



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. 07-4000003**

DEPARTMENT: COMMUNITY DEVELOPMENT

RECOMMENDED MOTION:

Approve Ordinance No. 2007-⁵⁶ approving the Third Amendment to the Master Development Agreement for Westport PCD, as recommended by the Planning Commission.

PLANNING COMMISSION ACTION: At the October 25, 2007 meeting, the Planning Commission recommended approval 5-0 (Commissioners Lasky and Atwood excused), of the Third Amendment to the Master Development Agreement for the Westport PCD.

SUMMARY: The purpose of the amendment is to allow a 96,000 SF commercial building and 6,000 SF commercial outparcel on Phase 2 of the Westport PCD with associated site improvements. The PCD has been revised following Planning Commission action. All outstanding technical and advisory comments have been addressed. Please see the attached staff report.

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

DEPARTMENT HEAD

Wayne Clark
Community Development Director

Date

11/2/07

FINANCE DEPARTMENT

N/A

Approved as to Budget Requirements

Date

CITY ATTORNEY

Approved as to Form and Legality

Date

11.1.07

CITY MANAGER

Approved Agenda Item For:

11.13.07

COUNCIL ACTION:

Approved as Recommended

Disapproved

Tabled Indefinitely

Continued to Date Certain

Approved with Modification

Second Reading 12/11/07

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).

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 a ny 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

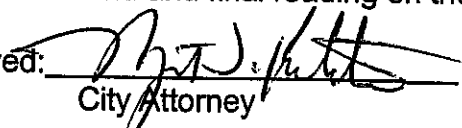
Reviewed and Approved: 
City Attorney

Exhibit 1

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

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

- a) reconfigure the site plan to illustrate the location of existing buildings and two proposed free standing buildings (approximately 96,200 and 6,000 gross square footage, respectively), utilities, roads and other improvements on the subject property;
 - b) expand the parking area and reconfigure stormwater retention areas in conformance with the Drainage Retention Agreement between the City and Indigo;
 - c) eliminate the wetlands mitigated as part of the Summer Trees Road construction;
 - d) add two access points to Summer Trees Road for a total of 3 access points on Summer Trees Road;
 - e) phase the construction of the two buildings on-site
 - f) establish the parking standard and signage requirements for this site; and
 - g) redesignate Lot 3 (as shown on the original Exhibit B of the MDA) to Lot 1 per plat of the Westport Square PCD, Phase II, in Map Book 45, Page 43, Public Records of Volusia County, Florida.
3. Consistent with the Drainage Agreement, the City agrees that Continental has satisfied 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).
4. The construction of the two free standing buildings on Lot 1 will be phased. Phase IIA 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 MDA agreement. The Phase can be extended consistent with the provisions for amending this MDA agreement.
5. Lot 1 will be allowed two monument style signs. The smaller retail building will be 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.

Above Space for Recorder's Use

Signed in the presence of:

CITY OF PORT ORANGE:

[Print Name]

By: _____
Allen Green, Mayor

[Print Name]

Attest: _____
Kenneth W. Parker,
City Manager

[SEAL]

STATE OF FLORIDA

COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this _____ day of _____, 2007 by ALLEN GREEN, as Mayor of the City of Port Orange, Volusia County, Florida on behalf of the City. He is personally known by me.

Notary Public

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

STATE OF FLORIDA

COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this _____ day of _____, 2007 by KENNETH W. PARKER, City Manager of the City of Port Orange, Volusia County, Florida on behalf of the City. He is personally known by me.

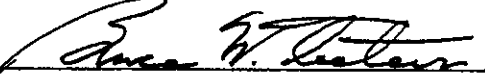
Notary Public

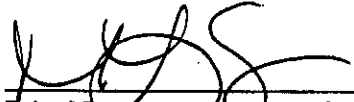
(Print, type or Stamp Commissioned Name
of Notary Public)

Above Space for Recorder's Use

INDIGO GROUP LTD.
A Florida limited partnership,

By Indigo Group Inc., a Florida Corporation,
it's managing general partner

By: 
Bruce W. Teeters, President


Print Name: Marisa Gary

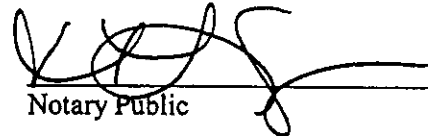
[SEAL]


Print Name: Robert F. Aggar

STATE OF FLORIDA

COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this 30th day of October, 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.


Notary Public



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

Above Space for Recorder's Use

CONTINENTAL 217 FUND LLC,
a Wisconsin limited liability company

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

By: Daniel J. Minahan
Daniel J. Minahan, President

Janine Patrykus
Print Name: Janine Patrykus

Tara Mlenia
Print Name: TARA MLENIA

STATE OF WISCONSIN

COUNTY OF WAUKESHA

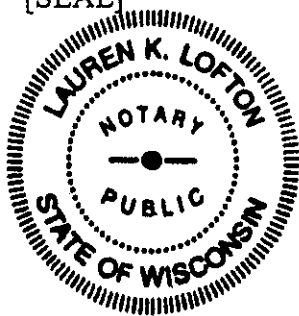
The foregoing instrument was acknowledged before me this 24th day of October, 2007 by Daniel J. Minahan, as President of Continental Properties Company, Inc., A Wisconsin corporation, as manager of CONTINENTAL 217 FUND LLC, a Wisconsin limited liability company, on behalf of the limited liability company. He is personally known to me.

