

ORDINANCE NO. 2006 - 56

AN ORDINANCE OF THE CITY OF DELAND, FLORIDA, CHANGING THE ZONING FROM CITY C-2, GENERAL COMMERCIAL TO PD, PLANNED DEVELOPMENT DISTRICT, ON DESCRIBED PROPERTY LOCATED ON THE EAST SIDE OF WOODLAND BOULEVARD, SOUTH OF WEST VOLUSIA SHOPPING CENTER; APPROVING A DEVELOPMENT PLAN FOR A TOWNHOUSE DEVELOPMENT, A PLANNED DEVELOPMENT CONSISTING OF APPROXIMATELY 7.35 ACRES OF PROPERTY; DIRECTING A CHANGE IN THE COMPREHENSIVE ZONING MAP; CONDITIONING FINAL DEVELOPMENT APPROVAL ON A DETERMINATION OF CONCURRENCY; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, Southern Cross, LLC C/o Peter Darpino, owner (hereinafter referred to as "Applicant"), owns a 7.35 acre parcel of land located on the east side of Woodland Boulevard, south of West Volusia Shopping Center, which is more particularly described in the legal description attached hereto as Exhibit "A" and by this reference made a part hereof; and

WHEREAS, Applicant has applied for a change of zoning from the present zoning classification of City C-2, General Commercial to PD, Planned Development District; and

WHEREAS, said rezoning as a PD District is consistent with both the Comprehensive Plan and the purpose and intent of Section 33-32 of the Code of Ordinances of the City of DeLand (the "Code"); and

WHEREAS, Applicant has submitted an application for approval of a development plan for the Mainstreet Townhomes PD to encompass all of the property described in Exhibit "A" (hereinafter the "Property" or the "Project"); and

WHEREAS, the proposed development plan meets or exceeds the minimum conditions and standards for the PD District with respect to minimum development size, perimeter setbacks, comprehensive plan consistency, internal compatibility, external compatibility, open spaces, sidewalks, environmental constraints, internal access and circulation, external transportation access, off-street parking, public facilities and unified control; and

WHEREAS, the proposed development plan is consistent with the City Highway Commercial land use designation which: encourages intensified development in outlying or newly developed areas for a variety of commercial and office needs; encourages clustering of new development to promote shared facilities and access and to discourage linear development along collector and arterial level roadways; permits energy and cost effective delivery of services; and, requires properly designed ingress and egress to avoid undue traffic hazards or congestion;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF DELAND, FLORIDA:

Section 1. The City Commission has held a public hearing to approve the change of zoning from City C-2, General Commercial to PD, Planned Development District.

Section 2. Pursuant to the determination made at public hearing, the City Commission hereby amends the Comprehensive Zoning Map of the City to include the land described in Exhibit "A" as Mainstreet Townhomes PD, Planned Development District.

Section 3. The zoning of the Property as PD, Planned Development District, is made pursuant to Section 33-32 of the Code and the development of the Property shall take place in accordance with that Section and in substantial compliance with the Development Plan Report, Narrative, Maps and other supporting documentation submitted by Applicant which shall be filed and retained for public inspection in the office of the City Planning Department and constitute a supplement to the official Zoning Map of the City.

Section 4. The approved Development Plan for the Mainstreet Townhomes PD, including the Development Plan Agreement, Map and other supporting documentation (on file with the City Planning Department), are attached hereto as Exhibit "B" and by this reference made a part hereof.

Section 5. The failure of the approved Development Plan to address a particular permit, condition, term or restriction shall not relieve the Applicant of the necessity of complying with any law governing said permitting requirements, conditions, terms or restrictions, as same may be amended or enacted from time to time in the future. All current land development regulations of the City are applicable to the PD District except to the extent that they conflict with a specific provision of the approved Development Plan.

Section 6. At the time of development, the Applicant shall comply with all relevant building codes and development standards contained in the City's Code of Ordinances or in the Development Plan; provided, however, that the development standards contained in the adopted Development Plan shall supersede comparable standards contained in the Code of Ordinances.

Section 7. Pursuant to Article 5 of the City's Land Development Regulations, the Applicant shall comply with all applicable infrastructure regulations.

Section 8. The City Commission may rezone any portion of the Project which has not obtained a certificate of occupancy within five years from the date of adoption of this Ordinance.

