

ORDINANCE 2009 - 34

AN ORDINANCE OF THE CITY OF DELAND, FLORIDA, CHANGING THE ZONING FROM VOLUSIA COUNTY'S R-6 URBAN TWO-FAMILY RESIDENTIAL TO CITY'S PD, PLANNED DEVELOPMENT, ON PROPERTY LOCATED ON THE NORTH SIDE OF COUNTY ROAD 92, SOUTH OF GREENS DAIRY ROAD, WEST OF STONE STREET AND APPROXIMATELY 1300 FEET EAST OF STATE ROAD 15A, APPROVING A DEVELOPMENT PLAN FOR COMMERCIAL-RETAIL USES, A PLANNED DEVELOPMENT CONSISTING OF APPROXIMATELY ± 13.08 ACRES OF PROPERTY; MAKING FINDINGS OF CONSISTENCY WITH THE COMPREHENSIVE LAND USE PLAN FOR THE CITY OF DELAND; DIRECTING CHANGE IN THE COMPREHENSIVE ZONING MAP; CONDITIONING FINAL DEVELOPMENT APPROVAL ON A DETERMINATION OF CONCURRENCY; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, Alfredo Adissi, DeLand Real Estate Ventures (hereinafter referred to as "Applicant"), owns ± 13.08 acres of land located on the north side of County Road 92, south of Greens Dairy Road, west of Stone Street and approximately 1300 feet east of State Road 15A, which is more particularly described in the legal description attached hereto as Exhibit "A" and by this reference made a part hereof; and

WHEREAS, the Applicant has applied for a change of zoning from the present zoning classification of Volusia County's R-6, Urban Two Family Residential to City's 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, the Applicant has submitted an application for the approval of a development plan in order to develop the property for commercial-retail purposes 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 Business Retail 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 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 Volusia County's R-6, Urban Two-Family Residential to City's PD, Planned

Development, on the site located on the north side of County Road 92, south of Greens Dairy Road, west of Stone Street and approximately 1300 feet east of State Road 15A, to develop the property for commercial-retail purposes.

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 Gardens Crossings 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 Garden Crossings 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 site plan or preliminary plat approval 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.

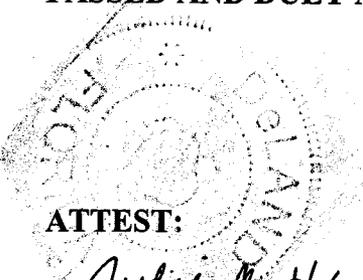
Section 10. The City Engineer, Planning Director and Building Department are hereby directed to change the Comprehensive Zoning Map of the City of DeLand to conform with the change of zoning enacted in this Ordinance.

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.

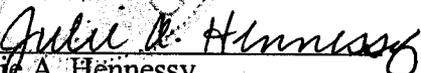
PASSED AND DULY ADOPTED this 16th day of November, 2009.





Robert F. Argar
Mayor - Commissioner

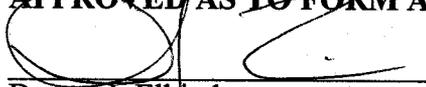
ATTEST:



Julie A. Hennessy
City Clerk - Auditor

Passed on first reading: April 21, 2008
Adopted on second reading: November 16, 2009

APPROVED AS TO FORM AND LEGALITY:



Darren J. Elkind
City Attorney

2DJ-J1/LAT/06-16-09

DESCRIPTION:

(AS CREATED BY BOWYER-SINGLETON & ASSOCIATES, INC.)

LOTS 6, 7 AND 10, SCARLETT SUB, PER DEED BOOK G, PAGE 660, AND MAP BOOK 12, PAGE 141, PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA, LESS AND EXCEPT THAT PORTION OF LOT 10 LYING IN THE RIGHT OF WAY OF U.S. HIGHWAY 92, AS RECORDED IN OFFICIAL RECORDS BOOK 3357, PAGES 977-978 AND PAGES 981-982, PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA.