Lauren K. Lofton
Notary Public

Lauren K. Lofton
(Print, type or Stamp Commissioned Name of Notary Public)

My commission is permanent.

[SEAL]



WESTPORT SQUARE PHASE II PLANNED COMMERCIAL DEVELOPMENT CITY OF PORT ORANGE - VOLUSIA COUNTY, FL EXHIBIT B

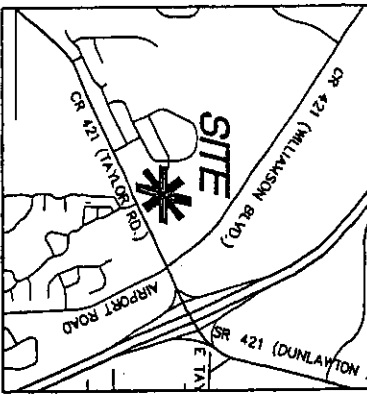
SURVEYOR: TINKLEPAUGH SURVEYING
378 W. HIGHWAY AVENUE
SUITE 209
ORLANDO, FL 32808
(407) 422-0957
(407) 422-6915 (FAX)
CONTACT: BILL TUCKER, P.L.S.

ATTORNEY: CARLTON FIELDS, P.A.
4221 W. BOY SCOUT BLVD., SUITE
1000
TAMPA, FL 33607
(813) 223-7000
(813) 223-4973 (FAX)
CONTACT: RAY H. ALLEN, JR.

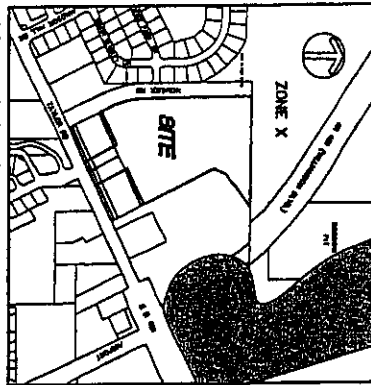
ENGINEER: ZEY COHEN & ASSOCIATES, INC.
55 SEBON TRAIL
ORLANDO BEACH, FL 32178
(386) 677-2482
(386) 877-2505 (FAX)
CONTACT: RANDY HUDAK, P.E.

DEVELOPER: CONTINENTAL 217 FUND LLC
1134 HOGG'S EXECUTIVE PARKWAY
MEMPHIS FALLS, WI, 53051-3310
(262) 502-5500
(262) 502-5522 (FAX)
CONTACT: TOM GILGENBACH, DEVELOPMENT DIRECTOR

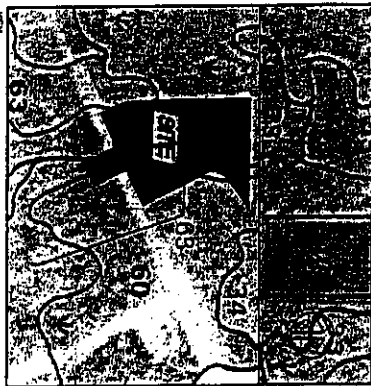
VICINITY MAP
SCALE 1" = 1000'



FLOOD ZONE MAP
SCALE 1" = 100'



SOILS MAP
SCALE 1" = 100'



SITE DATA

TAX PARCEL I.D. NUMBER: 6318-18-00-0010
PROPOSED USE: SHOPPING CENTER
EXISTING ZONING: PCO
TOTAL SITE AREA (PHASE 1): 12.18 ACRES
BUILDING AREA: 2,237 ACRES / 101,048 SF (18,850)
KOR'S: 86,248 SF
OUT PARCELS: 4,800 SF
TOTAL BUILDING AREA: 101,048 SF
ADDITIONAL IMPROVEMENTS AREA: 438 ACRES / 318,028 SF (60.42)
TOTAL IMPROVEMENTS AREA: 718 ACRES / 517,116 SF (95.85)
REQUIRED PARKING: 1.6 SPACES PER 1,000 SF = 346 SPACES
1 SPACE PER 250 SF = 24 SPACES
TOTAL: 390 SPACES

TOTAL PARKING PROVIDED: 393 SPACES (10 HOURS)
TOTAL OPEN SPACE PROVIDED: 178 ACRES / 12,378 SF (2.24)
NATURAL PRESERVATION AREA: 107 ACRES / 141,488 SF (25.93)

LEGAL DESCRIPTION

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

NOTE: COMPLIANCE WITH THE ENVIRONMENTAL PRESERVATION CODE IS A NECESSARY MODIFICATION OF THE CONCEPTUAL PLAN.

SHEET INDEX:

- C1 COVER SHEET
- C2 MASTER DEVELOPMENT PLAN
- C3 MASTER DRAINAGE PLAN
- C4 MASTER LIGHT PLAN
- C5 OPEN SPACE EXHIBIT

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.