Section 9. Prior to the issuance of a building permit for any nonresidential development, Applicant shall submit an easement document, acceptable to the City of DeLand, permitting additions to shared access, parking, utilities and stormwater.

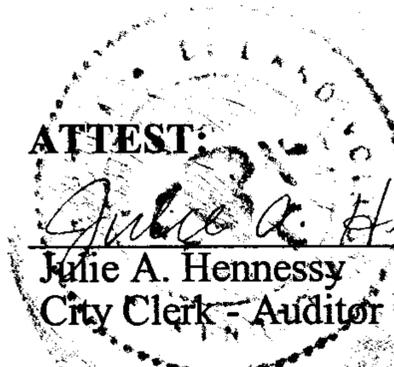
Section 10. The City Engineer, Planning Director and Building Department are hereby directed to change the Comprehensive Zoning Map of the City of DeLand to conform with the change of zoning enacted in this Ordinance.

Section 11. No rights to obtain final development orders nor any rights to develop the property have been granted or implied by this Ordinance. Final development orders for the property including, but not limited to, subdivision and site plan approval shall be subject to a determination of concurrency.

Section 12. If any section, sentence, clause or phrase of this Ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, that holding shall in no way affect the validity of the remaining portions of this Ordinance.

Section 13. This Ordinance shall become effective immediately upon its adoption.

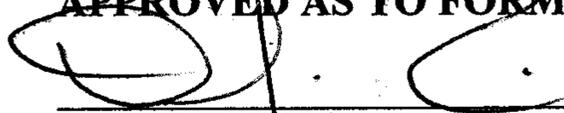
PASSED AND DULY ADOPTED this 7th day of August, 2006.

ATTEST:

Julie A. Hennessy
Julie A. Hennessy
City Clerk - Auditor


Robert F. Apgar
Mayor - Commissioner

Passed on first reading: July 17, 2006
Adopted on second reading: August 7, 2006

APPROVED AS TO FORM AND LEGALITY:


Darren J. Elkind
City Attorney

1 **MODEL PD PLANNED DEVELOPMENT AGREEMENT**

2 **IN THE CITY COMMISSION OF THE**

3 **CITY OF DELAND, FLORIDA**

4 **IN RE: Z-06-09, Application of**

5 **Southern Cross, LLC**

6 **ORDINANCE # 06-56**

7 ***(# to be Provided After Commission Approval)***

8 **ORDER AND RESOLUTION**

9 **GRANTING A REQUEST FOR CHANGE OF ZONING FROM C-2 COMMERCIAL**

10 **TO**

11 **MAINTSTREET TOWNHOMES RESIDENTIAL PD (PLANNED DEVELOPMENT)**

12

13 **The application of Southern Cross, LLC, hereinafter, "Applicant", for rezoning was**

14 **heard by and before the City Commission, DeLand Florida, on August 7, 2006. Based**

15 **upon the verified Application and other supporting documents, maps, charts, overlays,**

16 **other evidence and instruments; the advice, report, and recommendations of the**

17 **Community Development, and other Departments and agencies of DeLand, Florida; and**

18 **the testimony adduced and evidence received at the Public Hearing on this Application by**

19 **the Planning Board on June 21st, 2006, and otherwise being fully advised, the City**

20 **Commission does hereby find and determine as follows:**

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GENERAL FINDINGS

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A. That the application of Southern Cross, LLC was duly and properly filed herein on 13 April 2006 as required by law.

B. That all fees and costs which are by law, regulation, or Ordinance required to be borne and paid by the applicant have been paid.

C. That the applicant is the Owner of a 7.354 acre parcel of land which is situated in DeLand, Florida. This parcel of land is described more particularly in the survey and legal description, a true copy of which is attached hereto as Exhibit "A".

D. That the Applicant has complied with the concept plan provision as required by Land Development Regulations Ordinance # 2002-09, as amended.

E. That the Applicant has complied with the "Due Public Notice" requirements of the City Commission, Land Development Regulations Ordinance # 2002-09, as amended.

FINDINGS REGARDING REZONING

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A. That the Applicant has applied for a change of zoning from the present zoning classification(s) of the parcel described in Exhibit "A" from C-2 Commercial to (PD) (Planned Development).

B. That the said rezoning to a PD is consistent with both the City of DeLand Comprehensive Plan Ordinance # 1990-04, as amended, and the intent and purpose of the City of DeLand Land Development Regulations Ordinance # 2002-09, as amended, and does promote the public health, safety, morals, general welfare and orderly growth of the area affected by the rezoning request.

