

ORDINANCE 2010 - 22

AN ORDINANCE OF THE CITY OF DELAND, FLORIDA, AMENDING ORDINANCE NO. 1995-12, APPROVING THE PLANNED DEVELOPMENT AGREEMENT FOR SCOTTY'S INC.; BY AMENDING THE EXISTING DEVELOPMENT AGREEMENT TO PERMIT ADDITIONAL USES AND PLACE ADDITIONAL REQUIREMENTS ON THE CURRENT AND FUTURE DEVELOPMENT OF THE SITE; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, On February 20, 1995, the City Commission adopted Ordinance No. 1995-12, approving the Planned Development for Scotty's, Inc., and

WHEREAS, the applicant, DeLand Commercial Properties, LLC, is requesting to amend the existing Planned Development Agreement in order to allow for other uses and by changing the name to DeLand Commercial Properties PD; and

WHEREAS, the applicant desires to utilize the existing building without making significant site improvements; and

WHEREAS, the City desires to allow the current use of the property, subject to certain conditions and the requirement for full redevelopment of the site in the future; and

WHEREAS, the proposed amendment will not have a detrimental effect on the surrounding properties, and it is in the best interests of the City to grant the requested modification to the existing Planned Development.

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

Section 1. City of DeLand Ordinance No. 1995-12, approving the Planned Development Agreement for Scotty's, Inc., is hereby amended by amending the existing Planned Development Agreement and replacing it with the Planned Development Agreement attached hereto.

Section 2. At the time of development, the developer 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, as amended, shall supersede comparable standards contained in the Code of Ordinances.

Section 3. 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 4. This Ordinance shall become effective immediately upon its adoption.

PASSED AND DULY ADOPTED this 1st day of November, 2010.



Robert F. Appa
Mayor - Commissioner

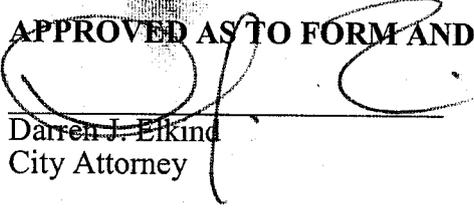
ATTEST:



Julie A. Hennessy
City Clerk - Auditor

Passed on first reading: October 18, 2010
Adopted on second reading: November 1, 2010

APPROVED AS TO FORM AND LEGALITY:



Darren J. Elkind
City Attorney

1 PLANNED DEVELOPMENT AGREEMENT

2 IN THE CITY COMMISSION OF THE

3 CITY OF DELAND, FLORIDA

4 IN RE: Z-10-40, Application of

5 DELAND COMMERCIAL PROPERTIES, LLC

6 ORDINANCE # 2010-22

7
8 ORDER AND RESOLUTION

9 GRANTING A REQUEST FOR CHANGE OF ZONING FROM

10 SCOTTY'S PD (PLANNED DEVELOPMENT) TO

11 DELAND CP PD (PLANNED DEVELOPMENT)

12
13 The application of DeLand Commercial Properties, LLC, hereinafter, "Applicant", for
14 rezoning was heard by and before the City Commission, DeLand Florida, on November
15 1st, 2010. Based upon the verified Application and other supporting documents, maps,
16 charts, overlays, other evidence and instruments; the advice, report, and recommendations
17 of the Community Development, and other Departments and agencies of DeLand, Florida;
18 and the testimony adduced and evidence received at the Public Hearing on this Application
19 by the Planning Board on September 15, 2010, and otherwise being fully advised, the City
20 Commission does hereby find and determine as follows:

GENERAL FINDINGS

1
2
3 A. That the application of DeLand Commercial Properties, LLC was duly and
4 properly filed herein on June 21st, 2010 as required by law.

5
6 B. That all fees and costs, which are by, law, regulation, or Ordinance required
7 to be borne and paid by the applicant have been paid.

8
9 C. That the Applicant is the owner of a 4.1 acre parcel of land, which is situated
10 in DeLand, Florida. This parcel of land is described more particularly in the survey and
11 legal description, a true copy of which is attached hereto as Exhibit "A".

12
13 D. That the Applicant has complied with the concept plan provision as required
14 by Land Development Regulations Ordinance # 2002-09, as amended.

15
16 E. That the Applicant has complied with the "Due Public Notice" requirements of
17 the City Commission, Land Development Regulations Ordinance # 2002-09, as amended.