EXHIBIT A

1 PLANNED DEVELOPMENT AGREEMENT

2 IN THE CITY COMMISSION OF THE

3 CITY OF DELAND, FLORIDA

4 IN RE: Z-08-15, Application of

5 DELAND REAL ESTATE VENTURES, LLC

6 ORDINANCE # 2009-34

7
8 ORDER AND RESOLUTION

9 GRANTING A REQUEST FOR CHANGE OF ZONING FROM R-6 & R-6C

10 TO

11 GARDEN CROSSINGS PD (PLANNED DEVELOPMENT)

12
13 The application of DeLand Real Estate Ventures, LLC, hereinafter, "Applicant", for
14 rezoning was heard by and before the City Commission, DeLand Florida, on November 16,
15 2009. Based upon the verified Application and other supporting documents, maps, charts,
16 overlays, 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 April 21, 2008, and otherwise being fully advised, the City
20 Commission does hereby find and determine as follows:

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EXHIBIT B

GENERAL FINDINGS

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A. That the application of DeLand Real Estate Ventures, LLC was duly and properly filed herein on November 19, 2007 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 13.08 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

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 Volusia County R-6 and R-6C to Garden Crossings BPD (Business Planned Development).

B. That the said rezoning to a(n) BPD 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, 120 S. FLORIDA AVENUE, DELAND, FLORIDA, THIS (public hearing date) DAY OF Nov. 16, A.D., 2009, AS FOLLOWS:

A. That the Application of DeLand Real Estate Ventures, 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 R-6 and R-6C to PD as described in Article VII of the City of DeLand, Land Development Regulations Ordinance # 2002-09, as amended.

1 C. That the Official Zoning Map of the City of DeLand, is hereby amended to
2 show the rezoning of said parcel to Garden Crossings BPD.

3
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.

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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 Business Retail (*BR*) 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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A. Development Concept The property shall be developed as a PD substantially in accordance with the Planned Development Plan. The Planned Development Plan shall govern the development of the property as a PD and shall regulate the future land use of this parcel.

1. Planned Development Plan The Planned Development Plan shall consist of the Development Plan Map prepared by Bowyer-Singleton and Associates, Inc. and dated May 8, 2007 and this development agreement. The Planned Development Plan is hereby approved and incorporated in this Ordinance by reference as Exhibit "B". The Planned Development Plan shall be filed and retained for public inspection in the Planning Department and it shall constitute a supplement to the Official Zoning Map of the City of DeLand.

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

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

4. Final Site Plan Approval. After the Planned Development Plan is

1 recorded, and prior to issuance of any permits for construction, including clearing and
2 landfill, a Final Site Plan shall be prepared and submitted for review and approval in the
3 manner required by Article 12 of the City of DeLand, Land Development Regulations
4 Ordinance # 2002-09, as amended

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

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10 C. Phases of Development. The infrastructure for this project will be developed
11 and constructed as a single phase. The outparcels will be developed separately.

12

13 D. Land Uses Within the PD. The development of the parcel shall be consistent
14 with the uses allowed in the Business Retail zoning designation. The location and size of
15 said land use areas are shown on the Development Plan Map, Exhibit "B".

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17 E. Development Standards.

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|----|--|-----------|
| 18 | 1. Minimum lot area | 9,000 sf. |
| 19 | 2. Minimum lot width and/or depth | 75 ft. |
| 20 | 3. Setbacks: | |
| 21 | a. Front yard: | 20 ft. |
| 22 | b. Rear yard abutting residential zoning: | 25 ft. |
| 23 | c. Rear yard, other: | 10 ft. |
| 24 | d. Side yard abutting residential zoning : | 25 ft. |
| 25 | e. Side yard, other: | 10 ft. |
| 26 | 5. Maximum impervious surface: | 70 % |
| 27 | 6. Maximum building height | 60 ft. |