NOW, THEREFORE, BE IT RESOLVED AND ORDERED BY THE CITY OF DELAND, FLORIDA, IN OPEN MEETING DULY ASSEMBLED IN THE CITY COMMISSION CHAMBERS, 121 WEST RICH AVENUE, DELAND, FLORIDA, THIS 7th DAY OF AUGUST, A.D., 2006, AS FOLLOWS:

A. That the Application of Southern Cross, LLC for the rezoning of the subject parcel is hereby granted.

B. That the zoning classification of the subject parcel described in Exhibit "A" attached hereto is hereby amended from C-2 Commercial to a Residential PD as described in Article XII of the City of DeLand, Land Development Regulations Ordinance # 2002-09, as amended.

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1 C. That the Official Zoning Map of the City of DeLand, is hereby amended to
2 show the rezoning of said parcel to Mainstreet Townhomes PD.

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4 D. That the City of DeLand Land Development Regulations Ordinance # 2002-
5 09, as amended, is consistent with the provisions of the "Development Agreement" as
6 hereinafter set forth in this Ordinance and with respect to any conflict between Land
7 Development Regulations Ordinance # 2002-09, as amended, and the "Development
8 Agreement", the provisions of the "Development Agreement" shall govern. Ordinance No.
9 02-09, as amended, shall govern with respect to any matter not covered by the
10 "Development Agreement." The City of DeLand, will ensure overall compliance with this
11 Ordinance.

12
13 E. Unless otherwise provided for herein the City of DeLand, Land Development
14 Regulations Ordinance # 2002-09, as amended, shall apply to the PD in the same manner
15 as the R-16 Residential zoning classification.

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17 F. Nothing in this Ordinance shall abridge the requirements of any City of
18 DeLand Ordinance other than Ordinance 2002-09, as amended. Timing and review
19 procedures contained in this Order and Resolution may be modified to comply with the City
20 of DeLand Land Development Regulations, Ordinance No. 2002-09, as amended. Further,
21 nothing in the Development Agreement is intended to abridge the requirements of
22 Ordinance No. 2002-09, as amended, and any other City Ordinances.

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DEVELOPMENT AGREEMENT

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2 A. Development Concept The property shall be developed as a PD
3 substantially in accordance with the Planned Development Plan. The Planned
4 Development Plan shall govern the development of the property as a PD and shall regulate
5 the future land use of this parcel.

6 1. Planned Development Plan The Planned Development Plan shall
7 consist of the Development Plan Map prepared by Tomoka Engineering and dated May 16,
8 2006 and this development agreement. The Planned Development Plan is hereby
9 approved and incorporated in this Ordinance by reference as Exhibit "B". The Planned
10 Development Plan shall be filed and retained for public inspection in the Planning
11 Department and it shall constitute a supplement to the Official Zoning Map of the City of
12 DeLand.

13 2. Amendments. All amendments of the Planned Development Plan,
14 other than those deemed by the Planning Department to be minor amendments as set out
15 in Ordinance No. 2002-09, as amended, shall require the review and recommendation of
16 the Planning Board and action by the City Commission in the same manner as a rezoning
17 of the parcel.

18 3. Subdivision Approval. After the Planned Development Plan is
19 recorded, and prior to any construction, including clearing and landfill, preliminary plat of
20 the area to be subdivided shall be submitted for review and approval in the manner
21 required by Article 13 of the City of DeLand Land Development Regulations, Ordinance No.
22 2002-09, as amended.

23 4. Preliminary Plat Approval. After the Planned Development Plan is
24 recorded, and prior to issuance of any permits for construction, including clearing and
25 landfill, a preliminary plat shall be prepared and submitted for review and approval in the

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1 manner required by Article 12 of the City of DeLand, Land Development Regulations
2 Ordinance # 2002-09, as amended.

3
4 B. Unified Ownership. The Applicant or his successors shall maintain unified
5 ownership of the subject parcel until after issuance of the Final Plat Development Order.

6
7 C. Phases of Development. This will be a single phase development

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9 D. Land Uses Within the PD. The development of the parcel shall be consistent
10 with the uses prescribed for each area within the proposed PD. The location and size of
11 said land use areas are shown on the MAINTSTREET TOWNHOMES Development Plan
12 Map, Exhibit "B". The following land uses shall be allowed as permitted principal uses and
13 structures along with their customary accessory uses and structures: Residential Town
14 Home Development

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16 E. Development Standards.

