

**PALM BEACH COUNTY
PLANNING, ZONING AND BUILDING DEPARTMENT
ZONING DIVISION**



Application No.: ZV/DOA/W-2011-00419
Control No.: 2004-00616
Applicant: KRG Atlantic Delray Beach LLC
Owners: KRG Atlantic Delray Beach LLC
Agent: Urban Design Kilday Studios - Wendy Tuma
Telephone No.: (561) 366-1100
Project Manager: Carol Glasser, Site Planner II

Location: Northwest corner of West Atlantic Avenue and future Lyons Road. (Delray Marketplace)

TITLE: a Type II Zoning Variance REQUEST: to allow alternative street cross sections for Main Street; to eliminate the limitation on Free Standing Structures; to allow an increase in frontage for a single tenant; to allow streets without on-street parking; to allow a reduction in the number of queuing spaces; and, to allow an increase in the height of Building I. **TITLE:** a Development Order Amendment REQUEST: to reconfigure the Site Plan, reduce square footage, modify/delete Conditions of Approval (All Petitions, Architectural Review, Landscape, Signs, Use Limitations), and restart the Commencement of Development clock. **TITLE:** a Waiver REQUEST: to allow a reduction in the length of the Main Street and the minimum length of a block.

APPLICATION SUMMARY: Proposed is a Development Order Amendment for the Delray Marketplace. The 82.99-acre site was approved by the Board of County Commissioners on August 25, 2005 for 32.82 acres of development area and 50.17 acres of preserve area; and, last approved on March 31, 2010 for 300,526 square feet and 73 multi-family dwelling units.

The applicant requests to reconfigure the site plan, reduce square footage (-21,586 square feet to 278,940), restart the Commencement of Development clock pursuant to a new traffic study, and modify/delete Conditions (All Petitions, Architectural Review, Landscape, Signs, Site Design, and Use Limitations). The applicant also requests waivers to reduce the length of Main Street and to reduce the length of a block. The applicant also requests Variances from the limitations on free standing structures; to allow alternative designs for a commercial street in a Traditional Marketplace Development; to increase the frontage for a single tenant (Grocery Store); to reduce the number of queuing spaces for a Financial Institution drive-thrus; relief from the on-street parking requirement; and, to allow an increase of 9 feet in the height of Building I. A total of 1,081 commercial parking spaces will be provided. No changes are proposed to the preserve areas. Access remains from West Atlantic Avenue (2) and future Lyons Road (2).

ISSUES SUMMARY:

o Project History

Resolutions R-2005-1626, R-2005-1627, and R-2005-1628 adopted by the BCC on August 25, 2005 approved the rezoning to the TMD Zoning District, an Indoor Entertainment Requested Use, Requested Uses for 4 single tenants over 25,000 square feet in Buildings A, B, H, and I; and, a waiver of development standards for the TMD main street. This original waiver for the length of Main

Street is not vested due to the substantial redesign of the Main Street. Building H is reduced to 23,292 square feet with this application; therefore, corresponding Use Limitations Condition 4 is recommended to be revised to reduce the single tenants over 25,000 square feet previously approved in R-2005-1627.

Resolutions R-2007-0082, R-2007-0083, and R-2007-0084 adopted by the BCC on January 25, 2007 approved a rezoning and a DOA to add land area, reconfigure the site plan, and modify conditions of approval to add a commercial parcel at the southeast corner of the site (Helena Chemical), and Requested Uses for 22 Type I restaurants. Resolution ZR-2007-005 adopted by the ZC on January 5, 2007 approved a Type II Variance from the contiguous requirement for the primary frontage arcaded sidewalks, which remains vested with this application.

Resolution R-2008-0112 adopted by the BCC on January 24, 2008 approved a DOA to modify Engineering conditions of approval and to add a temporary access point. Resolutions R-2008-0263, R-2008-0266, and R-2008-0267 adopted by the BCC on February 28, 2008 approved a rezoning and a DOA to add and delete preservation land area.

Resolution ZR-2008-042 adopted by the ZC on June 5, 2008 approved two Type II Variances for the Grocery Store (Building A) to be 55 feet in height and a variance of 57 feet to allow 298 feet of frontage for the Grocery Store. The variances for the Grocery Store are not vested with this application due to the redesign of the Grocery Store as a 1-story building.

Resolutions R-2008-1136 and R-2008-1137 adopted by the BCC on June 30, 2008 approved a DOA to reconfigure the site plan, modify and delete conditions of approval (Building and Site Design, Engineering, Use Limitations, and Landscape), approve an additional single tenant over 25,000 square feet; and, to collocate the requested use for the Indoor Entertainment (Bowling Alley) with the Indoor Theater (Movie) in Building I. A total of 4 single tenants over 25,000 square feet remain vested.

Administrative Inquiry (AI) AI-2009-002, May 28, 2009: The Zoning Director initiated an Administrative Inquiry to request BCC direction regarding implementing the April 6, 2005 Conceptual Plans for the Delray Marketplace TMD shown to the BCC as part of the original "Beauty Contest" approval process. The BCC provided direction that the Development Review Officer (DRO) may certify application ZV/W/DOA-2008-1900 with a modification to provide 73 dwelling units and eliminate vertical integration of the dwelling units; relocate the residential units to the north portion of the site at the rear of Building I; delete the parking structure to the west of Building I; and reduce commercial square footage from 320,000 square feet to 300,526 square feet. The BCC directed the applicant and staff to reach out to the community prior to the public hearing for this application to include all of the participants involved in the original AGR-TMD approval process.

On October 1, 2009, the Zoning Commission approved a Type II Variance to eliminate the percentage of transparency for the building design of Building I (Movie Theater and Bowling Alley). The approval was based the findings indicating these uses rely on low-light levels to function, require the auditorium at the building perimeter for egress, and the lanes to be glare-free for the function of the uses. ZR-2009-036 ties the grant of the variance to the Bowling Alley and Indoor Theater uses and remains vested for Building I.

On March 31, 2010, the BCC approved R-2010-0447 and R-2010-446 for a DOA to reconfigure the site plan, reduce the number of dwelling units from 86 to 73, reduce commercial square footage, restart the Commencement of Development clock, modify/delete Conditions of Approval (Building and Site Design, Planning), and a Waiver of Traditional Development District (TDD) parking structures to allow surface parking in excess of 1 space per 250 square feet of non-residential. The Parking Structure Waiver would not be vested with this application regardless that the proposed number of parking spaces is below the threshold requiring a parking structure for the proposed plan.

Administrative Inquiry (AI) AI-2011-002, February 24, 2011: The Zoning Director initiated an Administrative Inquiry to provide the BCC, property owner, surrounding residents, and original residents who participated in the 2004 AGR-TMD Design Charrette with an overview of the proposed changes to the plan; and for confirmation from the BCC that the proposed amendments to the plan will be consistent with the April 6, 2005 Conceptual Plan shown to the BCC as part of the approval

process for the Delray Marketplace AGR-TMD. The 5 main modifications to the plan included: 1) Relocation of Building A (Grocery Store) to accommodate the typically large parking area in front of the store, which eliminates Main Street terminus, affects the design by reducing the length of Main Street, and discourages pedestrian circulation; 2) Redesign and Relocation of Buildings along Main Street, which eliminates the terminus, impacts the block structure, and the drive-thrus conflict with the pedestrian walkway; 3). Reconfiguration of Main Street by decreasing length and introducing additional on-street angled parking giving prominence to the vehicular over the pedestrian discouraging pedestrian circulation and creating distance between buildings; 4) Revision to Access 100 feet to the west to accommodate relocation of the Grocery Store and changes to the Main Street to be considered with the above requests; and 5) Relocation of the Central Plaza and Modifications to relocate the Central Plaza adjacent to the Movie Theater, which is in a less prominent location than on the Conceptual Plan and the creation of Amphitheater Plaza adjacent to parking aisles. Staff's recommendations to provide consistency with the Conceptual Plan included: Grocery Store back to original location or align with north side of Main Street; align Building C1 (Financial Institution with 3 drive-thrus) along the north side of Main Street to avoid conflict with the pedestrian walkway and improve block structure; eliminate conflicts between circulation and parking; and, expand and enhance the useable pedestrian space adjacent to the amphitheater. The BCC moved to proceed with the project allowing for waivers and variances, and to include the caveat that the project could not be extended beyond the approved completion date of November 12, 2011.

o Consistency with Comprehensive Plan

The Planning Division has determined that the requests are consistent with the Commercial Low with an underlying Agriculture Reserve (CL/AGR) Land Use Designation designation of the Palm Beach County Comprehensive Plan and direction received from the BCC on February 24, 2011. See Staff Review Analysis for additional Planning Division comments.

o Compatibility with Surrounding Land Uses

NORTH:

FLU Designation: AGR
 Zoning District: AGR
 Supporting: Bona-fide Agriculture and Agriculture Sales and Service (Control 86-129)

SOUTH:

FLU Designation: AGR
 Zoning District: AGR
 Supporting: Boni-fide Agriculture and a Special Exception for Agricultural Sales (Control 94-070)

EAST:

FLU Designation: AGR
 Zoning District: Agricultural Reserve Planned Unit Development (AGR-PUD)
 Supporting: Ascot-Lyons and Atlantic PUD (Control 04-504),

EAST:

FLU Designation: AGR
 Zoning District: General Commercial (CG)
 Supporting: Automotive Service Station

WEST:

FLU Designation: AGR
 Zoning District: AGR
 Supporting: Commercial Stable, Agriculture (Control No 74-61)

The Delray Marketplace development was previously found to be compatible with the surrounding land uses under the prior applications. This application requests to reconfigure the development area and reduce square footage. The proposed amendment does not decrease the residential buildings' setback from the north boundary. The property owner is required by a Condition of Approval (Planned Development–TMD Condition 2) to notify prospective residents in writing through the

Homeowners' Association (HOA) documents, written sales brochures, sales contracts, and site plans of Florida's Right to Farm act. The 15-acre TMD Preserve Parcel 3 abuts the west boundary of the development area and is approximately 133 feet wide along the southern portion of the west property line adjacent to the relocated Grocery Store (Building A1). As proposed and subject to the recommended conditions of approval, staff anticipates no adverse impacts to the surrounding properties from the requests.

- o Modification of Conditions

The applicant requests to modify/delete Conditions of Approval (All Petitions, Architectural Review, Landscape, Signs, Use Limitations) as follows:

The applicant's request to modify the All Petitions Conditions are ones that are consistently revised with Development Order Amendments by staff.

Architectural Review Conditions 1, 4 - 9:

Applicant's Request:

1. Amend to state Architectural Elevations for Buildings A1 and I shall be submitted simultaneously with the site plan for Final Architectural Review instead of requiring all non-residential buildings prior to final approval by the Development Review Officer (DRO). Applicant would like to work with staff on the wording of the condition to allow the applicant to utilize the DRO Type II Concurrent Review process. (See Architectural Review 1 in Exhibit C-2)
- 4: Revise or delete this condition, which was relative to the previous 2-story design of the Grocery Store (previous Building A), to reflect the current design of Building A1. (See Architectural Review 4 in Exhibit C-2)
- 5: Modify the condition to not require dumpsters to be integrated into Building I. Applicant proposes to provide screen gates and decorative gates are a requirement of condition 6. (See Landscape – Interior 9 in Exhibit C-2)
- 6: Update condition to reflect the revised buildings providing service gates, Buildings B1, D, E, FG, H and I. (See Architectural Review 5 in Exhibit C-2)
- 7: Delete the condition requiring screening walls for Building B as the condition is no longer applicable. (See Architectural Review 6 in Exhibit C-2)
- 8: Revise the condition for the drive-thru canopy to apply to Building C1 and to not state all drive-thrus as Building A1's drive-thru is not visible from Main Street or West Atlantic Avenue. (See Architectural Review 7 in Exhibit C-2)
- 9: Update the condition requiring Regulating Plan details that are subject to review prior to final approval by the DRO to reflect the proposed site plan amenities, such as: Plazas, amphitheater, pedestrian gathering areas, trellis, water features, bus shelters, entry features, signage, street furniture and freestanding light fixtures. (See Architectural Review 8 in Exhibit C-2)

Staff's Response:

Staff has reviewed the applicant's request for modifications to or deletion of Architectural Review Conditions 1, and 4 through 9. Staff agrees that the conditions may be modified to reflect the currently proposed site plan or have agreed with the removal of the condition as indicated in Exhibit C-2.

Landscape – Interior Condition 5

Applicant's Request:

Delete Landscape – Interior Condition 5 relative the parking structure, which is no longer proposed, and, delete Landscape – Interior 8 relative to the focal point for the previous variance for the height of Building A (elevated Grocery Store) as no longer applicable.

Staff's Response:

Staff recommends these conditions be deleted as no longer applicable. (See Landscape – Interior 5 and 7 in Exhibit C-2)

Landscape – Perimeter 10

Applicant's Request:

Modify Landscape – Perimeter 10 to omit the south perimeter buffer from the requirements of this condition as the large number of trees will not do well in the 20-foot wide buffer, which has 5-foot wide utility easement overlap. The applicant has also indicated the large number of trees hinders the ability to create the two “windows” allowed by Code to permit views into the TMD from the West Atlantic Avenue right-of-way by the clustering of the trees.

Staff's Response:

This condition requires 1 native palm for each 20 feet and 1 pine tree for each 30 feet in addition to the ULDC requirement for 1 canopy tree per 25 lineal feet of the south right-of-way buffer. Staff agrees the total number of trees will limit the ability to allow “windows” to view the TMD buildings from the right-of-way. Staff has recommended and the applicant has agreed to a reduction the number of additional trees (versus elimination of all the additional palms and pines) to require 1 native palm or pine tree per each 30 feet in addition to Code requirements for canopy trees and to modify the condition's clustering requirement. (See Landscape – Perimeter 10 and 12)

Sign Condition 1

Applicant's Request:

Modify Sign Condition 1 as the parking structure is no longer proposed and Building I is no longer greater than 175 feet in length.

Staff's Response:

Staff recommends Sign Condition 1 be modified as requested by the applicant for the reasons indicated by the applicant. (See Sign 1 in Exhibit C-2)

Site Design Condition 1

Applicant's Request:

Update Site Design Condition 1, which specified additional primary frontages pursuant to the previously approved Main Street waiver and is not applicable to the proposed site plan and current Main Street waiver request.

Staff's Response:

Staff recommends that this condition be amended to require primary frontages on building facades: A2 east, B1 south, C1 north and west, C2 north, and H north consistent with this application's requests to be consistent with the intent of the previous condition. (See Site Design 1 in Exhibit C-2)

Use Limitations Condition 4

Applicant's Request:

Update Use Limitations Condition 4, which indicates the required locations of the 5 previously approved single tenants over 25, 000 square feet, to reflect the proposed plan.

Staff's Response:

Building H is now proposed to be 23,292 square feet and cannot accommodate a single tenant over 25,000 square feet. Thus, 1 of the 4 single tenants over 25,000 square feet previously approved by the BCC via Resolution R-2005-1627 and never implemented will not be vested upon the approval of the Preliminary Site Plan dated April 18, 2011. Staff recommends that this condition be updated to reflect the approved locations of the remaining 3 single tenants over 25,000 square feet approved via R-2005-1627 and the 1 single tenant over 25,000 square feet for the Bowling Alley tenant approved by the BCC via R-2008-1136. Thus, the development remains vested for 4 single tenants over 25,000 square feet. (See Use Limitations 4 in Exhibit C-2)

o Traffic

Petitioner has estimated the build-out of the project to be December 31, 2013. Although this project has a previous approval, a new traffic study was submitted to extend the buildout date and address

the uses now proposed. Total net new traffic expected from this project is 9,664 trips per day, 1,014 trips in the PM peak hour. See Staff Review and Analysis for additional Traffic comments.

o Landscape/Buffering

An Alternative Landscape Plan (ALP) was approved on January 10, 2008. The plan indicates a 3-foot high berm with a 3-foot high hedge for the north and west perimeter buffers adjacent to Building A1 and Building I to provide a 6-foot high opaque screen. The ALP is consistent with the landscape plan for the Rural Parkway. The plant materials consist of live oaks, mahoganies, sabal palms, southern red cedars, and slash pines as well as 3 tiers of shrubs planted in a naturalistic pattern. The surface parking area provides a minimum of 1 canopy tree per 8 parking spaces. Street trees are provided along sidewalks in accordance with TMD Code requirements.

o Signs

Prior to final approval by the DRO, the Master Sign Program will be updated to reflect the revised Sign Condition 1 and incorporation of the sign design and placement into the related to architectural and landscape features on the site.

o Architectural Review

The proposed development is subject to the Architectural Guidelines (Chapter 5.C.) of the Unified Land Development Code (ULDC). Staff recommends that final architectural elevations for Building A1 and I be submitted for review and approval at submittal for the final DRO Site Plan approval. As the project is located within AGR TMD, specific additional design guidelines apply to both the buildings and site layout. While some conceptual elevations have been submitted, the final architectural elevations shall be designed to be consistent with the Final Site Plan, all applicable Conditions of Approval, and ULDC requirements.

The conceptual elevations dated June 20, 2011 by Cuhaci & Peterson for Building A1; and, the focal point at Building A2 including Main Street conceptual and the Building B1 conceptual elevation dated May 2, 2011 by Wakefield Beasley & Associates are included as Figures 21, 22, and 23. Prior to final approval by the DRO, the Regulating Plan details shall be revised to be consistent with the conceptual architectural theme submitted on June 20, 2011 for preliminary review.

Delray Marketplace is 1 of only 2 TMDs allowed in the AGR Tier. The initial projects presented to the BCC as part of a "Beauty Contest" indicated an initial layout that varied from the current proposed site plan. The current site plan consists of 7 multifamily residential buildings and 13 non-residential buildings. The building area totals 266,240 square feet and with an additional 12,700 square feet of outdoor dining for a total of 278,940 square feet of commercial building area per the applicant.

As a product of changes to the site plan, the applicant is requesting a variance from Art. 3.F.4.E.9.b. – AGR TMD Free Standing Structures and Art. 3.F.4.D.1.c.4), Maximum Frontage Per single Tenant. Building A1, the grocery store, is a traditional, 1-story free standing building and has been relocated to the northwest corner of the property. The building includes a drive-thru pharmacy on the west side and traditional, large parking lots on the south and east side.

In supporting their proposed site plan, the applicant makes the argument that grocery store shoppers will be singularly focused and will not utilize the other commercial/recreational facilities of the TMD. "A customer coming to the grocery store is not going to leave their groceries in the car and go to a movie, restaurant or retail store." While staff agrees that the average grocery store shopper will not shop further within the TMD after purchasing groceries, staff believes that modifications to the proposed site plan would facilitate shopping within the TMD before grocery shopping. Additionally, staff believes that the intent of the TMD is more closely met with convenience walkways and shade structures that promote the connections between the parking and the retail buildings. As such staff has recommended several Conditions of Approval in Exhibit C-1 to address pedestrian connections from the parking lots generally associated with the Grocery Store to the remainder of the TMD to mitigate the impacts of the free standing building variance.

The applicant also requested a variance for Building A1 from Art. 3.F.4.D.1.c.4), which allows for a single tenant of up to 200 feet of building frontage, with an increase to 240 feet in the AGR Tier if the building is designed to provide for the appearance of separate storefronts. Building A1 is designed with a build-to line on the south façade (Primary Entrance) and a second build-to line on the east façade (Secondary or staff entrance). Thus, the Grocery Store has 2 fronts and 2 rears in accordance with the definitions of the build-to-line and lot frontage for a Traditional Development District (TDD). Staff has reviewed conceptual elevations for Building A1 to ensure that the Code requirements will be met prior to final approval by the DRO to allow the south façade to be greater than 200 feet and the pharmacy drive-thru to be located on the west façade.

o Variance

The applicant is requesting the following variances from the ULDC:

	ULDC ARTICLE	REQUIRED	PROPOSED	VARIANCE
V1	Art. 3.F.4.D.7. Parking	Parking on both sides of all 2- way streets.	Waive requirement in areas south of Building 1SW, and 1SE, north of Building E, west of Buildings C1 and D, west of Building B1 and east of Building A1.	Waive requirement in areas south of Building 1SW, and 1SE, north of Building E, west of Buildings C1 and D, west of Building B1, and east of Building A1.
V2	Figure 3.F.4.D. Typical Example of TMD Commercial Street with Angled Parking to include the requirements for street cross sections in: Art. 3.F.2.A.1.c.1) Street Design Table 3.F.2.A.TDD Street Design Standards by Tier Figure 3.F.2.A. TDD Commercial Street Art. 3.F.4.D.2.a. Main Street Art 3.F.4.D.2.a.1) Main Street Design Exception	Cross Section Street Design per Figure – 91 foot cross section allowed	Alternative Street Cross Section Design – 151± foot cross section proposed	Alternative Street Cross Section Design – Variance of 60± feet
V3	Art. 3.F.4.D.1.c.4), Maximum Frontage Per Single Tenant where 240 feet is allowed provided that any increase over 200 feet incorporates the appearance of a separate storefront on the subject façade to include a distinct architectural style a minimum of 40 feet in length, a similar percentage of transparency, and an additional building entrance.	Maximum frontage of 240 feet.	Maximum frontage of 295 feet, for Building A1 (Grocery Store), inclusive of the drive thru canopy on the west side of the building and the delivery area screen wall on the east side of the building.	55 feet.
V4	Art. 3.F.4.E.9.b. AGR TMD Free Standing Structures	10 percent maximum of the square footage may be located in freestanding	20.1 % +/-	10.1 % +/-

		structures. Free standing structures are: Buildings A-1, A-2, and C-1.		
V5	Art. 6.A.1.D.16.a. – Queuing Standards and Table 6.A.1.D-5 – Minimum Queuing Standards	Queuing of five (5) spaces for teller lanes	Queuing of three (3) spaces per teller lane	Two (2) spaces per teller lane
V6	Art. 3.F.4.D.3.a.2) TMD Maximum Building Height in the AGR Tier	35 feet	44 feet for Building I	Increase of nine (9) feet in the height of Building I

V.1: Art. 3.F.4.D.7. Parking

On-street parking is required on both sides of all 2-way streets and on at least 1 side of 1-way streets, except within 25 feet of a street intersection or alley or within 10 feet of a fire hydrant, or along a vehicular access way to internal parking. The applicant requests a variance from this requirement in areas south of Building 1SW, and 1SE, north of Building E, west of Buildings C1 and D, west of Building B1 and east of Building A1

V.2: Figure 3.F.4.D. Typical Example of TMD Commercial Street with Angled Parking to include the requirements for street cross sections as also referenced in Art. 3.F.2.A.1.c.1); Table 3.F.2.A.TDD; Figure 3.F.2.A.; Art. 3.F.4.D.2.a.; and, Art 3.F.4.D.2.a.1)

Main Streets shall be designed to be consistent with Figure 3.F.2.A TDD Commercial Street. Table 3.F.2.A. TDD Street Design specifies the precise widths of travel lanes and the parallel parking lanes to achieve a pedestrian-scaled commercial street. The Code allows a Design Exception for Main Streets designed as an access way or a non-residential parking lot to increase the overall width to provide for angled parking not to exceed a 70 degree angle as indicated in Figure 3.F.4.D. The required width of travel lanes shall be as approved by the County Engineer based upon factors as anticipated average daily traffic and overlap of back-out maneuvers. The applicant requests an Alternative Street Cross Section Design – to allow an additional cross section width of +/- 60 feet as reflected on the Preliminary Site Plan and reviewed by the County Engineer.

V.3: Art. 3.F.4.D.1.c.4). Maximum Frontage Per Single Tenant

An increase from a maximum of 200 feet of frontage up to 240 feet of frontage per single tenant is permitted in the AGR Tier, provided that any increase over 200 feet incorporates the appearance of a separate storefront on the subject façade to include the following: A distinct architectural style a minimum of 40 feet in length, a similar percentage of transparency, and an additional building entrance or appearance of an entrance. The applicant requests a variance to allow a maximum frontage of 295 feet, for Building A1 (Grocery Store), inclusive of the drive thru canopy on the west side of the building and the delivery area screen wall on the east side of the building.

V.4: Art. 3.F.4.E.9.b. AGR TMD Free Standing Structures

A maximum of 10 percent of the overall allowable square footage of an AGR-TMD may be permitted to be developed as free-standing structures, provided that a minimum of 1 façade is developed according to the standards for primary or secondary frontage.

The 3 free standing buildings are: A1, A2, and C1. The size of Building A1, the free standing building for the Grocery Store, exceeds the 10% limit on free standing structures for the overall allowable square footage of 320,000 approved via Ordinance 2005-039. Building A1 proposed at 45,600 square feet is 14.3% of the overall allowable square footage. Building A2 proposed at 10,700 square feet is 3.3% of the overall allowable square footage. Building C1 (Financial Institution) proposed at 4,750 square feet is 1.5% of the overall allowable square footage. The variance request must also consider that the DRO may approve amendments to the Preliminary Site Plan approved by the BCC in accordance with Art. 2.D.1.G.1.b to approve an increase of no more than 5% of the total floor area of any building provided the increase does not exceed 5,000 square feet whichever is less.

Given the above, the variance request should account for possible unforeseen circumstances at time of building permit and staff hereby clarifies the variance to account for the 5% increase in square footage that may be allowed administratively. The total variance request is: Building A1 at 15% (45,600 square feet x 1.05 = 47,880 square feet); Building A2 at 3.5% (10,700 square feet x 1.05 = 11,235 square feet); and, Building C1 at 1.6% (4,750 x 1.05 = 4,988 square feet) for a total of 20.01% of the overall allowable square footage proposed as free standing structures. Thus, the total variance request is 10.01% over the allowed 10% of the square footage for free standing structures.

V.5: Art. 6.A.1.D.16.a. Queuing Standards and Table 6.A.1.D-5 Minimum Queuing Standards

A drive-thru for a Financial Institution is required to provide 5 queuing spaces for each teller lane and an additional queuing space for each teller lane in front of the point of service. The applicant is requesting to provide 3 queuing spaces for the 2 teller lanes and to allow the 2 teller lanes and the ATM lane to taper into one lane that is 15 feet in width between a speed bump and pedestrian crossing signage in advance of the pedestrian crosswalk.

V.6: Art. 3.F.4.D.3.a.2) TMD Maximum Building Height in the AGR Tier

Maximum building height in a TMD in the AGR Tier is limited to 35 feet and 2 stories. The applicant is requesting a variance to allow an increase of 9 feet in the height of Building I for a portion of the building relating to the Indoor Theater use. The applicant is not requesting to allow any increase in the number of stories over the 2-story limitation with the request to allow a portion of Building I to be 44 feet in height.

o Waivers

The applicant is requesting a waiver from Art. 3.F.4.D.2.a Main Street, which requires at least 2 two-way streets forming an intersection to be designated as Main Streets. A minimum of 1 Main Street shall cross through the entire length or width of a TMD, unless waived by the BCC. The applicant is requesting a waiver to allow the proposed reconfiguration of Main Street. None of the Main Streets cross through the entire length or width of the TMD. Staff recommends that the condition to require additional primary frontages to mitigate the loss in the length of Main Street be amended to require primary frontages on the following building facades: A2 east, B1 south, C1 north and west, C2 north, H north. This is consistent with approval of the previous waiver from the length of Main Street.