APPROVED:
DATE: 11/12/03
BY: [Signature]

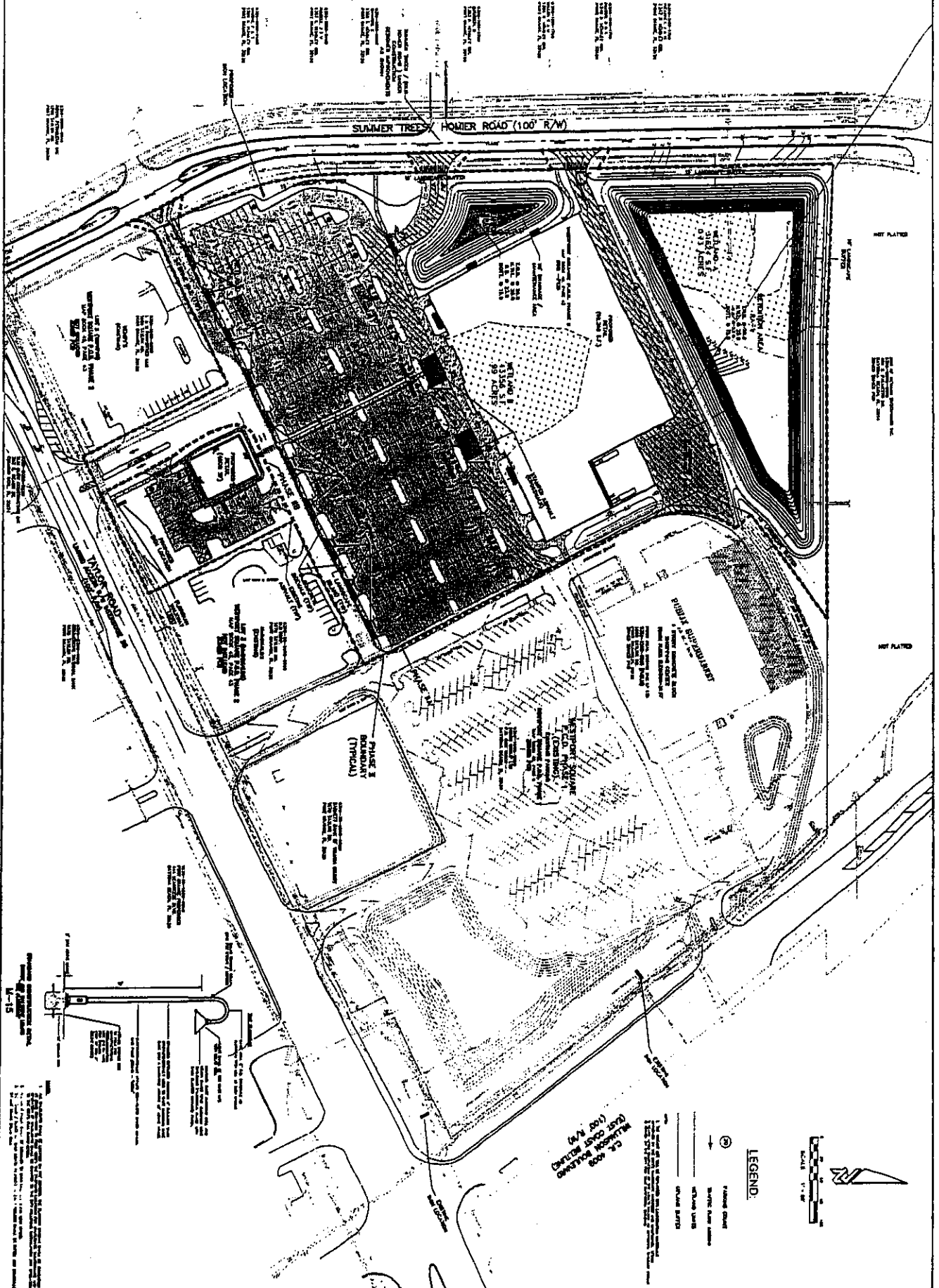
NO.	DESCRIPTION	DATE	BY
1	DESIGNED	11/12/03	[Signature]
2	CHECKED	11/12/03	[Signature]
3	APPROVED	11/12/03	[Signature]

