

CITY COUNCIL AGENDA FORM

REQUESTED COUNCIL MEETING DATE 11/13/07

SUBJECT: ORDINANCE APPROVING THE 3rd AMENDMENT TO THE MASTER

| DEVELOPMENT AGREEMENT FOR THE WESTPORT PCD CASE NO. 07-40000003 | | | | |
|---|--|---|-------------------------------------|-------------------------------|
| DEPARTMENT: | COMMUNITY D | EVELOPMENT | | |
| RECOMMENDED Me Approve Ordinance Development Agree Commission. | No. 2007- | approving the Th stport PCD, as r | ird Amendment ecommended by | to the Master the Planning |
| PLANNING COMMIS Commission recomm of the Third Amendm | nended approva | al 5-0 (Commission | ers Lasky and At | wood excused), |
| SUMMARY: The pubuilding and 6,000 sassociated site improvements on action. addressed. Please se | SF commercial provements. T All outstandir | outparcel on Pha he PCD has be ng technical and | se 2 of the Wes en revised follo | stport PCD with wing Planning |
| ATTACHMENTS: | Ordinance | Resolutio | n Budge | et Resolution |
| Other Supp | port Documents/ | Contracts Available fo | or Review in Manaç | ger's Office |
| DEPARTMENT HEAD | My | Wayne Clark Community Development | Director | Date 11/2/0 |
| FINANCE DEPARTMEN | T WA | Approved as to Budget Re | quirements | Date |
| CITY ATTORNEY DE | st). Mily | Approved as to Form and | Legality | Date//, /. 07 |
| CITY MANAGER | ulla | Approved Agenda Item Fo | or: 11.13.07 | |
| COUNCIL ACTION: | [] Approved as | s Recommended | [] Disapproved | |
| [] Tabled Indefinitely | [] Continued to | Date Certain | [] Approved with | h Modification |

ORDINANCE NO. 2007- 56

AN ORDINANCE OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA, APPROVING THE THIRD AMENDMENT TO MASTER DEVELOPMENT AGREEMENT WESTPORT COMMERCIAL DEVELOPMENT; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City and Developer desire to enter into a Third Amendment to Master Development Agreement Westport Planned Commercial Development; and

WHEREAS, the developer submitted a request to the Planning Commission to approve a Third Amendment to Master Development Agreement Westport Planned Commercial Development; and

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

WHEREAS, the Planning Commission has by a majority vote recommended approval of the Third Amendment to Master Development Agreement Westport Planned Commercial Development; and

WHEREAS, the City Council has approved by a majority vote of the members present the approval of the Third Amendment to Master Development Agreement Westport Planned Commercial Development.

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 Third Amendment to Master Development Agreement Westport Planned Commercial Development (attached hereto as Exhibit 1).

(ORD. NO. 2007-)

Section 2. The Mayor and City Manager are hereby authorized to execute said Third Amendment to Master Development Agreement Westport Planned Commercial Development on behalf of the City of Port Orange.

Section 3. All ordinances or resolutions or parts of ordinances or resolutions in conflict with the provisions of this ordinance are hereby repealed to the extent of such conflict.

Section 4. If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared severable.

Section 5. This ordinance shall become effective as provided by general law.

| | 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 |

C:\Legal\ORD\westport pcd third amendment 2007.wpd

Reviewed and Approved: City Attorney

THIS INSTRUMENT PREPARED BY AND WHEN RECORDED, RETURN

H. RAY ALLEN, II, ESQ. Carlton Fields, P.A. 4221 W. Boy Scout Boulevard, Suite 1000 Tampa, FL 33607-5780

Above Space for Recorder's Use

Third Amendment to Master Development Agreement Westport Planned Commercial Development Port Orange, Florida

This Third Amendment to the Westport Master Development Agreement is made by and among the City of Port Orange, a Florida municipal corporation ("the City"), Continental 217 Fund LLC, a Wisconsin limited liability company ("Continental"), and Indigo Group LTD, a Florida Limited Partnership.