The applicant is also requesting a waiver from TMD Block Structure to allow the block for Building A2 to be less than the minimum length of 160 feet as required by Art. 3.F.2.A.1.b.1). The Code allows the BCC to waive this requirement if the BCC determines that the block structure proposed is functionally equivalent for the purpose of providing efficient circulation systems for pedestrians, non-motorized vehicles, and motorists that serve to functionally and physically integrate the various land use activities. The proposed length of the block must also create a stronger pedestrian orientation. In this case, the shorter block of 142 feet is for Building A2. Staff recommends approval of the waiver to allow Building A2 to be in closer proximity to Building A1 to the west; and Buildings B1 and C1 to the east.

Staff is recommending approval of the requested waivers

o Zoning Commission (ZC) Hearing

At the suggestion of staff, the applicant requested a postponement by right from the June 2, 2011 ZC hearing to allow a variance request to allow an increase in the height of Building I submitted under application ZV-2011-1166 to be added to this application versus proceeding as a separate application. Therefore, this application was also postponed by right from the June 27, 2011 BCC hearing and has been updated to include the additional variance request. (Application ZV-2011-1166 was withdrawn.) This application was re-advertized, courtesy notices re-sent, and posted notices updated to include the additional variance request.

TABULAR DATA

	EXISTING	PROPOSED
Property Control Number(s)	Development Area: 00-42-46-18-01-000-0990 00-42-46-18-01-000-1272 00-42-46-18-01-000-1281 00-42-46-18-01-000-0971 00-42-46-18-01-000-0981 00-42-46-18-01-000-0972 00-42-46-18-01-000-1273 00-42-46-18-01-000-1242 Preserve Area: 1) 00-42-46-17-07-001-0000 00-42-46-17-07-002-0000 2) 00-42-46-18-07-001-0000 00-42-46-18-07-003-0000 3) 00-42-46-18-09-002-0000 00-42-46-18-09-003-0000 4) 00-42-46-18-07-004-0000 Rural Parkway: 00-42-46-18-01-000-0973 00-42-46-18-01-000-0974	Same
Land Use Designation:	Agricultural Reserve (AGR) and Commercial Low, with an underlying AGR (CL/AGR)	Same
Zoning District:	Traditional Marketplace Development (TMD)	Same
Tier:	Agricultural Reserve (AGR)	Same
Use:	Commercial – General Retail Sales, General (including a Grocery Store) Entertainment, Indoor Financial Institution with a drive-thru Restaurant, Type I Restaurant, Type II Theater, Indoor Multifamily Residential	Same (Grocery Store now includes a drive-thru for a pharmacy.) (Financial Institution now includes 3 drive-thrus.)
Acreage:	82.99 acres	Same
Dwelling Units (DU):	73 multifamily	Same
Density:	0.83 DU/acre	Same
Parking:	1,324 spaces	1,081 spaces (-243 spaces)
Access:	W. Atlantic Ave (2) and Lyons Road (2)	Same. (western W. Atlantic Ave. access is shifted approximately 100 feet to the east.)

PUBLIC COMMENT SUMMARY: At the time of publication, staff had received no contacts from the public regarding this project.

RECOMMENDATION: Staff recommends approval of the requests subject to 11 Conditions of Approval as indicated in Exhibit C-1; and, 80 Conditions of Approval as indicated in Exhibit C-2.

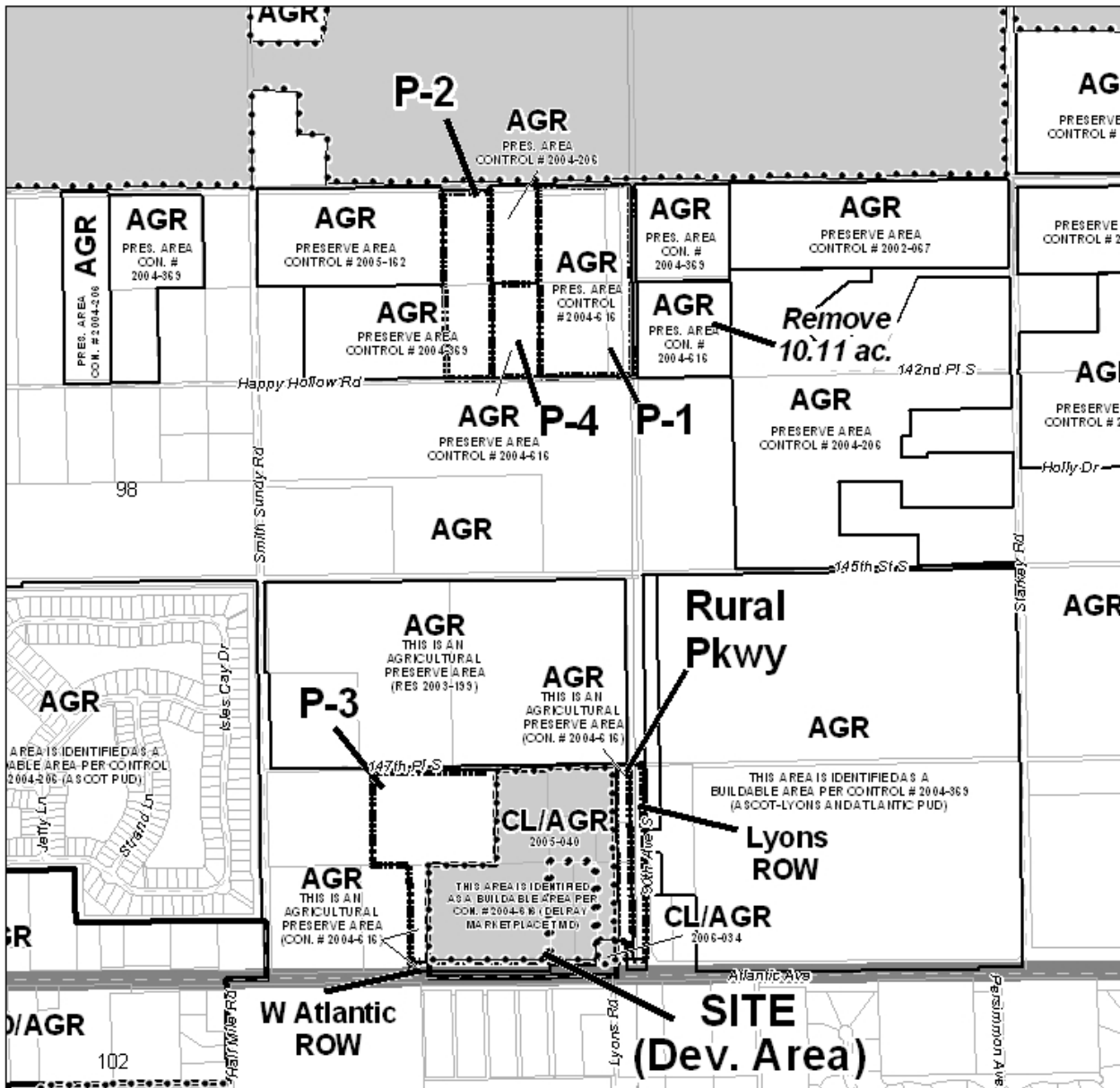
MOTION: To adopt a Resolution approving a Type II Variance to allow alternative street cross sections for Main Street; to eliminate the limitation on free standing structures; to allow an increase in frontage for a single tenant; to allow streets without on-street parking; to allow a reduction in the

number of queuing spaces; and, to allow an increase in the height of Building I subject to the Conditions of Approval as indicated in Exhibit C-1.

MOTION: To recommend approval of a Development Order Amendment to reconfigure the Site Plan, reduce square footage, modify/delete Conditions of Approval (All Petitions, Architectural Review, Landscape, Signs, Use Limitations), and restart the Commencement of Development clock subject to the Conditions of Approval as indicated in Exhibit C-2.

MOTION: To recommend approval of a Waiver to allow a reduction in the length of the Main Street and the minimum length of a block.

PALM BEACH COUNTY PLANNING DIVISION SITE LOCATION AND LAND USE



Application Number: ZV/DOAW-2011-419
 Control Number: 2004-616
 Land Use Atlas Page: 98
 Date: 04/28/2011



Figure 1 Land Use Map

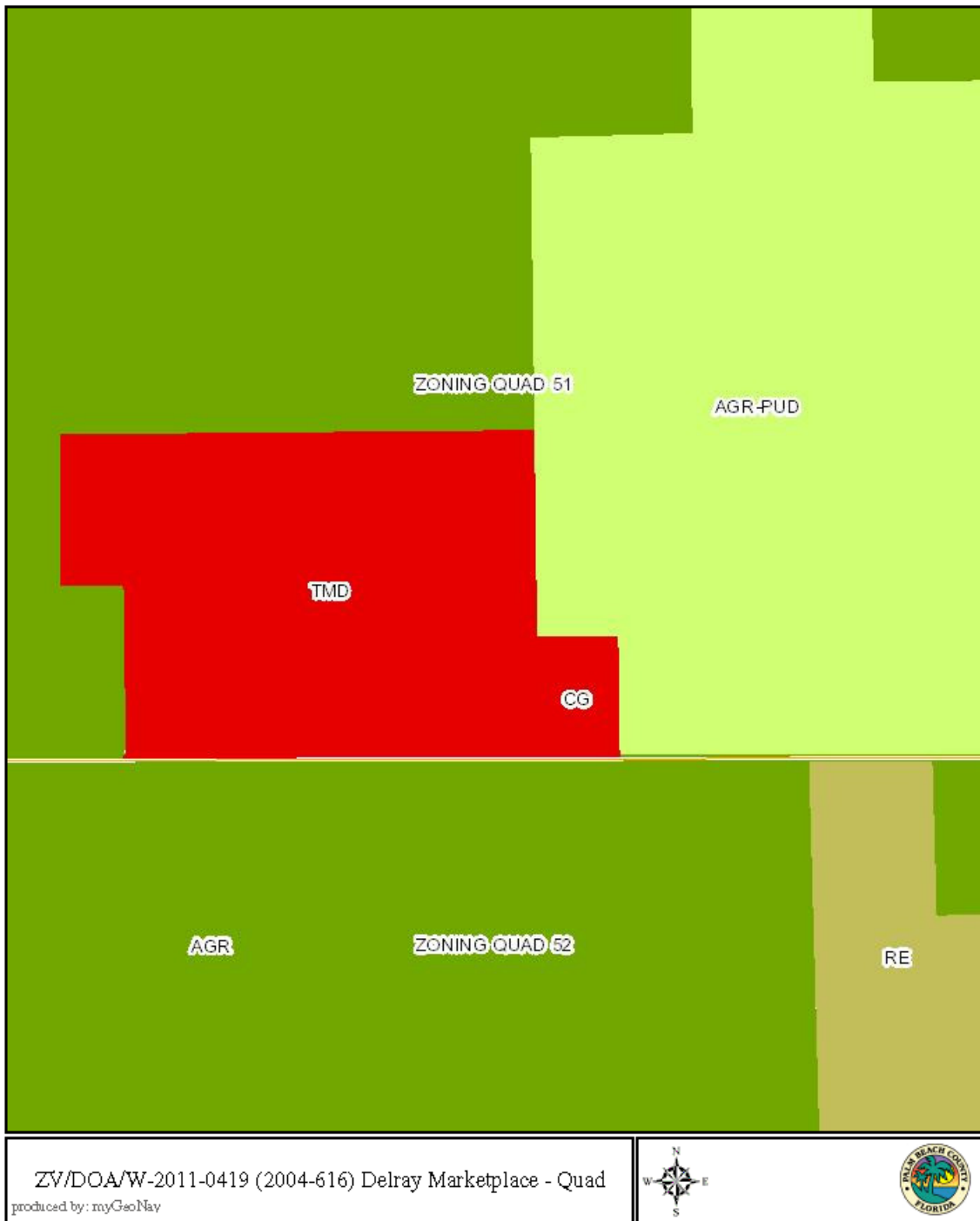


Figure 2 Zoning Quad Map



Figure 3 Aerial

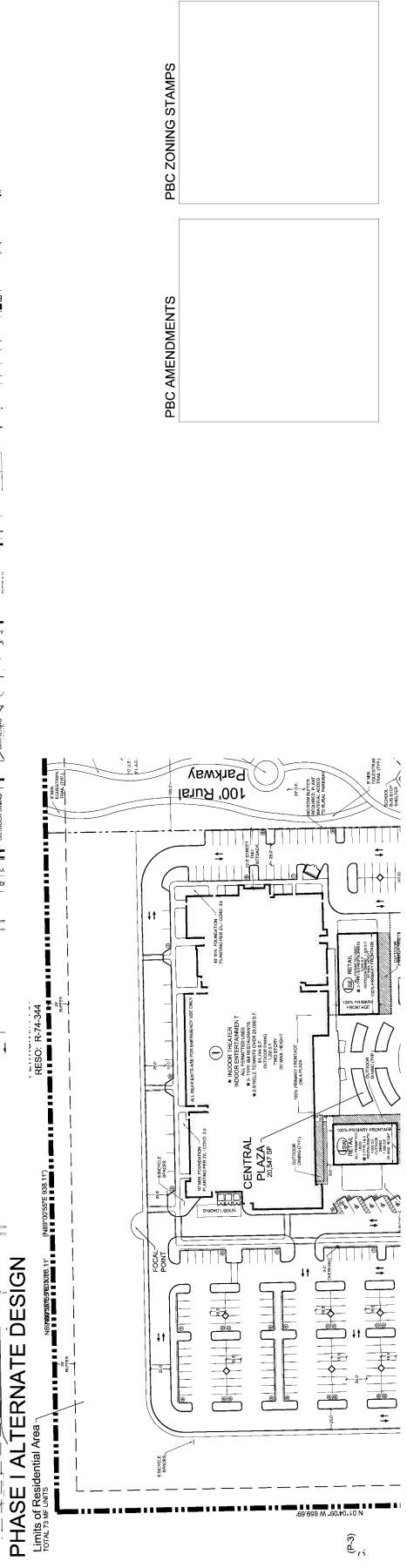
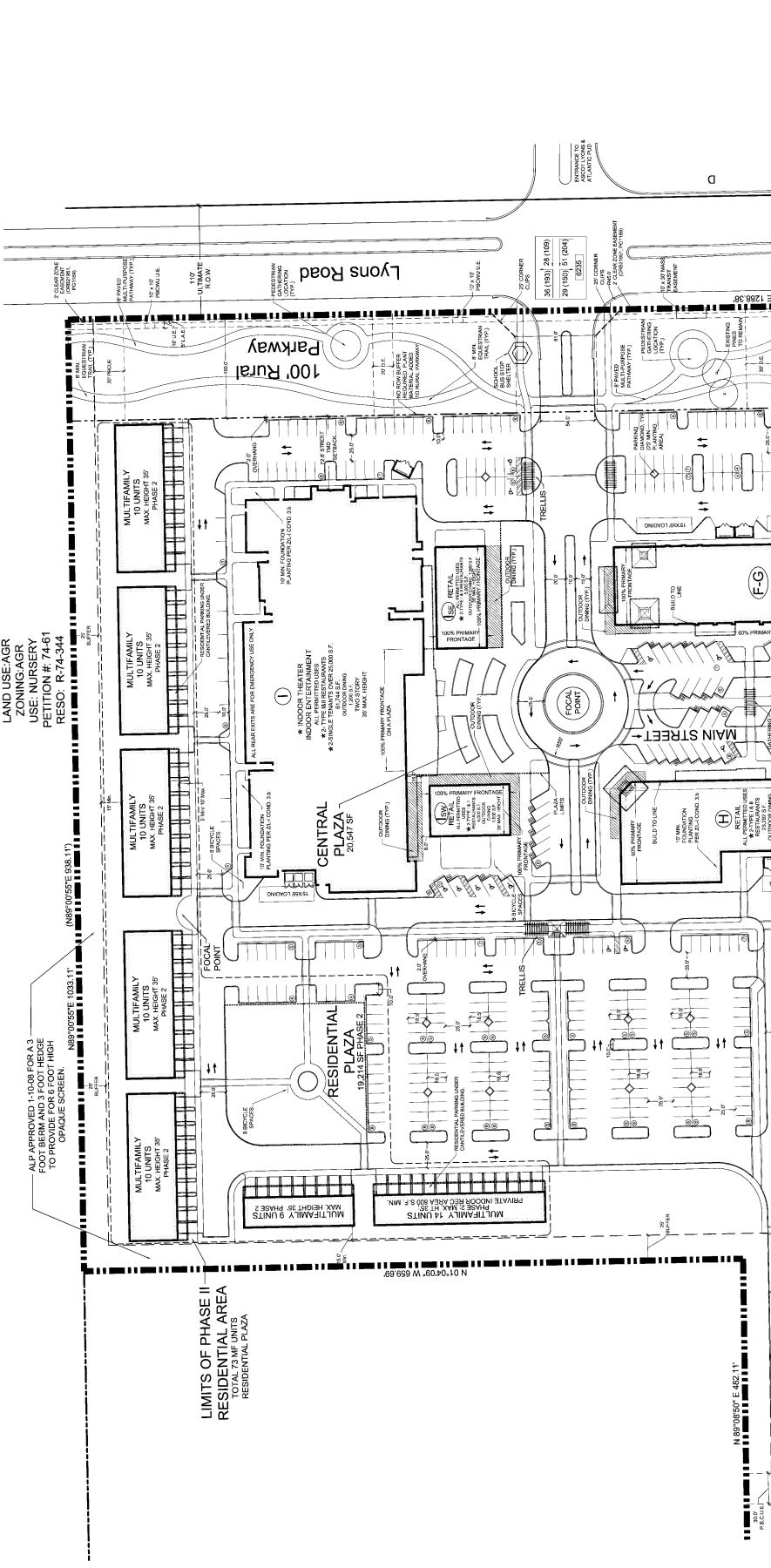


Figure 5 Preliminary Site Plan dated April 18, 2011, page 2

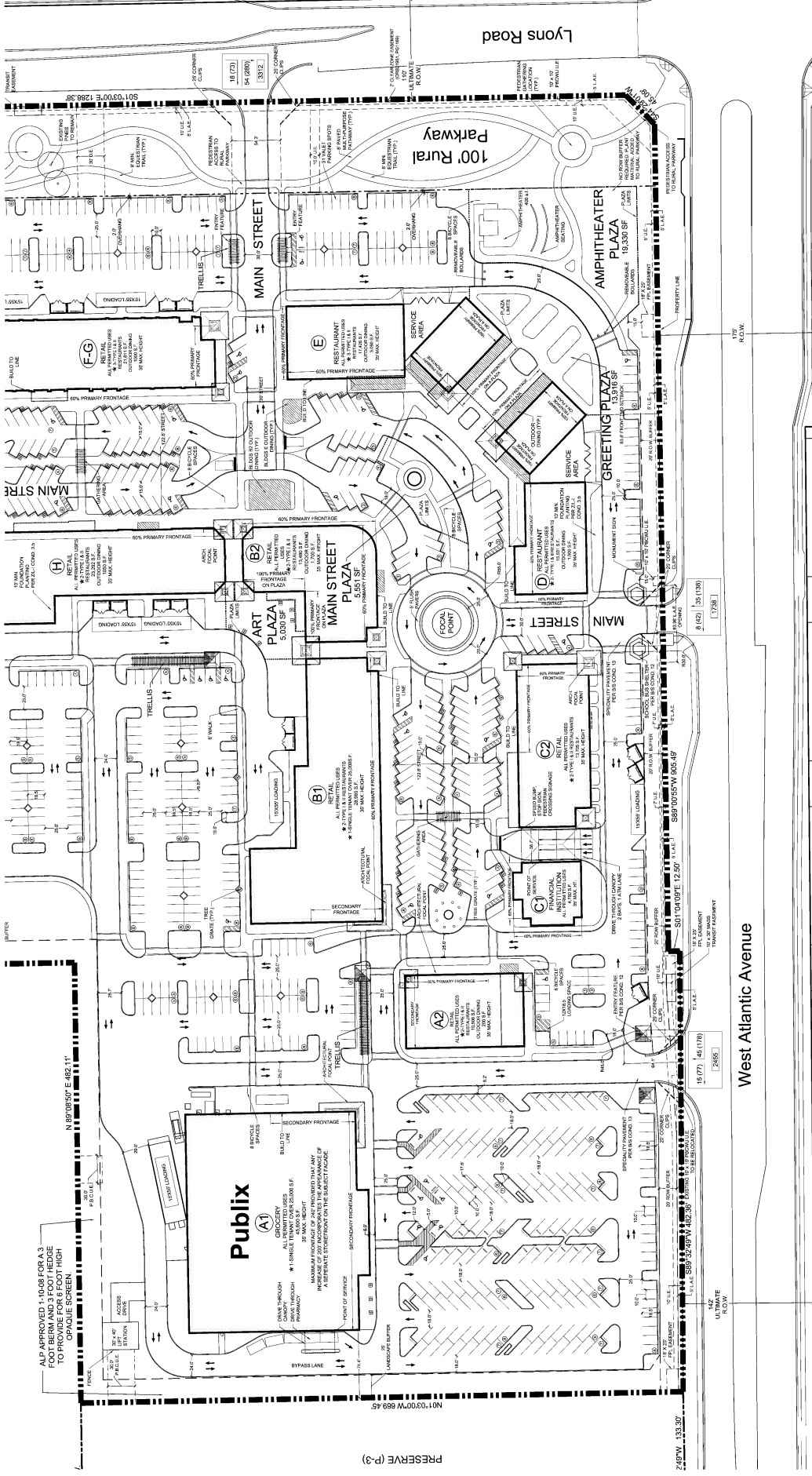


Figure 6 Preliminary Site Plan dated April 18, 2011, page 3

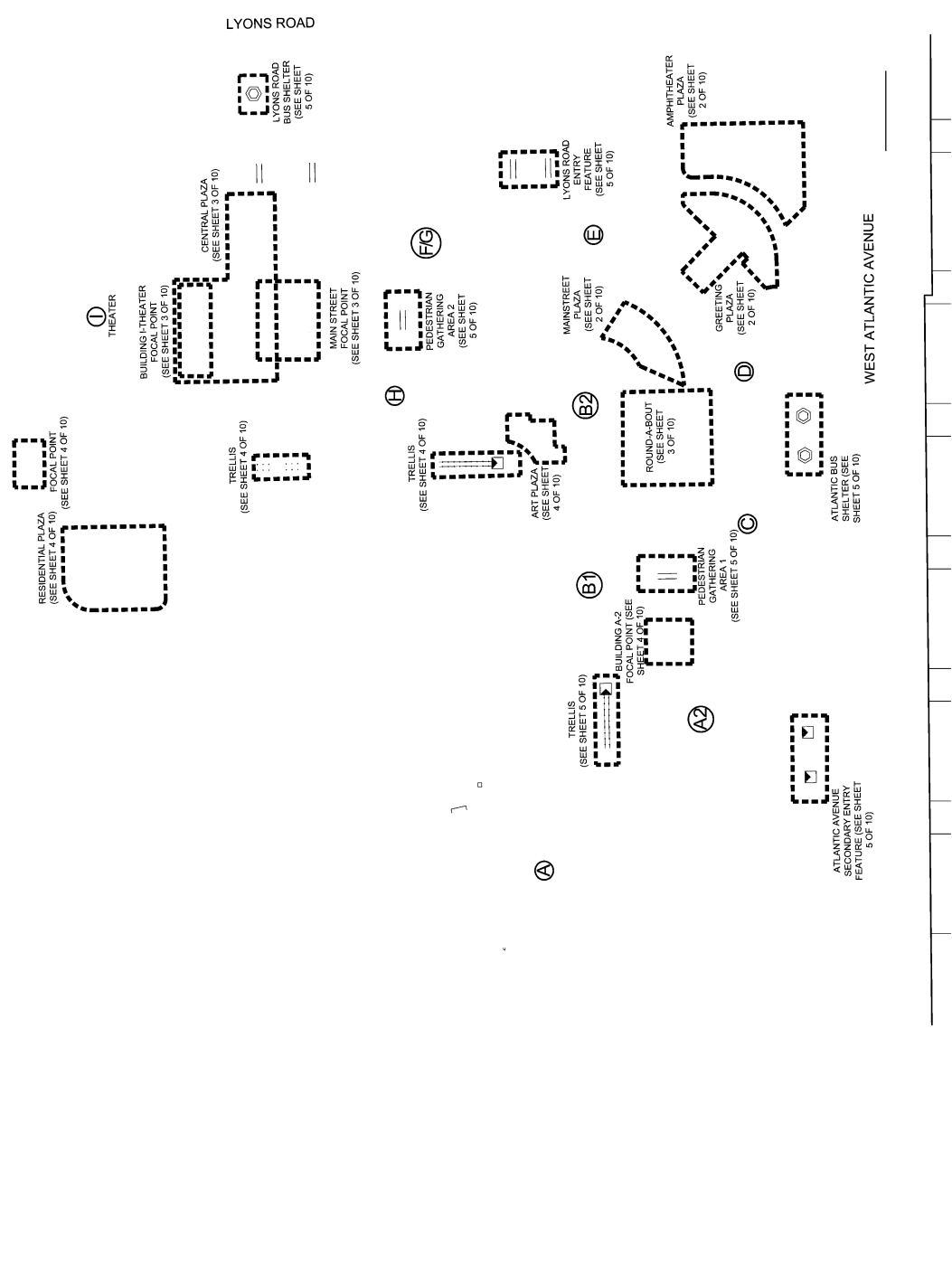
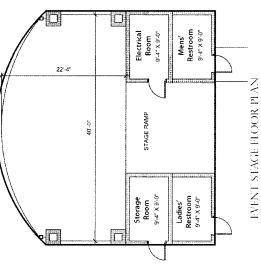
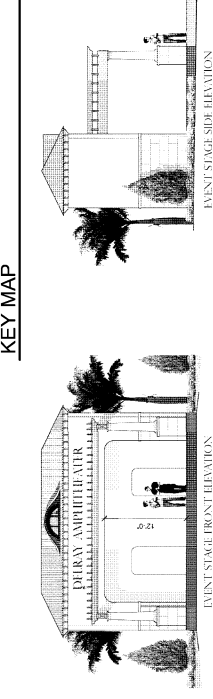
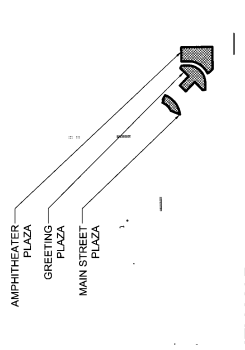
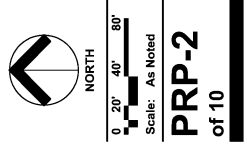


Figure 7 Preliminary Regulating Plan dated April 18, 2011, page 1

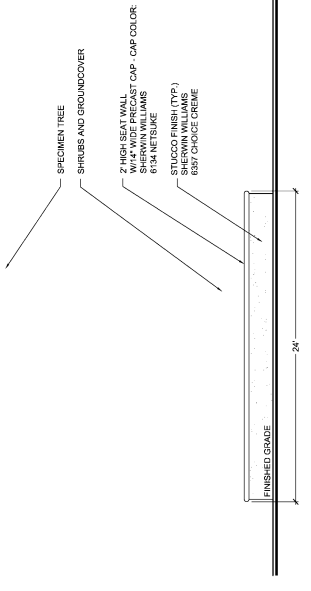
CONTRACTS
 All plans, designs, arrangements, and data are the property of the designers, and will remain the property of the designers, and will not be used for any other project, without the written consent of the designers. These plans, designs, arrangements, and data are prepared for the use of the client, and are not to be used for any other project, without the written permission of the designers.