**WESTPORT SQUARE PHASE II
PLANNED COMMERCIAL DEVELOPMENT
EXHIBIT B
COVER SHEET**

ZEV COHEN & ASSOCIATES, INC.
1000 W. UNIVERSITY AVENUE, SUITE 100
ORLANDO, FL 32808
(407) 422-0957
WWW.ZEYCOHEN.COM

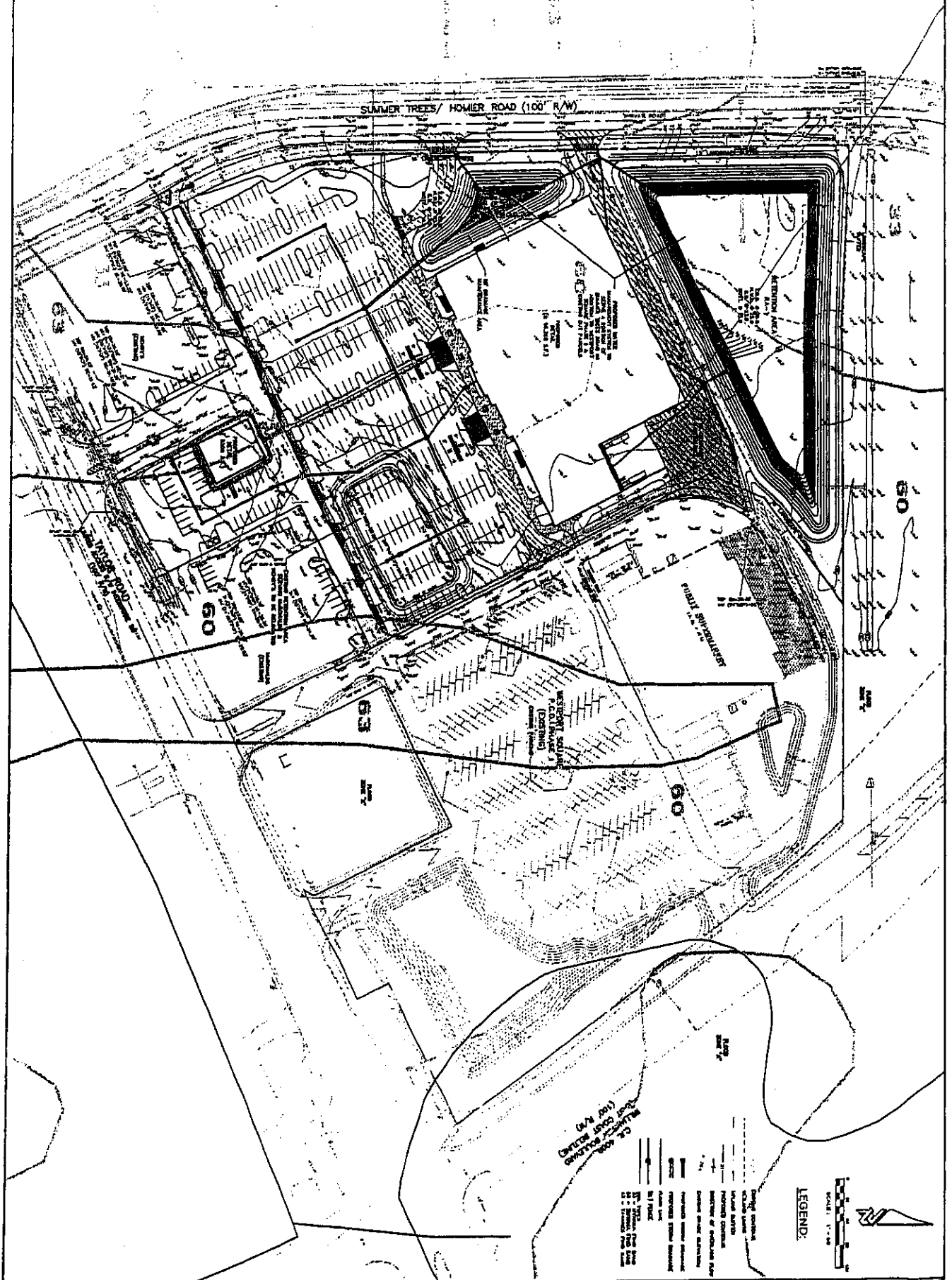
DATE: 11/12/03
BY: [Signature]

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.