- | | | |
|----|-----------------------------------|---------------------|
| 17 | 1. Minimum lot area | 900 sq. ft |
| 18 | 2. Minimum lot width and/or depth | 20 ft x 45 ft |
| 19 | 3. Minimum yard size (building) | |
| 20 | a. Front yard set back: | 0 ft. |
| 21 | b. Rear yard set back: | 0 ft. |
| 22 | c. Side yard set back: | 0 ft. |
| 23 | | |
| 24 | 4. Minimum floor area: | Unit A 1676 sq. ft. |
| 25 | | Unit B 1582 sq ft |
| 26 | | Unit C 1658 sq ft |
| 27 | 5. Maximum lot coverage | 100 % |
| 28 | 6. Maximum building height | 55 ft |

1	7.	Landscape buffer requirements	Side yard 20 ft
2			Front yard 30 ft
3			Rear yard 20 ft
4	8.	Perimeter building setbacks	Side 20 ft
5			Front 30 ft
6			Rear 20 ft
7	9.	Minimum building separation	0.0
8	10.	Off-street parking requirements	2 spaces per unit
9	11.	Signage requirements	None
10	12.	Open Space and/or Common Area requirements meeting the Land	
11		Development Regulations Ordinance #2002-09, see attached	
12	13.	Maximum impervious area	46.82%
13			
14			

15 F. Environmental Considerations. The minimum requirements of the Land
16 Development Regulations Ordinance # 2002-09, as amended, shall be met.

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18 G. Sewage Disposal and Potable Water Provision for sewage disposal and
19 potable water needs of the PD will be provided in accordance with the Comprehensive
20 Plan, Ordinance No. 1990-04, as amended, the Land Development Regulations Ordinance
21 No. 2009-09, as amended, and State of Florida Administrative Code 64E-6.

22
23 H. Stormwater Drainage. Provision for stormwater retention shall be in
24 accordance with the Land Development Regulations Ordinance # 2002-09, as amended.

25
26 I. Access and Transportation System Improvements. All access and
27 transportation system improvements shall be provided in accordance with the Land
28 Development Regulations, Ord. 02-09, as amended. The parcel shall be developed in

1 substantial accordance with the following access and transportation system improvements:

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3 1. Access. Main entrance off of Woodland Blvd. Additional
4 ingress and egress through shopping center easement.

5 2. Transportation System Improvements. None

6 3. A Secondary Access in case of emergency shall be provided to
7 the site via a stabilized roadway in the Progress Energy power line easement

8 J. Internal Roadways. 24 foot private roads within the subdivision.

9

10 K. Building or Property Owners Association. The charter and by-laws of said
11 association and any other agreements, covenants, easements or restrictions shall be
12 furnished to the City of DeLand at the time of creation. The applicant shall be responsible
13 for recording said information in the Public Records of Volusia County, Florida. Also, the
14 applicant shall bear and pay all costs for recording all of the aforementioned documents.

15 With respect to the enforcement of said agreements, covenants, easements or
16 restrictions entered into between the applicant and the owners or occupiers of property
17 within the Mainstreet Townhomes the City of DeLand shall only enforce the provisions of
18 the "Development Agreement" and City of DeLand Land Development Regulations
19 Ordinance # 2002-09, as amended, whichever is applicable, and not the private
20 agreements entered into between the aforementioned parties.

21

22 L. Reverter Provision: The City Commission may rezone any portion of the
23 project which has not secured a *final development order* on or before 5 years from the
24 effective date of this ordinance as may be necessary or appropriate to protect adjoining
25 properties or the public health, safety and welfare, unless the City Commission, for good

1 cause shown, shall extend the time period indicated in this paragraph.

2
3 M. Binding Effect of Plans; Recording; and Effective Date. The Planned
4 Development Plan, including any and all amendments shall bind and inure to the benefit of
5 the Applicant and his successor in title or interest. The Mainstreet Townhomes PD zoning,
6 provisions of the "Development Agreement," and all approved plans shall run with the land
7 and shall be administered in a manner consistent with Article 12 of the City of DeLand
8 Land Development Regulations Ordinance # 2002-09, as amended.