DATE: 02.18.11
Project No.: 04-0011
Designed By: WT
Checked By: WT
Submitted Date: 02.18.11
Submitted To: SHERWIN WILLIAMS
Project Name: DELAY MARKETPLACE
Project Location: PALM BEACH COUNTY, FLORIDA

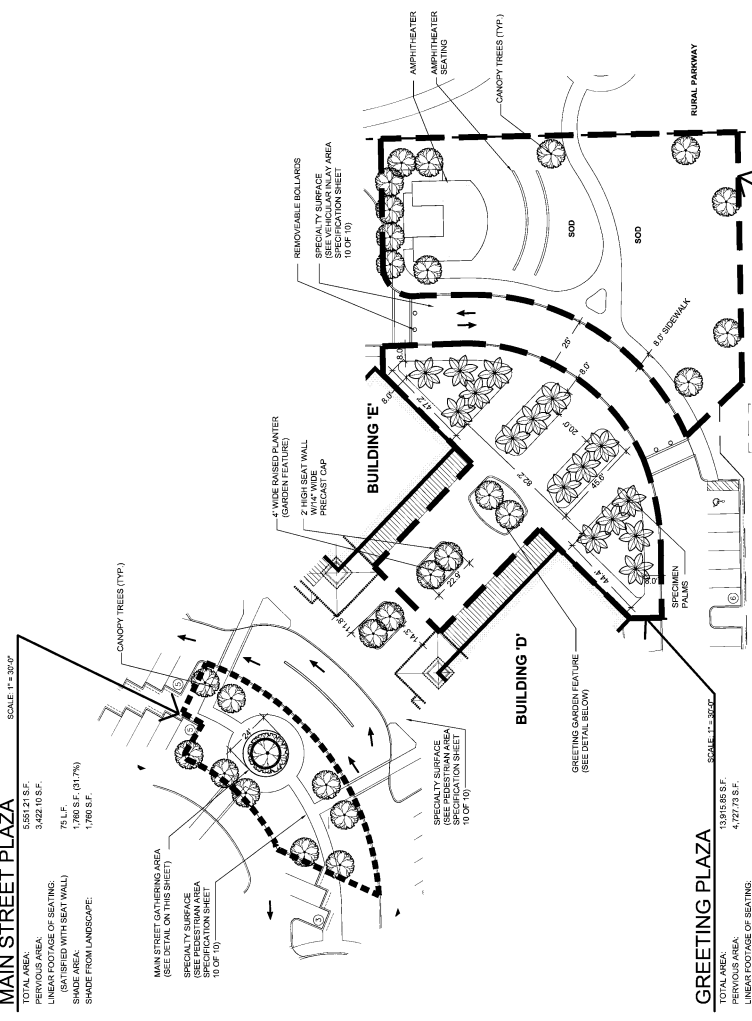
Delay Marketplace
Preliminary Regulating Plan
 Greeting Plaza, Amphitheater Plaza, & Main Street Plaza
 Palm Beach County, Florida



AMPHITHEATER ELEVATION
 SCALE: NTS



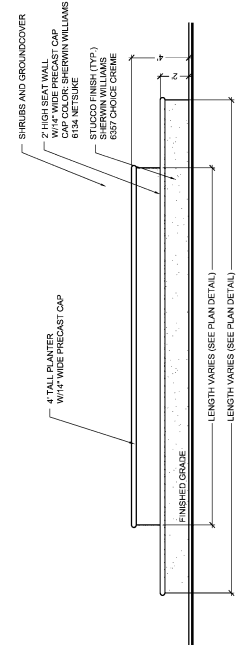
MAIN STREET GATHERING AREA ELEVATION
 SCALE: 1/4\"/>



MAIN STREET PLAZA
 SCALE: 1/4\"/>
 TOTAL AREA: 535.21 S.F.
 PREVIOUS AREA: 3426.10 S.F.
 LINEAR FOOTAGE OF SEATING: 75 L.F.
 (SATIATED WITH SEAT WALL)
 SHADE AREA: 1,760 S.F. (017%)
 SHADE FROM LANDSCAPE: 1,760 S.F.

GREETING PLAZA
 SCALE: 1/4\"/>
 TOTAL AREA: 93,816.86 S.F.
 PREVIOUS AREA: 4,727.73 S.F.
 LINEAR FOOTAGE OF SEATING: 1964 L.F.
 (SATIATED WITH SEAT WALL)
 SHADE AREA: 3,526 S.F. (02.29%)
 SHADE FROM LANDSCAPE: 3,526 S.F.

AMPHITHEATER PLAZA
 SCALE: 1/4\"/>
 TOTAL AREA: 14,000.00 S.F.
 PREVIOUS AREA: 14,001.52 S.F.
 LINEAR FOOTAGE OF SEATING: 100.00 L.F.
 SHADE AREA: 2,881.61 S.F. (05.39%)
 SHADE FROM LANDSCAPE: 2,712.5 S.F.



GREETING GARDEN FEATURE ELEVATION
 SCALE: 1/4\"/>

Figure 8 Preliminary Regulating Plan dated April 18, 2011, page 2

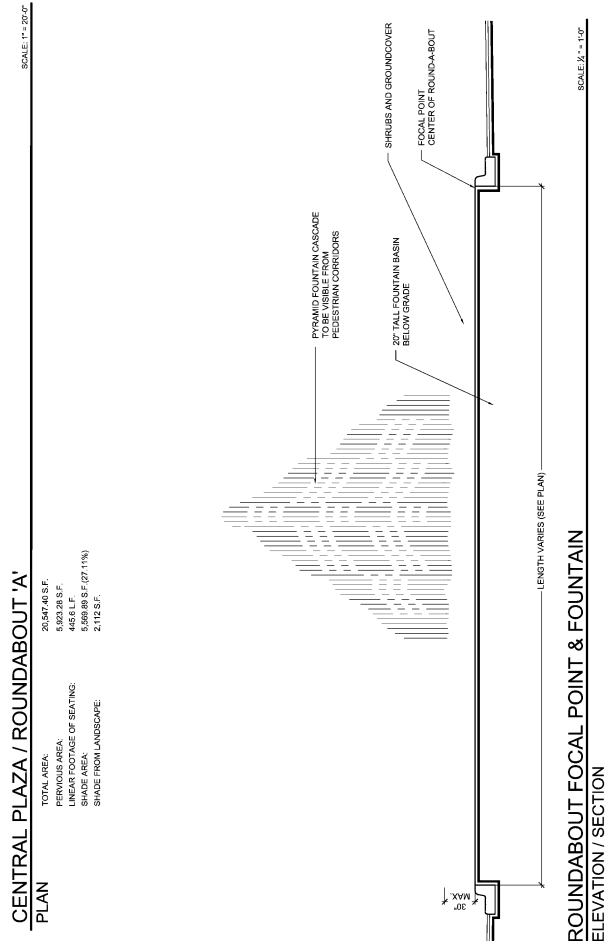
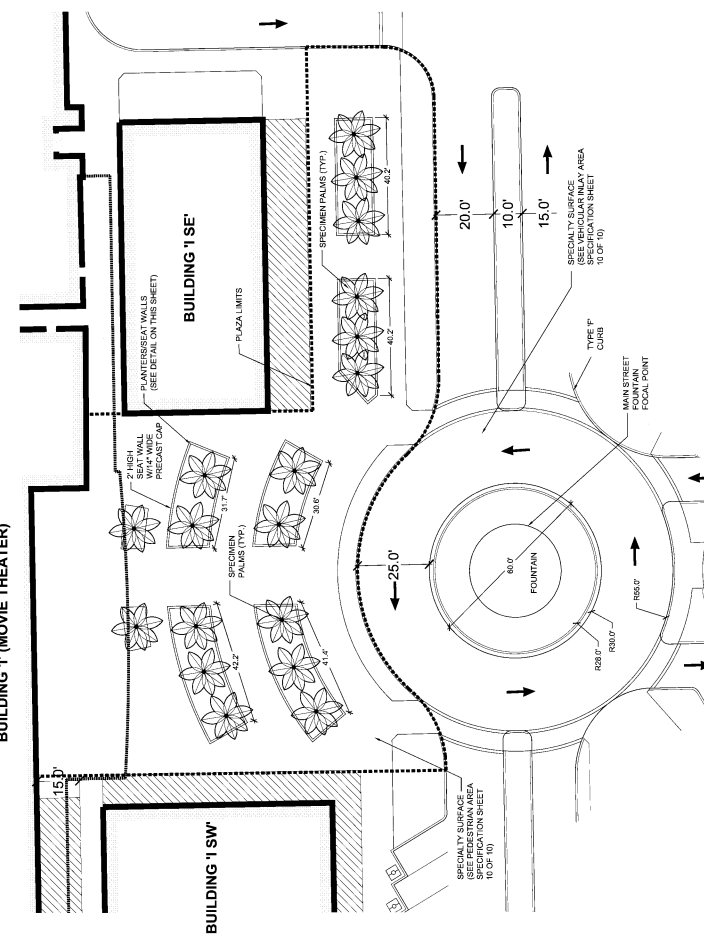
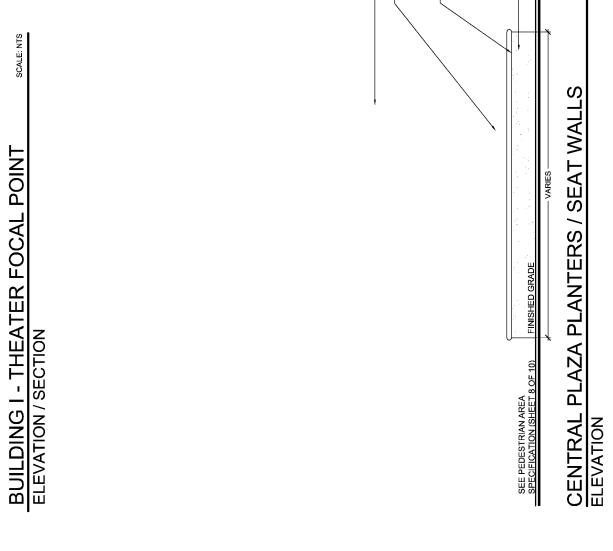
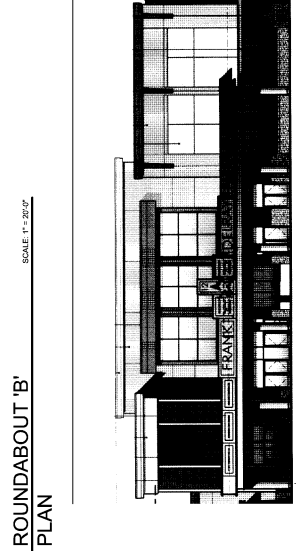
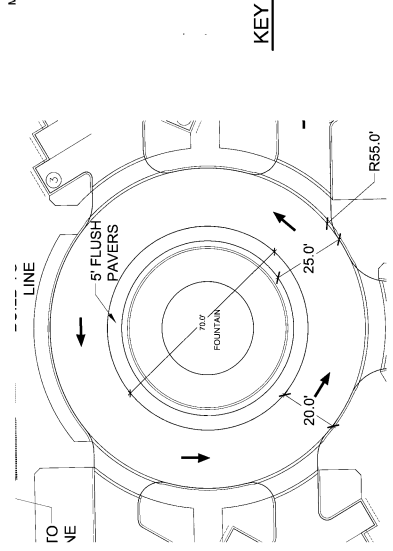
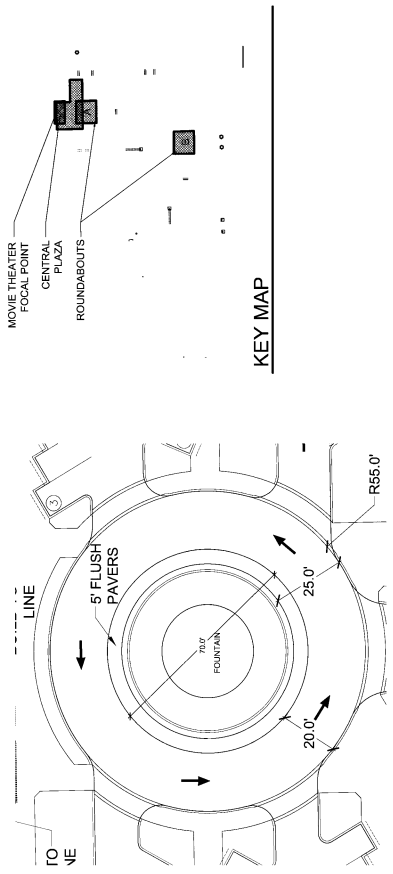


Figure 9 Preliminary Regulating Plan dated April 18, 2011, page 3

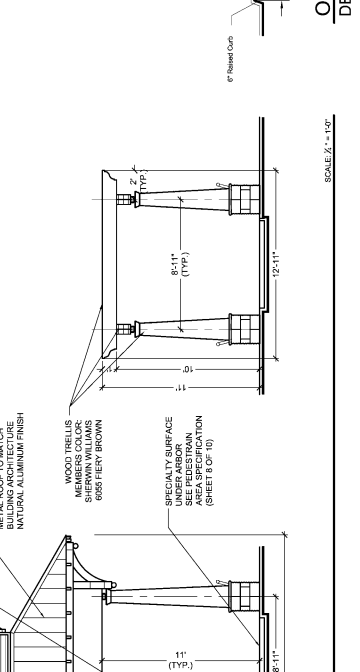
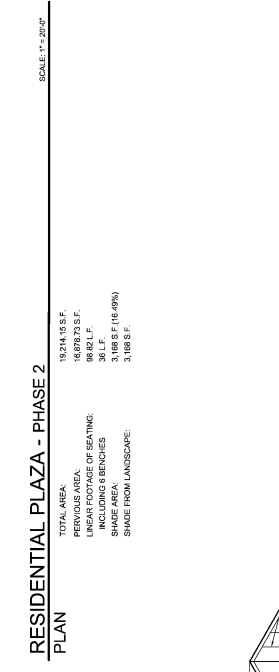
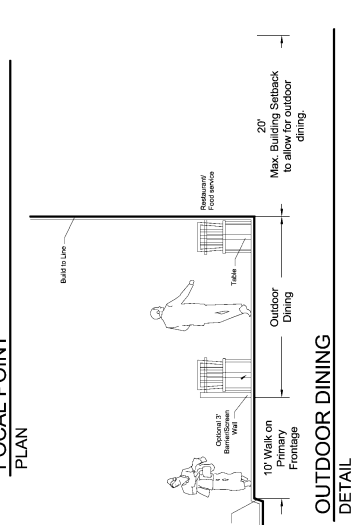
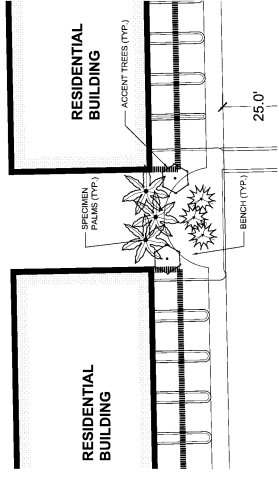
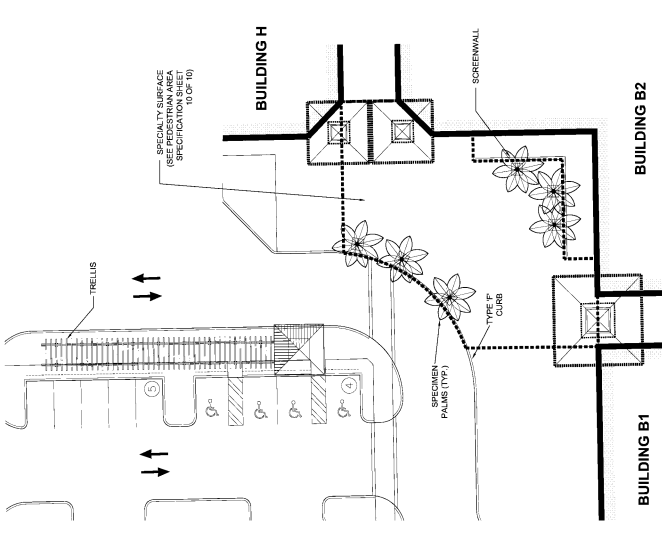
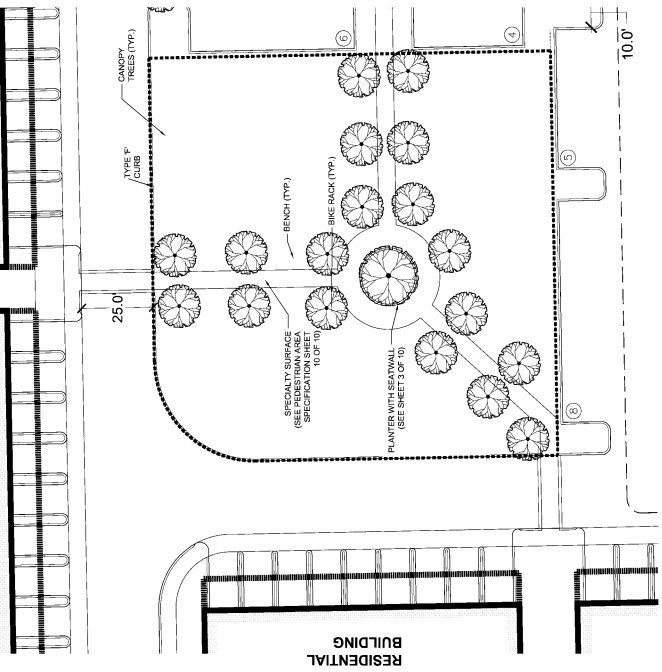
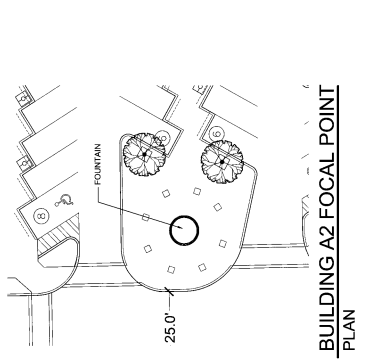
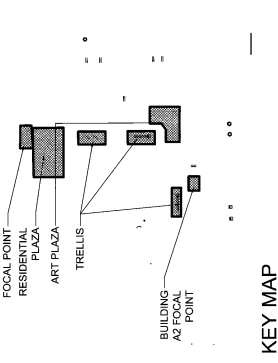


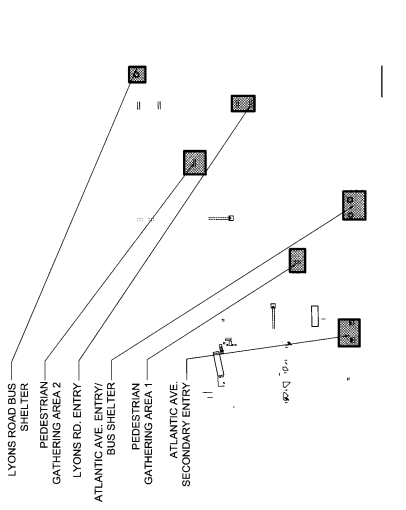
Figure 10 Preliminary Regulating Plan dated April 18, 2011, page 4

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Project No.:	0440411
Designed By:	WT
Checked By:	WT
Submitted Date:	Comments
DATE:	02.11.11
Project No.:	0440411
Designed By:	WT
Checked By:	WT
Submitted Date:	Comments

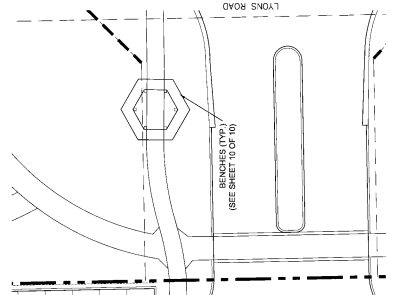
PRP-5
 of 10

Scale: As Noted

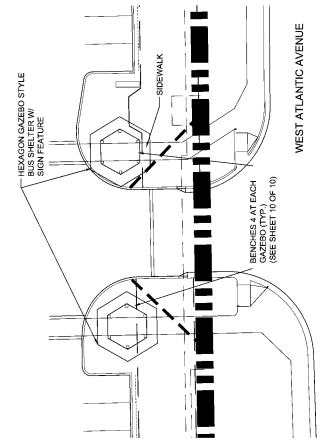
NORTH



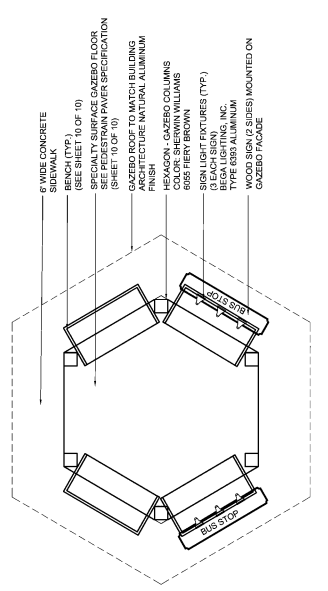
KEY MAP



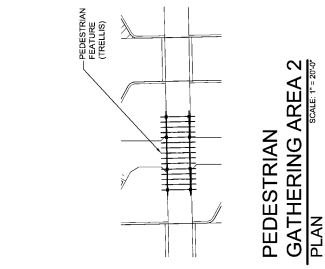
LYONS ROAD ENTRY FEATURE/ BUS SHELTER PLAN



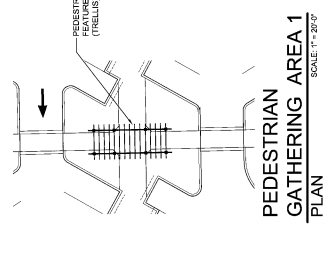
WEST ATLANTIC AVENUE ENTRY FEATURE/ BUS SHELTERS PLAN



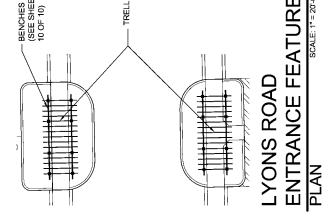
ELEVATION



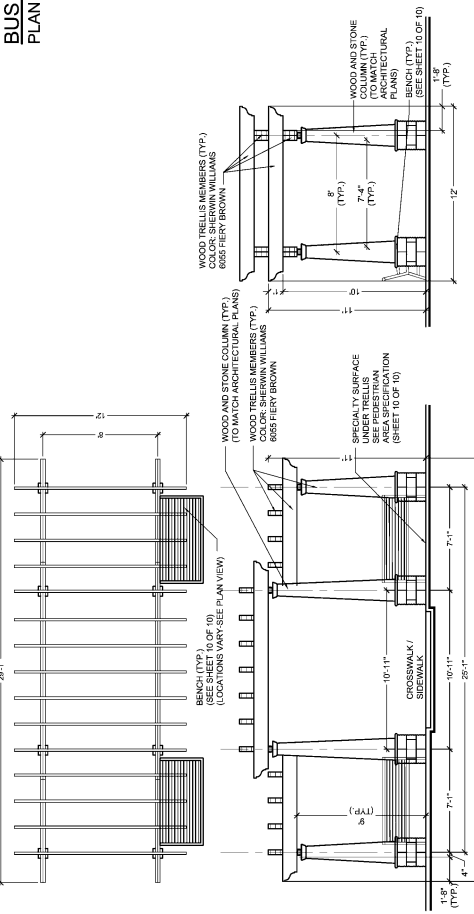
PEDESTRIAN GATHERING AREA 2 PLAN



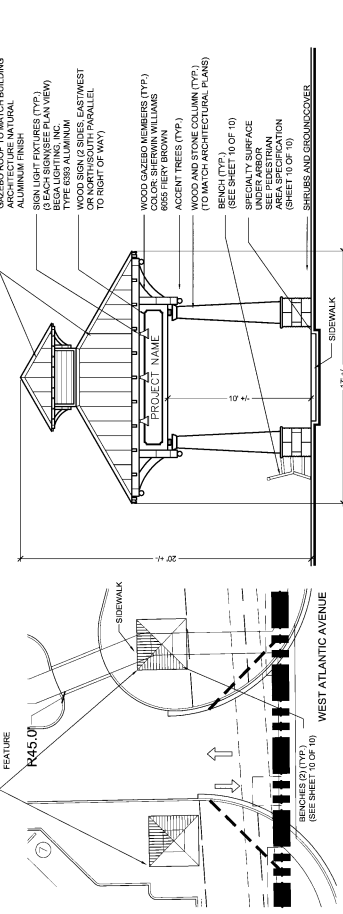
PEDESTRIAN GATHERING AREA 1 PLAN



LYONS ROAD ENTRANCE FEATURE PLAN

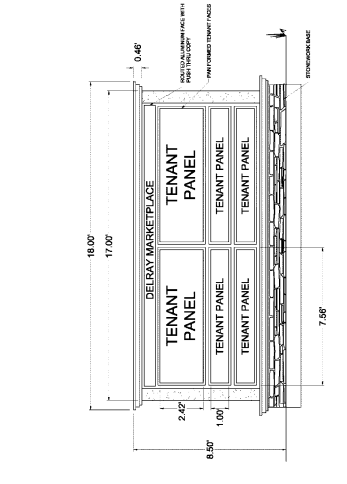


PEDESTRIAN GATHERING AREA TRELLIS PLAN & ELEVATION



ATLANTIC AVENUE SECONDARY ENTRY FEATURE PLAN & ELEVATION

Figure 11 Preliminary Regulating Plan dated April 18, 2011, page 5

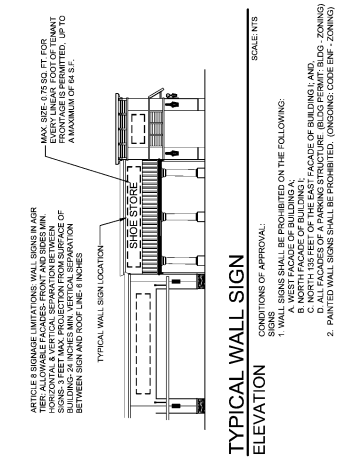


MONUMENT SIGN DETAIL ELEVATION
 SCALE: 1/8"=1'-0"