18
19 F. That the site is an existing commercial development previously zoned
20 Scotty's PD, with no list of defined uses other than as a Scotty's. The existing
21 development does not comply with many of the current land development regulations of
22 the City of DeLand. The Applicant desires to make the site usable for certain uses at the
23 current time without totally redeveloping the site. This rezoning to DeLand CP PD will allow
24 the existing improvements on the property to be utilized for certain limited uses as more

1 particularly set forth herein, and also provide for redevelopment of the site to current code
2 standards without the necessity of going through a rezoning.

3
4 FINDINGS REGARDING REZONING

5
6 A. That the Applicant has applied for a change of zoning from the present
7 zoning classifications of the parcel described in Exhibit "A" from Scotty's PD (Planned
8 Development) to DeLand CP PD.

9
10 B. That the said rezoning to DeLand CP PD is consistent with both the City of
11 DeLand Comprehensive Plan Ordinance #1990-04, as amended, and the intent and
12 purpose of the City of DeLand Land Development Regulations Ordinance # 2002-09, as
13 amended, and does promote the public health, safety, morals, general welfare and orderly
14 growth of the area affected by the rezoning request.

15
16 NOW, THEREFORE, BE IT RESOLVED AND ORDERED BY THE CITY OF
17 DELAND, FLORIDA, IN OPEN MEETING DULY ASSEMBLED IN THE CITY
18 COMMISSION CHAMBERS, 120 SOUTH FLORIDA AVENUE, DELAND, FLORIDA, THIS
19 1st DAY OF NOVEMBER, 2010 A.D., AS FOLLOWS:

20
21 A. That the Application of DeLand Commercial Properties, LLC for the rezoning
22 of the subject parcel is hereby granted.

23
24 B. That the zoning classification of the subject parcel described in Exhibit "A"

1 attached hereto is hereby amended from Scotty's PD to DeLand CP PD as described in
2 Article IV, Section 33-32 of the City of DeLand Land Development Regulations, Ordinance
3 # 2002-09, as amended.
4

5 C. That the Official Zoning Map of the City of DeLand is hereby amended to
6 show the rezoning of said parcel to DeLand CP PD.
7

8 D. That the City of DeLand Land Development Regulations Ordinance # 2002-
9 09, as amended, is consistent with the provisions of the "Development Agreement" as
10 hereinafter set forth in this Ordinance and with respect to any conflict between Land
11 Development Regulations Ordinance # 2002-09, as amended, and the "Development
12 Agreement", the provisions of the "Development Agreement" shall govern. Ordinance No.
13 02-09, as amended, shall govern with respect to any matter not covered by the
14 "Development Agreement." The City of DeLand, will ensure overall compliance with this
15 Ordinance.
16

17 E. Unless otherwise provided for herein the City of DeLand, Land Development
18 Regulations Ordinance # 2002-09, as amended, shall apply to the PD in the same manner
19 as the C-2 zoning classification.
20

21 F. Nothing in this Ordinance shall abridge the requirements of any City of
22 DeLand Ordinance other than Ordinance 2002-09, as amended. Timing and review
23 procedures contained in this Order and Resolution may be modified to comply with the City
24 of DeLand Land Development Regulations, Ordinance No. 2002-09, as amended. Further,

1 nothing in the Development Agreement is intended to abridge the requirements of
2 Ordinance No. 2002-09, as amended, and any other City Ordinances.

3
4 DEVELOPMENT AGREEMENT

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

10 1. Planned Development Plan. The Planned Development Plan shall
11 consist of the Development Plan Map prepared by Bowyer-Singleton & Associates, Inc.
12 dated October 19, 2010 and this development agreement. The Development Plan Map is
13 hereby approved and incorporated in this Ordinance by reference as Exhibit "B". The
14 Planned Development Plan shall be filed and retained for public inspection in the Planning
15 Department and it shall constitute a supplement to the Official Zoning Map of the City of
16 DeLand.

17 2. Amendments. The Development Plan Map may be amended at any
18 time as long as the amendments are consistent with the development standards outlined
19 below.

20 3. Subdivision Approval. Prior to any subdivision of the property, a
21 preliminary and final plat of an area to be subdivided shall be submitted for review and
22 approval in the manner required by Article 13 of the City of DeLand Land Development
23 Regulations, Ordinance No. 2002-09, as amended.

24 4. Final Site Plan Approval. Any new construction subject to site plan

1 review or a final site plan modifying the existing site shall be prepared and submitted for
2 review and approval in the manner required by Article 12 of the City of DeLand, Land
3 Development Regulations Ordinance # 2002-09, as amended.