9
10 This Ordinance and all subsequent amendments shall be filed with the Clerk of the
11 Court and recorded within forty-five (45) days following execution of the document by the
12 City Commission, in the Official Records of Volusia County, Florida. One copy of the
13 document, bearing the book and page number of the Official Record in which the
14 document was recorded, shall be submitted to the Planning Department for placement in
15 the public file. The date of recording of this document shall constitute the effective date of
16 the Mainstreet Townhomes PD or its subsequent amendments. The applicant shall pay all
17 filing costs for recording documents.

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21 DONE and ORDERED by the City Commission, City of DeLand, Florida, this
22 7th day of Aug., 2006 (mo/yr).

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25 ATTEST:
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28 Julie A. Hennessey
CITY CLERK-AUDITOR
Page 9 of 11

City Commission of DeLand Florida

Robert [Signature]

1 Mike Abels
2 City Manager

Robert Apgar
Mayor

3
4
5 STATE OF FLORIDA
6 CITY OF DELAND

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7
8 The foregoing instrument was acknowledged before me this 7th day of
9 August, 2006 (mo/yr), by Mike Abels and Robert Apgar, as City Manager
10 and Mayor, City of DeLand, respectively, on behalf of the City of DeLand,
11 and who are personally known to me.

12
13
14 NOTARY PUBLIC, STATE OF FLORIDA

Type or Print Name:

Kendra R. Curry

Commission No.: DD 242975

My Commission Expires: 8/19/2007

15
16 KENDRA R. CURRY
NOTARY PUBLIC - STATE OF FLORIDA
COMMISSION # DD242975
EXPIRES 08/19/2007
17 BONDED THRU 1-888-NOTARY1
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WITNESSES:

Deborah Gray
Deborah Gray

Dennise Palmer
Dennise Palmer

Peter Dardino Pres
Applicant's Name, Title & Corporation

Owner of Property (if other than applicant)

The foregoing instrument was acknowledged before me this 12th day of

JANUARY of 2007 (mo/yr), by (NAME), who is personally

known to me or who has produced PETER DARDINO as

identification.

FL DL. D615-670-53-460-0

NOTARY PUBLIC, STATE OF FLORIDA

Type or Print Name:

LISA A. MCKINLEY

Commission No.: DD 612032

My Commission Expires: 11-06-2010



LEGAL DESCRIPTION : (PARCEL 2B)

THE FOLLOWING LEGAL DESCRIPTION WAS PREPARED BY MIKE TICHY AND PROOF READ BY KEN KUHAR, TOMOKA ENGINEERING, DAYTONA BEACH, FLORIDA, FEBRUARY 26, 2003. THE PROPERTY DESCRIBED IS SHOWN ON A SKETCH DRAWING PREPARED BY TOMOKA ENGINEERING, PROJECT NO. T1109BULL, DRAWING REFERENCE NO. 1109SL8.

PORTION OF THE NORTH 1/2 OF SECTION 33, TOWNSHIP 17 SOUTH, RANGE 30 EAST, VOLUSIA COUNTY FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

FROM A POINT OF REFERENCE BEING THE NORTHWEST CORNER OF THE NORTHEAST 1/4 OF SAID SECTION 33, THENCE S01°03'16"E, ALONG THE WESTERLY LINE OF SAID NORTHEAST 1/4 OF SECTION 33, A DISTANCE OF 1681.08 FEET; THENCE DEPARTING SAID WESTERLY SECTION LINE RUN N89°36'26"E A DISTANCE OF 29.90 FEET TO THE POINT OF BEGINNING OF THIS DESCRIPTION: THENCE N89°36'26"E, 552.24 FEET; THENCE N01°13'08"W, 257.59 FEET TO A POINT ON THE SOUTHERLY LINE OF AN EASEMENT RECORDED IN OFFICIAL RECORDS BOOK 2801, PAGE 352, OF VOLUSIA COUNTY, FLORIDA; THENCE N89°30'26"E, ALONG THE SOUTHERLY LINE OF SAID EASEMENT, 84.01 FEET TO A POINT ON THE EASTERLY LINE OF THE WEST 1/4 OF THE NORTHEAST 1/4 OF SAID SECTION 33; THENCE S01°13'08"E, ALONG THE EASTERLY LINE OF THE WEST 1/4 OF THE NORTHEAST 1/4 OF SAID SECTION 33, 1217.32 FEET TO A JOINT ON THE SOUTHERLY LINE OF THE NORTHEAST 1/4 OF SAID SECTION 33, SAID POINT BEING ON THE NORTHERLY BOUNDARY OF HILLY PINES SUBDIVISION AS RECORDED IN MAP BOOK 10, PAGE 249 OF THE PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA; THENCE RUN S89°24'08"W, ALONG SAID NORTHERLY LINE, A DISTANCE OF 234.43 FEET; THENCE DEPARTING SAID NORTHERLY BOUNDARY OF HILLY PINES SUBDIVISION RUN N01°09'15"W A DISTANCE OF 779.37 FEET; THENCE S88°50'18"W A DISTANCE OF 404.43 FEET; THENCE N00°40'22"W A DISTANCE OF 186.45 FEET TO THE POINT OF BEGINNING OF THIS DESCRIPTION.