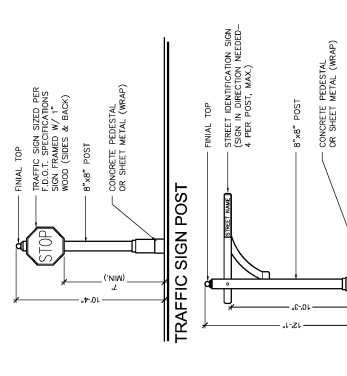
WALL SIGNAGE BUDGET
 75' x 125' SIGNAGE BUDGET (SEE PLAN FOR PROPOSED SIGNAGE, MATERIALS, PUBLIC RESTROOMS)
 25' SIGNAGE BUDGET (SEE PLAN FOR PROPOSED SIGNAGE, MATERIALS, PUBLIC RESTROOMS)

Building	Face	Wall Signage	Building	Face	Wall Signage
A1	east	142.8 SF	FG	north	60 SF
	west	67.5 SF		west	213.75 SF
	west	67.5 SF		west	60 SF
A2	north	60 SF	H	north	75 SF
	west	60 SF		west	213.75 SF
	west	60 SF		west	60 SF
B1	north	213.75 SF	I	north	129.25 SF
	west	60 SF		west	201.75 SF
	west	60 SF		west	60 SF
B2	north	213.75 SF	J	north	129.25 SF
	west	60 SF		west	201.75 SF
	west	60 SF		west	60 SF
C1	north	60 SF	K	north	60 SF
	west	60 SF		west	60 SF
	west	60 SF		west	60 SF
C2	north	60 SF	L	north	60 SF
	west	60 SF		west	60 SF
	west	60 SF		west	60 SF
D	north	60 SF	M	north	60 SF
	west	60 SF		west	60 SF
	west	60 SF		west	60 SF

WALL SIGNAGE BUDGET
 75' x 125' SIGNAGE BUDGET (SEE PLAN FOR PROPOSED SIGNAGE, MATERIALS, PUBLIC RESTROOMS)
 25' SIGNAGE BUDGET (SEE PLAN FOR PROPOSED SIGNAGE, MATERIALS, PUBLIC RESTROOMS)



TYPICAL WALL SIGN ELEVATION
 SCALE: 1/8"=1'-0"



TRAFFIC SIGN POST
STREET IDENTIFICATION POST
STREET SIGN POSTS ELEVATION
 SCALE: 1/8"=1'-0"



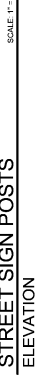
TREE DIAMOND PLAN
 SCALE: 1/8"=1'-0"



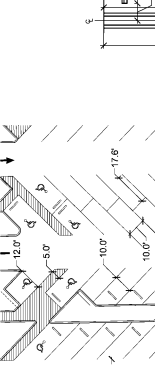
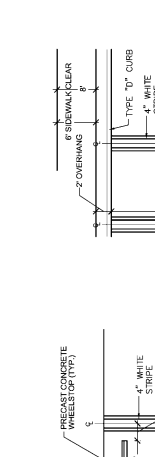
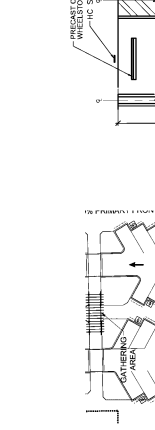
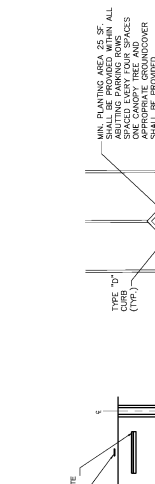
ACCESSIBLE PARKING DETAIL PLAN
 SCALE: 1/8"=1'-0"



60° PARKING DETAIL PLAN
 SCALE: 1/8"=1'-0"



45 DEGREE ANGLED INTERLOCKING PARKING SPACE PLAN
 SCALE: 1/8"=1'-0"



TYPICAL MAIN STREET SECTION ANGLED PARKING
 SCALE: 1/8"=1'-0"

Figure 12 Preliminary Regulating Plan dated April 18, 2011, page 6

DESIGNATIVE WATER, EXPOSURE TO OTHER ASPECTS OF THE SERVICE AREA OF THE APPLICABLE BUILDINGS. THESE SCREENING FEATURES SHALL:

- HAVE A MINIMUM HEIGHT OF EIGHT (8) FEET MEASURED FROM FINISHED GRADE TO HIGHEST POINT.
- HAVE A MINIMUM BUILDING FACE.
- BE ARCHITECTURALLY CONSISTENT WITH THE BUILDING.
- REMAIN CLOSED WHEN THE SERVICE AREAS ARE NOT IN USE.

AND:

- BE SUBJECT TO REVIEW AND APPROVAL BY THE APPLICABLE DESIGN SECTION (PER ARCH REVIEW ZONING).

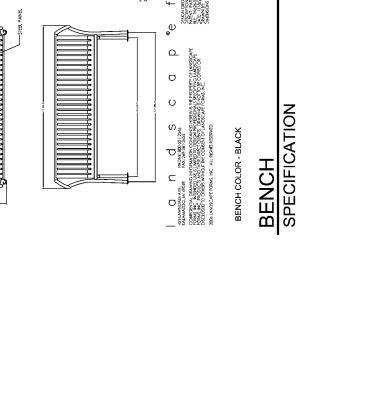
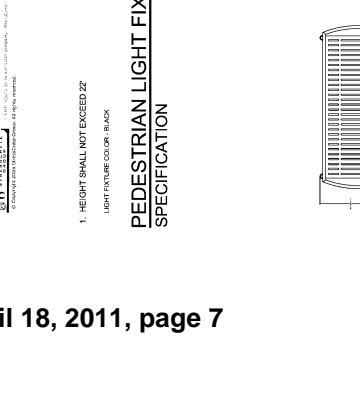
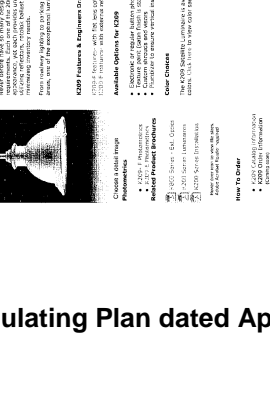
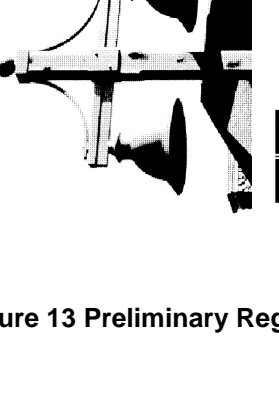
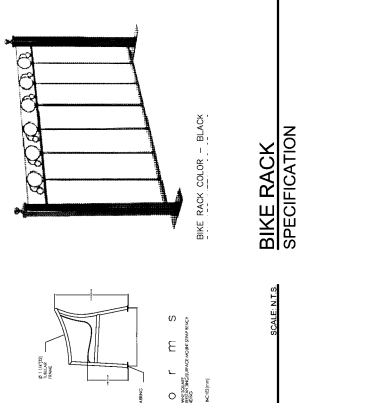
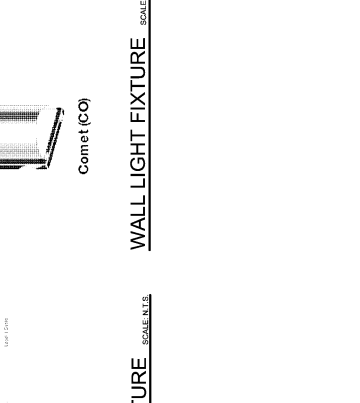
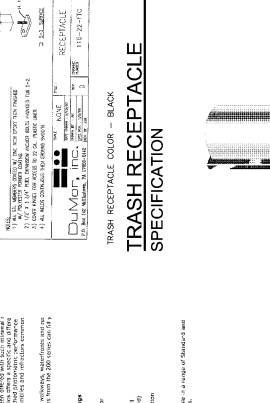
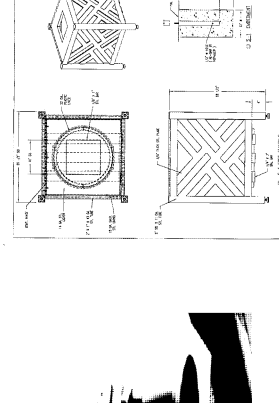
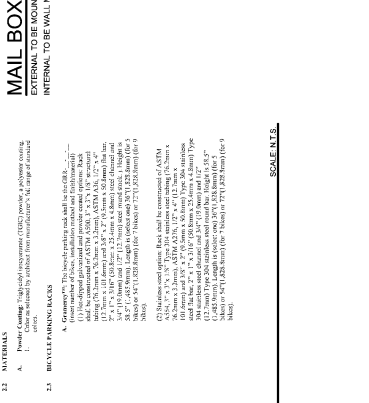
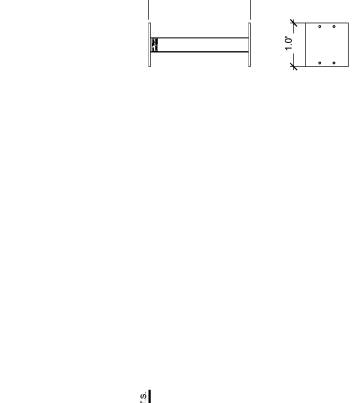
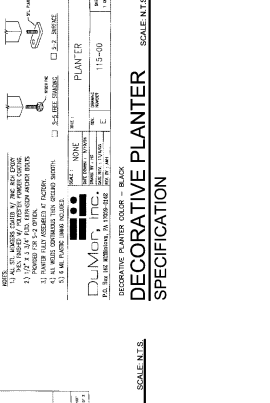
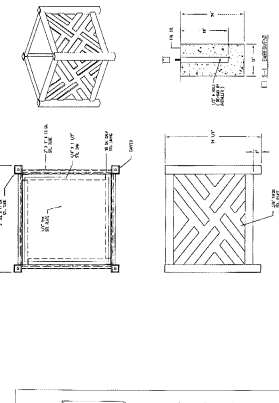
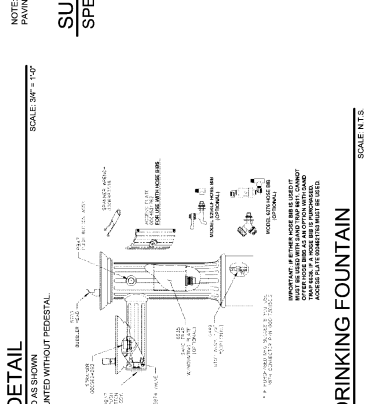
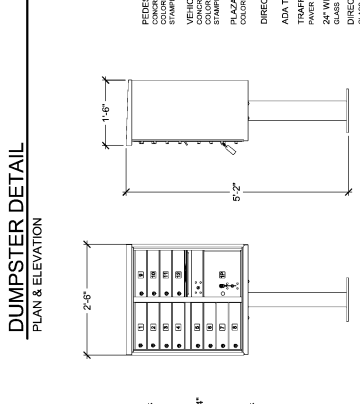
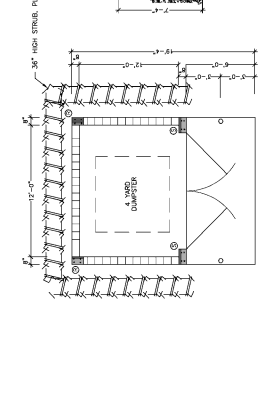
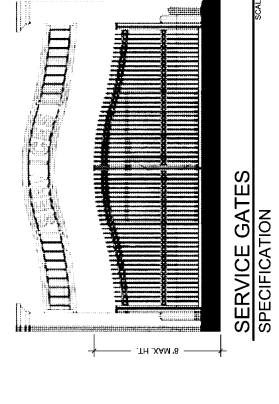
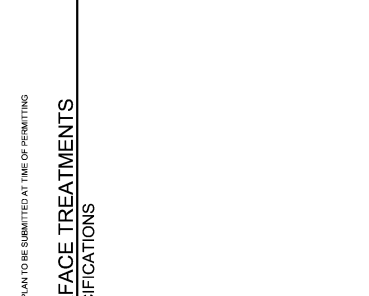
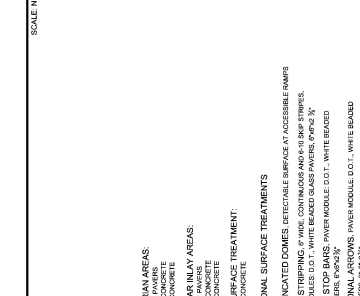
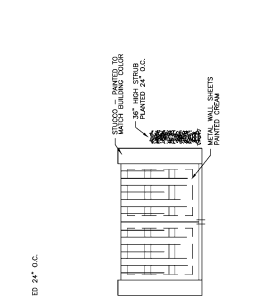


Figure 13 Preliminary Regulating Plan dated April 18, 2011, page 7

The Office at City Beach North
477 S. Rosemary Ave., Suite 225
West Palm Beach, FL 33401
P: 561-386-4111
www.urbandesignstudios.com

CONTRACT
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PROJECT NO.	0414611
DESIGNED BY	WT
CHECKED BY	WT
DATE	04/18/11
SUBMITTED TO	04/18/11
SUBMITTED BY	WT
DATE	04/18/11
APPROVED BY	WT
DATE	04/18/11

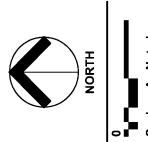
LANDSCAPING REQUIREMENTS

CATEGORY	CODE	REQUIREMENT	REQD.	PROVIDED
PERIMETER PLANTING				
100' RURAL PARKWAY (East Property Line)				
CANOPY TREES		2 PER 20 L.N. FT.	07	07
PALM TREES		1 PER 20 L.N. FT.	05	05
GROUNDCOVERS (P)		(100% L.F.) R.O.C.	065	065
SHRUBS-SMALL (P)		(50% L.F.) 20 O.C.	303	303
SHRUBS-LARGE (P)		(50% L.F.) 40 O.C.	76	76
20' ROW BUFFER (South Property Boundary)				
CANOPY TREES		1 PER 20 L.N. FT.	47	47
SHRUBS-SMALL (P)		(50% L.F.) 20 O.C.	230	230
SHRUBS-LARGE (P)		(50% L.F.) 40 O.C.	58	58
25' INCOMPATIBILITY BUFFER (North and West Property Boundary)				
CANOPY TREES		1 PER 30 L.N. FT.	68	68
GROUNDCOVERS (P)		(100% L.F.) R.O.C.	340	340
SHRUBS-SMALL (P)		(50% L.F.) 20 O.C.	165	165
SHRUBS-LARGE (P)		(50% L.F.) 40 O.C.	41	41
TOTAL PERIMETER TREES			138	138
INTERIOR PLANTING - NON-RESIDENTIAL				
MIN TREE QUANTITIES		1 PER 1,500 SF	867	867
MIN SHRUB QUANTITIES		3 PER 1,500 SF	2606	2606
TOTAL TREES (CANOPY, PALMS & PINES)			1298	1298

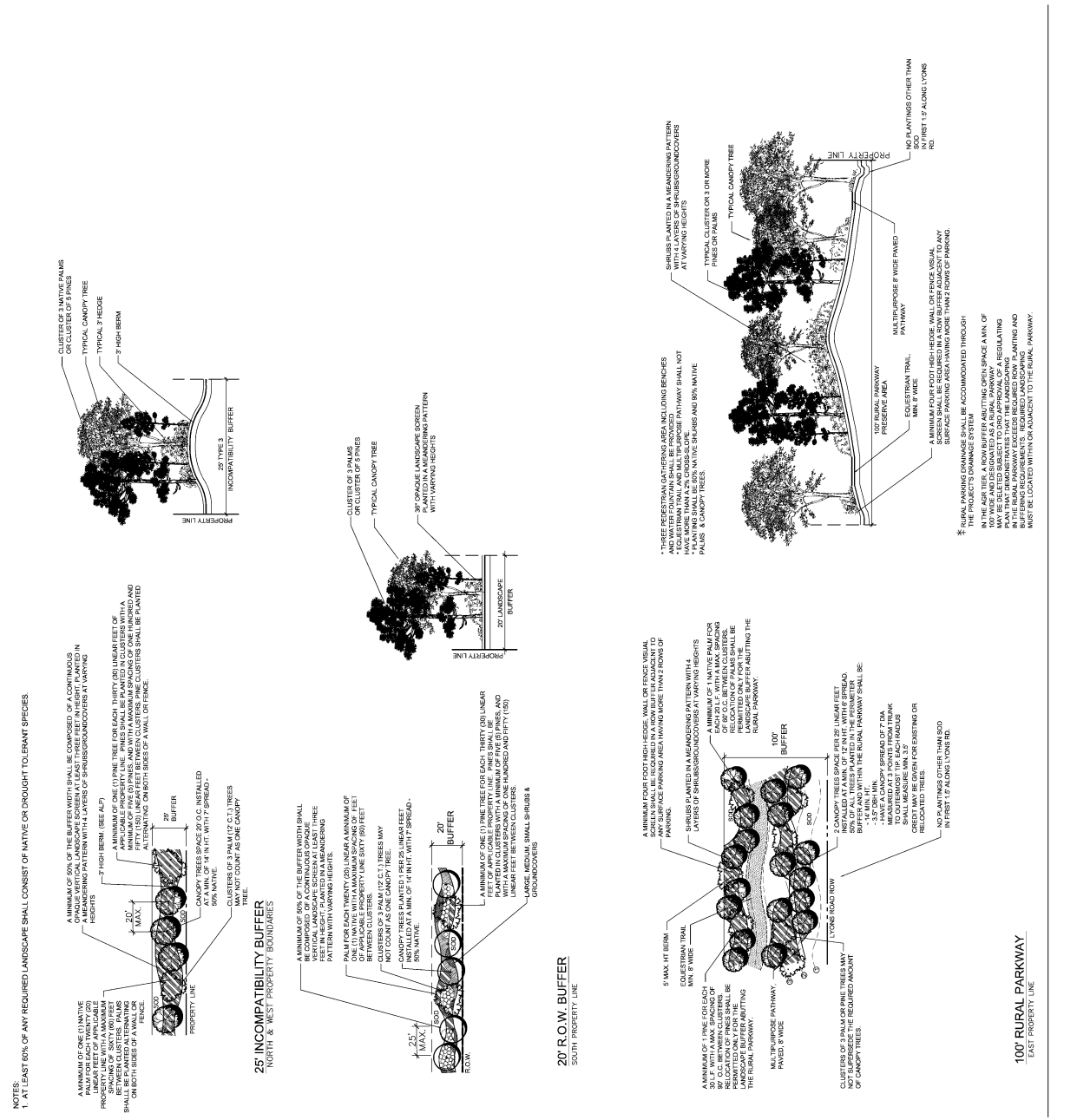
- Shrubs:**
Croton
Sourwood
St. Augustine
Sloanea
Law
Saw Palmetto
etc.
- Groundcover:**
St. Augustine
Floratone
Brazilian Star
Fountain
Lemon
Green Island
etc.
- Canopy Trees (Min. Ht. 14'):**
Live Oak
Mahogany
Cumbo Limbo
- Specimen Palms (Min. 12' Clear Trunk):**
Date Palm
Fishtail Palm
Washingtonia Palms
Coconut
- Accent Trees (Min. Ht. 8'):**
Tree Ligustrum
Cedar

PLANT MATERIAL SPECIFICATIONS

Delray Marketplace
Preliminary Regulating Plan
Buffer Details & Site Details
Palm Beach County, Florida



Scale: As Noted
PRP-8
of 10



TYPICAL LANDSCAPE BUFFER DETAILS PLAN & ELEVATION
SCALE: N.T.S.

Figure 14 Preliminary Regulating Plan dated April 18, 2011, page 8

6040 ACREAGE TABULAR

TOTAL GROSS DEVELOPABLE AREA:
 85.53 AC. (1,847,864.8 SF)
 38.16 AC. (1,662,248.8 SF)
 32.82 AC. (1,426,683.3 SF)

TOTAL GROSS DEVELOPABLE AREA ADJUSTED FOR MULTIFAMILY AREA ADJUSTMENT:
 82.89 AC.
 33.20 AC.
 48.79 AC.

TOTAL ADJUSTED NET ASSESSABLE AREA:
 82.89 AC.
 33.20 AC.
 48.79 AC.

MAX. PERMITTED GROSS AREA:
 82.89 AC.
 33.20 AC.
 48.79 AC.

PRESERVE AREA REQUIRED:
 17.27 AC.
 4.96 AC.
 9.87 AC.

NET DEVELOPABLE AREA:
 65.62 AC.
 28.24 AC.
 38.92 AC.

TOTAL DEVELOPABLE AREA:
 65.62 AC.
 28.24 AC.
 38.92 AC.

PRESERVE DATES:
 00-28-46-17-21-00-0000
 00-28-46-18-22-00-0000
 00-28-46-19-23-00-0000
 00-28-46-20-24-00-0000
 00-28-46-21-25-00-0000
 00-28-46-22-26-00-0000
 00-28-46-23-27-00-0000
 00-28-46-24-28-00-0000
 00-28-46-25-29-00-0000

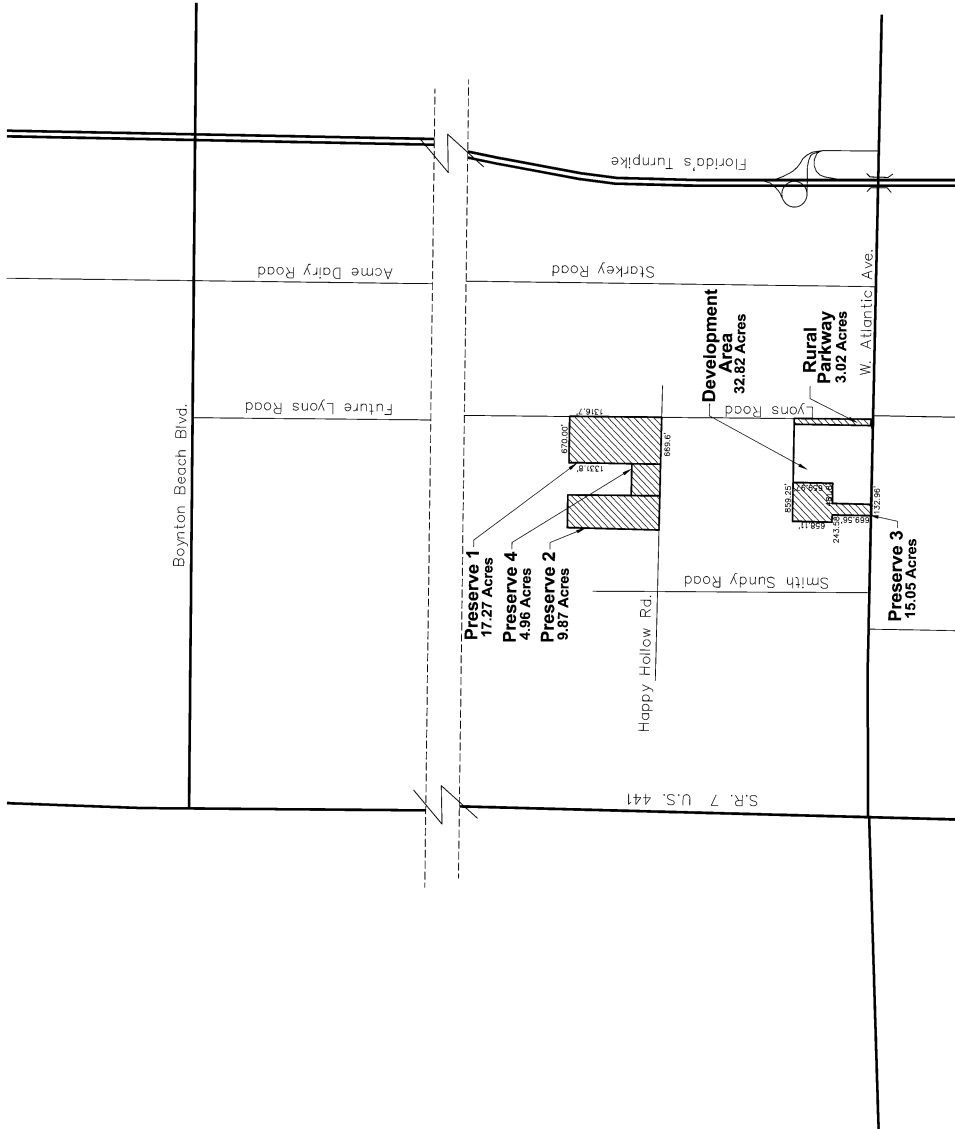
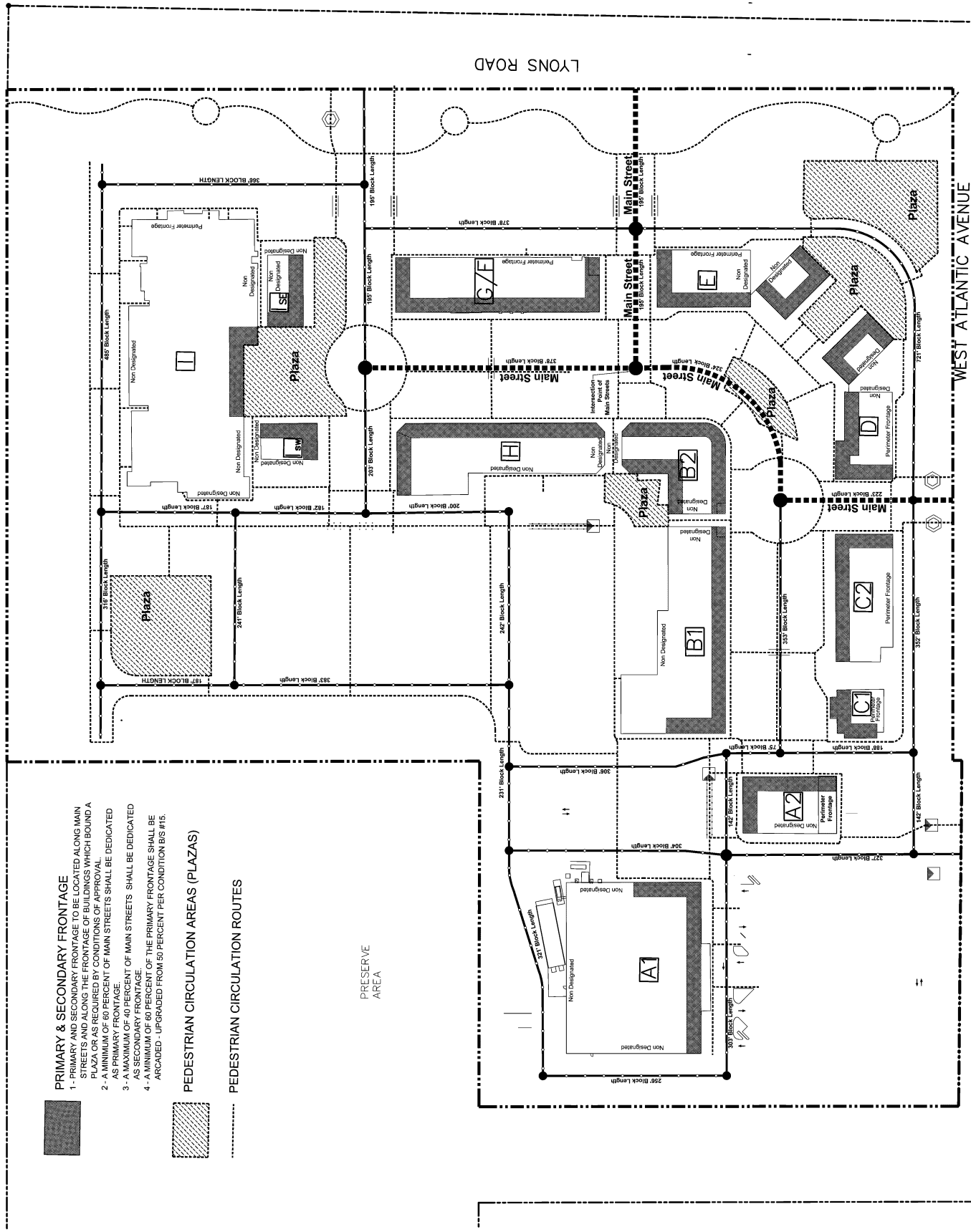


Figure 15 Preliminary Regulating Plan dated April 18, 2011, page 9



PRIMARY & SECONDARY FRONTAGE
 1- PRIMARY AND SECONDARY FRONTAGE TO BE LOCATED ALONG MAIN STREETS AND CORNER FRONTAGE OF BUILDINGS WHICH BOUND A PLAZA OR AS REQUIRED BY CONDITIONS OF APPROVAL
 2- A MINIMUM OF 60 PERCENT OF MAIN STREETS SHALL BE DEDICATED AS PRIMARY FRONTAGE
 3- A MAXIMUM OF 40 PERCENT OF MAIN STREETS SHALL BE DEDICATED AS SECONDARY FRONTAGE.
 4- A MINIMUM OF 60 PERCENT OF THE PRIMARY FRONTAGE SHALL BE ARCADED - UPGRADED FROM 50 PERCENT PER CONDITION B/S #15.

