002

1st Amendment to Airport Oaks PCD

East side of Williamson Blvd. north of Oakwater Lane

Robert J. Riggio, Esq., applicant

June 19, 2007

INTRODUCTION

Robert J. Riggio, Esq., applicant on behalf of CJ Office Plaza Inc., owner, requests approval of the First Amendment to the Master Development Agreement (MDA) for the Airport Oaks Planned Commercial Development (PCD). The purpose of this amendment is to extend the hours of operation for the convenience store business from 5:00 am – 11:00 pm to 24 hours a day. If approved, the existing gas station will be able to receive nighttime deliveries and increase its store hours. The subject property is located on the east side of Williamson Blvd. north of Oakwater Lane. (*Exhibit "A"*)

BACKGROUND

In September 2003, the MDA for the Airport Oaks PCD was approved by City Council on second reading. Currently, the subject property has a convenience store, a gas station, and a car wash, as permitted by the MDA. It is bordered by Williamson Blvd. on the west. The property to the west across Williamson Blvd. is zoned "CC" (Community Commercial). The land to the north is part of the Sterling Chase PUD. The vacant and wooded land to the east is part of the Ashton Lakes PUD and is comprised of wetlands. To the south is the Cypress Head PCD.

DISCUSSION

When this development was first proposed, Staff cautioned that the design of the project must take special care to fit in with the context of the surrounding residential development. Such care would need to be taken primarily because gas stations usually project a negative connotation, given their generally low quality of design. When the public hearings were held for this MDA, several residents expressed their concerns about possible increased crime and traffic issues. The applicant, however, assured residents that this development would not have a negative impact on their quality-of-life and would not become a haven for crime.

The proposed amendment would not change the permitted uses on the property, only the hours of operation. Because this is the first commercial development on this segment of Williamson Blvd, the three most important factors to consider for this amendment are those that could be impacted by this change, namely crime, traffic, and lighting of the property.

CRIME AND TRAFFIC

Attached to this report are minutes from the July 22, 2003 and September 3, 2003 City Council meetings regarding the Airport Oaks MDA proposal. (*Exhibits "B" & "C"*) Some of the statements pertaining to lighting, crime, and traffic have been underlined and bolded. The minutes show residents close to the subject property were primarily concerned about the possibility of increased crime and traffic generation. Staff has

researched the number of police reports filed for this address. Out of approximately 20 reports filed between June 4, 2006 and June 7, 2007, there were four instances of notable crimes committed. The majority of the reports filed, however, pertained to traffic violations and automobile accidents. Staff also discussed the issues of traffic and safety with the Port Orange Police Department. The Police staff has commented that because there have been no significant crimes or increased traffic related to the gas station, they have no issue with amending the MDA to allow a 24-hour operation.

LIGHTING

The Land Development Code requires all commercial site lighting to be shielded from adjacent streets or residences. Furthermore, Section 7 of the approved Airport Oaks MDA requires that all lights in the development be shielded from adjacent residential properties. As mentioned earlier, the site is currently not directly adjacent to any residence and has a 50 ft. buffer along Williamson Blvd. Lights underneath the pump island canopy are recessed so as to minimize off-site glare and light intrusion.

In a letter dated May 23, 2007, (*Exhibit "D"*) the applicant also states one benefit of extending the hours would be a reduction in the number of trucks on the road during busy daylight hours. The letter claims that the current hours of operation provided for in the MDA are creating significant delivery problems for its store since many of its suppliers prefer not to make deliveries during the day on Williamson Blvd. due to congestion. Furthermore, the applicant letter emphasizes that other gas station convenience stores in the City provide their convenience after the major retailers have shut down. The attached map (*Exhibit "E"*) shows the location of nine gas stations in the City and their hours of operation. It is apparent that although the gas stations are in close proximity to residential areas, they are not directly adjacent to them.