- A. The original Master Development Agreement ("MDA") dated April 13, 1993, as recorded in OR Book 3887, Page 3191, Public Records of Volusia County, Florida, was agreed upon among the City, Sembler Family Partnership #8, Ltd, a Florida limited partnership ("Sembler"), Indigo Group Ltd, a Florida limited partnership ("Indigo"), and Barnett Bank of Volusia County, a Florida banking corporation ("Barnett Bank"). The MDA outlined the conceptual development of 25.518 acres of real property, more or less, as commercial facilities serving the City, known as the Westport Planned Commercial Development ("Westport PCD"). The original MDA is included as Attachment 1.
- B. Sembler completed development of Lot 1 pursuant to a Supplemental Development Agreement with the City for Lot 1 ("SDA-1"), such development being Westport Square Shopping Center ("Shopping Center"), a grocery store anchored neighborhood retail shopping center having a gross leaseable area of 57,343 square feet and 2,281 parking spaces, with Publix Supermarkets, Inc. ("Publix") as the initial grocery store tenant.
- C. The City approved the First Amendment to the Master Development Agreement dated December 29, 1993, as recorded in OR Book 3887, Page 3208, Public Records of Volusia County, Florida, which required Indigo or its successors in the development of

12371542.1

Lot 3 to provide an additional 18,000 square feet of area for tree preservation as specified in the agreement ("Additional Tree Preservation Requirement"). In addition, Indigo or its successors in the development of Lot 3 must also comply with the tree preservation and buffer requirements in the City Land Development Code ("LDC") for the development of that lot. The First Amendment to the MDA is included as Attachment 2.

- D. Sembler sold and conveyed its entire right, title and interest in Lot 1 and the improvements thereon, including Sembler's obligation to comply with the terms of the MDA, to Root Real Estate Corp. by Special Warranty Deed executed on the 30th day of January, 1996, and recorded in OR Book 4075, Page 869, Public Records of Volusia County, Florida.
- E. The City approved the Second Amendment to the Master Development Agreement dated November 20, 2000, and recorded in OR Book 4618, Page 3794, Public Records of Volusia County, Florida, which established a Temporary Seasonal Outdoor Display in the parking lot of the shopping center constructed on Lot 1. The Second Amendment to the MDA is included as Attachment 3.
- F. The City entered into two agreements with Indigo, a Drainage Retention Agreement and Joint Use Agreement, which established the joint use of the stormwater facilities for both the Summer Trees Road Extension and the Westport PCD, which clarified that the MDA for the Westport PCD is in full force and effect, and stated that the Westport PCD will not be penalized for the loss of trees in the drainage easement for the City's portion or Indigo's portion of the joint use retention pond, and established that the entire drainage easement including any expansion by Indigo shall be considered as open space for the Westport Agreement and the LDC requirements. The Drainage Retention Agreement is included as Attachment 4. The Joint Use Agreement is included as Attachment 5.
- G. Continental has entered into a contract with Indigo to purchase Lot 3 as identified on Exhibit B of the MDA.
- H. Continental is seeking approval of amendments to the Westport PCD to revise the Conceptual Development Plan (CDP) to reconfigure the proposed building and parking lot, stormwater facilities, reflect the wetland mitigation the City completed as part of the construction of Summer Trees Road and to clarify the requirements for tree preservation onsite based upon the recent Drainage Retention Agreement.

Now, therefore, the City, Continental and Indigo hereby agree as follows:

1. The above recitals are true and correct and are incorporated by reference herein.

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2. Continental is proposing to revise Exhibit B of the MDA to do the following:

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reconfigure the site plan to illustrate the location of existing buildings and two a) proposed free standing buildings (approximately 96,200 and 6,000 gross square footage, respectively), utilities, roads and other improvements on the subject property;

expand the parking area and reconfigure stormwater retention areas in b) conformance with the Drainage Retention Agreement between the City and

Indigo:

eliminate the wetlands mitigated as part of the Summer Trees Road construction;

c) add two access points to Summer Trees Road for a total of 3 access points on d) Summer Trees Road;

phase the construction of the two buildings on-site e)

establish the parking standard and signage requirements for this site; and f)

- redesignate Lot 3 (as shown on the original Exhibit B of the MDA) to Lot 1 per g) plat of the Westport Square PCD, Phase II, in Map Book 45, Page 43, Public Records of Volusia County, Florida.
- Consistent with the Drainage Agreement, the City agrees that Continental has satisfied 3. the Additional Tree Preservation Requirement. Thus, Lot 1 is no longer required to provide an additional 18,000 square feet of area for tree preservation as directed in the first amendment to the MDA (see Attachment 2).
- The construction of the two free standing buildings on Lot 1 will be phased. Phase IIA 4. will be for the purpose of constructing the proposed retail building (identified as approximately 96,200 SF on Exhibit B) and all infrastructure and facilities required in its construction including parking and retention areas. This phase will begin in 2008. Phase IIB will be for the purpose of constructing the smaller proposed retail building (identified as approximately 6,000 SF on Exhibit B). Phase IIB will be limited to the stubbing out of utilities as part of Phase IIA so that the project will simply require connection to those existing facilities. No other development will occur on this portion of Lot 1 until site plan approval is received. Phase IIB will expire on the same date as the expiration of this The Phase can be extended consistent with the provisions for MDA agreement. amending this MDA agreement.
- Lot 1 will be allowed two monument style signs. The smaller retail building will be 5. allowed wall signage on the south and east elevations. There will be one wall sign on the south elevation and one wall sign for each tenant of the smaller retail building on the east elevation. It is anticipated that there will be no more than three tenants in the smaller retail building. The larger 96,200 SF retail building will be allowed wall signage on the south and west elevations per the sign code standards.