PEDESTRIAN CIRCULATION ROUTES

PRESERVE AREA

Figure 16 Preliminary Regulating Plan dated April 18, 2011, page 10

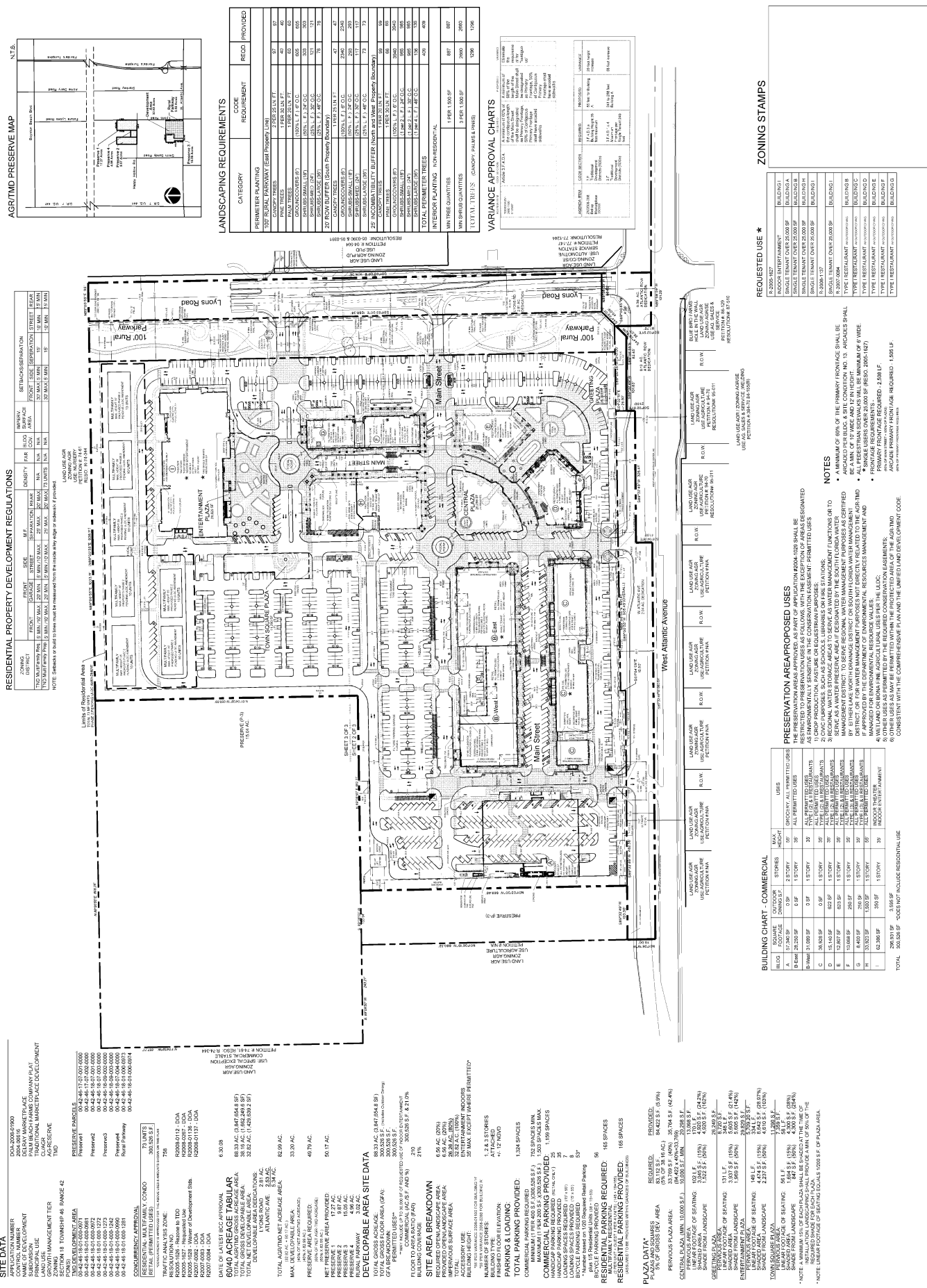


Figure 17 Preliminary Site Plan (pg 1) dated June-12, 2009, which was approved by the BCC on March 31, 2010

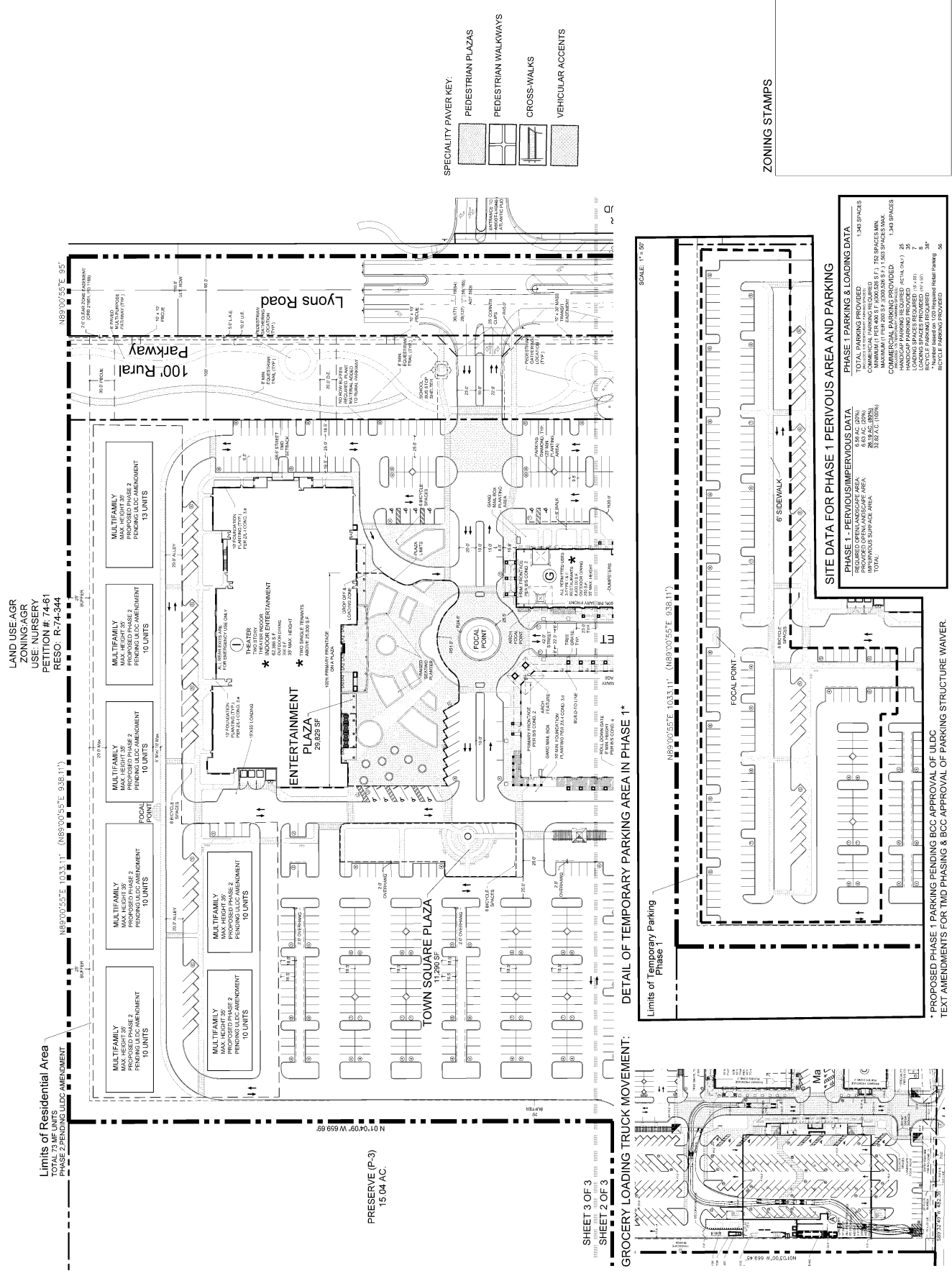


Figure 18 Preliminary Site Plan (pg 2) dated August 24, 2009, which was approved by the BCC on March 31, 2010



OPTION 1

Figure 20 Rendering "Option 1" dated February 22, 2011

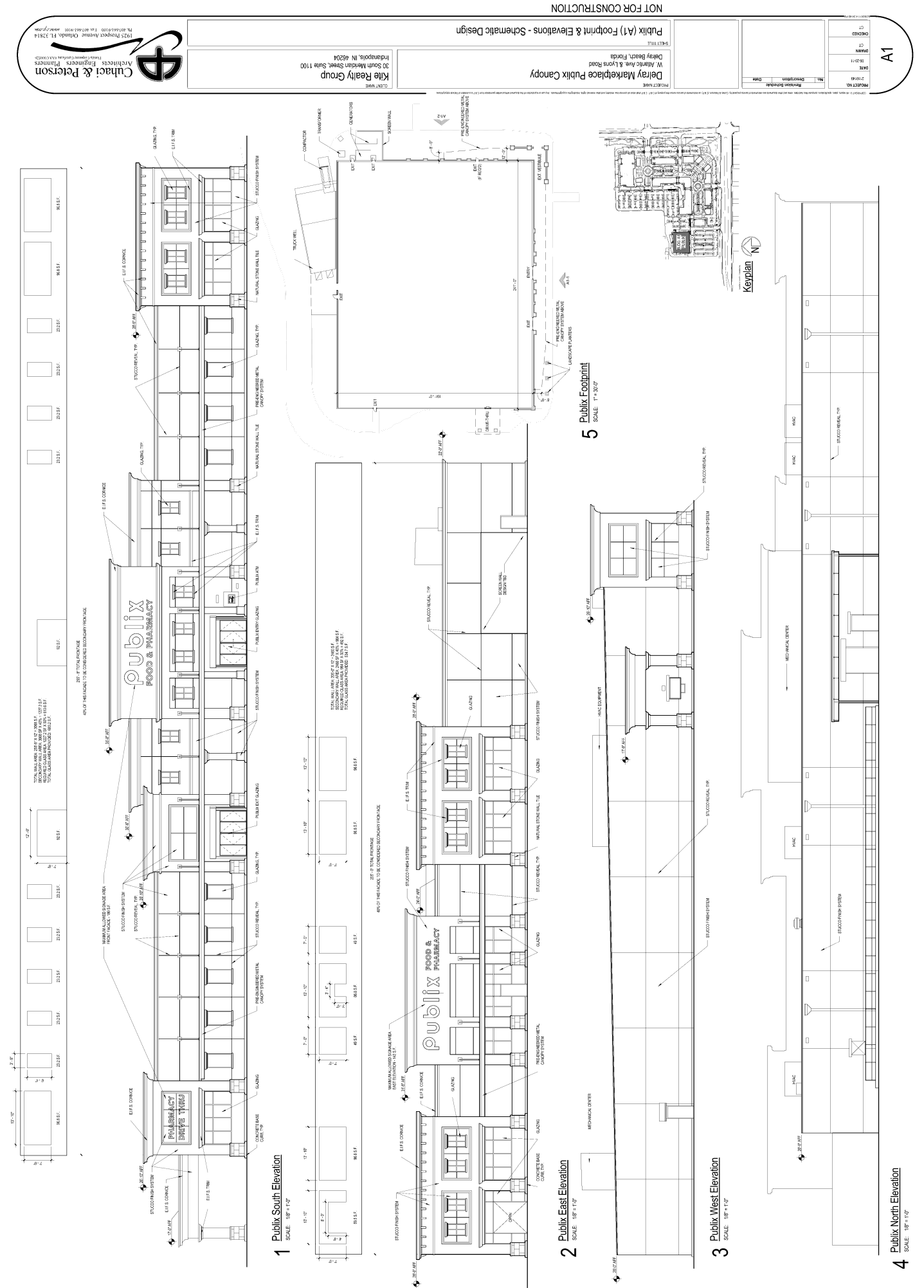


Figure 21 Building A1 (Publix Grocery Store) Conceptual Elevation dated June 20, 2011

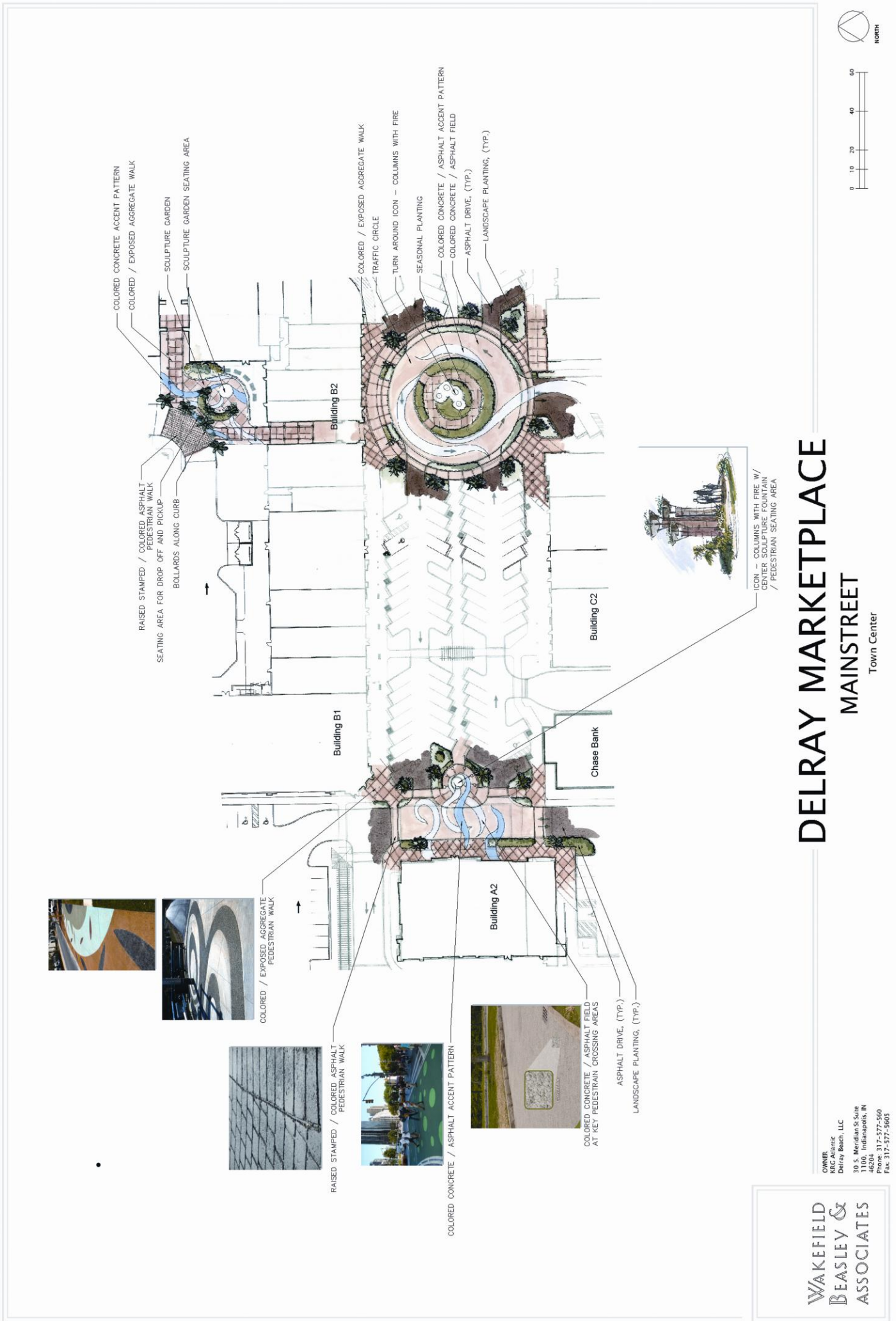


Figure 22 Building A2 Focal Point and Main Street Conceptual submitted on June 20, 2011

STAFF REVIEW AND ANALYSIS

PLANNING DIVISION COMMENTS:

FUTURE LAND USE (FLU) PLAN DESIGNATION: Agriculture Reserve (AGR) and Commercial Low with an underlying Agriculture Reserve (CL/AGR) Land Use Designation

TIER: The subject site is in the Agricultural Reserve Tier.

FUTURE ANNEXATION AREAS: The subject site is not located within the future annexation area of any municipality.

INTERGOVERNMENTAL COORDINATION: The subject property is not located within one mile of any municipality.

CONSISTENCY WITH FUTURE LAND USE (FLU) PLAN DESIGNATION: The Planning Division has reviewed the following requests: To reconfigure the site plan; 2 Type II variances (from main street design criteria and from the Free Standing Structure criteria); a Waiver of Development Standards for the length of the Main Street; and, a Block Structure Waiver for one block of the TMD. Staff has found the requests to be consistent with the site's CL/AGR FLU designation.

The 88.55-acre Delray Marketplace TMD has been the subject of two Large Scale Land Use approvals. The first was for 32.46 acres known as Atlantic Avenue/Lyons Road TMD (LGA-2005-006; ORD 2005-40) and the second was for 0.97 acres and was known as Delray Marketplace Residual (LGA 2006-009; ORD 2006-034)

The Large Scale Land Use approval known as Atlantic Avenue/Lyons Road TMD (LGA-2005-006; ORD 2005-40), contained one condition of approval which states, "Development on the site shall be limited to a maximum of 320,000 square feet of non-residential uses and 86 dwelling units". The request for 278,940 square feet is consistent with the condition.

The Large Scale Land Use approval known as Delray Marketplace Residual (LGA 2006-009; ORD 2006-034), contained two conditions of approval: 1) There shall be no density or intensity associated with this site; and, 2) Prior to the adoption public hearing for this proposal amendment, the applicant must submit a rezoning application for this parcel to the Traditional Marketplace Development (TMD) Zoning District. The intent of this amendment was to recognize that the subject 0.97 acres created a residual parcel if it hadn't been incorporated into the TMD which wraps around the entire north and western sides of this site. Condition #1 was to ensure that the TMD remained limited to the 320,000 square feet of Commercial Low uses even with this additional land area. The request for a total of 278,940 square feet is consistent with the limitations of both amendment conditions limiting the total square footage for the entire 33.20-acre TMD to a maximum of 320,000 square feet. The 0.97 acres was rezoned and added to the TMD via Resolutions R-2007-081 and R-2007-082 on January 25, 2007.

Delray Marketplace TMD has been the subject of two Administrative Inquiries due to the deviations from the literal interpretation of the ULDC and the Conceptual Plans that were part of the original approval.

The first Administrative Inquiry to the BCC was May 28, 2009. Direction from the BCC: The applicant was to increase the number of units proposed from 36 to 73, provide an additional phase to allow for construction of the residential units and was no longer required to vertically integrate the residential units. This application was later approved via Resolution R-2010-447.

The second Administrative Inquiry was February 24, 2011. Direction from the BCC concluded that generally there was no issue with relocating the grocery store to a standalone position, revise access points, relocating the central plaza and modify the building separations on main streets. The BCC directed the applicant and staff to work together regarding queuing of the proposed bank and other issues that may arise due to the proposed changes and main street street cross section requirements.

Staff reviewed the subject requests against the following Comprehensive Plan policies:

Policy 4.4.4-c. states, "The County may allow a Traditional Marketplace Development (TMD) which shall provide an alternative commercial development pattern in the form of a Traditional Main Street". Traditional Marketplace Development may be allowed in the CL land use category in the Exurban and Rural Tiers and in the CH category in the Urban/Suburban Tier and shall contain a minimum of 51% commercial land uses. This alternative pattern shall allow low intensity commercial and institutional uses, vertically integrated with residential uses, and shall include a concentrated area for shopping, entertainment, business, services, cultural and housing opportunities. This concentration shall be accomplished by allowing for a mix of uses in a manner that creates a stronger pedestrian orientation through design, placement and organization of buildings, and common public space while dispersing parking and respecting and maintaining the character of the surrounding area."

The proposed site plan concentrates shopping along three areas that are interlinked with pedestrian pathways and common public spaces with parking scattered throughout. The subject site is located within an area that is defined by active agriculture and gated residential communities. The shopping plaza may create an integrated identity with the residential communities through the architectural review process governed by the ULDC. Therefore the request is consistent with this policy.

Additional TMD Policies specific to AGR TMD's relate to location, allowable uses and required 60/40 acreage ratios. No changes to the acreage or location of the development or preservation parcels are proposed through this request.

SPECIAL OVERLAY DISTRICT/NEIGHBORHOOD PLAN/PLANNING STUDY AREA: The subject property is not located within the boundaries of a neighborhood planning area.

FINDINGS: The request is consistent with the CL/AGR land use designation of the Palm Beach County Comprehensive Plan and direction received from the BCC February 24, 2011.

ENGINEERING COMMENTS:

REQUIRED ENGINEERING RELATED PERMITS

The property owner shall obtain an onsite Drainage Permit from the Palm Beach County Engineering Department, Permit Section, prior to the application of a Building Permit.

The property owner shall obtain a Turnout Permit from the Palm Beach County Engineering Department, Permit Section, for access onto Lyons Road and a permit from the Florida Department of Transportation for access onto Atlantic Avenue.

TRAFFIC IMPACTS

Petitioner has estimated the build-out of the project to be December 31, 2013. Although this project has a previous approval, a new traffic study was submitted to extend the buildout date and address the uses now proposed. Total net new traffic expected from this project is 9,664 trips per day, 1,014 trips in the PM peak hour. Additional traffic is subject to review for compliance with the Traffic Performance Standard.

There are no improvements to the roadway system required for compliance with the Traffic Performance Standards. However, the project has relied on the Atlantic Avenue CRALLS (TE Policy 1.2-f.35). To mitigate impacts to this corridor, the project must remain a party to the Atlantic Avenue funding agreement.

ADJACENT ROADWAY LEVEL OF SERVICE (PM PEAK westbound)

Segment: Atlantic Avenue from Lyons Road to the Turnpike

Existing count: 773

Background growth: 488

Project Trips: 198

Total Traffic: 1,459

Present laneage: 2L/4LD

Assured laneage: 4LD

CRALLS capacity: 1,960

Projected level of service: D

PALM BEACH COUNTY HEALTH DEPARTMENT:

No Staff Review Analysis is needed for the requests.

ENVIRONMENTAL RESOURCE MANAGEMENT COMMENTS:

VEGETATION PROTECTION: The property has been previously cleared.

WELLFIELD PROTECTION ZONE: The property is not located within a Wellfield Protection Zone.

IRRIGATION CONSERVATION CONCERNS AND SURFACE WATER: All new installations of automatic irrigation systems shall be equipped with a water sensing device that will automatically discontinue irrigation during periods of rainfall pursuant to the Water and Irrigation Conservation Ordinance No. 93-3. Any non stormwater discharge or the maintenance or use of a connection that results in a non stormwater discharge to the stormwater system is prohibited pursuant to Palm Beach County Stormwater Pollution Prevention Ordinance No. 93-15.

ENVIRONMENTAL IMPACTS: There are no significant environmental issues associated with this petition beyond compliance with ULDC requirements.

OTHER:

FIRE PROTECTION: The Palm Beach County Department of Fire Rescue will provide fire protection.

SCHOOL IMPACTS: On May 3, 2005, the subject property was approved by the School District with a school concurrency determination (case # 05020104C) for 86 multi-family units. Resolution of R-2005-1626 was also approved subsequently by the Board of County Commissioners on August 25, 2005.

This application for 73 Multifamily units will not cause an increase in the number of the previously approved units nor change the unit type. Since the proposed amendment will have no impact on the adopted Level of Service (LOS) established for public schools, there will be a no impact determination associated with this development.

This project is estimated to generate approximately thirteen (13) public school students. The schools currently serving this project area are: Hagen Road Elementary, Carver Middle, and Olympic High.

The Preliminary Master Plan dated April 18, 2011 shows two (2) bus shelter locations. A bus shelter condition of approval has been applied to this request.

PARKS AND RECREATION: A minimum of 800 square feet of private indoor recreation area shall be provided.

CONCURRENCY: Concurrency has been approved for 73 Multifamily (condo) units and 278,940 square feet of permitted and requested non-residential uses.