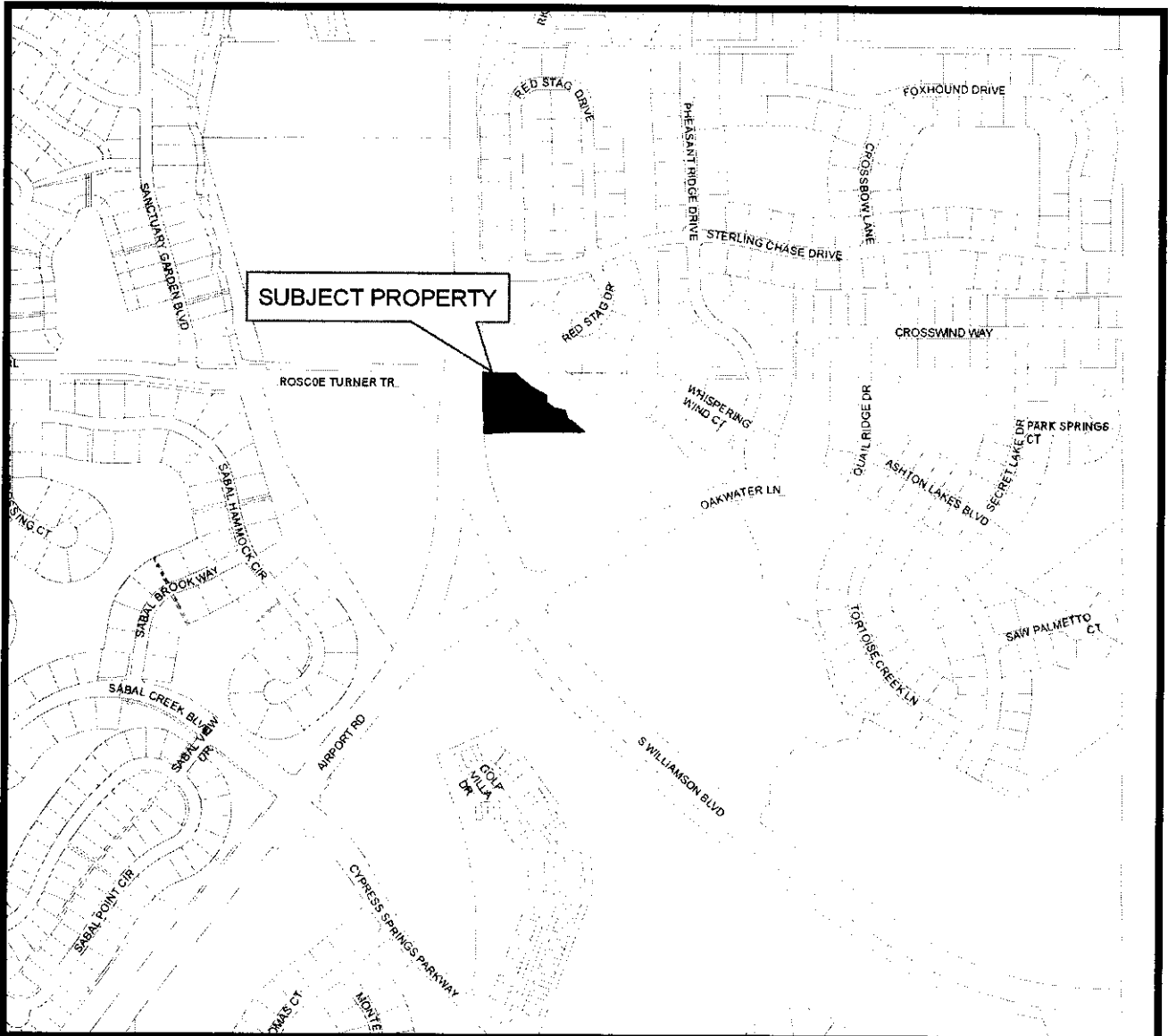
Please note, both the July and September, 2003 City Council minutes show the applicant specifically stating that the store was not intended to be operated 24 hours a day.

RECOMMENDATION:

Staff recommends **approval** of the First Amendment to the Master Development Agreement for Airport Oaks PCD subject to review and approval by the City Attorney as to legal form and content with the following condition added to the MDA:

1. If the number of complaints or crime reports in the area should significantly increase after the approval of this amendment, the City reserves the right to revert the hours of operation back to 5:00 am to 11:00 pm and amend the MDA accordingly.

Prepared by: Tali Kritzer, Senior Planner	(386) 506-5672
City of Port Orange Department of Community Development	(386) 506-5600
Planning Commission Date:	June 28, 2007
City Council Date:	July 24, 2007



Case No.: 07-4000002

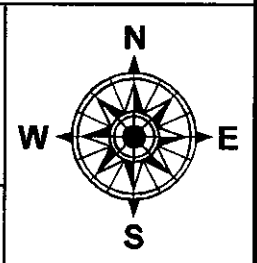
Applicant: Robert J. Riggio, Esq.

Location: 6223 S. Williamson Blvd.

Requested Action:
 Approval of the first amendment to the Airport Oaks PCD to extend the hours of operation to 24 hours a day.



Exhibit "A" - Location Map
CITY OF PORT ORANGE
 DEPARTMENT OF COMMUNITY DEVELOPMENT



SEPTEMBER 3, 2003
CITY COUNCIL MINUTES

28. First Reading - Ordinance No. 03-35 - Approving the Master Development Agreement and conceptual Development Plan for Airport Oaks PCD

Planning Commission recommends approval.

ORDINANCE NO. 03-35

AN ORDINANCE OF THE CITY OF PORT
ORANGE, VOLUSIA COUNTY FLORIDA,
APPROVING THE AIRPORT OAKS
PLANNED COMMERCIAL DEVELOPMENT
MASTER DEVELOPMENT AGREEMENT; AND
PROVIDING AN EFFECTIVE DATE.