4
5 B. Unified Ownership. The Applicant or his successors shall maintain unified
6 ownership of the subject parcel until after the recording of a Final Plat.

7
8 C. Phases of Development. Not applicable.

9
10 D. Permitted Uses within the PD. The uses allowed as permitted principal uses
11 and structures along with their customary accessory uses and structures shall be
12 consistent with those listed in the attached Exhibit "C". Certain of the uses listed on the
13 attached Exhibit "C" can only be conducted on the site if the Applicant redevelops the site
14 so that it meets all then current land development regulations of the City of DeLand, as well
15 as any other applicable rules or regulations relative to the development of the subject
16 property.

17
18 E. Development Standards. The Development Standards for this are based on
19 the existing improvements on the site at the time of approval of this document. The
20 dimensions are based on the survey of the site.

- 21 1. Minimum lot area: 9,000 sq. ft.
22 2. Minimum lot width and/or depth: 75 ft.
23 3. Minimum building setback:
24 a. Front: 20 ft.
25 b. Rear:
26 abutting residential zoning 25 ft.

- 1 other 10 ft.
- 2 c. Side:
- 3 abutting street 20 ft.
- 4 other 10 ft.
- 5 4. Maximum floor area ratio (FAR): 0.25
- 6 5. Maximum lot coverage: 70%
- 7 6. Maximum building height: 35 ft.
- 8 7. Landscape buffer requirements:
- 9 Perimeter:
- 10 Adjacent to SR 15A: 6 ft.
- 11 Northern Boundary: 13 ft.
- 12 Western Boundary: 11 ft.
- 13 Southern Boundary: 4 ft.
- 14 Landscape buffer area at corner of SR 15A and Plymouth
- 15 Avenue shall remain as is illustrated on Development Plan Map.
- 16 8. Minimum building separation: 25 ft.
- 17 9. Off-street parking requirements:
- 18 The site currently has 113 spaces. Unless parking spaces are added,
- 19 the size of the uses for the site shall be restricted to those that meet
- 20 or exceed the minimum requirements of Section 33-91, of the City of
- 21 DeLand, Land Development Regulations Ordinance # 2002-09, as
- 22 amended. As illustrated in the Development Plan Map, the portion of
- 23 the site designated for future parking may be converted to parking so
- 24 long as such conversion otherwise meets the land development
- 25 regulations of the City of DeLand but this action will not subject the
- 26 overall property to full compliance to current code as required in the
- 27 note at the end of this section. Proposed parking shall be designed to
- 28 meet or exceed the minimum requirements of Section 33-91, of the
- 29 City of DeLand, Land Development Regulations Ordinance # 2002-
- 30 09, as amended.
- 31 10. Signage requirements:
- 32 Shall meet the requirements of Article VII of the City of DeLand, Land

Development Regulations Ordinance # 2002-09, as amended.

11. Open Space and/or Common Area requirements:

The amount of open space shall be consistent with the development in place at the time of the approval of this Agreement, as more particularly depicted in the Development Plan Map.

12. Outside Storage: So long as the existing building remains in place, the Applicant may display up to 50 square feet of merchandise on the concrete sidewalk immediately adjacent to the front facade of the existing building to correspond with the operating hours of the business.

IN THE EVENT THAT ANY REDEVELOPMENT OF THE PROPERTY OCCURS WHICH NECESSITATES SUBMISSION AND APPROVAL OF A SITE PLAN, THEN THE ENTIRETY OF THE PROPERTY SHALL MEET THE THEN EXISTING REQUIREMENTS OF THE LAND DEVELOPMENT REGULATIONS, THE PROVISIONS OF SECTIONS E1 THROUGH E12 HEREOF NOTWITHSTANDING.

F. Environmental Considerations. The site does not currently meet tree preservation and other environmental regulations. The Applicant shall be permitted to maintain the existing tree preservation areas and landscaping. The Applicant shall, within sixty (60) days of the approval of this Agreement, install landscaping on the northern property boundary from the Plymouth Avenue driveway to the western property line, with such landscaping to comply with the landscape buffer B canopy and understory tree requirements of the City of DeLand's Land Development Regulations. Additional plant material to be added to the following areas: front buffer along SR 15A – new shrubs to replace dead; center island – one live oak; and interior median parallel to Plymouth Ave – 6 understory trees.