THE ABOVE DESCRIBED PARCEL OF LAND CONTAINS 320,326 SQ. FT. OR 7.354 ACRES, MORE OR LESS.

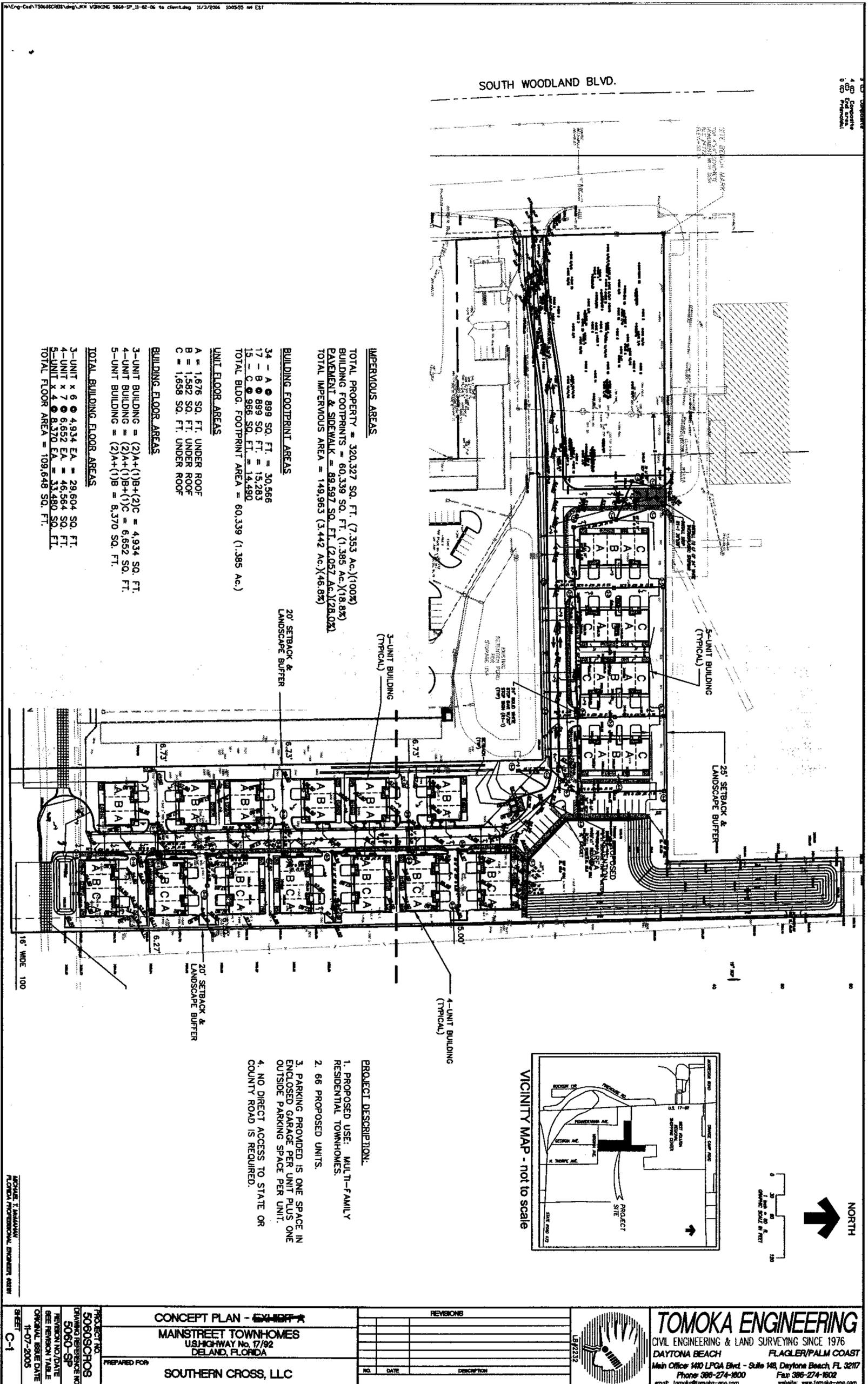
Received

DEC 18 2006

Planning & Zoning

Exhibit "A"

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 Book : 6042
 Page : 3588
 Diane M. Matousek
 Volusia County, Clerk of Court



IMPERVIOUS AREAS

TOTAL PROPERTY = 320,327 SQ. FT. (7.353 Ac.)(100%)
 BUILDING FOOTPRINTS = 60,339 SQ. FT. (1.385 Ac.)(18.8%)
 PAVEMENT & SIDEWALK = 89,597 SQ. FT. (2.057 Ac.)(28.0%)
 TOTAL IMPERVIOUS AREA = 149,963 (3.442 Ac.)(46.8%)

BUILDING FOOTPRINT AREAS

34 - A @ 899 SQ. FT. = 30,566
 17 - B @ 899 SQ. FT. = 15,283
 15 - C @ 968 SQ. FT. = 14,490
 TOTAL BLDG. FOOTPRINT AREA = 60,339 (1.385 Ac.)

UNIT FLOOR AREAS

A = 1,676 SQ. FT. UNDER ROOF
 B = 1,582 SQ. FT. UNDER ROOF
 C = 1,658 SQ. FT. UNDER ROOF

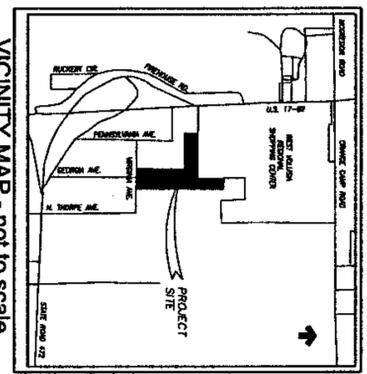
BUILDING FLOOR AREAS

3-UNIT BUILDING = (2)A+(1)B+(2)C = 4,934 SQ. FT.
 4-UNIT BUILDING = (2)A+(1)B+(1)C = 6,552 SQ. FT.