Mike Disher, Planning & Development Manager, gave the staff report. The subject property was originally owned by the City but sold when they no longer needed it. The applicant submitted a proposed MDA and CDP in February for consideration. The property is vacant and wooded. It is bordered on the north by Sterling Chase PUD and to the east by wetlands within Cypress Head (Ashton Lakes) PUD. The future Cypress PUD is to the south. Property to the west across Airport Road is also intended for commercial use. The applicant proposes to develop the PCD as a single-lot development to include a 2,450 square foot convenience store building, 720 square foot car wash, and a 2,280 square foot gas pump island canopy. These will be separated from Airport Road by a 50-foot wide landscape buffer. Along the north side abutting Sterling Chase PUD there will be a 20'-wide landscape buffer and opaque wall, and a 25'-wide buffer will separate the development from wetlands to the east. There will be stormwater retention on the site. A connection point to the PCD property to the south will be a 24-foot wide Cross access easement. There will be left and right- turn lane improvements made to Airport Road. The development will have Mediterranean architectural styling. Other items discussed including lighting, signage, and surrounding land uses. At the site plan stage a traffic study will be required. **Councilman Steindoefer feels traffic on Taylor Road could decrease. Councilman Green asked the hours of operation. He asked when considering lighting that staff be certain it is designed such that headlights off of vehicles does not go into other homes.**

Jerry Mitchell, Attorney for the applicant, and Jim Neferdorf, applicant, were present. **Mr. Mitchell said it is not intended the facility be operated 24 hours a day. Hours will probably be 6:00 a.m.-11:00 p.m. Mr. Neferdorf stated he will make certain the lighting is taken care of.**

Arthur Dudley, Heron Pond Drive, spoke regarding his concerns of egress out of The Sanctuary and considers this a danger. He asked why this area of 1,475 acres that has always been considered residential will now become commercial. Mr. Disher explained the acreage involved is only 1.495 acres. There was a section set aside in this area some time ago intended to be commercial use. It is shown on the City's Comp Plan as being commercial too. Mr. Neferdorf does not see any potential danger that will be created by the development.

Motion made by Councilman Green, seconded by Vice Mayor Martin, to approve Ordinance No. 2003-35 on first reading. Motion carried unanimously upon roll call vote.

Mayor Hukill said second reading will be on August 19, 2003.

SEPTEMBER 3, 2003
CITY COUNCIL MINUTES

20. Second Reading - Ordinance No. 2003-35 - Approving the Master Development Agreement and Conceptual Development Plan for Airport Oaks PCD (continued to date certain of 9/3103)

Mayor Hukill gave an outline of how discussions and presentations will proceed. She asked that those speaking not repeat the same information. Mr. Parker, City Manager, said that Mike Disher, Planning & Development Manager, will be making the City's presentation. Mr. Parker called to Council's attention materials included in the agenda packet which provides some historical background as it relates to the Oaks Spruce Hammock project which became Cypress Head. He gave an overall view of this property since 1984 of this property.

MOTION ON FLOOR

ORDINANCE NO. 2003-35

AN ORDINANCE OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA, APPROVING THE AIRPORT OAKS PLANNED COMMERCIAL DEVELOPMENT MASTER DEVELOPMENT AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.

Mayor Hukill said there have been petitions in opposition to this and letters sent to the City Managers Office on this item. She has spoken to several people on this including Mr. Riggio, Attorney for the applicant. Councilman Green has also spoken to Mr. Riggio. Councilman Jackson has spoken to persons in The Sanctuary and Cypress Head. Vice Mayor Martin received e-mails, spoke to some of the people, and also met with Mr. Riggio and Mr. Nefferdorf. Councilman Steindorfer has spoken to Mr. Riggio and other people that called him. Mike Disher, Planning & Development Manager, supplemented the City Manager's comments offering some diagrams and maps of the area in question. When Cypress Head was annexed into the City 20 years ago it was coupled with a future land use amendment to this property. He pointed out Cypress Head and the area initially set aside for commercial use on an overhead map. When the Cypress Head PUD was later approved there were commercial uses planned for. The 1.5 acres was set aside for a fire station. Mr. Disher gave an overview of the significant elements of the Development Agreement as it pertains to the gas station. He showed the current version of the future land use map showing the area as being commercial, shows the wetlands to the east, and residential areas. There are other areas to the west intended for commercial development. After the new fire station was built that was when the area on the conceptual plan of Cypress Head was changed and merged into the commercial nodes. Mr. Disher gave an overview of the history of the proposal and history of discussions with the applicant. When staff was first approached regarding the proposed development the applicant was made aware of the need to be extremely sensitive to the concerns of residents in that area. This is the first commercial development in this area and would have a big impact visually and on people's perception for what was to follow. Staff knew the entire area was set aside for commercial. The proposed conceptual plan shows a fifty foot-wide buffer. This is not a site plan as the official design has not been approved. They have provided information on the quantity and materials going in. There is a 6-foot high wall proposed along one side that will separate residential and commercial uses. The access point lines up with Roscoe Turner Road and is just north of where Airport Road splits off from Williamson Boulevard. It is anticipated there will be another entrance after development. A convenient store, gas station, and car wash are proposed. Mr. Disher presented a colored rendering of the gas station on Madeline Avenue and Nova Road noting this is what has been presented to the applicant stating this is similar to what is expected by the City. It is a historical architectural style (Mediterranean). Signage will be very low profile. **Attention will be paid to lighting and lights will be recessed into the canopy. Surrounding lights on the site itself will be required to be shielded from adjacent residential**