- 6. The minimum parking requirements for the larger retail building on Lot 1 will be 3.8 spaces per 1,000 square feet of building area. The smaller retail building will be based upon the City's standard of 1 space per 250 square feet.
- 7. The hours of operation (including seasonal hours) will comply with the noise ordinance of the City of Port Orange for the delivery and/or operation of the businesses. This means delivery and operation will need to occur after 7 AM and before 10 PM. Operations after 10 PM and before 7 AM may occur if they do not exceed the sound levels provided in the Code (Section 42-80) and do not include the Specific Noises Prohibited (Section 42-81). There will be times during the year such as back to school and holiday sales where the stores will be opened extended hours including the potential for 24 hours.
- 8. The site lighting will comply with the City of Port Orange Lighting requirements (Chapter 12, Section (6)(1), LDC) to not shine directly on any adjacent residence or street, or produce excess glare.
- 9. Unless otherwise specifically described within the Westport MDA (the original and all amendments), final development plans and development permits for uses/structures within the PCD shall comply with regulations, ordinances and resolutions in effect at the time of plan approval or permit application.
- 10. Pursuant to Paragraph 15 of the MDA, the MDA may be amended without the consent of all parties to the MDA provided that such amendment does not materially affect the other party's lot or lots. This Third Amendment only burdens Lot 1 of Westport Square PCD, Phase II (formerly known as Lot 3 as shown on Exhibit B of the original MDA) and provides a benefit to Lot 1 as it is to be developed by Continental.
- 11. The City agrees to extend the expiration date for the MDA for ten years from the date of execution of this agreement. The remaining provisions remain the same as identified in Section 18 of the Original MDA.
- 12. In all other respects except as specifically amended herein, the MDA shall remain in full force and effect as first made.

IN WITNESS WHEREOF, the parties hereto attach their hands and seals as of the day and year set forth above.

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| | A) C D 1.1-17-1 |
|--|---|
| | Above Space for Recorder's Use |
| Signed in the presence of: | CITY OF PORT ORANGE: |
| | Ву: |
| [Print Name] | By:Allen Green, Mayor |
| | Attest: |
| [Print Name] | Kenneth W. Parker, City Manager |
| | [SEAL] |
| STATE OF FLORIDA | |
| COUNTY OF VOLUSIA | |
| The foregoing instrument was acknow ALLEN GREEN, as Mayor of the City of Por is personally known by me. | vledged before me this day of, 2007 by t Orange, Volusia County, Florida on behalf of the City. He |
| | Notary Public |
| | (Print, type or Stamp Commissioned Name of Notary Public) |
| STATE OF FLORIDA | |
| COUNTY OF VOLUSIA | |
| The foregoing instrument was acknow KENNETH W. PARKER, City Manager of the City. He is personally known by me. | vledged before me this day of, 2007 by ne City of Port Orange, Volusia County, Florida on behalf or |
| • | Notary Public |
| | (Print, type or Stamp Commissioned Name of Notary Public) |

5

INDIGO GROUP LTD.

A Florida limited partnership,

By

Indigo Group Inc., a Florida Corporation,

it's managing general partner

By:

Bruce W. Teeters, President

[SEAL]

Print Name: Dobot F. Agan

STATE OF FLORIDA

COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this 3th day of Chic., 2007 by BRUCE W. TEETERS as President of Indigo Group, Inc., A Florida corporation, as general partner of INDIGO GROUP LTD, A Florida limited partnership, on behalf of the limited partnership. He is personally known to me.