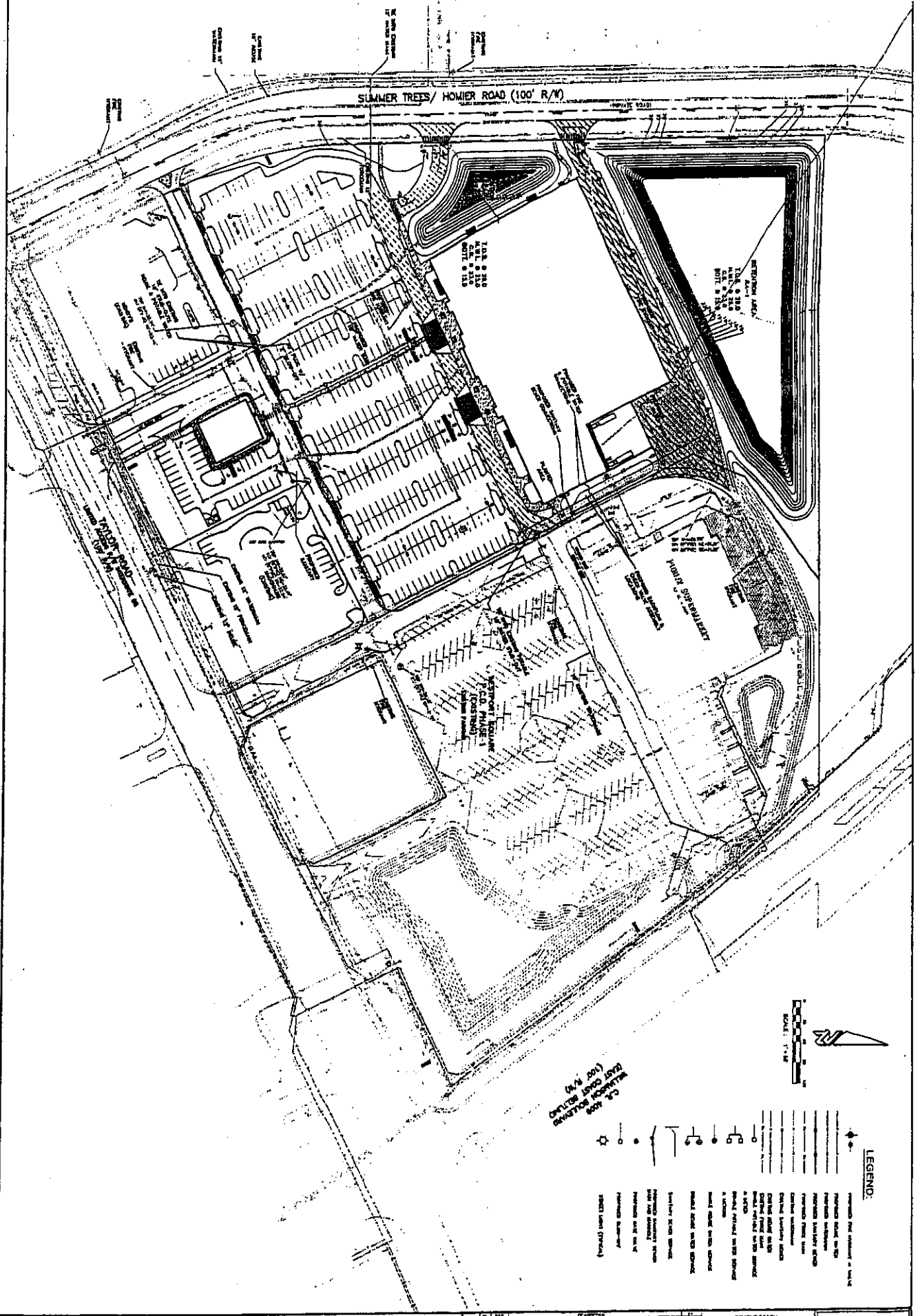
<p>PROJECT NO. 0000 DATE: 08/11/2000 DRAWN BY: [Name] CHECKED BY: [Name]</p>	<p>ZEV COHEN & ASSOCIATES, INC. 2700 S. WINDY ROAD, SUITE 100 PORT ORANGE, FL 32127 TEL: 386-329-1111 WWW.ZEVCOHEN.COM</p>	<p>WESTPORT SQUARE PHASE II PLANNED COMMERCIAL DEVELOPMENT EXHIBIT B</p> <p>AMENDED MASTER DEVELOPMENT PLAN</p>	<table border="1"> <tr> <th>NO.</th> <th>DESCRIPTION</th> <th>DATE</th> <th>BY</th> </tr> <tr> <td>1</td> <td>PRELIMINARY PLAN</td> <td>08/11/2000</td> <td>[Name]</td> </tr> <tr> <td>2</td> <td>AMENDED MASTER DEVELOPMENT PLAN</td> <td>08/11/2000</td> <td>[Name]</td> </tr> </table>	NO.	DESCRIPTION	DATE	BY	1	PRELIMINARY PLAN	08/11/2000	[Name]	2	AMENDED MASTER DEVELOPMENT PLAN	08/11/2000	[Name]	<p>APPROVED BY: [Signature] [Title]</p>	
NO.	DESCRIPTION	DATE	BY														
1	PRELIMINARY PLAN	08/11/2000	[Name]														
2	AMENDED MASTER DEVELOPMENT PLAN	08/11/2000	[Name]														

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



<p>ZEV COHEN & ASSOCIATES, INC. Civil Engineers - Landscape Architects Planners - Transportation - Environmental www.zevcohen.com</p>	<p>WESTPORT SQUARE PHASE II PLANNED COMMERCIAL DEVELOPMENT EXHIBIT B</p>		<p>AMENDED MASTER DRAINAGE PLAN</p>
	<p>PROJECT NO. 0000 SCALE DATE: 1/2010 DESIGNED BY: [Name] CHECKED BY: [Name] APPROVED BY: [Name]</p>	<p>DATE: 1/2010 DRAWN BY: [Name] CHECKED BY: [Name] APPROVED BY: [Name]</p>	

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



DATE: 11/18/03
 SHEET NO: CA - 5

ZEV COHEN ASSOCIATES, P.C.
 CIVIL ENGINEERS - LANDSCAPE ARCHITECTS
 PLANNING - TRANSPORTATION - ENVIRONMENTAL
 CONSULTING ENGINEERS