areas. The Development Agreement also allows a number of alternative uses such as a commercial center with a small number of stores and general offices or restaurant. Staff looked at what impacts would be. These are normally looked at the site plan stage and it is then that staff determines if the site as designed can be supported by infrastructure. Traffic was initially looked at because of the traffic situation in this area. A traffic study will be required at the site plan stage. Based on staff's knowledge of use of a gas station they do not generate traffic in and of themselves.

Robert Riggio, Attorney, for the applicant, said they made it clear to staff up front his client is in the business of developing gas stations/convenient stores. Mr. Riggio stated there are other persons present on their behalf who can answer any questions, including a land planner, expert on petroleum storage, Danny Johns, Site Engineer, a traffic engineer, and individual who is an expert on car washes. Mr. Riggio said, for the record he is asking to put into the record the original City Council agenda form for the July 22nd meeting and the materials Mr. Parker spoke of which are included in the City Manager's comments under Item 20 of tonight's meeting. From the outset his client has had one interest and that is to develop this site as a gas station/convenient store/car wash. That is what they purchased the property for. Mr. Riggio asked that a form signed by Mr. Nefferdorf at the beginning that acknowledged he would be held to the highest standards be included in the record. Each time his client has been asked to do something he has gone above minimum requirements. This item went before the Planning Commission and was unanimously recommended for approval. At second reading of the ordinance there were a number of people who appeared. Mr. Riggio said they took Council's advice and sat down with residents of all the various subdivisions in the surrounding area.

James Nefferdorf, USA Development Corporation spoke. After the last Council meeting he posted signs on the property stating if you are in support of a gas station/convenient store to please contact them. They have received 503 names on a petition in support of the project. This to him states there is a need for this project. Mr. Nefferdorf presented the petition to City Council. He showed Council a flyer that was mailed to residents of The Sanctuary and Waters Edge. Mr. Nefferdorf said they also spoke to people who might be considered original residents of that area. Mayor Hukill noted for the record that Mr. Riggio is submitting into the record a one-page flyer entitled "To the residents of Airport Road", multiple pages of a petition, the top of which page says "I support the building of a gas station/convenience store/car wash on Airport Road at the location designated below". Councilman Jackson asked Mr. Riggio if he took the petition around to different neighborhoods and asked them to sign it. Mr. Nefferdorf said yes. They received some phone calls from the signs and they would drive to their homes and provide them information. One individual came to their office to let them know that there are a large number of people who support the project. Mr. Riggio showed two photos, one being a being a gas station at Madeline Avenue and Nova Road and the other being a Shell station at Dunlawton Avenue and Nova Road, and asked what they represent. Mr. Nefferdorf said they represent their architectural standards and material used to the one at Madeline and Nova and landscaping of the Shell Station to try and illustrated what a natural buffer would look like. The proposed store is smaller than that. There will be a fifty-foot buffer along the Airport Road frontage. Mr. Riggio introduced their Land Planner, Javier E. Omana, who gave an overview of his background and expertise. Also provided was a copy of his resume. He has been in planning projects for the last 22 years. He submitted a copy of his resume. Mr. Riggio questioned him as to commercial properties to the south and the west and county areas to the northwest (Case No. 3 in the agenda packet). Other discussion by Mr. Omana included the type of developments that are likely to occur on the property and traffic. This property could be developed to an intensity that would equal 22,000 square feet of retail. This is not a destination type location. It is considered an infill project. This project would not be considered urban sprawl. It has been planned by the City as reflected in its Comprehensive Plan and Land Development Code. The applicant is sensitive to the neighborhood and design standards. Vice Mayor Martin asked Mr. Omana if he has spoken to any Community Development staff. He said no. Ms. Roberts, City Attorney, asked about the statement that gas station use would be typical and what it would be typical of. Mr. Riggio said typical of having gas stations in locations of commercial nodes such as this. Ms. Roberts asked if gas stations are a higher impact for any other types of commercial use. Mr. Omana said yes. Gas and convenient stores have a different traffic generation vs. an Office