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7. Landscape buffer requirements:
 - a. Front (along CR 92) 35 ft.
 - b. Side:
 - Adjacent to residential 20 ft.
 - Adjacent to commercial 10 ft.
 - c. Rear: 30 ft.
8. Perimeter building setbacks
 - Adjacent to County R■ zoning 30 ft.
9. Minimum building separation 25 ft.
10. Off-street parking requirements per Land Development Regulations Ordinance # 2002-09.
11. Signage requirements per Land Development Regulations Ordinance # 2002-09.
12. Open Space and/or Common Area requirements meeting the Land Development Regulations Ordinance # 2002-09.
13. Proposed structures will meet the Community Design Standards.
14. The maximum Floor Area Ratio is 0.25
15. Applicant shall construct a wall located on the interior side of the buffer on Greens Dairy Rd., with the exact location, height and construction materials to be agreed upon between the applicant and the neighbors and determined by the City Commission at site plan approval.
16. Applicant shall install low level (no bleed over) lighting on the property that will internalize the lighting for the parking and the back of the building.
17. Applicant shall provide notice to surrounding property owners prior to applicant appearing before the TRC for site plan review.
18. There shall be no access to the subject property off Greens Dairy Road (except for emergency access for public safety as noted below in Section I).

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2 F. Environmental Considerations. The minimum requirements of the Land
3 Development Regulations Ordinance # 2002-09, as amended, shall be met. The site will
4 meet the tree protection requirements. A majority of the tree preservation will be located at
5 the north end of the project per the Planned Development Plan, Exhibit B. If less than the
6 required 15%, additional tree protection needs be provided per each outparcel. There are
7 no wetlands on site.

8
9 G. Sewage Disposal and Potable Water. Provision for sewage disposal and
10 potable water needs of the PD will be provided in accordance with the Comprehensive
11 Plan, Ordinance No.1990-04, as amended, the Land Development Regulations Ordinance
12 No. 2009-09, as amended, and State of Florida Administrative Code 64E-6.

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

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17 I. Access and Transportation System Improvements. All access and
18 transportation system improvements shall be provided in accordance with the Land
19 Development Regulations, Ord. 02-09, as amended. The parcel shall be developed in
20 substantial accordance with the following access and transportation system improvements:

21 1. Access. Primary access to the site shall be on CR No-92. Secondary
22 access shall include a 50' vehicular access easement to the adjacent properties and a 24'
23 vehicular access easement between proposed outparcels. An emergency access with a
24 break-away gate to Greens Dairy Road will be required in the northwest corner of the site if

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the adjacent parcels are not developed prior to final plat approval.

2. Transportation System Improvements. A right turn lane on CR 92 into the site will be constructed as part of the development. Off-site traffic improvements will be consistent with those required in the City and County approved traffic impact analysis.

3. Traffic Impact Analysis. As part of the site plan or preliminary plat application, a Traffic Impact Analysis (TIA), that incorporates the traffic anticipated for the adjacent property to the west as part of the background, shall be submitted. The TIA will include the general development allowed under Business Retail (BR) land use category unless the adjacent west property has submitted plans for development, then that information may be used in the TIA.

J. Internal Roadways. The internal street system will be a minimum 50' right-of-way designed to meet city standards. The internal street system will provide access for each parcel to CR 92. Cross access between adjacent outparcels is required.

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

With respect to the enforcement of said agreements, covenants, easements or restrictions entered into between the applicant and the owners or occupiers of property within the BPD, the City of DeLand shall only enforce the provisions of the "Development

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2 Agreement" and City of DeLand Land Development Regulations Ordinance # 2002-09, as
3 amended, whichever is applicable, and not the private agreements entered into between
4 the aforementioned parties.

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6 L. Reverter Provision: The City Commission may rezone any portion of the
7 project which has not secured a preliminary plat approval on or before 5 years from the
8 effective date of this ordinance as may be necessary or appropriate to protect adjoining
9 properties or the public health, safety and welfare, unless the City Commission, for good
10 cause shown, shall extend the time period indicated in this paragraph.

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12 M. Binding Effect of Plans; Recording; and Effective Date. The Planned
13 Development Plan, including any and all amendments shall bind and inure to the benefit of
14 the Applicant and his successor in title or interest. The _PD zoning, provisions of the
15 "Development Agreement," and all approved plans shall run with the land and shall be
16 administered in a manner consistent with Article 12 of the City of DeLand Land
17 Development Regulations Ordinance # 2002-09, as amended.

18
19 This Ordinance and all subsequent amendments shall be filed with the Clerk of the
20 Court and recorded within forty-five (45) days following execution of the document by the
21 City Commission, in the Official Records of Volusia County, Florida. One copy of the
22 document, bearing the book and page number of the Official Record in which the
23 document was recorded, shall be submitted to the Planning Department for placement in
24 the public file. The date of recording of this document shall constitute the effective date of

1 the PD or its subsequent amendments. The applicant shall pay all filing costs for
2 recording documents.