PROJECT NO: 0300 SHEET NO: CA - 5
 DATE: 11/18/03 BY: ZCA/STW

**WESTPORT SQUARE PHASE II
 PLANNED COMMERCIAL DEVELOPMENT
 EXHIBIT B**

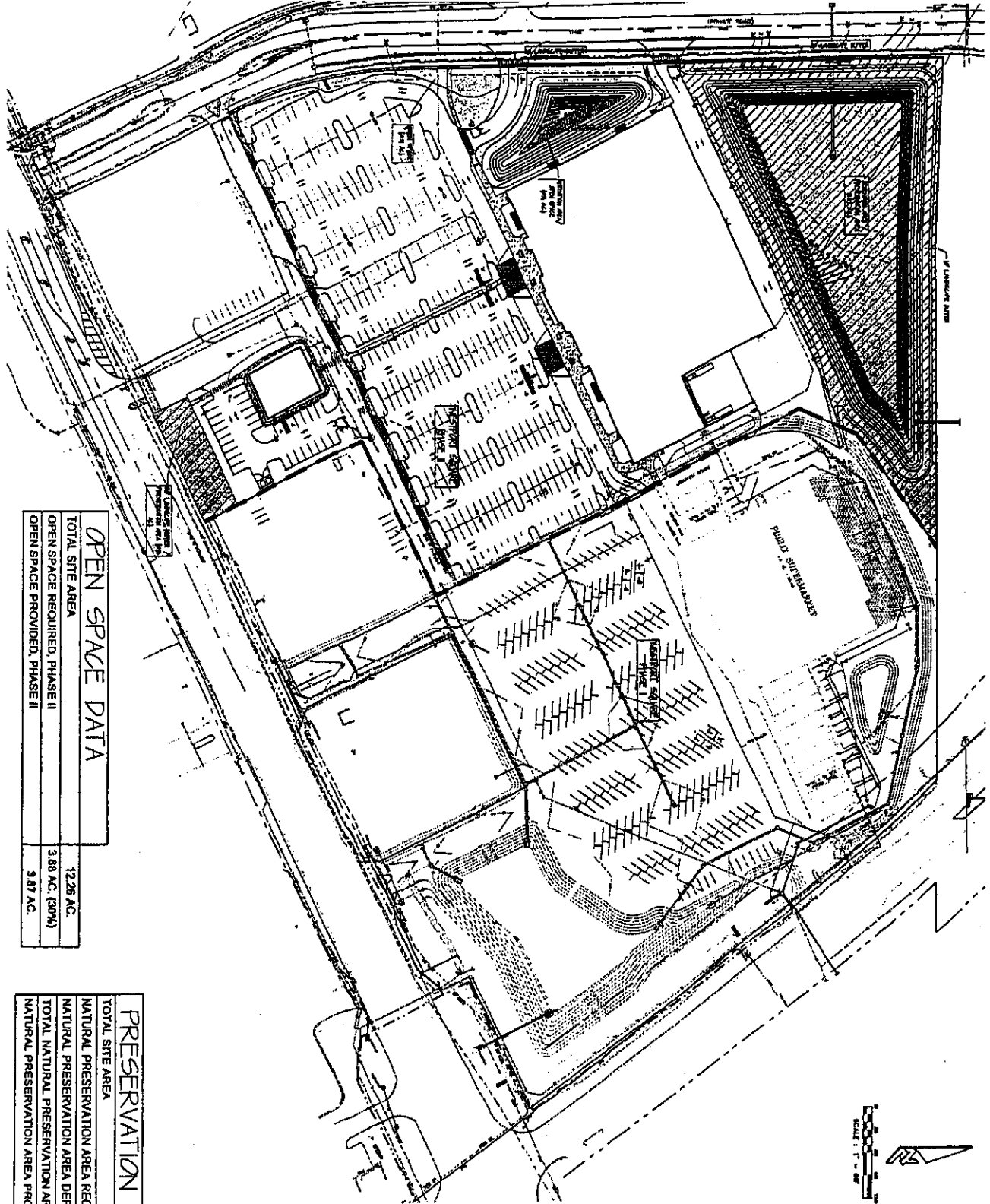
AMENDED MASTER UTILITY PLAN

NO.	DESCRIPTION	DATE
1	ISSUED FOR PERMITTING	11/18/03
2	ISSUED FOR PERMITTING	11/18/03
3	ISSUED FOR PERMITTING	11/18/03
4	ISSUED FOR PERMITTING	11/18/03
5	ISSUED FOR PERMITTING	11/18/03
6	ISSUED FOR PERMITTING	11/18/03
7	ISSUED FOR PERMITTING	11/18/03
8	ISSUED FOR PERMITTING	11/18/03
9	ISSUED FOR PERMITTING	11/18/03
10	ISSUED FOR PERMITTING	11/18/03

PROJECT LOCATION:
 21 AUGUSTINE
 PORT ORANGE, FLORIDA 32127

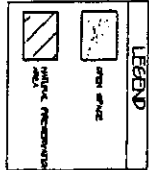
PROJECT NO: 0300
SHEET NO: CA - 5





OPEN SPACE DATA	
TOTAL SITE AREA	12.26 AC.
OPEN SPACE REQUIRED, PHASE II	3.68 AC. (30%)
OPEN SPACE PROVIDED, PHASE II	9.87 AC.

PRESERVATION DATA	
TOTAL SITE AREA	12.26 AC.
NATURAL PRESERVATION AREA REQUIRED, PHASE II	1.84 AC. (15%)
NATURAL PRESERVATION AREA DEFICIENCY, PHASE I	0.41 AC.
TOTAL NATURAL PRESERVATION AREA REQUIRED	2.25 AC.
NATURAL PRESERVATION AREA PROVIDED, PHASE II	3.07 AC.



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

DATE: 05 - 5

ZEV COHEN & ASSOCIATES, P.A.
 PLANNING & TRANSPORTATION ARCHITECTS
 41-2

**WESTPORT SQUARE PHASE II
 PLANNED COMMERCIAL DEVELOPMENT
 EXHIBIT B
 OPEN SPACE EXHIBIT**

FOR REVIEW ONLY
 NOT FOR CONSTRUCTION

APPROVED SPACE
 PREPARED BY: ZEV COHEN & ASSOCIATES, P.A.
 DATE: 05-05-05





STAFF REPORT

CASE NO. 07-4000003

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

250 square feet 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. That 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.