Depot for example. This is a "passer-by" type of traffic. Some of those uses that would be a higher impact for commercial purposes include an appliance store or a furniture store. Ms. Roberts asked if a restaurant would be higher or lower impact. Mr. Omana said it depends on the type of restaurant. Ms. Roberts asked Mr. Omana to identify the type of restaurant that is proposed in the permitted uses. Mr. Riggio said his client came forward with an interest in developing a gas station/convenient store/car wash. At the SDRC meeting the comment was made what if for some reason 20 years from now should this burn down and someone wants to do something else, what would happen. His client has no interest or expertise in being involved in a restaurant. In the MDA that is under the section regarding uses. Ms. Roberts said based on information presented so far is that the MDA will need to be modified within the next 30 days should Council approve it to reflect USA Development, Inc. as the owner. Mr. Riggio said they provided the City with the signed version and the revised cover page. Ms. Roberts said on page 8 under landscape buffers the front buffer abutting Airport Road is designated as 50 feet. She recommends the Amendment be amended to reflect the existing vegetation shall not be removed from the 50 foot buffer area. Also, Council may want to consider the type of restaurant would be appropriate, if any, as permitted uses in this area. Mr. Riggio asked that Council allow him to have a standing objection to any testimony given by persons from the public who are stating hearsay and no real testimony. Mayor Hukill said there is a difference in someone giving their opinion of whether they think the project is appropriate or they like or do not like it as opposed to saying they know something specific that involves personal knowledge. Ms. Roberts has no objection to Mr. Riggio's proposal to set the record that he may object to a certain quality or character to some of the testimony given. Mr. Riggio would like to go on record now. Mayor Hukill would not allow that. She suggested that each person that gets up to speak have the ability to finish their time, as long as they are not being repetitive or redundant, and if Mr. Riggio has an objection he can make it.

Phillip Bernstein, The Sanctuary, said they notified residents that petitions would be available at their home to sign on August 23rd. There were over 200 people who signed them that day. They were shown the site concept. People were adamantly against it. They now have 312 signatures covering several neighborhoods. Mr. Bernstein submitted the petitions. He pointed out the exit and entrance will be directly across from their driveway. Without a traffic light at that location they now have trouble making left turns. He feels a traffic light is needed there for safety purposes.

Ray Huther, 6136 Sanctuary Garden Boulevard, took exception to several comments reportedly made in a flier. He opposes the project and prefers a green area. Mr. Huther feels one gas station will attract others. Other discussion included the price of gasoline, plantings, and traffic.

Resident of 5979 Heron Pond, The Sanctuary, said he did not receive any fliers and did not know there was a meeting. **He pointed out a gas station will make the area less appealing because of crime.** He submitted reports entitled "Summary and Interpretation of Crime in the U.S., 1999 Uniform Crime Report" by the FBI released October 15, 2000 and a report by the Inter-University Consortium for Political and Social Research done on convenience store crimes in Georgia, Massachusetts, Maryland, Michigan, and South Carolina. Robert Riggio, Attorney, asked if the witness has any particular expertise regarding crime. The resident said no. Mr. Riggio asked if he got the information from the Regular City Council internet. He said yes. Ms. Roberts, City Attorney, said it needs to be very clear that the law does require us to afford the opportunity to question anyone testifying tonight. Mr. Riggio objects to the resident's entry.

Julie Fowler, Sterling Chase, showed on the overhead a map of the area where she lives and its proximity to the proposed project. After meeting with the developer and reviewing his plans she feels the gas station will benefit the community.

Bob, 6020 Sanctuary Garden Boulevard, read from a prepared statement. He feels the area is expanding and that the proposed project will be an asset to the community.

John Bogdanoff, 1315 Osprey Nest Lane, objects to the project. He does not feel it is compatible with the surrounding area and present uses. Present uses are entirely residential. He does not agree with Mr. Parker's statement that the compatibility issue can be divorced from the

environmental and safety concerns. He referenced an underline gas transmission line about -1 00 yards to the north of the proposed project. **The residents are concerned about safety of that and underground gas tanks and gas delivery tankers.** Also of concern is beer sales at the store. There is concern about a gas station in close proximity to an elementary school that may be located nearby. There are other available commercial uses for the property that would have less impact. He sent a letter dated August 25th addressing compatibility. They ask that the City not turn this area into a Daytona Beach.

Resident of 6255 Williamson Boulevard said this project would benefit him especially with the prices he pays for gas. There are pros and cons to the project, but the pros exceed the cons.

Kathleen , was present representing her parents who live at 6075 Red Stag Drive. **She spoke on the topic of crime. She is a former Daytona Beach Police Officer with over 11 years experience. Her minimal research of studies on the internet indicate they will be paying a very high price for convenience. There will be problems with either littering, drugs, violence in terms of robberies, assaults, rapes, noise and vandalism. Regarding the buffer it will cause more problems in that if the storefront cannot be seen from the roadway it is a prime location for a robbery. She did some research through the Port Orange Police Dispatch and found a couple of gas stations in Port Orange receives 20-30 calls for service a month.** She referenced Mr. Parker's statement that he has seen other convenience stores incorporated in other developments with success. She asked how that success is measured.