WATER/SEWER PROVIDER: Palm Beach County Water Utilities Department (PBCWUD).

FINDING: The proposed Development Order Amendment complies with Article 2.F of the ULDC, Concurrency (Adequate Public Facility Standards).

FINDINGS:

Type II Concurrent Variance Standards:

The Zoning Commission shall consider and find that all 7 criteria pursuant to Article 2.B.-3.E and listed below have been satisfied by the applicant prior to making a motion for approval, of a zoning variance:

- 1. Special conditions and circumstances exist that are peculiar to the parcel of land, building or structure that are not applicable to other parcels of land, structures or buildings in the same zoning district:**

V.1 Art. 3.F.4.D.7. Parking: YES.

This variance applies to the following areas on the site plan: Areas south of Buildings 1SW and 1SE; area north of Building E; areas west of Buildings B1, C1 and D; and, Secondary street east of Building A2. The special conditions are created as a result of the shape of the parcel with the 15.04 acre preserve area to the northwest and west creating an L-shaped land area. The only other TMD in the AGR Zoning District is more symmetrically shaped. The special conditions are associated with the areas where streets intersect with the Main Street or where the two Main Streets intersect creating some traffic conflicts. The design of the parking areas were influenced based in part on input from the Palm Beach County Land Development Division to address the potential stacking issue concerns of cars backing out in main circulation areas. All traffic currently entering the site from the south on Lyons Road must enter via the northern entrance (areas south of Buildings 1SW and 1SE) as the southern entrance does not allow for a left turn. Thus, a greater queue distance is provided for incoming traffic to get through the traffic circle without congestion from back-up traffic. A variance is needed particular to this development to allow for the free flow of traffic without the impacts associated with cars backing out into traffic in these areas of the site. The elimination of the few parking spaces at the requested locations, which includes streets at the request of staff that the applicant believes function as drive aisles (west of Buildings B1 and C1), will prevent congestion of cars backing out as vehicles either ingress or egress the development.

V.2 Figure 3.F.4.D. Typical Example of TMD Commercial Street with Angled Parking to include the requirements for street cross sections as also referenced in Art. 3.F.2.A.1.c.1); Table 3.F.2.A.TDD; Figure 3.F.2.A.; Art. 3.F.4.D.2.a.; and, Art 3.F.4.D.2.a.1); YES.

The potential national retail tenants, who have experience in existing Traditional Marketplace style developments, indicate a critical need for more parking on the Main Street and have indicated issues specific to the required street design. Thus, the Preliminary Site Plan proposes a modified street cross section for Main Street. Main Street is proposed to be widened to allow for 2 additional rows of angled parking on the inside of each of the one-way drive aisles with a minimum 6-foot wide sidewalk between the additional rows of parking whereas the TMD Design Exception in Art. 3.F.4.D.2.a.1) allows for the provision of angled parking not to exceed 70 degrees in lieu of parallel parking. This circumstance is peculiar to the proposed L-shaped TMD in the AGR Zoning District.

A variance is needed to allow the proposed is an increase in width of approximately 60 feet for the proposed Main Street cross sections. The typical street cross section consists of 2 one-way drive aisles with a width of 15 feet and allowing for 60-degree angled parking on each side of the one-way drive aisles with the exception of the curve at the Main Street Plaza that provides for a valet drop-off area. The pedestrian sidewalks abutting the storefronts on each side of the Main Street comply with the Typical Angled Parking Figure by providing for 15 feet to include the sidewalk, street tree, and street light easement. This variance is needed to alleviate the concerns of the prospective tenants regarding limited convenient parking in front of the stores, the length of the L-shaped project's Main Street, South Florida's 'liquid sunshine' and heat, which affect the shopping patterns in the TMD-type centers. Shoppers tend to not venture the entire length of the Main Street and patronize additional business if parking is removed from the front of the store.

V.3 Art. 3.F.4.D.1.c.4). Maximum Frontage Per Single Tenant: YES.

The proposed design of Building A1 is 241 feet in width is an established design of the Publix Grocery Store chain. Publix is the proposed single tenant in the building. Publix indicates that they no longer desire to construct the 2-story Grocery Store with the parking on the ground floor as the design has proved to be less successful. The additional 54 feet of width (including the drive-thru canopy on the

west side of the building and the delivery area screening wall on the east side of the building for a total width of 295 feet) is width, not frontage so the pharmacy drive-thru canopy and screen wall are not calculated in the length of frontage. However, the variance chart will indicate the proposed width of 295 feet and a variance of 55 feet at the applicant's request to avoid any unforeseen issues during the building permit process.

V.4 Art. 3.F.4.E.9.b. AGR TMD Free Standing Structures: YES.

The 3 free standing buildings are: A1, A2, and C1. The size of Building A1, the free standing building for the Grocery Store, exceeds the 10% limit on free standing structures for the overall allowable square footage of 320,000 approved via Ordinance 2005-039. Building A1 proposed at 45,600 square feet is 14.3% of the overall allowable square footage. Building A2 proposed at 10,700 square feet is 3.3% of the overall allowable square footage. Building C1 (Financial Institution) proposed at 4,750 square feet is 1.5% of the overall allowable square footage. The variance request must also consider that the DRO may approve amendments to the Preliminary Site Plan approved by the BCC in accordance with Art. 2.D.1.G.1.b to approve an increase of no more than 5% of the total floor area of any building provided the increase does not exceed 5,000 square feet whichever is less.

Given the above, the variance request should account for possible unforeseen circumstances at time of building permit and staff hereby clarifies the possible magnitude of the variance to account for the 5% increase in square footage that may be allowed administratively. The total variance request is: Building A1 at 15% (45,600 square feet x 1.05 = 47,880 square feet); Building A2 at 3.5 (10,700 square feet x 1.05 = 11,235 square feet); and, Building C1 at 1.6% (4,750 x 1.05% = 4,988 square feet) for a total of 20.01% of the overall allowable square footage proposed as free standing structures. Thus, the total variance request is 10.01% over the allowed 10% of the square footage for free standing structures.

A special condition exists in that the provision of a successful, proven product type and size for the Grocery Store use necessary to provide needed commercial services to the residents of the AGR Tier in and of itself exceeds the maximum square footage allowed for free standing buildings in the TMD. This also limits the ability to provide a financial institution to provide for another needed service in the AGR Tier. Both uses necessitate designs, which in the TMD Zoning District, create free standing buildings but are uses specifically envisioned for the 2 TMD commercial areas in the AGR Tier.

V.5 Art. 6.A.1.D.16.a. Queuing Standards and Table 6.A.1.D-5 Minimum Queuing Standards: YES.

The applicant has indicated that the financial institution is critical to provide needed banking services in the TMD to the residents of the AGR Tier. The applicant has also indicated that the drive-thru component of the use is critical to the success of the financial institution. A conceptual design, which provided the required number of queuing spaces was presented to the BCC for the most recent AI, but the design compromised pedestrian safety and was unacceptable. At the suggestion of Zoning Division staff, the applicant explored the possibility of seeking a variance for queuing. To protect the pedestrian connectivity of the Primary and Secondary Frontage buildings, in particular the connection between Building C1 and Building C2, a variance is requested to reduce the number of queuing spaces. If the Code-required queuing spaces were provided, the width of the separation along the south side of the primary pedestrian sidewalk would increase by 2 lanes of traffic and pedestrians would have to cross 3 lanes of traffic between Buildings C1 and C2. This circumstance is peculiar to the urban form of development in a TMD.

V.6 Art. 3.F.4.D.3.a.2) TMD Maximum Building Height in the AGR Tier

The Indoor Theater use is proposed to be designed as a state-of-the-art theater per industry standards. The request to allow an increase in height is needed to accommodate the taller screens and balcony stadium seating for the movie theater. The particular circumstance is results from the proposed use of the structure, which is allowed as a permitted use in a TMD in the AGR Tier. The indoor entertainment use (Bowling Alley), which is the other single tenant over 25,000 square feet in Building I, does not need an increase in the allowable height. Thus, the variance for an increase in height is applicable to a portion of Building I. The exact portion of the building that is needed to accommodate the taller screens and balcony seating will not be known until building permit upon submittal of the architectural elevations including floor plans and roof plans. The need for the variance is unique to Building I and is not applicable to the other TMD in the AGR Tier.

2. Special circumstances and conditions do not result from the actions of the applicant:

V.1 Art. 3.F.4.D.7. Parking: YES.

V.2 Figure 3.F.4.D. Typical Example of TMD Commercial Street with Angled Parking to include the requirements for street cross sections as also referenced in Art. 3.F.2.A.1.c.1); Table 3.F.2.A.TDD; Figure 3.F.2.A.; Art. 3.F.4.D.2.a.; and, Art 3.F.4.D.2.a.1): YES.

The previously approved site plan failed to attract the caliber of tenants necessary to support the center and create a successful viable project that will provide the services needed for the residents in the AGR area. The design of providing an increase in the number of angled parking within the Main Street and avoiding the circumstance of increasing the separation between blocks to provide just 1 or 2 on-street angled parking spaces is a result of the demand by potential tenants willing to lease in a Traditional Marketplace style development and the L-shaped parcel, not the result of the applicant.

V.3 Art. 3.F.4.D.1.c.4). Maximum Frontage Per Single Tenant: YES.

V.4 Art. 3.F.4.E.9.b. AGR TMD Free Standing Structures: YES.

V.5 Art. 6.A.1.D.16.a. Queuing Standards and Table 6.A.1.D-5 Minimum Queuing Standards: YES.

The proposed tenant for Building A1 is Publix. Publix has established store prototypes and has decided against the previous 2-story store as a building type. The special circumstances are a result of the needs of the tenant, Publix, to utilize a design prototype even if a variance is needed for 1 extra foot of frontage and exceeds the maximum area allowed as a free standing building. Building A1 must also have a large parking area intended almost exclusively for the Grocery Store to help contain the shopping carts. Variance Condition 4 requiring an additional pedestrian pathway to link Building A1's large front parking area to Building A2 is recommended to mitigate the negative effect of the large parking field in the TMD development.

The financial institution tenant also specifies to meet the demands of the AGR Tier market that the drive-thrus are required, which requires the financial institution to be separated from Building C2 for the drive-thru lanes, adding to the square footage of free standing structures. To mitigate the negative effect of 3 lanes abutting a primary pedestrian sidewalk, a variance is needed from the number of queuing spaces to reduce the impact on the pedestrian circulation system within the TMD development.

V.6 Art. 3.F.4.D.3.a.2) TMD Maximum Building Height in the AGR Tier

Likewise, the Indoor Theater (Movie) tenant proposes to make a significant investment in a movie theater experience for the residents of the AGR Tier. The proposed theater design to include taller screens and stadium seating has proven successful in the evolving industry standards. The need for the variance is a result of the tenant to meet the AGR Tier market demands for the state-of-the-art movie theater design.

3. Granting the variance shall not confer upon the applicant any special privilege denied by the Comprehensive Plan and this code to other parcels of land, structures or buildings in the same zoning district:

V.1 Art. 3.F.4.D.7. Parking: YES.

V.2 Figure 3.F.4.D. Typical Example of TMD Commercial Street with Angled Parking to include the requirements for street cross sections as also referenced in Art. 3.F.2.A.1.c.1); Table 3.F.2.A.TDD; Figure 3.F.2.A.; Art. 3.F.4.D.2.a.; and, Art 3.F.4.D.2.a.1): YES.

V.3 Art. 3.F.4.D.1.c.4). Maximum Frontage Per Single Tenant: YES.

V.4 Art. 3.F.4.E.9.b. AGR TMD Free Standing Structures: YES.

V.5 Art. 6.A.1.D.16.a. Queuing Standards and Table 6.A.1.D-5 Minimum Queuing Standards: YES.

V.6 Art. 3.F.4.D.3.a.2) TMD Maximum Building Height in the AGR Tier: YES.

Either of the 2 TMD's in the AGR Zoning District may request a variance from Code requirements. If Zoning Commission finds that the applicant has adequately addressed the 7 criteria for the requested variance, a special privilege is not conferred.

4. Literal interpretation and enforcement of the terms and provisions of this Code would deprive the applicant of rights commonly enjoyed by other parcels of land in the same zoning district, and would work an unnecessary and undue hardship:

V.1 Art. 3.F.4.D.7. Parking: YES.

V.2 Figure 3.F.4.D. Typical Example of TMD Commercial Street with Angled Parking to include the requirements for street cross sections as also referenced in Art. 3.F.2.A.1.c.1); Table 3.F.2.A.TDD; Figure 3.F.2.A.; Art. 3.F.4.D.2.a.; and, Art 3.F.4.D.2.a.1): YES.

V1 and V2 are discussed together for the literal interpretation criteria. V2 is related to V1 in that the request for a variance to allow more angled parking in front of stores along the Main Street decreases the need for literal interpretation of the on-street parking provision.

The Plan and the Code allow only 2 TMD's in the AGR Tier. The Canyon Town Center TMD is substantially constructed whereas the Delray Marketplace TMD is seeking an amendment to the site plan to address new market-driven conditions. The applicant indicates that the very viability of the Delray Marketplace TMD hinges on the availability of additional parking directly in the vicinity of the Main Street, a critical design requirement based on the knowledge gained from existing TMD-style developments. The argument that the on site parking provision was not literally enforced for the other TMD in the AGR Zoning District does not relieve the applicant of the requirement that the Code be literally interpreted for this application.

The elimination of some on-street parking at the ingress and egress streets will allow for a more compact, stronger Main Street pedestrian orientation when walking from Building A2 to B1 or C1; from Building C2 to D, from Building E to F-G, and from Central Plaza area (flanked by Buildings I, I-SE and I-SW to Buildings H and F-G. Unless a mix of angled and parallel parking is provided, the walk is shortened by 20 to 40 feet between these areas. The applicant has indicated that providing a mix of parallel and angled parking is an undesirable site design from a customer convenience view.

V.3 Art. 3.F.4.D.1.c.4). Maximum Frontage Per Single Tenant: YES.

The variance request is for only 1 foot over the 240-foot maximum frontage to allow development of an established, successful Grocery Store prototype. Literal enforcement of the Code would work an unnecessary hardship.

V.4 Art. 3.F.4.E.9.b. AGR TMD Free Standing Structures: YES.

V.5 Art. 6.A.1.D.16.a. Queuing Standards and Table 6.A.1.D-5 Minimum Queuing Standards: YES.

The literal interpretation of the Code would impact the ability to provide for the much-needed Grocery Store and Financial Institution services in the AGR Tier and would be an unnecessary hardship for the residents in addition to an unnecessary hardship for the overall success of the TMD development, which is 1 of only 2 TMDs allowed in the AGR Tier.

V.6 Art. 3.F.4.D.3.a.2) TMD Maximum Building Height in the AGR Tier: YES.

Literal interpretation of the Code would work an unnecessary hardship in that the state-of-the-art movie theater cannot be provided for the residents of the AGR Tier. Building I is the anchor tenant/focal point/central plaza gathering area of the development. To lose the long-anticipated movie theatre and bowling alley tenants would cause a substantial site re-design and substantial hardship.

5. Grant of variance is the minimum variance that will make possible the reasonable use of the parcel of land, building or structure:

V.1 Art. 3.F.4.D.7. Parking: YES.

V.2 Figure 3.F.4.D. Typical Example of TMD Commercial Street with Angled Parking to include the requirements for street cross sections as also referenced in Art. 3.F.2.A.1.c.1); Table 3.F.2.A.TDD; Figure 3.F.2.A.; Art. 3.F.4.D.2.a.; and, Art 3.F.4.D.2.a.1): YES.

V.3 Art. 3.F.4.D.1.c.4). Maximum Frontage Per Single Tenant: YES.

V.4: Art. 3.F.4.E.9.b. AGR TMD Free Standing Structures: YES.

V.5 Art. 6.A.1.D.16.a. Queuing Standards and Table 6.A.1.D-5 Minimum Queuing Standards: YES.

V.6 Art. 3.F.4.D.3.a.2) TMD Maximum Building Height in the AGR Tier: YES.

This TMD in the AGR Tier has been through numerous Development Order Amendment and Type II Variance approvals since the project was first presented to the BCC as part of a "Beauty Contest." The Zoning Director initiated a second Administrative Inquiry (AI-2011-002) for confirmation from the BCC that the proposed amendments to the plan will be consistent with the April 6, 2005 Conceptual Plan shown to the BCC as part of the approval process for the Delray Marketplace AGR-TMD. The BCC allowed this application to proceed through the DOA process allowing for the waivers and the

variances. The modifications to the plan which are related to the variance requests include: 1) Relocation of Building A (Grocery Store) to accommodate the typically large parking area in front of the store, which eliminates Main Street terminus; 2) Redesign and Relocation of Buildings along Main Street to include drive-thrus; and 3). Reconfiguration of Main Street by introducing additional on-street angled parking and creating distance between buildings.

The purpose of a Type II Variance is to allow a deviation from certain standards of the Code when special circumstances or conditions peculiar to the property exist and the literal enforcement of the Code would result in undue and unnecessary hardship. This application seeks a significant site re-design to address changes in the development market and in particular changes in the development of the TMD-style developments.

Variances 1 through 6 are all needed to accomplish the proposed site design. The retail users envisioned for this project require sufficient parking to be located in the vicinity of the storefronts, a fact that was made apparent during leasing coordination with the retail users and is based on the users' experience in other TMD-style developments (V.1 and V.2.). The Grocery Store is a critical component to the success of the TMD in the AGR Tier. The single-tenant frontage variance equates to less than a 1% variance to allow the construction of the Grocery Store without necessitating a change to the construction documents. The impact of redesigning the prototype to accommodate a decrease in frontage of 1 foot is unreasonable. This will allow for a more timely and efficient construction process for the building (V.3 and V.4). The Financial Institution must provide drive-thru tellers while transitioning to one narrower lane to exit out onto the main pedestrian sidewalk (V.5). The indoor movie theater must provide the taller screens and stadium seating, which is relatively new but that has come to be expected by the movie-going public (V.6).

6. Grant of the variance will be consistent with the purposes, goals, objectives, and policies of the Comprehensive Plan and this Code:

V.1 Art. 3.F.4.D.7. Parking: YES.

V.2 Figure 3.F.4.D. Typical Example of TMD Commercial Street with Angled Parking to include the requirements for street cross sections as also referenced in Art. 3.F.2.A.1.c.1); Table 3.F.2.A.TDD; Figure 3.F.2.A.; Art. 3.F.4.D.2.a.; and, Art 3.F.4.D.2.a.1): YES.

V.3 Art. 3.F.4.D.1.c.4). Maximum Frontage Per Single Tenant: YES.

V.4 Art. 3.F.4.E.9.b. AGR TMD Free Standing Structures: YES.

V.5 Art. 6.A.1.D.16.a. Queuing Standards and Table 6.A.1.D-5 Minimum Queuing Standards: YES.

V.6 Art. 3.F.4.D.3.a.2) TMD Maximum Building Height in the AGR Tier: YES.

Grant of the 6 variances will allow for the proposed site design, which will provide a concentrated area for shopping, entertainment, business, services, and cultural opportunities within a pedestrian oriented environment. This project promotes the preservation of agriculture by providing a compact commercial area at the intersection of major arterials to serve the residents in the AGR Tier and preserve agricultural land. The BCC determined pursuant to the AI-2011-002 that this design implements the conceptual designs that were presented to the BCC on April 6, 2005. The Planning Division has determined that the amended site plan is consistent with the Plan.

7. Granting the variance will not be injurious to the area involved or otherwise detrimental to the public welfare:

V.1 Art. 3.F.4.D.7. Parking: YES.

V.2 Figure 3.F.4.D. Typical Example of TMD Commercial Street with Angled Parking to include the requirements for street cross sections as also referenced in Art. 3.F.2.A.1.c.1); Table 3.F.2.A.TDD; Figure 3.F.2.A.; Art. 3.F.4.D.2.a.; and, Art 3.F.4.D.2.a.1): YES.

V.3 Art. 3.F.4.D.1.c.4). Maximum Frontage Per Single Tenant: YES.

V.4 Art. 3.F.4.E.9.b. AGR TMD Free Standing Structures: YES.

V.5 Art. 6.A.1.D.16.a. Queuing Standards and Table 6.A.1.D-5 Minimum Queuing Standards: YES.

V.6 Art. 3.F.4.D.3.a.2) TMD Maximum Building Height in the AGR Tier: YES.

Grant of the variances will not be injurious to the AGR Tier or otherwise detrimental to the public welfare. Grant of V.1 will allow a shorter walking distance between several of the buildings and avoid some back-out issues and stacking issues. Grant of V.2 will help to mitigate the loss of some of the on-street parking with the grant of V.1. The proposed site plan provides multiple pedestrian connections between both sides of Main Street and via the sidewalk between the 2 additional rows of

angled parking. Parking is dispersed throughout the development in accordance with Art. 3.F.4.A.3. At the most recent AI hearing for this project wherein the need for the street cross section and free standing structure variances were discussed, the public indicated the need for this project to move forward.

As to V.3 and V.4, the Grocery Store tenant is of particular importance to serve the residents in the AGR Tier. The variance to allow 241 feet of frontage—an increase of 1 foot of frontage—for a single is unnoticeable. The building will be designed to provide for the appearance of separate storefronts per Code requirements. Staff is recommending conditions of approval for the free standing structure variance to mitigate any adverse effects of the separation of Building A1 (Grocery Store) from the other buildings and to visually diminish the parking lot in front of Building A1 in accordance with Art. 3.F.1.G.2.b.

V.5, the variance from the number of queuing spaces helps to mitigate the separation of Building C1 from Building C2 and provides increased safety for pedestrians crossing in front of the financial institution's drive-thru lanes. The design allows for the parking lot access aisle to the south of the building to serve as a bypass lane, thereby encouraging bank patrons to park and utilize the bank's lobby should all drive-thru lanes be full furthering TMD goals of encouraging more pedestrian traffic along Main Street.

Finally, as to V.6 a variance to allow additional building height the applicant notes that a residential building in a TMD in the AGR Tier is allowed to be 45 feet in height if ground floor garage is provided. Allowing a height of 44 feet for the Indoor Theater use, which provides substantial setbacks and separations from the adjacent property owners and residences within the development, to accommodate the industry design standards for state-of-the-art movie theaters would not be detrimental to the public welfare.

FINDINGS:

Conditional Uses, Requested Uses and Development Order Amendments:

When considering a development order application for a conditional or requested use, or a development order amendment, the BCC and ZC shall consider standards 1 – 9 indicated below. A conditional or requested use or development order amendment which fails to meet any of these standards shall be deemed adverse to the public interest and shall not be approved. Staff has reviewed the request for compliance with the standards that are expressly established by Article 2.B.-2.B and provides the following assessment:

1. **Consistency with the Plan** – *The proposed use or amendment is consistent with the purposes, goals, objectives and policies of the Plan, including standards for building and structural intensities and densities, and intensities of use.*

The Planning Division has determined that the requests are consistent with the Commercial Low with an underlying Agriculture Reserve (CL/AGR) Land Use Designation designation of the Palm Beach County Comprehensive Plan and direction received from the BCC February 24, 2011.

2. **Consistency with the Code** - *The proposed use or amendment complies with all applicable standards and provisions of this Code for use, layout, function, and general development characteristics. The proposed use also complies with all applicable portions of Article 4.B, SUPPLEMENTARY USE STANDARDS.*

The BCC provided direction to staff on April 24, 2011 pursuant to AI-2011-002 that the proposed preliminary site plan amended to provide; 1) Relocation of Building A (Grocery Store) to accommodate the parking area in front of the store; 2) Redesign and Relocation of Buildings along Main Street; 3). Reconfiguration of Main Street including a decrease in length and introduction of additional on-street angled parking pursuant to an alternative commercial street cross section design; 4) Revision to Access 100 feet to the west; and 5) Relocation of the Central Plaza and Modifications and the creation of Amphitheater Plaza. The applicant has complied with BCC direction. Therefore, staff has determined that the Development Order Amendment to reconfigure the Site Plan, reduce square footage, modify/delete Conditions of Approval (All Petitions, Architectural Review, Landscape,

Signs, Use Limitations), and restart the Commencement of Development clock is consistent with the Code. The determination that the amendment complies with all applicable standards and provisions of this Code for a TMD in the AGR tier is subject to Zoning Commission approval of Type II Variances to allow alternative street cross sections for Main Street, to reduce the limitation on Free Standing Structures, to allow an increase in frontage for a single tenant, to allow streets without on-street parking, and to allow a reduction in the number of queuing spaces; and, also subject to BCC approval of the concurrent waiver request to allow a reduction in the length of the Main Street and the minimum length of a block.

3. **Compatibility with Surrounding Uses** – *The proposed use or amendment is compatible and generally consistent with the uses and character of the land surrounding and in the vicinity of the land proposed for development.*

The Delray Marketplace development was previously found to be compatible with the surrounding land uses under the 2 prior rezoning applications. This application requests to reconfigure the development area and reduce square footage. The proposed amendment does not decrease the residential buildings' setback from the north boundary. Planned Development–TMD Condition 2 requires a notice be given to residents in writing through the Homeowners' Association (HOA) documents, written sales brochures, sales contracts, and site plans to advise prospective residents of Florida's Right to Farm act is carried forward with this application. The 15-acre TMD Preserve Parcel 3 abuts the west boundary of the development area and is approximately 133 feet wide along the southern portion of the west property line adjacent to the relocated Grocery Store (Building A1). As proposed and subject to the recommended conditions of approval, staff anticipates no adverse impacts to the surrounding properties from the requests.

4. **Design Minimizes Adverse Impact** – *The design of the proposed use minimizes adverse effects, including visual impact and intensity of the proposed use on adjacent lands.*

The applicant is not proposing any additional intensity or density. The gross floor area has been reduced from 300,526 square feet to 278,940 square feet (including outdoor dining) and the residential units remain at 73 units. Although the Grocery Store is now closer to the west boundary, the building has been reduced in height from 2-stories to 1-story.

5. **Design Minimizes Environmental Impact** – *The proposed use and design minimizes environmental impacts, including, but not limited to, water, air, storm water management, wildlife, vegetation, wetlands and the natural functioning of the environment.*

Environmental Resources Management has determined this amendment has no significant environmental issues beyond compliance with ULDC requirements.

6. **Development Patterns** – *The proposed use or amendment will result in a logical, orderly and timely development pattern.*

The amendment does not alter the development pattern in the vicinity. Staff has determined that this amendment does not affect the previous finding that Delray Marketplace development was a logical, orderly, and timely development pattern.

7. **Consistency with Neighborhood Plans** – *The proposed development or amendment is consistent with applicable neighborhood plans in accordance with BCC policy.*

Neither the development area nor the preserve parcels are located within a neighborhood plan.