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:

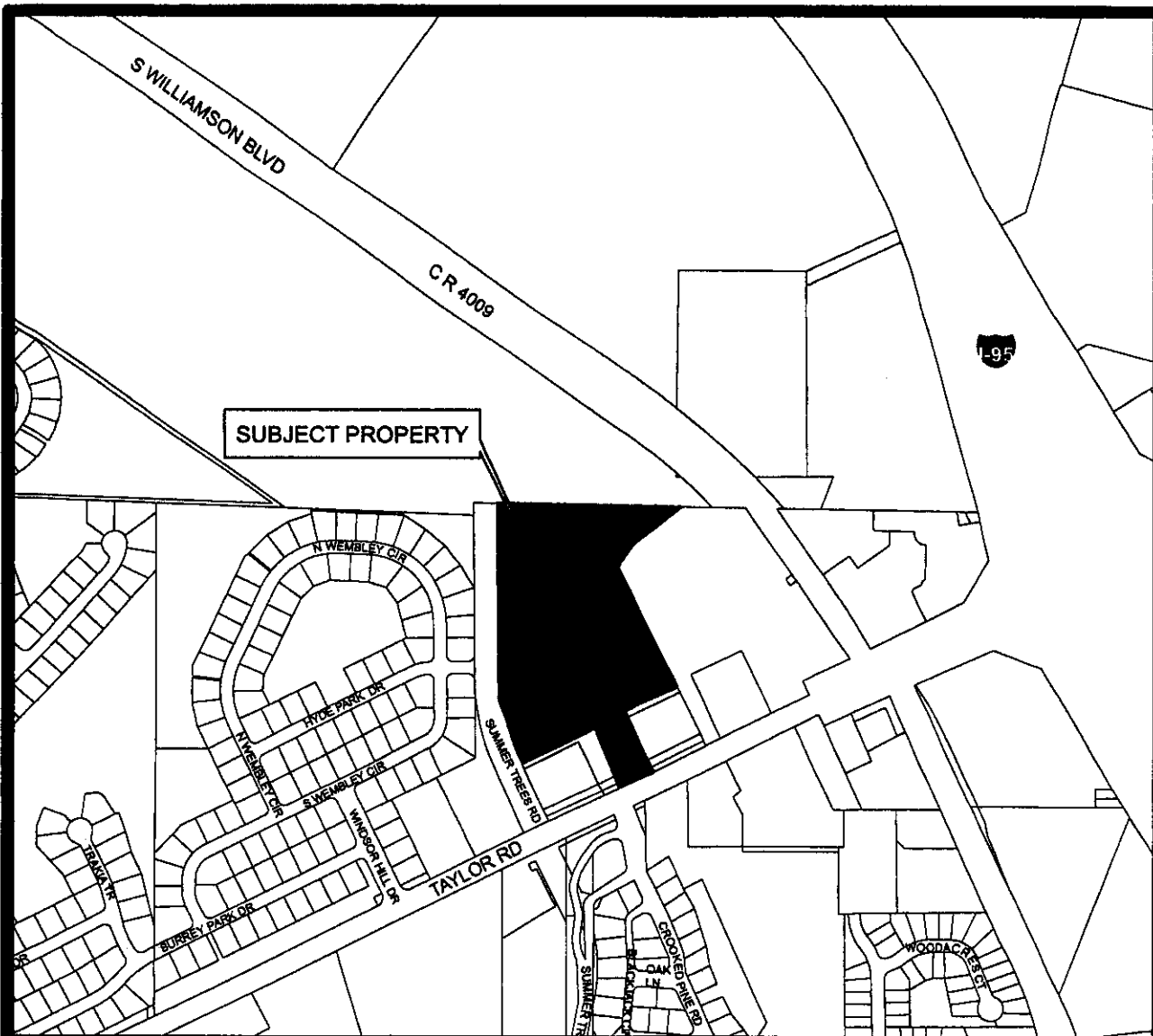
- All outstanding technical comments are addressed prior to this item being scheduled for City Council review; and
- Review by the City Attorney as to legal form and content.

Prepared by: Gwen Perney, Planner
City of Port Orange Department of Community Development

(386) 506-5673
(386) 506-5600

PLANNING COMMISSION DATE:
CITY COUNCIL DATE:

October 27, 2007
November 13, 2007



Case No.: 07-4000003

Applicant: Randy Hudak, Engineer
Indigo Group, Ltd.

Location: 1682 Taylor Rd.

Requested Action:

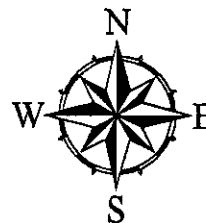
Approval of the 3rd Amendment to the Westport PCD. If approved, the developer intends to develop the property with a 96,000 SF retail building and 6,000 SF outparcel building with associated site improvements.

Exhibit "A"