Roy Jazowski, 6051 Sanctuary Garden Boulevard, was not contacted by anyone for support of the gas station. He provided statistical information. **Florida ranks 4th in the nation in robberies. Volusia County ranks 11th in the State. Ten percent of all robberies are gas stations and convenience stores.** Mr. Jazowski submitted his written statement and said the information is from the most recent statistical database (2001) maintained by the FBI. The residents of Airport Road do not want this project. **He is also concerned about hours of operation, advertising, traffic, and the sale of beer and wine close to an elementary school.** Mr. Riggio objected to the document being entered into the record.

Lorraine Truax, 1320 Osprey Nest Lane, strongly objects to the proposed project. She does not feel the project will be compatible with the existing land uses. She lives in Port Orange because it is special. If the gas station was going to be placed a mile down the road from her she too would not object. The property is zoned PCD and believes it was zoned that way so City Council would have the choice to decide what would be placed there. **Ms. Truax referenced a copy of a Ft. Myers City Council Ordinance she obtained from the internet that relates to crime as it relates to convenience stores and gas stations.** Page 3 of the specs of the project are misleading. She believed there was a possibility that there would be a restaurant or some other type of commercial use on the site. Volusia County rejected the new gas station.

George Chatley, 1402 Florida Mass Lane, objects to Mr. Riggio's witnesses, in that they are well rehearsed. It does not appear to him to be fair and the public speaking is limited with their time. He drove the City and found no other gas station in any residential area. The only hazardous place he has found is at Publix and Texaco. Staff has indicated in their findings that a gas station is the worse use of property.

Richard Lavalley, 6145 Jasmine Vine Drive, is concerned about the intersection and traffic. He suggested the project be delayed until improvements are made to Airport Road.

Pio Cassadey, 6048 Sanctuary Garden Boulevard, asked that Council put themselves in their situation and ask themselves if they would like this to happen to them. Council should vote their consciences.

Patrick Kahn, 6098 Sabal Brook Way, said he and his family look forward to the development. He does not agree with all of the negative comments.

Bob Ellison, 6088 Sanctuary Garden Boulevard, said everyone understands the need for progress and development but sometimes resist change. Developing areas along a roadway that does not have the capacity or structure to it to handle traffic only burdens and causes frustration. He hopes the architecture will be well done. Also of concern is the sale of alcoholic beverages that will likely be consumed on subdivision side streets and then thrown out. He asked if the gas station should go out of business does Port Orange have a backup plan.

Lisa Masters, 6068 Sanctuary Garden Boulevard, is pleased to have a convenience store.

Wilson Morton, 6109 Sanctuary Garden Boulevard, is concerned about traffic most especially with construction trucks that will be used during its development. He is concerned about how traffic will be handled for persons trying to get out of The Sanctuary.

Michael Elam, 133 Osprey Nest Lane, said his daughter is near the age to be able to drive. He fears for her safety in getting out of The Sanctuary because of traffic. He asked if anyone has considered moving the project a little south. Mr. Elam is strongly concerned about the safety of the youth. At the least he asked Council to put in a traffic light.

Arthur Dudley, 5978 Herron Pond Drive, asked about ownership of the land. If Port Orange does not own it what is the need for this meeting. This is the best area of the City.

Mr. Riggio gave his closing statement. He feels many of the comments come down to people not wanting to see anything in the area. This was planned for a commercial node many years ago. The road as it exists now may change during the site plan stage. These types of things will all be addressed at the appropriate time. Regarding the natural gas line, it is actually 400 feet to the north. This is an upscale area. **As to the crime issue his client has no intention of becoming a haven for crime. He is willing to close early during hours of the evening where people are concerned about crime.** Mr. Riggio gave an overview of area gas stations and areas they abut. They have tried to address all of the concerns of staff and residents.

Councilman Jackson would like to see the restaurant more defined. Mr. Riggio said that is okay. They have no plans for a restaurant. Councilman Jackson said if the property is sold someone else could be interested in a restaurant. Mr. Riggio pointed out most convenience stores already has an area in which they can serve limited food. Mr. Nefferdorf is willing to limit the seating area to 8.

The store will not be a 24-hour day operation. Hours of operation will be from 5:00 a.m. to 11:00 P.M.