 5-UNIT BUILDING = (2)A+(1)B = 8,370 SQ. FT.

TOTAL BUILDING FLOOR AREAS

3-UNIT x 6 @ 4,934 EA. = 29,604 SQ. FT.
 4-UNIT x 7 @ 6,552 EA. = 46,564 SQ. FT.
 5-UNIT x 4 @ 8,370 EA. = 33,480 SQ. FT.
 TOTAL FLOOR AREA = 109,648 SQ. FT.

- PROJECT DESCRIPTION:**
1. PROPOSED USE: MULTI-FAMILY RESIDENTIAL TOWNHOMES.
 2. 66 PROPOSED UNITS.
 3. PARKING PROVIDED IS ONE SPACE IN ENCLOSED GARAGE PER UNIT PLUS ONE OUTSIDE PARKING SPACE PER UNIT.
 4. NO DIRECT ACCESS TO STATE OR COUNTY ROAD IS REQUIRED.



PROJECT NO. 5060SCROS DRAWING REFERENCE NO. 5060-SP REVISION NO./DATE SEE REVISION TABLE ORIGINAL ISSUE DATE 11-07-2005	CONCEPT PLAN - EXHIBIT A MAINSTREET TOWNHOMES US HIGHWAY No. 17/92 DELAND, FLORIDA	REVISIONS NO. DATE DESCRIPTION	TOMOKA ENGINEERING CIVIL ENGINEERING & LAND SURVEYING SINCE 1976 DAYTONA BEACH FLAGLER/PALM COAST Main Office: 1410 LPGA Blvd - Suite 148, Daytona Beach, FL 32117 Phone: 386-274-1600 Fax: 386-274-1602 email: tomoka@tomoka-eng.com website: www.tomoka-eng.com
	PREPARED FOR SOUTHERN CROSS, LLC		

Exhibit "B"