6

MARISA GARY
Commission DD 682009
Expires August 5, 2011
Bonded Thru Trey Fain Insurance 800-365-7019

(Print, type or Stamp Commissioned Name of Notary Public)

12371542.1

CONTINENTAL 217 FUND LLC,

a Wisconsin limited liability company

By: CONTINENTAL PROPERTIES COMPANY, INC., a Wisconsin corporation, its Manager

By: JU

Daniel J. Minahan, President

Print Name Jennifer fatylus

Print Name: Troy Menin

STATE OF WIGONSIN

COUNTY OF WANTESHIX

The foregoing instrument was acknowledged before me this <u>Jak</u> day of <u>Okrabov</u>, 2007 by Daniel J. Minahan, as President of Continental Properties Company, Inc., A Wisconsin corporation, as manager of CONTINENTAL 217 FUND LLC, a Wisconsin limited liability company, on behalf of the limited liability company. He is personally known to me.

Notary Public

(Print, type or Stamp Commissioned Name of Notary Public)

My commission is permanent.

SEAL STAR LOCALITY OF WISCOMMINISTRATION OF

CITY OF PORT ORANGE VOLUSIA COUNTY, FL

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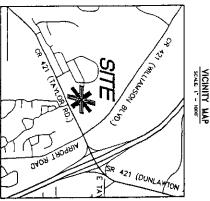
SURVEYOR: TINKLEPAUGH SURVEYING 379 W. MICHIGAN AVENUE SUITE 209 ORLANDO, FL, 32806 (407) 422–6915 (FAX) CONTACT: BILL TUCKER, P.L.S. (407) 422-0957

ATTORNEY: TAMPA, FL. 33607 (813) 223-7000 (813) 229-4973 (FAX) CONTACT: RAY H. ALLEN,II CARLTON FIELDS, P.A. 4221 W. BOY SCOUT BLVD., SUITE

> ENGINEER: ZEV COHEN & ASSOCIATES, INC. 55 SETON TRAIL ORMOND BEACH, FL., 32176 (386) 677-2482 (386) 677-2505 (FAX) CONTACT: RANDY HUDAK, P.E.

DEYELOPER:

CONTINENTAL 217 FUND LLC
W134 N8673 EXECUTIVE PARKWAY
MENOMONEE FALLS, WI., 53051-3310
(262) 502-5500
(262) 502-5522 (FAX)
CONTACT: TOM GILGENBACH, DEVELOPMENT DIRECTOR

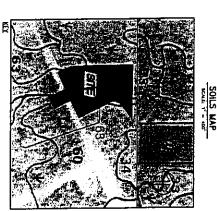


ZONE X

FLOOD ZONE MAP

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PLOOD DOME "N" - STOLE FLOOD HULLION ANDAIN BANGATO PF PERFORM S. LINCONS. 4/15/2002. _____ PLOOR ZONE "A" - AREAS DETERMINED TO BE DUTING \$404-TEAN PLOORS AND



SITE DATA:

BUILDING AREA: TOTAL SIE AREA (PHASE II): TAX PARCEL 1.D. NUMBER: EXISTING ZONING: OUT PARCEL: S,THO TOTAL BUILDING AREA 2.32 ACRES/ 101,068 SF (18.9%) 96,268 SF 8 101,088 SF 1.000 SF 12.26 ACRES 6319-16-00-0010 SHOPPING CENTER

ADDITIONAL IMPERVIOUS AREA: 1.98 ACRES / 218,058 SF (40.4%) 7.28 ACRES / 517,116 SF (59.8%)

3.6 SPACES PER 1,000 SF - 368 SPACES 1 SPACE PER 250 SF - 24 SPACES

REQUIRED PARKING:

KOHL'S

TOTAL PARKING PROWDED: TOTAL OPEN SPACE PROWDED: NATURAL PRESERVATION AREA: 3.76 ACRES/ 163,765 SF (30.6%) 3.07 ACRES/ 141,869 SF (39.9%) 393 SPACES (10 HANDICAP)

NOTE:
COMPLIANCE WITH THE ENVIRONMENTAL
PRESERVATION CODE MAY NECESSITATE
MODIFICATION OF THE CONCEPTUAL PLAN.

LOT 1. ACCORDING TO THE WESTPORT SQUARE P.C.D., PHASE II PLAT THEREOF, AS RECORDED IN MAP BOCK 45, PAGE 43, OF THE PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA.

22222

SHEET INDEX:

COVER SHIET
MASTER DEVELOPMENT PLAN WASTER DRAWAGE PLAN DPEN SPACE EXHIBIT

LEGAL DESCRIPTION.