8. **Adequate Public Facilities** – *The extent to which the proposed use complies with Art. 2, F, Concurrency.*

Concurrency has been approved for 73 Multifamily (condo) units and 278,940 square feet of permitted and requested non-residential uses.

9. **Changed Conditions or Circumstances** – *There are demonstrated changed conditions or circumstances that necessitate a modification.*

The request to reduce gross floor area of the center is as a result of the change circumstances in the surrounding area. The developer feels 278,940 square feet can be supported by the surrounding area. Since the original approval of the project in 2005, residential development in the Ag. Reserve has slowed greatly. Specifically, the 380 unit approved PUD located to the east of Delray Marketplace has not been built. The applicant indicates this circumstance is one of the reasons for the reduced length of the Main Street as the center has become more compact.

Building A, (Grocery Store). The most recent approved plans for Delray Marketplace included a grocery store located on the second floor over a parking garage. The applicant states: The tenant did not have success with this store prototype and no longer wishes to construct an elevated store. The community had concerns about the difficulty of grocery shopping and then having to maneuver the shopping cart down an escalator. Building A has been converted to a more typical grocery store to meet the tenant's requirements. Building A has been shifted to the north and a larger parking area is provided near the primary entry. This relocation also caused the western entrance road from Atlantic Avenue to shift approximately 100 feet to the east.

Main Street Design: The applicant indicates developer has worked with national retail tenants, and received feedback regarding the Main Street design. These national tenants have experience in TMD style centers across the country and feel there more parking is needed on the Main Street. The additional parking along the Main Street, proposed as 4 rows of angled parking and 2 one-way drives, provides more convenient parking for the users without having to walk a long distance in the Florida heat per the tenant's view given the median age of the population within 3 miles of the site is 61.5 years compared to 48 years in the other areas for Palm Beach County.

Plaza relocation: The applicant indicates the amphitheater plaza was created in the southeast corner of the property to allow for a larger green and a gathering area. The plaza will feature a privately operated Amphitheater where entertainment can be provided for the community at a location visible from both Lyons Road and W. Atlantic Ave to attract additional people and energize the center. The amphitheater use is accessory to the plaza; therefore, special event permits are not required, per the Zoning Director's interpretation. The location of the amphitheater plaza also allows an easy flow from the Greeting Plaza. Bollards are proposed to close-off the vehicular connection during events and overflow seating can be provided in the Rural Parkway that is directly adjacent to the Amphitheater Plaza. A direct pedestrian connection from the Parkway has been provided. This plaza in the central area of the project although not on Main Street, will serve as wonderful gathering area for the community.

Staff has evaluated the standards listed under Article 2.B.2.B 1-9 and determined that there is a balance between the need for change and the potential impacts generated by this change. Therefore, staff is recommending approval of the DOA request. Staff has also determined that any of the potential impact and incompatibility issues will be adequately addressed subject to the recommended conditions of approval as indicated in Exhibit C-2.

CONDITIONS OF APPROVAL

EXHIBIT C-1

Type II Variance - Concurrent

ALL PETITIONS

1. The approved Preliminary Site Plan is dated April 18, 2011. Modifications to the Development Order inconsistent with the conditions of approval, or changes to the uses or site design beyond the authority of the Development Review Officer (DRO) as established in the Unified Land Development Code (ULDC), must be approved by the Board of County Commissioners or the Zoning Commission. (ONGOING: ZONING - Zoning)

2. The Development Order for this variance shall be tied to the Time Limitations of the Development Order for ZV/DOAW-2011-419 (ONGOING: MONITORING - Zoning)

VARIANCE

1. A minimum of 40% of the south elevation of Building A1 shall meet Secondary Frontage requirements of the Unified Land Development Code (ULDC). (DRO:ZONING-Zoning)

2. A minimum of 40% of the East elevation of Building A1 shall be constructed on the build-to-line to meet Secondary Frontage requirements of the Unified Land Development Code (ULDC). (DRO: ZONING - Zoning)

3. A functional secondary building entrance shall be provided on the east facade of Building A1. The east entrance shall be similar in size and detail to the primary entrance and located at minimum 40 feet north of the southeast corner. (DRO: ZONING - Zoning)

4. A pedestrian pathway shall be provided within the parking area south of Building A1. The pathway shall link the interior islands from west to east and cross the western entrance to the south west corner of Building A2 consistent with the intent of Art. 3.F.1.G.2.b (DRO: ZONING - Zoning)

5. A pedestrian amenity, consistent with the adjacent entrance feature, shall be provided at the middle interior island in the parking lot between Building A1 and West Atlantic Ave. (DRO:ZONING-Zoning)

6. Outdoor cart storage is prohibited except within cart corrals as indicated on the Final Site Plan.(ONGOING: ZONING / CODE ENF - Zoning)

7. A minimum twelve (12) foot wide covered walkway shall be provided north of Building A2. An architectural focal point shall be provided on the southeast corner of Building A1 and repeated on the southwest corner of Building B1. These focal points and the shaded walkway shall promote a singular architectural statement linking the freestanding building to the attached buildings. (DRO: ARCH REVIEW - Zoning)

8. In granting this approval, the Zoning Commission relied upon the oral and written representations of the property owner/applicant both on the record and as part of the application process. Deviations from or violation of these representations shall cause the approval to be presented to the Board of County Commissioners for review under the compliance condition of this approval. (ONGOING: MONITORING - Zoning)

9. Failure to comply with any of the conditions of approval for the subject property at any time may result in:

a. The issuance of a stop work order; the issuance of a cease and desist order; the denial or revocation of a building permit; the denial or revocation of a Certificate of Occupancy (CO); the denial of any other permit, license or approval to any developer, owner, lessee, or user of the subject property; the revocation of any other permit, license or approval from any developer, owner, lessee, or user of the subject property; revocation of any concurrency; and/or

- b. The revocation of the Official Map Amendment, Conditional Use, Requested Use, Development Order Amendment, and/or any other zoning approval; and/or
- c. A requirement of the development to conform with the standards of the Unified Land Development Code (ULDC) at the time of the finding of non-compliance, or the addition or modification of conditions reasonably related to the failure to comply with existing conditions; and/or
- d. Referral to code enforcement; and/or
- e. Imposition of entitlement density or intensity.

Staff may be directed by the Executive Director of PZ&B or the Code Enforcement Special Master to schedule a Status Report before the body which approved the Official Zoning Map Amendment, Conditional Use, Requested Use, Development Order Amendment, and/or other zoning approval, in accordance with the provisions of Section 2.E of the ULDC, in response to any flagrant violation and/or continued violation of any condition of approval. (ONGOING: MONITORING - Zoning)

EXHIBIT C-2
Development Order Amendment

ALL PETITIONS

1. All Petitions 1 of Resolution R-2010-447, Control No. 2004-616, which currently states:

The approved Preliminary Site Plan is dated June 12, 2009. Modifications to the development order inconsistent with the conditions of approval, or changes to the uses or site design beyond the authority of the DRO as established in the ULDC, must be approved by the Board of County Commissioners. (ONGOING: ZONING - Zoning)

Is hereby amended to read:

The approved Preliminary Site Plan is dated April 18, 2011. Modifications to the Development Order inconsistent with the conditions of approval, or changes to the uses or site design beyond the authority of the Development Review Officer (DRO) as established in the Unified Land Development Code (ULDC), must be approved by the Board of County Commissioners or the Zoning Commission. (ONGOING: ZONING - Zoning)

2. All Petitions 2 of Resolution R-2010-447, Control 2004-616, which currently states:

All previous conditions of approval applicable to the subject property, as contained in Resolutions R-2008-1136 and R-2009-0709 (Control 2004-0616), have been consolidated as contained herein. The property owner shall comply with all previous conditions of approval and deadlines previously established by Article 2.E of the Unified Land Development Code (ULDC) and the Board of County Commissioners or Zoning Commission, unless expressly modified. (ONGOING: MONITORING - Zoning)

Is hereby amended to read:

All previous conditions of approval applicable to the subject property, as contained in Resolution R-2010-447 (Control 2004-616), have been consolidated as contained herein. The property owner shall comply with all previous conditions of approval and deadlines previously established by Article 2.E of the Unified Land Development Code (ULDC) and the Board of County Commissioners or Zoning Commission, unless expressly modified. (ONGOING: MONITORING - Zoning)

3. Based on Article 2.E of the Unified land Development Code, this Development Order meets the requirements to receive a new three (3) year review date from date of approval of this resolution. (DATE June 27, 2014: MONITORING - Zoning)

ARCHITECTURAL REVIEW

1. Architectural Review 1 of Resolution R-2010-447, Control No. 2004-616, which currently states:

At time of submittal for final approval by the Development Review Officer (DRO), architectural elevations for all non-residential buildings and structures shall be submitted simultaneously with the site plan for final architectural review and approval. The elevations shall be designed to be consistent with ULDC Articles 5.C, 3.F.4.D.3. and 3.F.4.D.9., and shall reflect a character that is generally consistent with the elevations prepared by Scott Partnership dated June 21, 2005. Development shall be consistent with the approved architectural elevations, the DRO approved site plan, all conditions of approval, and all ULDC requirements.

a. Any revisions to Architectural Elevations or an architectural element previously approved by the DRO may be approved administratively by the Architectural Review Section only, provided the footprint or site plan is not affected. (DRO: ARCH REVIEW - Zoning)

Is hereby amended to read:

Prior to final approval by the Development Review Officer (DRO), architectural elevations for Building A1 and Building I shall be submitted simultaneously with the site plan for final architectural review and

approval. The elevations shall be designed to be consistent with Articles 5.C and 3.F., as amended, of the Unified Land Development Code (ULDC) and shall reflect a character that is generally consistent with the elevations prepared by Scott Partnership dated June 21, 2005. Development shall be consistent with the approved architectural elevations, the DRO approved site plan, all conditions of approval, and all ULDC requirements. (DRO: ARCH REVIEW - Zoning)

2. Design of gutters and downspouts shall be integrated into the architectural design of each building, excluding the freestanding multifamily buildings. Painting of the gutters and downspouts shall not constitute architectural integration. (DRO: ARCH REVIEW - Zoning) (Previous Architectural Review Condition 2 of Resolution R-2010-0447, Control No. 2004-616)

3. Each freestanding multifamily dwelling unit shall include a garage that exceeds the minimum residential parking dimensions or a separate storage closet for trash receptacles, as deemed acceptable to the Architectural Review Section. (DRO: ARCH REVIEW - Zoning) (Previous Architectural Review Condition 3 of Resolution R-2010-0447, Control No. 2004-616)

4. Architectural Review Condition 4 of Resolution R-2010-0447, Control No. 2004-616, which currently states:

Prior to final approval by the Development Review Officer (DRO), the property owner shall submit architectural elevations for Building A that are in compliance with the proposed square footage of 57,340 square feet. The revised elevations shall be consistent in design with the preliminary architectural elevations provided for Application 2008-288 on April 14, 2008. All revisions shall comply with Article 5.C., 3.F.4.D.3 and 3.F.4.D.9. of the ULDC and the character of the site design. (DRO: ARCH REV - Arch Rev)

Is hereby deleted: REASON: The grocery store building is no longer proposed to be elevated over parking.

5. Architectural Review 6 of Resolution R-2010-0447, Control No. 2004-616, which currently states:

Decorative gates, doors or other acceptable means of screening shall be provided for the opening to the service areas of Buildings A, C, F, G, H and I. These screening features shall:

- a. have a minimum height of eight (8) feet measured from finished grade to highest point;
- b. have a maximum height no greater than the height of the adjacent building facade;
- c. be architecturally consistent with the building;
- d. remain closed when the service areas are not in use; and,
- e. be subject to review and approval by the Architectural Review Section. (DRO: ARCH REVIEW - Zoning)

Is hereby amended to read:

Decorative gates, doors or other acceptable means of screening shall be provided for the opening to the service areas of Buildings B1, D, E, FG, H and I. These screening features shall:

- a. have a minimum height of eight (8) feet measured from finished grade to highest point;
- b. have a maximum height no greater than the height of the adjacent building facade;
- c. be architecturally consistent with the building;
- d. remain closed when the service areas are not in use; and,
- e. be subject to review and approval by the Architectural Review Section. (DRO: ARCH REVIEW - Zoning)

6. Architectural Review 7 of Resolution R-2010-0447, Control No. 2004-616, which currently states:

The screening walls adjacent to the service areas of Building B shall:

- a. have a minimum height of ten (10) feet measured from finished grade to highest point;
- b. have a maximum height no greater than the height of the adjacent building facade;
- c. be attached to the adjacent corners of the building;
- d. extend a distance no less than the length of each service area;

- e. be architecturally consistent with the building; and,
- f. be subject to review and approval by the Architectural Review Section. (DRO: ARCH REVIEW - Zoning)

Is hereby deleted. REASON: No longer applicable.

7. Architectural Review 8 of Resolution R-2010-0447, Control No. 2004-616, which currently states:

All drive-thru facilities shall incorporate an overhead canopy designed to the following standards:

- a. a minimum length and width adequate to cover all queuing lanes below;
- b. a maximum height of twenty-five (25) feet measured from finished grade to highest point;
- c. a pitched roof with a minimum slope of 4:12. No flat roof shall be permitted;
- d. lighting for the canopy shall be flush mounted or recessed;
- e. a maximum of one (1) canopy sign not exceeding eighteen (18) inches in height shall be permitted. Signage shall be limited to the side of the canopy providing vehicle entry only; and,
- f. the final design and details for these canopies shall be subject to review and approval by the Architectural Review Section. (DRO: ARCH REVIEW - Zoning)

Is hereby amended to read:

The drive-thru facility for Building C1 shall incorporate an overhead canopy designed to the following standards:

- a. a minimum length and width adequate to cover all queuing lanes below;
- b. a maximum height of twenty-five (25) feet measured from finished grade to highest point;
- c. a pitched roof with a minimum slope of 4:12. No flat roof shall be permitted;
- d. lighting for the canopy shall be flush mounted or recessed;
- e. a maximum of one (1) canopy sign not exceeding eighteen (18) inches in height shall be permitted. Signage shall be limited to the side of the canopy providing vehicle entry only; and,
- f. the final design and details for the canopy shall be subject to review and approval by the Architectural Review Section. (DRO: ARCH REVIEW - Zoning)

8. Architectural Review 9 of Resolution R-2010-0447, Control No. 2004-616, which currently states:

Prior to final approval by the Development Review Officer (DRO), the design and detail for the following amenities shall be subject to review and approval by the Architectural Review Section and reflected on the Regulating Plan:

- a. plazas;
- b. town square;
- c. event stage;
- d. pedestrian gathering areas;
- e. water features;
- f. architectural focal points;
- g. bus shelters;
- h. trellis;
- i. entry features;
- j. signage;
- k. street furniture; and,
- l. freestanding light fixtures.

All amenities shall be designed to be consistent with the architectural character of the principal buildings. (DRO: ARCH REVIEW - Zoning)

Is hereby amended to read:

Prior to final approval by the Development Review Officer (DRO), the design and detail for the following amenities shall be subject to review and approval by the Architectural Review Section and reflected on the Regulating Plan:

- a. plazas;
- b. amphitheater;

- c. pedestrian gathering areas;
 - d. trellis
 - e. water features;
 - f. bus shelters;
 - g. entry features;
 - h. street furniture;
 - i. freestanding light fixtures;
 - j. Building I focal point; and,
 - k. Building A2 focal point consistent with rendering "Option 1" dated February 22, 2011.
- All amenities shall be designed to be compatible with the architectural character of the principal buildings and to establish a consistent theme for the project. (DRO: ARCH REVIEW - Zoning)

9. Prior to final approval by the Development Review Officer (DRO), the site plan shall be revised to indicate a trellis with climbing vine or other entry feature acceptable to the DRO as follows:

- a. over each sidewalk at the entryways from West Atlantic Avenue; and,
- b. the final design and detail for these amenities shall be subject to review and approval by the Architectural Review Section. (DRO: ARCH REVIEW - Zoning) (Previous Architectural Review 10 of Resolution R-2010-0447, Control No. 2004-616)

10. In addition to ULDC requirements at least 60% of the Primary Frontages shall have arcades a minimum of 10 feet in width and 12 feet minimum height. The requirement for the arcades to be contiguous may be amended subject to a variance approval. [ZR-2007-005] (DRO: ARCH REVIEW - Zoning)(Previous Architectural Review 11 of Resolution R-2010-0447, Control No. 2004-616)

11. Prior to building permit application, the architectural elevations for the residential units shall be submitted for review and approval by the Architectural Review Section. All elevations shall be:

- a. given a similar architectural treatment that is generally consistent with the architectural character of the principal structures in the development. (BLDG PERMIT: ARCH REVIEW - Zoning) (Previous Architectural Review 12 of Resolution R-2010-447, Control No. 2004-616)

ENGINEERING

1. In order to comply with the mandatory Traffic Performance Standards, the Property Owner has relied on the Atlantic Avenue CRALLS designation (Policy 1.2-f.35 of the transportation element of the Comprehensive Plan) and as such must enter into a funding agreement to the satisfaction of County Engineer, to pay for the construction of the 6-laning of West Atlantic Avenue from Florida's Turnpike to Jog Road and the 4-laning of West Atlantic Avenue from Lyons Road to Starkey Road. (ONGOING: ENGINEERING - Eng) (Previous Engineering Condition 1, Resolution R-2010-0447, Control No. 2004-616) [Note: COMPLETED per the Atlantic Ave Agreement]

2. Previous Engineering Condition 2, Resolution R-2010-0447, Control No. 2004-616, which currently states:

In order to comply with the mandatory Traffic Performance Standards, the Developer shall be restricted to the following phasing schedule:

- a. No building permits for the site shall be issued after December 31, 2012. A time extension for this condition may be approved by the County Engineer based upon an approved Traffic Study which complies with Mandatory Traffic Performance Standards in place at the time of the request. This extension request shall be made pursuant to the requirements of Article 2.E of the Unified Land Development Code. (DATE: MONITORING - Eng)

Is hereby amended to read:

In order to comply with the mandatory Traffic Performance Standards, the Developer shall be restricted to the following phasing schedule:

- a. No building permits for the site shall be issued after December 31, 2013. A time extension for this condition may be approved by the County Engineer based upon an approved Traffic Study which complies with Mandatory Traffic Performance Standards in place at the time of the request. This

extension request shall be made pursuant to the requirements of Article 2.E of the Unified Land Development Code. (DATE: MONITORING - Eng)

3. The concurrency approval is subject to the project aggregation rule set forth in the Traffic Performance Standards Ordinance. (ONGOING: ENGINEERING - Eng) (Previous Engineering Condition 3 of Resolution R-2010-0447, Control No. 2004-616)

4. The Property Owner shall fund the cost of signal installation if warranted as determined by the County Engineer at the Project's north Entrance and Lyons Road. Signalization shall be a mast arm structure installation. The cost of signalization shall also include all design costs and any required utility relocation.

a. No Building Permits shall be issued until the developer provides acceptable surety in the form of a cash bond or escrow agreement to the Traffic Division in an amount as determined by the Director of the Traffic Division. (BLDG PERMIT:MONITORING-Eng)

b. In order to request release of the surety for this traffic signal the Property Owner shall provide written notice to the Traffic Division stating that the final certificate of occupancy has been issued for this development and requesting that a signal warrant study be conducted at both intersections. The Traffic Division shall have 24 months from receipt of this notice to either draw upon the monies to construct the traffic signal or release the monies. (ONGOING: ENGINEERING-Eng) (Previous Engineering Condition 4, Resolution R-2010-0447, Control No. 2004-616)

5. Prior to December 1, 2005, the Property Owner shall fund the cost of signal installation if warranted as determined by the County Engineer at Lyons Road and West Atlantic Avenue.

a. Signalization shall be a mast arm structure installation. The cost of signalization shall also include any required utility relocation. (DATE:MONITORING-Eng)

b. In order to request release of the surety for the traffic signal at this intersection the Property Owner shall provide written notice to the Traffic Division stating that the final certificate of occupancy has been issued for this development and requesting that a signal warrant study be conducted at both intersections. The Traffic Division shall have 24 months from receipt of this notice to either draw upon the monies to construct the traffic signal or release the monies. (ONGOING: ENGINEERING-Eng) (Previous Engineering Condition 5 of Resolution R-2010-0447, Control No. 2004-616) [Note: Complete per the Atlantic Avenue Funding Agreement]

6. The location of back-out angled parking on the main streets in the TMD is subject to review and approval by the County Engineer, and may be required to be removed or relocated prior to final DRO approval. (DRO: ENGINEERING - Eng) (Previous Engineering Condition 6 of Resolution R-2010-0447, Control No. 2004-616)

7. CORRIDOR CONVEYANCE OF RIGHT OF RIGHT OF WAY The property owner shall convey to Palm Beach County Land Development Division by road right of way warranty deed for the roads below. All Right of way conveyances shall be free of all encumbrances and encroachments, unless noted otherwise. Developer shall provide Palm Beach County with sufficient documentation acceptable to the Right of Way Acquisition Section to ensure that the property is free of all encumbrances and encroachments. The Grantor also agrees to provide Palm Beach County an environmental report, subject to the approval of County Engineer, demonstrating that this property meets all appropriate and applicable environmental agency requirements. In the event the report makes a determination of contamination which requires remediation or clean up on the property now owned by the Grantor, the Grantor agrees to hold the Grantee harmless and shall be responsible for all costs of such clean up, including but not limited to, all applicable permit fees, Engineering or other expert witness fees including Attorney's fees as well as the actual cost of the clean up prior to dedication. Thoroughfare Plan Road right-of-way conveyances shall be consistent with Palm Beach County's Thoroughfare Right of Way Identification Map and shall include where appropriate as determined by the County Engineer provisions for Expanded Intersection Details and Corner Clips.

a. Lyons Road 55 feet from centerline, prior to January 1, 2006 (DATE: MONITORING-Eng) [Note: COMPLETED]

b. West Atlantic Avenue an additional 70 feet of right of way to provide for a total of 126 feet of right of way. Right of way shall be free and clear of all encumbrances and encroachments prior to widening of Atlantic Avenue. Prior to final DRO approval for the development parcel, Property Owner shall enter into an agreement with Right of Way Acquisition Section to allow encroachments until right of way is required for widening. The agreement shall require that the property owner be responsible for the costs associated with removing and relocating all encroachments within the ultimate right of way. (DRO:ENGINEERING-Eng)

c. Expanded Intersection right of way at West Atlantic Avenue and Lyons Road on an alignment approved by the County Engineer. Right of way shall be free and clear of all encumbrances and encroachments prior to widening of Atlantic Avenue. Prior to final DRO approval for the development parcel, Property Owner shall enter into an agreement with Right of Way Acquisition Section to allow encroachments until right of way is required for widening. The agreement shall require that the property owner be responsible for the costs associated with removing and relocating all encroachments within the ultimate right of way. (DRO:ENGINEERING-Eng) (Previous Engineering Condition 7 of Resolution R-2010-0447, Control No. 2004-616)

8. Prior to issuance of a building permit the property owner shall convey to Palm Beach County Land Development Division by warranty deed additional right of way for the construction of right turn lanes on West Atlantic Avenue at both of the project's entrances. This right of way shall be a minimum of 280 feet in length, twelve feet in width, and a taper length of 50 feet or as approved by the County Engineer. This additional right of way shall be free of all encumbrances and encroachments and shall include corner clips where appropriate as determined by the County Engineer. Property owner shall provide Palm Beach County with sufficient documentation acceptable to the Right of Way Acquisition Section to ensure that the property is free of all encumbrances and encroachments. (BLDG PERMIT: MONITORING-Eng) (Previous Engineering Condition 8 of Resolution R-2010-0447, Control No. 2004-616)

9. The Property owner shall construct:

- i. Right turn lane east approach on West Atlantic Avenue at both Project Driveways.
- ii. Left turn lane west approach on West Atlantic Avenue at the Project's west driveway OR a traffic separator within Atlantic Avenue at the Project's west driveway to restrict left turns in and out of this driveway, subject to FDOT approval.
- iii. Left turn lane south approach on Lyons Road at the Projects north entrance.
- iv. Right turn lane north approach on Lyons Road at both Project entrances.
- v. A temporary access to West Atlantic Avenue at existing Lyons Road that provides a minimum 200 foot throat distance and a north approach left, through and right turn lane.

a. Any and all costs associated with this construction shall be paid by the property owner. These costs shall include, but are not limited to, utility relocations and acquisition of any additional required right-of-way. (ONGOING: ENGINEERING - Eng)

b. Construction for the improvements in a 9.i., 9.ii., and EITHER 9.iii. and 9.iv. OR 9.v. shall be completed prior to the issuance of the first Certificate of Occupancy. (CO: MONITORING - Eng)

c. If both driveways on Lyons Road are not constructed as part of the first phase of development or are not constructed at the same time, then the right turn lanes required in 9.iv. shall be constructed concurrent with the associated driveway or as otherwise required by the County Engineer. (ONGOING: ENGINEERING - Eng) (Previous Engineering Condition 9 of Resolution R-2010-0447, Control No. 2004-616)

10. The property owner shall:

a. Reimburse Palm Beach County \$175,000 for right of way acquisition costs for construction of Lyons Road as a 2-lane median divided section from Atlantic Avenue to the north project driveway, including separate left turn, right turn and through lanes on the north approach at Atlantic Avenue and Lyons Road, prior to April 30, 2010. (DATE:MONITORING-Eng)

[Note: COMPLETED]

b. Make a payment to Palm Beach County to cover all costs to extend the TCE for Parcels 903 and 904, the construction easements or portion of easements required for the construction of Lyons Road, for an amount of time sufficient to cover the length of construction, if the property owner has not completed that portion of Lyons Road prior to the expiration of the TCEs under Condition 17.a., within thirty (30) days written notice from the County Engineer. (ONGOING: MONITORING Eng) (Previous Engineering Condition 10 of Resolution R-2010-0447, Control No. 2004-616)

11. On or before August 1, 2006, the property owner shall prepare and provide to the County all necessary right-of-way acquisition documents including but not limited to surveys, property owners maps, legal descriptions for acquisition, and parceled right-of-way maps required for the construction of Lyons Road a minimum of 110 feet in width plus provisions for Expanded Intersection Details at the intersection of Lyons Road and West Atlantic Avenue. These documents shall include a title search for a minimum of 25 years. Notification shall be given to the Land Development Division. (DATE: MONITORING - Eng) (Previous Engineering Condition 11 of Resolution R-2010-0447, Control No. 2004-616) [Note: Documents Received]

12. Prior to September 30, 2010, the property owner shall make available to Palm Beach County Land Development for bidding purposes:

a. Construction plans for Lyons Road as a 2-lane median divided section from the north project driveway south to West Atlantic Avenue. The plans shall include separate left turn, right turn and through lanes at the north approach at Atlantic Avenue and Lyons Road. (DATE: MONITORING-Eng) (Previous Engineering Condition 12 of Resolution R-2010-0447, Control No. 2004-616) [Note: COMPLETED]