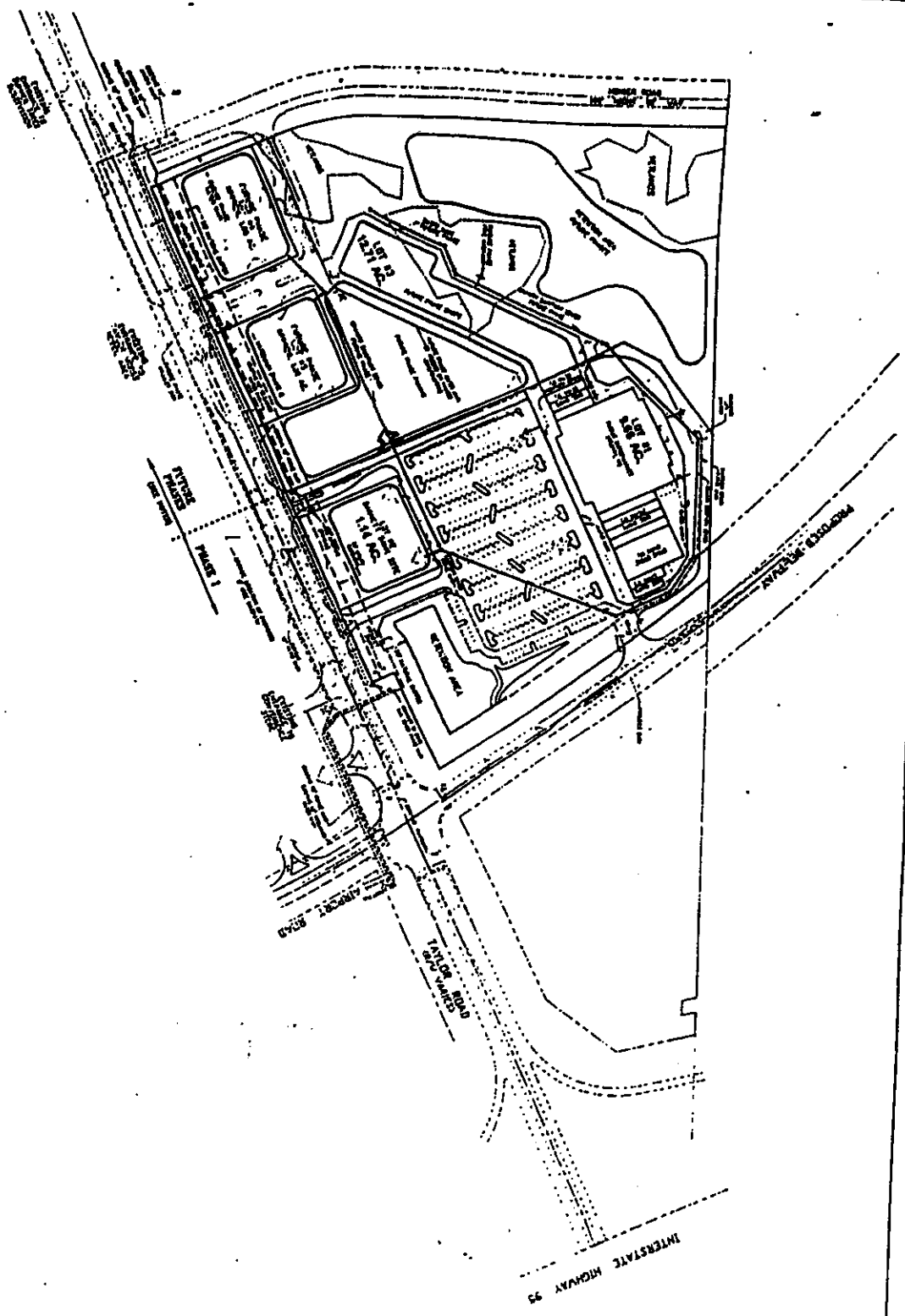
LOCATION MAP

CITY OF PORT ORANGE

DEPARTMENT OF COMMUNITY DEVELOPMENT



1. ALL UTILITIES SHOWN ARE BASED ON RECORD PLANS AND FIELD SURVEY. THE PLANNED DEVELOPER HAS BEEN ADVISED BY THE CITY ENGINEER THAT THE CITY ENGINEER HAS REVIEWED THE PLANS AND FOUND THEM TO BE IN ACCORDANCE WITH THE CITY ENGINEERING DEPARTMENT'S STANDARDS AND SPECIFICATIONS. THE CITY ENGINEER'S REVIEW IS LIMITED TO THE TECHNICAL ASPECTS OF THE PLANS AND DOES NOT CONSTITUTE A GUARANTEE OF THE ACCURACY OF THE INFORMATION PROVIDED HEREON. THE PLANNED DEVELOPER IS RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE CITY ENGINEER AND OTHER AFFECTED AGENCIES. THE CITY ENGINEER'S REVIEW IS LIMITED TO THE TECHNICAL ASPECTS OF THE PLANS AND DOES NOT CONSTITUTE A GUARANTEE OF THE ACCURACY OF THE INFORMATION PROVIDED HEREON. THE PLANNED DEVELOPER IS RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE CITY ENGINEER AND OTHER AFFECTED AGENCIES.



WEST PORT SQUARE PLANNED COMMERCIAL DEVELOPMENT MASTER CONCEPT PLAN MASTER UNITRY PLAN	
PREPARED BY: ZEV COHEN & Associates, Inc. 55 SEVEN TRAIL, (904) 577-1482 ORLANDO BEACH, FLORIDA 32178	
DATE: 12-28-82	SHEET NO. 1 OF 1
SCALE: AS SHOWN	DRAWN BY: JAC
CHECKED BY: JAC	DATE: 12-28-82
APPROVED BY: JAC	DATE: 12-28-82

NOT RELEASED FOR CONSTRUCTION

EXHIBIT "B"

EXHIBIT "B"

**3RD AMENDMENT TO THE MASTER DEVELOPMENT AND CONCEPTUAL
DEVELOPMENT PLAN
WESTPORT SQUARE PCD 3RD
CASE NO. 07-4000003
OUTSTANDING TECHNICAL COMMENTS AS OF 10/15/07**

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

Master Development Agreement

1. Paragraph 10. Correct the reference to old Lot 3 to the redesignated Lot 1 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. 07-4000003
OUTSTANDING ADVISORY COMMENTS AS OF 10/15/07**

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

1. 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.