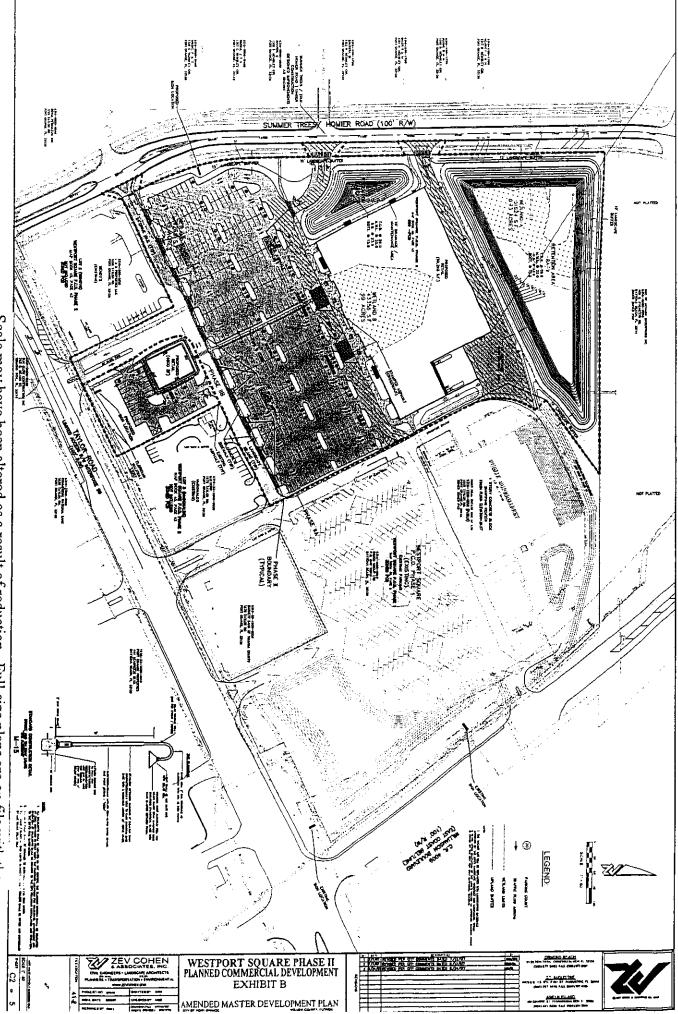
Scale may have been altered as a result of reduction. Full-size plans are on file with the City of Port Orange and are available for inspection upon request.