Ms. Roberts, City Attorney, said with regard to evidence heard tonight Council must weigh the quality and character of that evidence and determine in their own minds which is worth more than another. Council needs the evidence and nature of testimony as to the expertise or their own personal knowledge. Also, the facts Council believes is important to their decision tonight should be stated. She asked that after each Council Members speaks to those facts that they believe are relative and important that there be some consensus as to those facts as findings that would go into the record to support their decision. Ms. Roberts stated, for the record, that Council is under no contract or obligation with regard to USA Development, Inc. or any predecessor owner with regard to the use that is being proposed. There are several amendments identified. One is regarding the landscape, buffer. She asked that Council seek the Planning Staff's recommendation on that. Also, the owner's name is an amendment, the restaurant use, and the hours of operation. Any others should be identified.

Councilman Green said Airport Road will eventually be part of the beltway system. When the City met with ICI about The Sanctuary about Roscoe Turner and where it would exit onto Airport Road the City made a concerted effort to have it directly tie into in front of Sterling Chase. The City was unable to acquire the property. When Cypress Head was developed the owner prepaid the impact fees to the County primarily for that road. The City has fought long and hard to establish high standards and to keep them there. That area has been an integral part of a long range plan as a

commercial node and was there in 1984. Councilman Jackson has listened to people who have contacted him. The project has to be thought out completely and rationally. **He does not feel the traffic will be increased because of this project. It should alleviate some of it.** He did have some concern with a chain restaurant but that is not going to happen now. He has to do what is right for the majority of the people. Vice Mayor Martin resents the people who have commented that because she may not vote the way they want her to that that makes her a person that does not care about the community. She has lived here for 20 years and cares greatly about this community. She has a gas station and strip center almost in her back yard and does understand residents concerns. Her decision on voting will center around the commercial zoning and the fact that it has existed for a long time, and the fact that there is a MDA and that is what is being voted on tonight, not the site plan. There is a developer of this area who cares about the area. They have gone above and beyond with what they want to place there. This is not the only area in Port Orange that has the potential of having a site that has a commercial node in a very residential area. Councilman Steindorfer was concerned with the gas station initially not the convenience store. **The project will meet the Dunlawton Corridor standards and there will be no lights shining in houses.** Mayor Hukill supports the project. The property has been a longstanding commercial use designated that can have a mixture of uses. There is a person who when first contacted Mayor Hukill about this that was against it but now supports it. She is concerned about the type of anxiousness that has been created by some people who may feel somewhat differently when the project is completed. **Mayor Hukill does not feel the project will make traffic worse.** She feels it will service the majority of the people who live there, work there or visit there.

Mike Disher, Planning & Development Manager, said Code speaks to quantity and materials and species put in. The developer can credit existing vegetation in that area. Anything not in there will have to be added on to. They are required to preserve 15% of the natural vegetation on the site. They can either use the buffer up front or they can put it somewhere else. There also has to be landscaping in the parking lot areas, and all vehicular use areas. Council could stipulate as stated in the Code. Mr. Roberts, City Attorney and Mr. Parker, City Manager, suggested Council retain jurisdiction of the site plan.

Motion made by Councilman Green, seconded by Councilman Jackson, to amend Ordinance No. 2003-35 to include requirements as specified in City Code on the landscape buffer, correct the name of the owner, **require recessed lighting and maintain such that they do no illuminate, hours of operation to be 5:00 a.m. to 11:00 p.m.,** to place a limitation on seating of no greater than eight (8), meet the quality standards established on the Dunlawton Corridor, Amendments are to be completed and resubmitted within thirty (30) days to the City Attorney's Office. Motion carried unanimously upon roll call vote.

Ms. Roberts asked if it is Council's consensus that all of the facts stated by the individual Council Members shall be incorporated as their Finding of Facts on their decision tonight. All Council Members stated yes.

Main motion carried unanimously upon roll call vote as amended.

RIGGIO & MITCHELL, P.A.

Attorneys & Counselors at Law

400 South Palmetto Avenue
Daytona Beach, Florida 32114

Exhibit "D"

Telephone
(386) 252-3004

Fax
(386) 255-6233

May 23, 2007

Mr. Wayne Clark
Director of Community Development
City of Port Orange
1000 City Center Circle
Port Orange, FL 32129

MAY 2 2007

CITY OF PORT ORANGE
COMMUNITY DEVELOPMENT

**Re: First Amendment to Master Development Agreement
/Airport Oaks PCD**

Dear Mr. Clark:

It is my pleasure to represent CJ Office Plaza, Inc. which is the owner of the Airport Oaks PCD property. CJ Office Plaza has found that the current hours of operation provided for in the MDA are creating significant delivery problems for its store since many of its suppliers prefer not to make deliveries during the day on Airport Road owing to its level of congestion. My client requests that its hours of operation be extended so nighttime deliveries can be made as they are made to other convenience stores throughout the City. This would have the added benefit of taking these trucks off that road during the busy daylight hours. It would also allow this store to have hours similar to other convenience stores in the City who basically provide their convenience after the major retailers have shut down. Jim Nefferdorf has discussed this request with Mike Disher.