5 DONE and ORDERED by the City Commission, City of DeLand, Florida, this
6 16th day of November, 2009 (mo/yr).

9 ATTEST:

City Commission of DeLand Florida

11 Michael Pleus

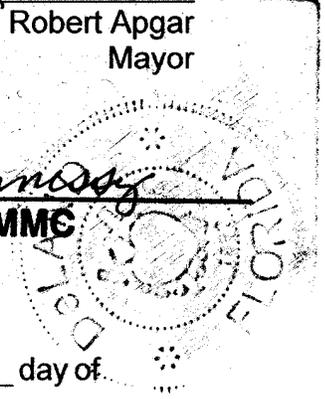
12 Michael Pleus
13 City Manager

11 Robert Apgar

12 ATTEST: Robert Apgar
13 Mayor

17 STATE OF FLORIDA
18 CITY OF DELAND

17 Julie A. Hennessy
18 Julie A. Hennessy, MMC
19 City Clerk - Auditor
20 Appr: 11-16-09



20 The foregoing instrument was acknowledged before me this 1st day of
21 July 2010 (mo/yr), by Mike Pleus and Robert Apgar, as City Manager
22 and Mayor, City of DeLand, respectively, on behalf of the City of DeLand,
23 and who are personally known to me.

27 NOTARY PUBLIC, STATE OF FLORIDA

28 Type or Print Name
Kendra R. Curry

29 Commission No.: DD701139

30 My Commission Expires: 8/19/2011

KENDRA R. CURRY
NOTARY PUBLIC - STATE OF FLORIDA
COMMISSION # DD701139
EXPIRES 8/19/2011
BONDED THRU 1-888-NOTARY1

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WITNESSES:

[Handwritten Signature]

[Handwritten Signature]

Alfredo Adessi, Managing Member
Deland Real Estate Ventures LLC
Applicant's Name, Title & Corporation

Applicant's Name, Title & Corporation

Owner of Property (if other than applicant)

The foregoing instrument was acknowledged before me this 9th day of
June (mo/yr), by (NAME), who is personally
known to me or who has produced _____ as
identification.

[Handwritten Signature]

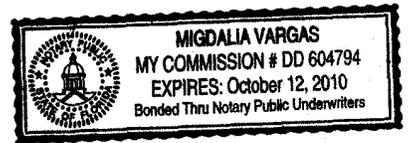
NOTARY PUBLIC, STATE OF FLORIDA

Type or Print Name:

Migdalia Vargas

Commission No.: DD 604794

My Commission Expires: 10/12/2010



Revised June 9, 2010 u/p/zone/pd_doc

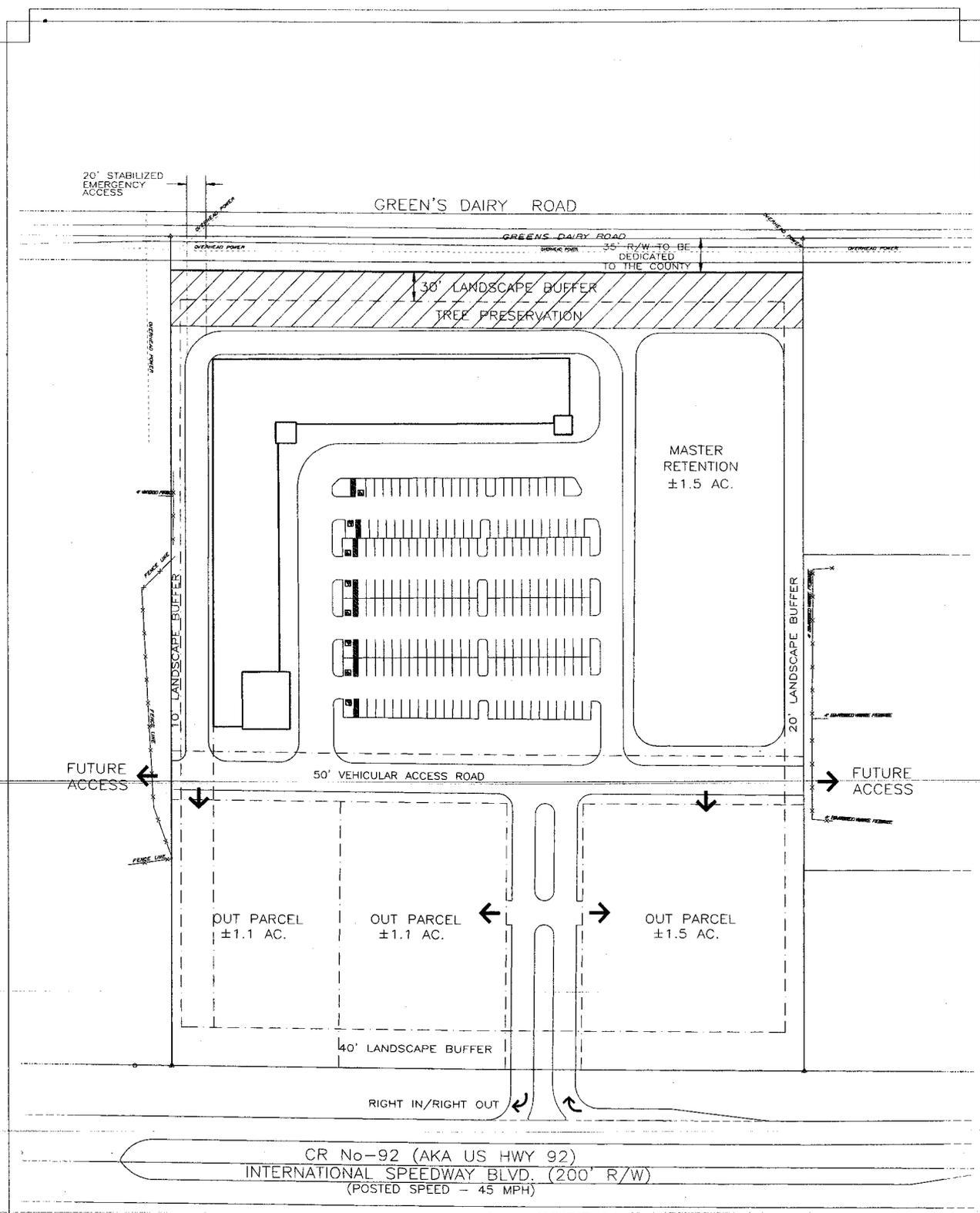
2DJ-J1/LAT/06-16-09

DESCRIPTION:

(AS CREATED BY BOWYER-SINGLETON & ASSOCIATES, INC.)

LOTS 6, 7 AND 10, SCARLETT SUB, PER DEED BOOK G, PAGE 660, AND MAP BOOK 12, PAGE 141, PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA, LESS AND EXCEPT THAT PORTION OF LOT 10 LYING IN THE RIGHT OF WAY OF U.S. HIGHWAY 92, AS RECORDED IN OFFICIAL RECORDS BOOK 3357, PAGES 977-978 AND PAGES 981-982, PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA.

EXHIBIT A



- NOTES:
1. FUTURE ACCESS POINTS SHALL ALIGN WITH ACCESS PROVIDED BY THE ADJOINING PROPERTIES.
 2. THE EMERGENCY ACCESS SHOWN SHALL ONLY BE CONSTRUCTED IF A SECONDARY POINT OF ACCESS IS NOT PROVIDED.

SITE DATA

TOTAL SITE AREA	= ±12.54 AC.
TREE PRESERVATION REQ.	= ±1.88 AC. (15%)
TOTAL RETENTION PROVIDED	= ±1.5 AC. (15%)
TOTAL PARKING SHOWN	= ±211 SPACES

"EXHIBIT B"
 CONCEPT PLAN
GARDEN CROSSING
 CITY OF DELAND, FLORIDA
 KATSIKOS GROUP

DISCLAIMER
 THIS CONCEPTUAL EXHIBIT ILLUSTRATES THE GENERAL INTENT OF THE DEVELOPMENT AND IS NOT BASED ON AN ENGINEERING ANALYSIS. THE CONCEPT SHOULD NOT BE USED FOR COST PURPOSES AS IT IS SUBJECT TO CHANGE.