Editor C1 a 5



WESTPORT SQUARE PHASE II PLANNED COMMERCIAL DEVELOPMENT EXHIBIT B

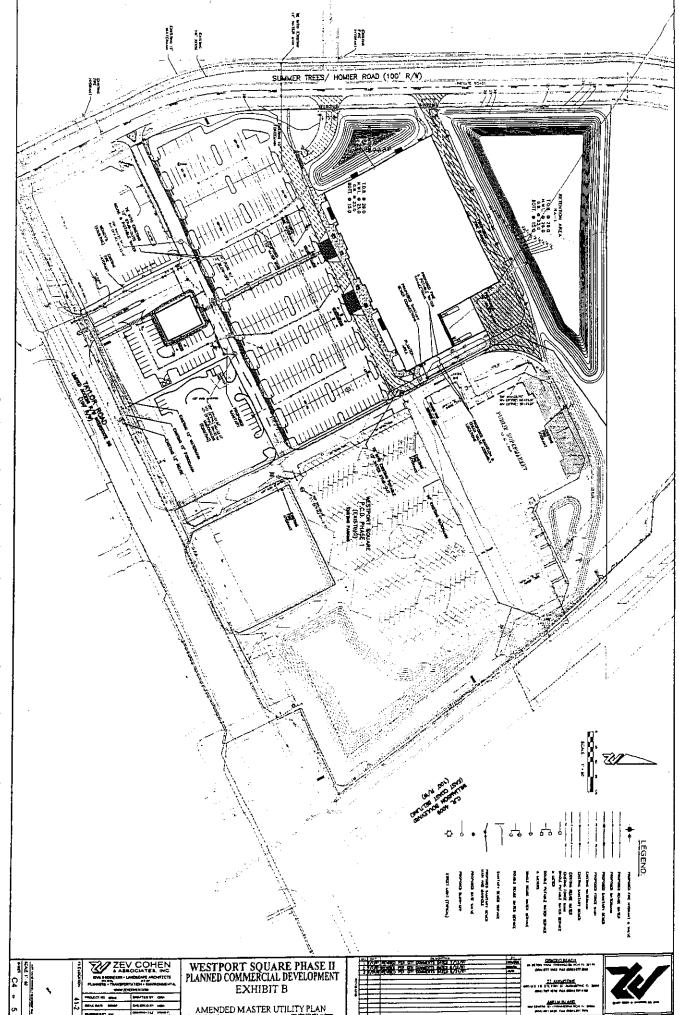
COVER SHEET



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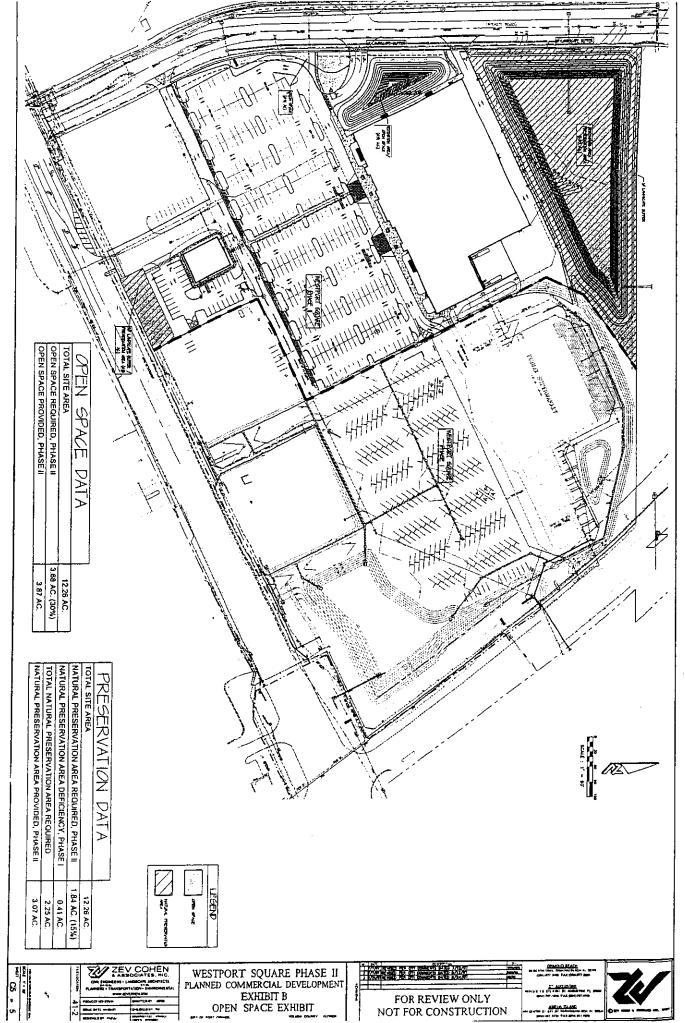


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STAFF REPORT

CASE NO. 07-40000003 3rd Amendment to the Westport Square PCD 1682 Taylor Road Randy Hudak, Engineer

October 18, 2007

INTRODUCTION:

Randy Hudak, representing the owners (Indigo Group Ltd.), requests approval of the 3rd Amendment to the Westport Square Master Development Agreement (MDA) and Conceptual Development Plan (CDP) for the Westport Planned Commercial Development (PCD). The purpose of the amendment is to revise the plan for the existing PCD. If approved, the developer, Continental Properties, intends to develop the property with a 96,000 square foot retail store and future 6,000 square foot outparcel. (Exhibit "A")

BACKGROUND:

The Master Development Agreement (MDA) and Conceptual Development Plan (CDP) for the Westport Planned Commercial Development (PCD) were initially approved by City Council in December 1993. The MDA and CDP established a 25 +/- acre planned commercial development with two phases (Exhibit "B"). Since December 1993, two amendments to the MDA have been processed. The subject property is located on a lot that was originally designated to include an attached addition to the existing Publix shopping center. Phase II is 12.26 acres and currently vacant and wooded.

The property also has frontage along the new Summer Trees Road extension, which is scheduled to be open to traffic in April 2008. In order for the City to construct the road, adjacent retention areas were needed. The City and Indigo Group Ltd. entered into an agreement to provide a joint-use pond on Phase II. In exchange for the use of the property as a retention area, the City agreed to not penalize future development on the property for the loss of tree preservation area. This agreement, and its relation to the proposed amendment, are described further below.

DISCUSSION:

The applicant proposes to construct a 96,000 +/- square foot retail store and a 6,000 +/square foot outparcel building with associated site improvements. The 96,000 square foot store would be constructed immediately and will align with the existing Publix shopping center. The outparcel will be constructed at a later time and will be located by Taylor Road, aligned with the existing Wendy's and McDonald's.