In addition, the Applicant shall install a six (6) foot tall opaque fence at the southern

1 edge of the northern buffer from the Plymouth Avenue driveway to the western property
2 line or such location easterly thereof, and along the eastern edge of the future parking area
3 from the aforementioned fence to the northeastern corner of the building as depicted in the
4 Development Plan Map; the intent being that the fence will screen from public view the
5 truck parking area. In the event that any redevelopment of the property occurs which
6 necessitates submission and approval of a site plan, then the entirety of the property shall
7 meet the then existing requirements of the City of DeLand Land Development Regulations,
8 including but not limited to environmental and tree regulations.

9
10 G. Sewage Disposal and Potable Water. Provision for sewage disposal and
11 potable water needs of the DeLand CP PD will be provided in accordance with the
12 Comprehensive Plan, Ordinance No.1990-04, as amended, the City of DeLand, Land
13 Development Regulations Ordinance # 2002-09, as amended, and State of Florida
14 Administrative Code 64E-6.

15
16 H. Stormwater Drainage. Provision for stormwater retention shall be in
17 accordance with the City of DeLand, Land Development Regulations Ordinance # 2002-09,
18 as amended. Any future improvements on the property shall meet or exceed the
19 requirements for the stormwater management and conservation provision of the City of
20 DeLand, Land Development Regulations Ordinance # 2002-09, as amended. Areas
21 identified as retention areas on the Development Plan Map may be shifted or altered for
22 stormwater management purposes without the necessity of amendment of this
23 Development Agreement and its exhibits.

24

1 I. Access and Transportation System Improvements. All access and
2 transportation system improvements shall be provided in accordance with the City of
3 DeLand, Land Development Regulations Ordinance # 2002-09, as amended. Access to
4 the site is through direct connection to SR 15A and to Plymouth Avenue. The locations of
5 the points of access are shown on the Development Plan Map.

6
7 J. Internal Roadways. There are no internal roadways associated with this PD.

8
9 K. Binding Effect of Plans; Recording; and Effective Date. The Planned
10 Development Plan, including any and all amendments shall bind and inure to the benefit of
11 the Applicant and his successor in title or interest. The DeLand CP PD zoning, provisions
12 of the "Development Agreement," and all approved plans shall run with the land and shall
13 be administered in a manner consistent with Article 12 of the City of DeLand Land
14 Development Regulations Ordinance # 2002-09, as amended.

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

24

1 DONE and ORDERED by the City Commission, City of DeLand, Florida, this 1st day of
2 November, 2010.

3
4 ATTEST:

City Commission of DeLand Florida

5 Michael Pleus
6 Micheal Pleus
7 City Manager
8
9

Robert Apgar
Robert Apgar
Mayor

10 STATE OF FLORIDA
11 CITY OF DELAND

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

12
13 The foregoing instrument was acknowledged before me this 1st day of
14 November, 2010 (mo/yr), by Michael Pleus and Robert Apgar, as City
15 Manager and Mayor, City of DeLand, respectively, on behalf of the City of
16 DeLand, and who are personally known to me.

17
18
19 NOTARY PUBLIC, STATE OF FLORIDA
20 Type or Print Name: Kendra R. Curry
21 Kendra R. Curry
22 Commission No.: DD 701139
23 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

WITNESSES:

APPLICANT'S NAME, TITLE & CORPORATION:

Fred Bilowit
Managing Partner
DeLand Commercial Properties, LLC

The foregoing instrument was acknowledged before me this 10th day of
December 2010 (mo/yr), by Fred Bilowit who is personally known
to me or who has produced _____ as
identification.

NOTARY PUBLIC, STATE OF FLORIDA

Type or Print Name: *Michele Gootenberg*
Michele Gootenberg

Commission No.:

My Commission



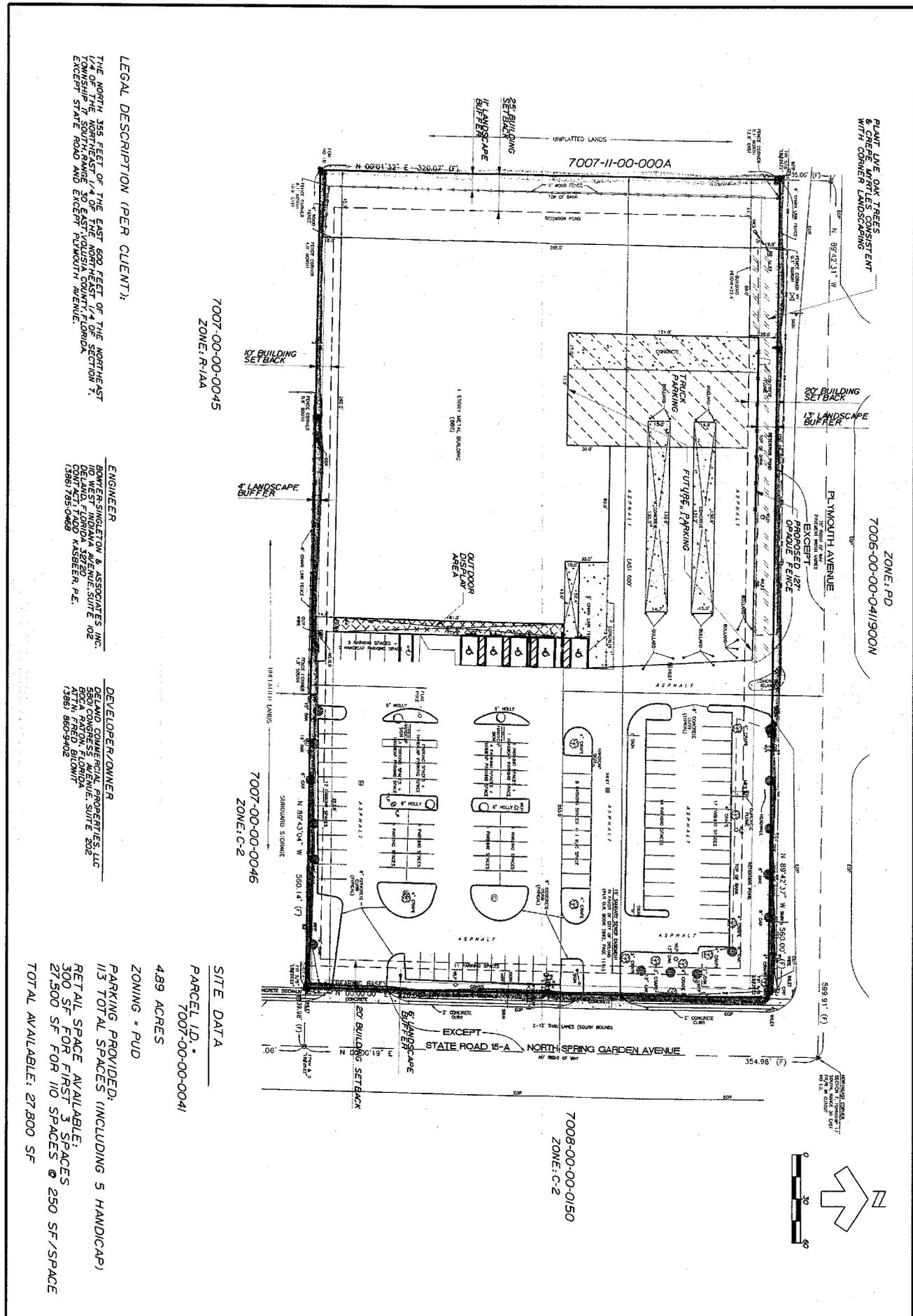
Revised December 10, 2010 u/p/zone/pd_doc

LEGAL DESCRIPTION

THE NORTH 355 FEET OF THE EAST 600 FEET OF THE NOTHEAST ¼ OF THE
NORTHEAST ¼ OF THE NORTHEAST ¼ OF SECTION 7, TOWNSHIP 17 SOUTH, RANGE 30
EAST, VOLUSIA COUNTY, FLORIDA. EXCEPT STATE ROAD AND EXCEPT PLYMOUTH
AVENUE.

EXHIBIT B

Instrument# 2011-058802 # 16
 Book: 6581
 Page: 2475



LEGAL DESCRIPTION (PER CLIENT):
 THE NORTH 355 FEET OF THE EAST 800 FEET OF THE NORTH-EAST 1/4 OF THE NORTH-EAST 1/4 OF THE NORTH-EAST 1/4 OF SECTION 7, TOWNSHIP 35S, RANGE 14E, COUNTY OF PALM BEACH, FLORIDA, EXCEPT STATE ROAD AND EXCEPT PLYMOUTH AVENUE.