In support of this request, please find attached the following:

- 1) a fully executed PUD/PCD amendment application;
- 2) the deed for the property;
- 3) this letter outlining the simple request;
- 4) a legal description of the property;
- 5) executed affidavit of authorization;
- 6) twelve copies of the proposed amendment to the MDA; and
- 7) a check in the amount of \$4,500.00 to pay the processing and review fee.

We look forward to presenting this simple request to the City's Planning Commission at the earliest possible date.

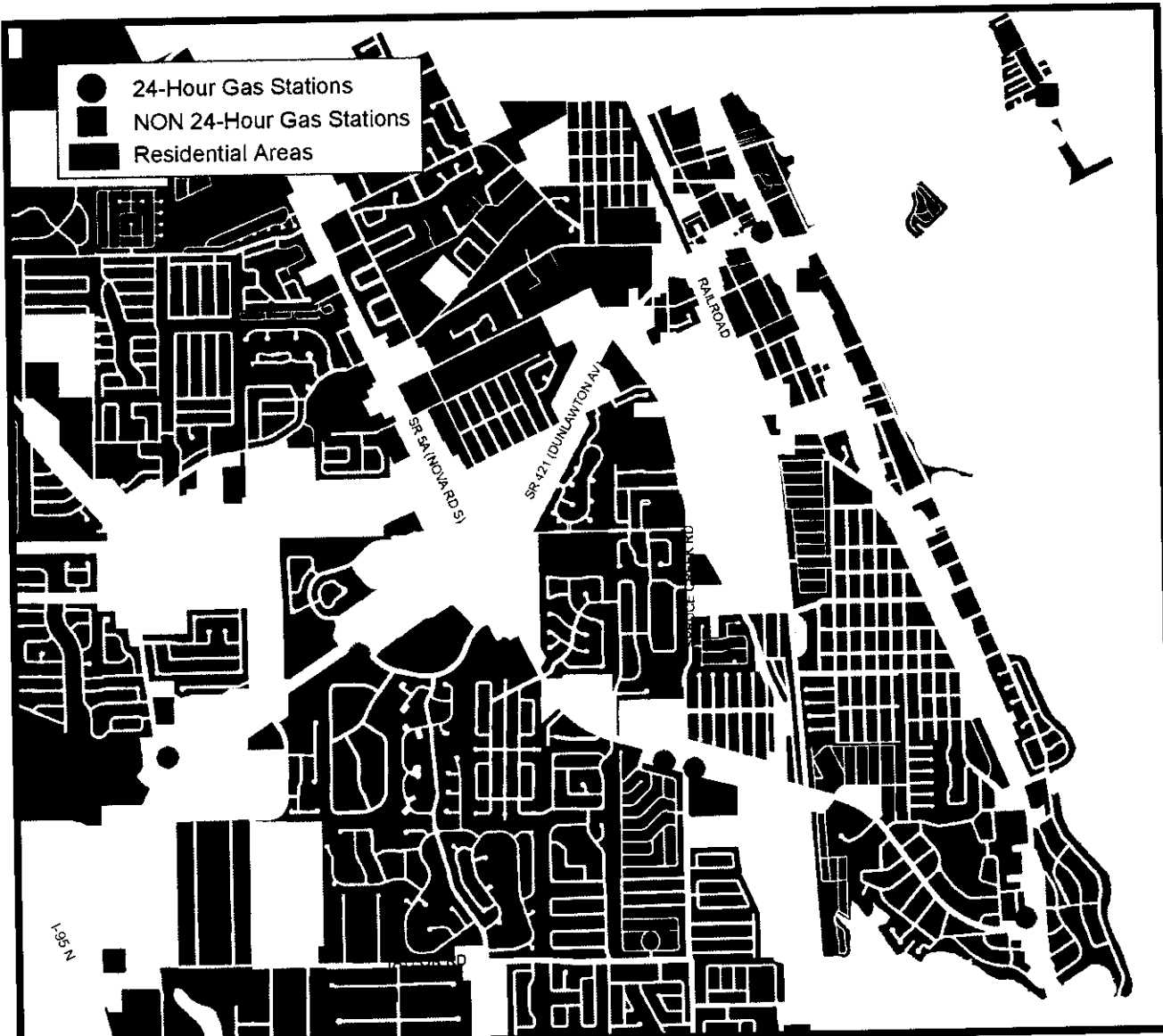
Sincerely,


Robert J. Riggio

RJR:rjr

cc: Carlo Jean-Joseph
James Nefferdorf

attach.



Case No.: 07-40000002

Applicant: Robert J. Riggio, Esq.

Location: 6223 S. Williamson Blvd.

Requested Action:

Approval of the first amendment to the Airport Oaks PCD to extend the hours of operation to 24 hours a day.



Exhibit "E" - Gas Stations
CITY OF PORT ORANGE

DEPARTMENT OF COMMUNITY DEVELOPMENT