Tree Preservation & Stormwater Retention

The 1st amendment to the Westport PCD deferred 18,000 square feet of tree preservation area from Phase I to Phase II, in addition to any tree preservation requirement the subject property would have at the time of development.

As mentioned above, the City and the Property Owner (Indigo Group Ltd.) entered into an Agreement approved by Council March 20, 2007, regarding drainage and retention. Through the agreement, the City was allowed to place the necessary retention pond on the subject property provided the subject property was not penalized for the City's removal of trees from the lot, and the property was declared to have met the additional 18,000 square feet of tree preservation, with no additional preservation or mitigation required to be provided. The City also agreed to pay for any mitigation necessary or otherwise required by the Land Development Code.

If Indigo Group had not entered into an agreement with the City, the required amount of tree preservation required for Phase II, including the standard 15% of the property plus the deferred 18,000 square feet, would have totaled 2.25 acres. Instead, the actual amount of tree preservation being provided is 0.18 acres fronting Taylor Road. The rest of the tree preservation area would have been within the 2.89-acre area that is instead designated as the joint-use retention pond. In total, the loss of 36 trees from the property would need to be mitigated by the City at a cost of approximately \$5,000.

The applicant is proposing to expand the City's stormwater pond to create retention for this development. A half-acre pond is also being provided on the west side of the building. As part of the Drainage Agreement, the stormwater pond may count toward open space for the site. As per Chapter 17, section 27, LDC, the open space requirement for Phase II is 3.68 acres (30% of the total Phase II 12.26 acres). A total of 3.87 acres of open space are being provided, with 3.4 of those acres being stormwater ponds.

The required 50-foot landscape buffer and building setback will be maintained along Taylor Road and a 15-foot landscape buffer will be provided along Summer Trees Road.

Parking and Driveways

This development will have seven points of connection to the adjacent streets and Phase I. The driveways on the existing development will be extended to the subject property, and three new driveways will be provided along Summer Trees Road. The drive closest to the intersection of Taylor and Summer Trees Road will be restricted to right-in/right-out access. The middle drive will align with Hyde Park Drive in the Windsor Hill subdivision and will be considered the main entrance along Summer Trees. The third drive will be a limited use drive and service the rear of the building.

The proposed parking is 19 spaces short of what is required by Code for a retail use of this size. However, the applicant provided statistics from past projects of the same retailer that justified using a calculation of 3.8 parking spaces per 1,000 square feet of floor area rather than the 4.0 spaces per 1,000 square feet required by Code. It has also been the City's past experience that a significant percentage of parking provided for big-box retailers goes unused. Staff supports this deviation because it will lend the area that would be used for parking to more open space. Also, the required 1 space per

Case No. 07-40000003 Page 3

250 square teet is being provided for the outparcel. All standard parking spaces will be the required 10' X 20'.

Architecture

The original MDA states that all buildings within the PCD must be consistent in design and style in regard to the architecture. I hat includes window patterns, design elements, colors and materials. The developer is providing a modified and updated version of the style currently featured at Westport. Some features include a canopied entry, arches, trellis features along the front and side elevations, brick wainscoting, and decorative relief and reveal elements. The outparcel, when developed, will use the same materials, features, and decorative elements as the main building.

Other Design Features

Sidewalks will connect the main building with the outparcel, Taylor Road, and Summer Trees Road. Decorative crosswalks will be provided across the drive aisles and in front of the store. The store will also be connected by sidewalk to the existing Publix shopping center. Floridian walklights will be provided along the existing Taylor Road sidewalk. A monument sign will be located on the outparcel lot as well as one along Summer Trees Road.

Consistency with the Comprehensive Plan

The subject property has a future land use designation of *Commercial*. It is also part of the Dunlawton/I-95 subregional commercial node. The City's *Comprehensive Plan – Update '98* states that "[c]ommercial land uses are those that provide for the retail sale of items and services to the general public. These areas consist of shopping centers, retail stores, restaurants, automobile service facilities, and similar uses." The proposed retail store listed in the proposed amendment is consistent with the intent of the City's Commercial future land use designation.