ENGINEER
 BOWERS SINGLETON & ASSOCIATES, INC.
 100 WEST INDIANA AVENUE, SUITE 102
 BOCA RATON, FLORIDA 33433
 (561) 785-0488

DEVELOPER/OWNER
 DELAND COMMERCIAL PROPERTIES, LLC
 5801 CONGRESS AVENUE, SUITE 202
 BOCA RATON, FLORIDA 33433
 (561) 960-9402

SITE DATA
 PARCEL I.D. # 7007-00-00-0041
 4.89 ACRES
 ZONING = PUD
 PARKING PROVIDED:
 1/3 TOTAL SPACES (INCLUDING 5 HANDICAP)
 RETAIL SPACE AVAILABLE:
 300 SF FOR FIRST 3 SPACES
 27,500 SF FOR 110 SPACES @ 250 SF/SPACE
 TOTAL AVAILABLE: 27,800 SF

CONTRACTOR "AS-BUILT" I hereby state that these "As-Built" were furnished to me by the contractor listed below, or an employee under my direct supervision have reviewed these "As-Built" and believe them to be in compliance with my knowledge of what was actually constructed. This statement is based upon site observations of the construction. Contractor's Name Engineer		REVISIONS <table border="1"> <tr> <th>DATE</th> <th>REVISIONS</th> </tr> <tr> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> </tr> </table>		DATE	REVISIONS							CITY OF DELAND REZONING PLAN CENTURY LIQUIDATORS DELAND OFFICE: 110 WEST PALM BLVD., SUITE 102 DELAND, FLORIDA 32701 386-705-0488 • ENGINEERING# 386-738-1222		FLORIDA BOWERS SINGLETON 	
DATE	REVISIONS														

33-17.14. C-2--General Commercial District.

(a) *Statement of intent.* The purpose of this zoning district is to provide for the general retail and service needs of the DeLand area. The uses that are permitted will draw from a wider area than the uses allowed in the neighborhood commercial zoning district.

(b) *Primary uses and structures.* The following primary uses and structures are allowed in this district:

1. Abstractors, accountants, bookkeeping service and business services.
2. Ambulance service.
3. Apothecary shops, drugstores, and pharmacies.
4. Art, antique, china, flower, gift, glassware, jewelry, and luggage shops.
5. Bakery (retail), pastry, and gourmet shops.
6. Beauty salons and barber shops.
7. Bed and breakfast inn.
8. Boarding houses.
9. Book stores, stationery stores, and newsstands.
10. Bowling alleys, billiard parlors, skating rinks, and indoor recreation and amusement facilities.
- ~~11. Business colleges or commercial schools.~~
12. Catering service and cafeterias.
13. Churches, houses of worship, and religious institutions, with their customary accessory educational and recreational uses and buildings.
14. Communication towers, per section 33-24.
15. Commercial parking lots.
16. Convenience stores, without gas pumps.
17. Copy, mailbox or shipping shops
18. Day care facilities.
19. Department and discount stores.
20. Dry cleaning and laundry retail service and self-service establishments.
21. Furniture stores.
22. General professional offices, architect, engineer, surveyor, lawyer and other professional services.
23. Governmental and public buildings and land uses.
24. Grocery, vegetable, fruit, fish, meat, milk, dairy, and poultry products retail sales.
25. Gymnasium, dance studio and martial arts studios or compatible organized physical activities where the predominate use is for organized scheduled instruction.
26. Hardware, bicycle, sporting goods, hobby shops, and locksmiths.
- ~~27. Hospitals, clinics, laboratories, and medical and dental offices*, nursing homes and
congregate living facilities.~~
- ~~28. Hotels, motels, may include restaurants or conference facilities.~~
29. Interior decorators.
30. Investment, insurance, finance, real estate, and bank offices.
31. Men's, women's, and children's clothing and accessories.
32. Mini and neighborhood parks.
33. Mobile vendors or retail push carts.
34. Mortuary, funeral homes, and crematoriums.

35. Office equipment sales and service.
36. Outdoor advertising signs.
37. Paint, glass, home improvement, hardware, and nursery sales.
38. Pawn shops.
39. Pest control and exterminating service.
40. Photographic, art, dance, music supplies, studios, and shops.
41. Printing and lithography establishments.
42. Public or governmental buildings and land uses.
43. Radio and television sales and service.
44. **Restaurants, including drive-through facilities and fast food. ***
45. Sundries, tobacco, candy and confectionery shops.
46. Swimming pool sales and service.
47. Tailor shops and shoe repair.
48. Telephone answering service.
49. ~~Theaters and assembly halls.~~
50. Travel agencies.
51. Trophy and awards, sales and assembly.
52. Upholstering and reupholstering.
53. Other uses approved by the city commission after review and recommendation by the planning board, which are substantially similar to those uses permitted herein.

* These uses can only be conducted on the site if the applicant redevelops the site so that it meets all then current land development regulations of the City of DeLand, as well as any other applicable rules or regulations relative to the development of the subject property.