STAFF DEVELOPMENT REVIEW COMMITTEE (SDRC):

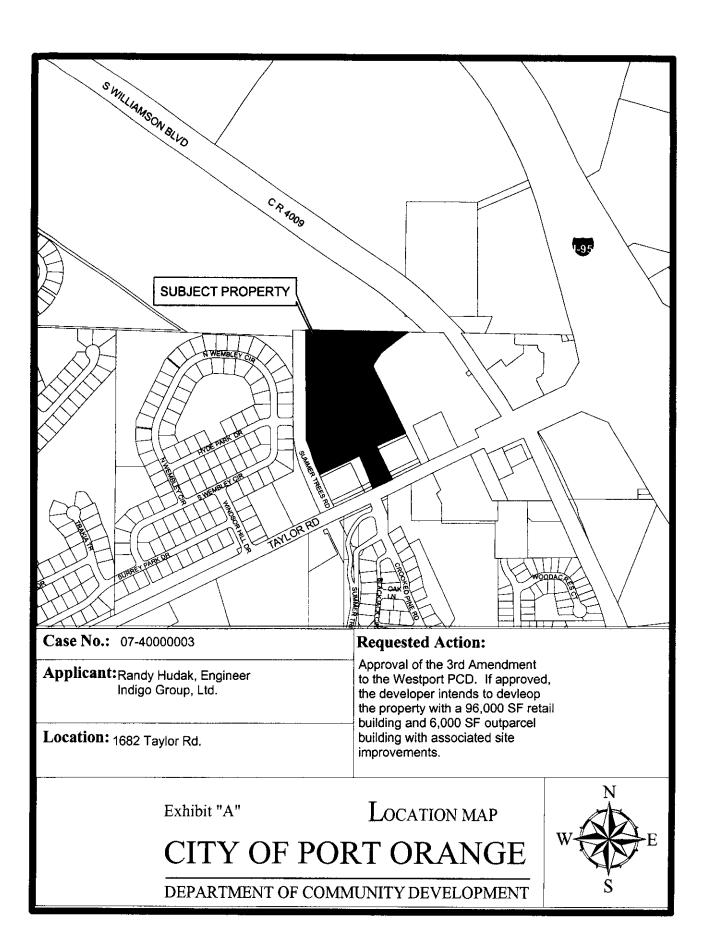
The Staff Development Review Committee met on July 11, 2007 to discuss this project. Based upon comments made at this meeting, the applicant submitted revised documents on August 7, 2007. The latest version of the revised amendment and conceptual development plan was submitted on September 24, 2007. This last review by Staff leaves the project with one outstanding technical comment and two advisory comments (Exhibit "C"). The outstanding technical comment from the City Attorney is to correct a reference to the subject Lot. The two advisory comments pertain to formatting of the MDA and CDP. These three outstanding comments can be addressed easily by the applicant.

Case No. 07-40000003 Page 4

RECOMMENDATION:

Based on the findings of this report, Staff recommends approval of the requested 3rd Amendment to the Master Development Agreement and Conceptual Development Plan of the Westport Square Planned Commercial Development with the following conditions:

- All outstanding technical comments are addressed prior to this item being scheduled for City Council review; and
- Review by the City Attorney as to legal form and content.



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EXHIBIT "B"

3RD AMENDMENT TO THE MASTER DEVELOPMENT AND CONCEPTUAL DEVELOPMENT PLAN WESTPORT SQUARE PCD 3RD CASE NO. 07-40000003 OUTSTANDING TECHNICAL COMMENTS AS OF 10/15/07

<u>CITY ATTORNEY:</u> (Linda D. Johnson CLA, Paralegal for Margaret T. Roberts - 506-5538; <u>paralegal@port-orange.org</u> or Betty Gaddy - 506-5527): <u>Master Development Agreement</u>

1. Paragraph 10. Correct the reference to old Lot 3 to the redesignated <u>Lot 1</u> per the plat of Westport Square PCD and Paragraph 2(g) of this MDA amendment.

3RD AMENDMENT TO THE MASTER DEVELOPMENT AND CONCEPTUAL DEVELOPMENT PLAN WESTPORT SQUARE PCD 3RD CASE NO. 07-40000003 OUTSTANDING ADVISORY COMMENTS AS OF 10/15/07

<u>CITY ATTORNEY:</u> (Linda D. Johnson CLA, Paralegal for Margaret T. Roberts - 506-5538; <u>paralegal@port-orange.org</u> or Betty Gaddy - 506-5527):

- Please reformat the pages so that the signatures of the Mayor and City Manager on behalf of the City appear on the same page.
- 2. The amended conceptual development plan must be reduced to 8-1/2" x 11" for recording as an attached exhibit to the Third Amendment. Please include a notation on the exhibit stating: Scale may have been altered as a result of reduction. Full-size plans are on file with the City of Port Orange and are available for inspection upon request.