13. Prior to July 1, 2005 the property owner shall convey a temporary roadway construction easement along Lyons Road and West Atlantic Avenue to Palm Beach County. Construction by the applicant within this easement shall conform to all Palm Beach County Standards and Codes. The location, legal sketches and the dedication documents shall be approved by the County Engineer prior to final acceptance. (DATE: MONITORING - Eng) (Previous Engineering Condition 13 of Resolution R-2010-0447, Control No. 2004-616) [Note: COMPLETED]

14. On or before January 1, 2006, the property owner shall convey to Palm Beach County sufficient road drainage easement(s) through the project's internal drainage system, as required by and approved by the County Engineer, to provide legal positive outfall for runoff from those segments of West Atlantic Avenue and Lyons Road along the property frontage; and up to a maximum of an additional 800 feet of these adjacent roadway(s). The limits of this additional 800 feet of drainage shall be determined by the County Engineer. Said easements shall be no less than 20 feet in width. Portions of such system not included within roadways or waterways dedicated for drainage purposes will be specifically encumbered by said minimum 20-foot drainage easement from the point of origin, to the point of legal positive outfall. The drainage system within the project shall have sufficient retention/detention, Compensating storage within this projects retention system as required by all permitting agencies, and conveyance capacity to meet the storm water discharge and treatment requirements of Palm Beach County and the applicable Drainage District, as well as the South Florida Water Management District, for the combined runoff from the project to accommodate the ultimate Thoroughfare Plan Road Section(s) of the included segment. If required and approved by the County Engineer the property owner shall construct within the proposed drainage easements a minimum of 24 inch closed piping system and appropriate wingwall or other structures as required by and approved by the County Engineer. Elevation and location of the entire drainage system shall be approved by the County Engineer. Any and all excess fill material from excavation by Palm Beach County within said easements shall become the property of Palm Beach County, which at its discretion may use this fill material. (DATE: MONITORING - Eng) (Previous Engineering Condition 14 of Resolution R-2010-0447, Control No. 2004-616) [Note: COMPLETED]

15. Previous Engineering Condition 15, Resolution R-2010-0447, Control No. 2004-616, which currently states:

Prior to final DRO approval, the site plan shall be amended to comply with the FDOT conceptual approval letter dated November 14, 2007 and provide a minimum 50-foot throat distance and

channelized geometrics to discourage outbound left turn movements at both project driveways on West Atlantic Avenue. (DRO: ENGINEERING - Eng)

Is hereby amended to read:

Prior to final DRO approval, the site plan shall be amended to comply with the FDOT conceptual approval letter at both project driveways on West Atlantic Avenue. (DRO: ENGINEERING - Eng)

16. Condition number 9.b. which requires turn lane improvements on Lyons Road to be completed prior to issuance of the first Certificate of Occupancy shall be considered complied with when payments or construction required in Condition number 17 have been made within the timeframe required in that condition. (ONGOING: ENGINEERING-Eng) (Previous Engineering Condition 16 of Resolution R-2010-0447, Control No. 2004-616)

17. The property owner shall either:

a. Commence construction of Lyons Road as a 2-lane median divided section built to PBC Thoroughfare Road standards from Atlantic Avenue to the north project driveway, including separate left turn, right turn and through lanes and tapers on the north approach at Atlantic Avenue and Lyons Road, prior to bid opening for both the County's portion of Lyons Road and Atlantic Avenue. The construction for Lyons Road shall tie into road conditions at the Atlantic Avenue north right of way line at the time of Lyons Road construction. Any and all costs associated with the construction shall be paid by the property owner. These costs shall include, but are not limited to, utility relocations and acquisition of any additional required right of way. During construction, the property owner shall provide access to Palm Beach County contractors for construction of the County's portion of Lyons Road as well as maintain access to adjacent farms, as necessary. (ONGOING: MONITORING - Eng)

b. Or, if Lyons Road construction has not commenced prior to bid opening for both the County's portion of Lyons Road and Atlantic Avenue, the property owner shall make a payment to Palm Beach County Engineering Department for an amount of the bid amount plus 10%, for all construction costs, including administration, testing and construction management, associated with the construction of Lyons Road as a 2-lane median divided section built to PBC Thoroughfare Road standards from Atlantic Avenue to the north project driveway, including separate left turn, right turn and through lanes and tapers on the north approach at Atlantic Avenue and Lyons Road, within thirty (30) days written notice from the County Engineer. The bid amount shall be based on bid received by Palm Beach County for this work. The developer shall be responsible for any and all costs in excess of this amount. If any of the actual costs exceed this amount, the developer shall pay Palm Beach County Engineering Department for that excess amount within sixty (60) days written notice from the County Engineer. If the payment amount is in excess of the actual costs, Palm Beach County shall refund the excess amount to the property owner. (ONGOING:MONITORING-Eng)

c. At time of payment as required in 17.b, all permits from all regulating agencies required to construct the improvements above shall be transferred to Palm Beach County and copies provided to Land Development. (ONGOING:ENGINEERING-Eng)

d. If property owner elects to construct Lyons Road, construction of Lyons Road shall be completed prior to issuance of the first Certificate of Occupancy for the site or within 6 months from commencement of Lyons Road construction, whichever shall occur first. (CO/ONGOING: MONITORING- Eng) (Previous Engineering Condition 18 of Resolution R-2010-0447, Control No. 2004-616)

18. Prior to final site plan approval by the DRO, the property owner shall amend the drainage easement providing legal positive outfall to include all of the private property between this project site and the point of legal positive outfall. (DRO: ENGINEERING - Eng)

19. Prior to issuance of the first building permit, the property owner shall combine the property into a single lot of record in accordance with Article 11 of the ULDC. (BLDG PERMIT: MONITORING - Eng)

HEALTH

1. Property owners and operators of facilities generating industrial, hazardous, or toxic wastes shall not deposit or cause to be deposited any such wastes into the sanitary sewer system unless adequate pretreatment facilities approved by the Florida Department of Environmental Protection (FDEP), the Palm Beach County Health Department and the agency responsible for sewage works are provided and used. (ONGOING:CODE ENF -Health) (Previous condition Health 1 of Resolution R-2010-447; Control 2004-616)

2. The property owner shall utilize Best Management Practices to minimize the breeding of mosquitoes in the surface water management system. Management of the system shall include control methods that minimize the need for aerial spraying and reduce the impacts of mosquito control activities on the surrounding natural areas. (ONGOING:HEALTH- Health) (Previous condition Health 2 of Resolution R-2010-447; Control 2004-616)

3. Prior to the issuance of the first building permit the property owner shall submit a written detailed plan acceptable to the Palm Beach County Health Department for the control of fugitive dust particulates on the site during all phases of site development. The property owner or a representative of the property owner shall be available to meet with staff of the Air Pollution Control Section of the Palm Beach County Health Department on request to clarify and discuss the scope and potential effectiveness of the proposed dust control measures. (BLDG PERMIT:MONITORING-Health)(Previous condition Health 3 of Resolution R-2010-447; Control 2004-616) [NOTE: COMPLETED]

LANDSCAPE - GENERAL

1. All palms required to be planted on the property by this approval shall meet the following minimum standards at installation:

- a. palm heights: twelve (12) feet clear trunk;
- b. clusters: staggered heights twelve (12) to eighteen (18) feet; and,
- c. credit may be given for existing or relocated palms provided they meet current ULDC requirements. (BLDG PERMIT: LANDSCAPE - Zoning) (Previous Landscape - General Condition 1 of Resolution R-2010-0447, Control No. 2004-616)

2. Landscape - General Condition 2 of Resolution R-2010-0447, Control No. 2004-616, which currently states:

A group of three (3) or more palms may not supersede the requirement for a canopy tree in that location, unless specified herein. (BLDG PERMIT: LANDSCAPE - Zoning)

Is hereby deleted. REASON: Code limits the substitution of palms, in clusters of same species, to no more than 25% of the total number of required trees. Staff has re-evaluated this previous condition and finds a condition is not needed to further limit the substitution of palms for required trees.

3. Field adjustment of wall, fence, and plant material locations may be permitted to provide pedestrian sidewalks/bike paths and to accommodate transverse utility or drainage easements crossings and existing vegetation. (BLDG PERMIT: LANDSCAPE - Zoning) (Previous Landscape - General Condition 3 of Resolution R-2010-0447, Control No. 2004-616)

LANDSCAPE - INTERIOR

4. Landscaped diamonds with a minimum planting area of twenty-five (25) square feet shall be provided within all rows of abutting parking. These diamonds shall be located at the common intersection of four (4) parking spaces and be spaced a maximum of four (4) parking spaces apart. A minimum of one (1) canopy tree, palm, flowering tree, or accent tree and appropriate ground cover shall be provided within each diamond. (DRO: LANDSCAPE - Zoning) (Previous Landscape - Interior Condition 4 of Resolution R-2010-0447, Control No. 2004-616)

5. Landscape - Interior Condition 5 of Resolution R-2010-0447, Control No. 2004-616), which currently states:

Any parking structure(s) shall be subject to the planting requirement of ULDC Article 7.G.2.F. (BLDG PERMIT: LANDSCAPE - Zoning)

Is hereby deleted. REASON: No longer applicable.

6. Landscape - Interior Condition 6 of Resolution R-2010-0447, Control No. 2004-616), which currently states:

Notwithstanding ULDC requirements, foundation planting or grade level planters shall be provided along the following:

- a. north facade of Building B, with the exception of the service area;
- b. south facades of Buildings C and D;
- c. west facade of Building H;
- d. north and north 175 feet of the east facade of Building I;
- e. the minimum width of these landscape areas shall be ten (10) feet;
- f. the length of these landscaped areas shall be no less than sixty (60) percent of the total length of the applicable building facade;
- g. landscape areas shall be planted with a minimum equivalent of one (1) canopy tree, pine tree or palm for each twenty (20) linear feet of building facade and appropriate ground cover; and,
- h. trees and/or palms required within the above referenced areas of Building I only shall have the following minimum height at installation:
 - 1) twenty-four (24) feet or greater: minimum twenty-five (25) percent of all required trees and/or palms;
 - 2) eighteen (18) feet to twenty-four (24) feet: minimum fifty (50) percent of all required trees and/or palms; and,
 - 3) sixteen (16) feet to eighteen (18) feet: maximum twenty-five (25) percent of all required trees and/or palms. (DRO: LANDSCAPE Zoning)

Is hereby amended to read:

Notwithstanding ULDC requirements, foundation planting or grade level planters shall be provided along the following:

- a. north facade of Building B1;
- b. south facades of Buildings C1, C2, and D;
- c. west facade of Building H;
- d. north and east facade of Building I;
- e. the minimum width of these landscape areas shall be ten (10) feet;
- f. the length of these landscaped areas shall be no less than sixty (60) percent of the total length of the applicable building facade;
- g. landscape areas shall be planted with a minimum equivalent of one (1) canopy tree, pine tree or palm for each twenty (20) linear feet of building facade and appropriate ground cover; and,
- h. trees and/or palms required within the above referenced areas of Building I only shall have the following minimum height at installation:
 - 1) twenty-four (24) feet or greater for a minimum twenty-five (25) percent of all required trees and/or palms;
 - 2) eighteen (18) feet to twenty-four (24) feet for a minimum fifty (50) percent of all required trees and/or palms; and,
 - 3) sixteen (16) feet to eighteen (18) feet for a maximum twenty-five (25) percent of all required trees and/or palms. (DRO: LANDSCAPE Zoning)

7. Landscaping Interior Condition 8 of Resolution R-2010-0447, Control No. 2004-616, which currently states,

Prior to final approval by the Development Review Officer (DRO),

- a. The Regulating Plan dated April 14, 2008 shall be amended to include a detail of the specimen palms landscape focal point at the southeast corner of Building A, and
- b. The Alternative Landscape Plan (ALP) shall be amended to indicate the landscape focal point at the southeast corner of Building A; to relocate palm trees from west facade of Building A foundation planting area to the perimeter landscape buffer adjacent to Building A; and to include palm trees in the green areas adjacent to the south facade of Building A. (DRO: LANDSCAPE - Zoning)

Is hereby deleted. REASON: No longer applicable.

LANDSCAPE - INTERIOR-FOCAL POINT WEST OF BUILDING I

8. Prior to final approval by the Development Review Officer (DRO), the site plan shall indicate a landscape focal point at the terminus of the access drive on the west side of Building I. The design and location of this landscape focal point shall be subject to Zoning Division review and approval. (DRO: LANDSCAPE - Zoning) (Previous Landscaping Interior Condition 9 of Resolution R-2010-0447, Control No. 2004-616)

LANDSCAPE - INTERIOR

9. Architectural Review 5 of Resolution R-2010-0447, Control No. 2004-616, which currently states:

Prior to final approval by the Development Review Officer (DRO), the architectural elevations for building I shall be revised to integrate the dumpster and service area. (DRO: ARCH REVIEW - Zoning)

Is hereby amended to read:

Prior to final approval by the Development Review Officer (DRO), the Regulating Plan shall be amended to include details of the landscape plantings for the divider median and terminal island adjacent to the north and west of Building I's dumpster and loading service area. The planting program shall screen the service area from the view of the multifamily units to the north and west. (DRO: ZONING - Landscape)

LANDSCAPE - PERIMETER

10. Landscaping Perimeter Condition 10 of Resolution R-2010-0447, Control No. 2004-616: which currently states:

In addition to ULDC requirements, all perimeter landscape buffers shall be upgraded to include:

- a. a minimum of one (1) native palm for each twenty (20) linear feet of the applicable property line with a maximum spacing of sixty (60) feet between clusters and
- b. a minimum of one (1) pine tree for each thirty (30) linear feet of the applicable property line. Pines shall be planted in clusters with a minimum of five (5) pines, and with a maximum spacing of one hundred and fifty (150) feet between clusters. (BLDG PERMIT: LANDSCAPE - Zoning)

Is hereby amended to read:

In addition to ULDC requirements the north and west perimeter landscape buffers shall be upgraded to include:

- a. a minimum of one (1) native palm for each twenty (20) linear feet of the applicable property line with a maximum spacing of sixty (60) feet between clusters and
- b. a minimum of one (1) pine tree for each thirty (30) linear feet of the applicable property line. Pines shall be planted in clusters with a minimum of five (5) pines, and with a maximum spacing of one hundred and fifty (150) feet between clusters. (BLDG PERMIT: LANDSCAPE - Zoning)

11. A minimum of fifty (50) percent of all (new and replacement) trees to be planted in the landscape buffers shall meet the following minimum standard at installation: Tree height: fourteen (14) feet. Credit may be given for existing or relocated trees provided they meet ULDC requirements. (BLDG PERMIT: LANDSCAPE - Zoning) (Previous Landscaping Perimeter Condition 11 of Resolution R-2010-0447, Control No. 2004-616)

12. In addition to ULDC requirements, the south right-of-way buffer shall be upgraded to include:

- a. a minimum of one (1) native palm or one (1) pine tree for each thirty (30) linear feet of the applicable property line. The palms or pines may be planted in clusters. (BLDG PERMIT: LANDSCAPE - Zoning)

LIGHTING

1. All outdoor, freestanding lighting fixtures exceeding twenty (20) feet in height shall be setback a minimum distance of forty (40) feet from the north and west property lines. (BLDG PERMIT: BLDG - Zoning) (Previous Lighting Condition 2 of Resolution R-2010-0447, Control No. 2004-616)

2. All outdoor, freestanding lighting fixtures shall be extinguished no later than one-half (1/2) hour after operating hours, excluding security lighting only. (ONGOING: CODE ENF - Zoning)(Previous Lighting Condition 3 of Resolution R-2010-0447, Control No. 2004-616)

3. The lighting conditions above shall not apply to proposed security or low voltage landscape/accent type lights used to emphasize plant material or street lighting. (ONGOING: CODE ENF - Zoning) (Previous Lighting Condition 4 of Resolution R-2010-0447, Control No. 2004-616)

PALM TRAN

1. The location of two easements for Bus Stop Boarding and Alighting Areas, subject to the approval of Palm Tran, shall be shown on the Master Plan and/or site plan prior to final approval by the Development Review Officer (DRO). The purpose of these easements are for the future construction of mass transit infrastructure in a manner acceptable to Palm Tran. (DRO: PALM TRAN - Palm Tran) (Previous Palm Tran Condition 1 of Resolution R-2010-0447, Control No. 2004-616)

2. Prior to Plat Recordation, the property owner shall convey and/or dedicate to Palm Beach County easements for a Bus Stop Boarding and Alighting Area in a form with terms and conditions approved by Palm Tran. Supporting documentation, including but not not limited to a location sketch, legal description, affidavit of ownership, attorney title opinion and other related documents as deemed necessary by Palm Tran is required. (PLAT:ENG -Palm Tran) (Previous Palm Tran Condition 2 of Resolution R-2010-0447, Control No. 2004-616)

PARKS

1. 1.Prior to final DRO approval a minimum of 800 square feet of indoor recreation space shall be delineated and provided to the tenants and owners of residential units in perpetuity without membership charges. (DRO: PARKS - Zoning) (Previous Parks Condition 1 of Resolution R-2010-0447, Control No. 2004-616)

PLANNED DEVELOPMENT-TRADITIONAL MARKETPLACE DEVELOPMENT (TMD)

1. Prior to the recordation of the first plat, all property included in the legal description for the development area of this application shall be subject to a Declaration of Restrictions and Covenants acceptable to the County Attorney's office which shall include the following:

a. Formation of a single master property owner's association, automatic voting membership in the master association by any party holding title to any portion of the subject property, and assessment of all members of the master association for the cost of maintaining all common areas.

b. All indoor recreation space shall be deed restricted to recreation for the use of the residents of the development. At the time of turnover to the POA/HOA, the indoor recreation space shall be turned over to the association at no cost to the residents.

c. The property shall not be subject to the Declaration of Restrictions in phases. Approval of the Declaration must be obtained from the County Attorney's office prior to the recordation of the first plat for any portion of the traditional development. This Declaration shall be amended when additional units or square footage is added to the TMD. (PLAT: CO ATTY - Zoning) (Previous Planned Development TMD Condition 1 of Resolution R-2010-0447, Control No. 2004-616)

PLANNED DEVELOPMENT

2. The property owner shall include in homeowners documents as well as written sales brochures, sales contracts, and site plans a disclosure statement identifying and notifying of the existence of active agricultural uses in the vicinity of the development and of Florida Statute 823.14, the Florida Right to Farm Act." The property owner shall submit documentation of compliance with this condition on an annual basis to the Monitoring Section of Planning, Zoning and Building beginning on August 25, 2006, and shall continue on an annual basis until all residential units within the development have been sold or the property owner relinquishes control to a homeowners association. (DATE: MONITORING - Zoning) (Previous Planned Development TMD Condition 2 of Resolution R-2010-0447, Control No. 2004-616)

PLANNING

1. Prior to final approval by the Development Review Officer (DRO), the applicant shall provide a Rural Parkway Landscape Plan, for the entire Delray Marketplace TMD Rural Parkway Preserve area, subject to approval by the Planning Division, to include a minimum of 60% native shrubs and a minimum of 90% native trees and palms. (DRO: PLANNING - Planning) (Previous Planning Condition 1 of Resolution R-2010-0447, Control No. 2004-616)

2. Prior to final approval by the Development Review Officer, submit a signed copy of the AGR Preserve Management Plans approved by ERM for each Agricultural Preserve parcel. (DRO-PLANNING-Planning) (Previous Planning Condition 2, Resolution R-2010-0447, Control No. 2004-616)

3. Prior to final site plan approval by the Development Review Officer (DRO), the property owner shall add a Preservation Area/Proposed Uses" notes section on page 1 of the Master Plan and include the following:

a. The preservation areas approved, as part of this application shall be restricted to preservation uses as follows, with the exception of areas designated as environmentally sensitive in the conservation easement:

PERMITTED USES:

- 1) Crop production, pasture or equestrian purposes;
- 2) Civic purposes, such as schools, libraries or fire stations;
- 3) Regional water storage areas to serve as water management functions or to serve as a Water Preserve Area if designated by the South Florida Water Management District: to serve regional water management purposes as certified by either Lake Worth Drainage District or South Florida Water management District, or for water management purposes not directly related to the AGR-TMD if approved by the Department of Environmental Resources Management and managed for environmental resource values;
- 4) Wetland or bona fide agricultural uses per the ULDC;
- 5) Other uses as permitted by the required conservation easements;
- 6) Other uses as may be permitted within the protected area of an AGR-TMD consistent with the Comprehensive Plan and the Unified Land Development Code. (DRO/ONGOING: PLANNING - Planning) (Previous Planning Condition 3 of Resolution R-2010-0447, Control No. 2004-616)

4. Prior to plat recordation for the Delray Marketplace TMD development area, the conservation easements for all of the Preservation parcels shall be recorded, as approved by the County Attorney's Office, the Department of Environmental Resources Management, and the Planning Division.

The conservation easements for all of these preserve parcels shall contain:

a) a legal description, site location, including the address of the parcel and a sketch including the area subject to the easement depicting reference points such as main streets and showing the location of the preserve within the context of the Ag Reserve;

b) a list of permitted uses, uses not permitted, and prohibited activities.

c) Title insurance for these easements shall be provided to Palm Beach County subject to approval by the County Attorney and in an amount acceptable to the Department of Environmental Resources Management and the Planning Division. (PLAT: ENG/PLANNING - Planning) (Previous Planning Condition 4 of Resolution R-2010-0447, Control No. 2004-616)

5. Prior to plat recordation for the Delray MarketPlaceTMD Development area, the conservation easement for the 100-foot Lyons Road Rural Parkway Preserve Area shall be recorded for the development area and for the preserve Parcel 1 as approved by the County Attorney's Office, the Engineering Department, and the Planning Division. The conservation easement for the 100' Lyons Road Rural Parkway Preserve Area shall contain:

a. A Landscape Plan that conforms with the approved Rural Parkway Landscape Plan, but not be limited to the following items:

- 1) 90% native trees and palms, and 60% native shrubs;
- 2) a multipurpose path and an equestrian path;
- 3) undulating berms, no taller than five feet; and
- 4) benches/pedestrian gathering area with a water fountain. At least one (1) pedestrian gathering area shall be provided within the 100-foot wide Lyons Road Rural Parkway along this project frontage.

b. The Rural Parkway easement shall not include:

- 1) walls; and,
- 2) structures with the exception of a bus shelter, benches/pedestrian gathering area, and water fountains.

c. The Rural Parkway easement may include:

- 1) A bus stop easement;
- 2) other drainage/utility easements may only be permitted which traverse (run perpendicular to) the Lyons Road Rural Parkway Easement to place drainage/utilities in the developable portion of the TMD; and,
- 3) Other drainage easements may be permitted in the Rural Parkway Easement for the purposes of draining the Rural Parkway, subject to approval by the County Engineering Department and the Planning Division.
- 4) A ten (10) foot utility easement located adjacent to the Lyons Road right-of-way.

d. A maintenance agreement for continual maintenance of the Rural Parkway that will contain language allowing for the transfer of maintenance to a property owners association or a deed to the County for the County's ownership and maintenance.

e. Title insurance for this easement shall be provided to Palm Beach County subject to approval by the County Attorney and in an amount acceptable to the Department of Environmental Resources Management and the Planning Division. (PLAT: ENG/PLANNING - Planning) (Previous Planning Condition 5, Resolution R-2010-0447, Control No. 2004-616)

6. Should the 100-foot wide Lyons Road Rural Parkway conservation easement not be placed on this property in a form acceptable to the County Attorney, Engineering Department, and Planning Division, prior to February 1st, 2010, then the approval of this Development Order (DO) shall be scheduled for review by the Board of County Commissioners with a recommendation by staff to revoke the Development Order. (DATE: MONITORING - Planning) (Previous Planning Condition 6 of Resolution R-2010-0447, Control No. 2004-616) [COMPLETE]

7. Should conservation easements not be recorded for the Preservation properties in a form acceptable to the County Attorney prior to February 1st, 2010, then the approval of this Development Order (DO) shall be scheduled for review by the Board of County Commissioners with a recommendation by staff to revoke the Development Order. No administrative time extension for this condition shall be allowed. (DATE: MONITORING - Planning) (Previous Planning Condition 7 of Resolution R-2010-0447, Control No. 2004-616)[COMPLETE]

8. Prior to the issuance of a building permit for any buildings on site, the property owner shall commence construction of the Rural Parkway. (BLDG PERMIT: MONITORING - Planning) (Previous Planning Condition 8 of Resolution R-2010-0447, Control No. 2004-616)

9. Prior to the issuance of a Certificate of Occupancy for any buildings on site, the property owner shall complete construction of the Rural Parkway. (CO: MONITORING - Planning) (Previous Planning Condition 9 of Resolution R-2010-0447, Control No. 2004-616)

10. Development on the site shall be limited to a maximum of 320,000 square feet of non-residential uses and 86 dwelling units. (ONGOING: PLANNING - Planning) (Previous Planning Condition 10 of Resolution R-2010-0447, Control No. 2004-616)

11. Prior to final site plan approval by the Development Review Officer (DRO), the property owner shall provide draft updated conservation easements reflecting the change in the development parcel,

allowable/prohibited uses and governing Control numbers. (DRO: PLANNING-Planning) (Previous Planning Condition 11 of Resolution R-2010-0447, Control No. 2004-616)

12. Prior to final site plan approval by the Development Review Officer (DRO), the property owner shall provide the final draft of the Rural Parkway Conservation Easement and Planting Plan for all parcels abutting Lyons Road. (DRO: PLANNING Planning) (Previous Planning Condition 12 of Resolution R-2010-0447, Control No. 2004-616)[COMPLETE]

SCHOOL BOARD

1. The property owner shall post a notice of annual boundary school assignments for students from this development. A sign 11" X 17" shall be posted in a clear and visible location in all sales offices and models with the following:

"NOTICE TO PARENTS OF SCHOOL AGE CHILDREN"

School age children may not be assigned to the public school closest to their residences. School Board policies regarding levels of service or other boundary policy decisions affect school boundaries. Please contact the Palm Beach County School District Boundary Office at (561) 434-8100 for the most current school assignment(s). (ONGOING: SCHOOL BOARD) (Previous School Board Condition 1 of Resolution R-2010-447, Control No. 2004-616).

2. Prior to the issuance of the first Certificate of Occupancy (CO), the school bus shelter shall be constructed by the property owner in a location and manner acceptable to the Palm Beach County School Board. Provisions for the bus shelter shall include, at a minimum, a covered area, continuous paved pedestrian and bicycle access from the subject property or use, to the shelter. Maintenance of the bus shelter(s) shall be the responsibility of the residential property owner. (CO: MONITORING School Board.) (Previous School Board Condition 2 of Resolution R-2010-447, Control No. 2004-616).

SIGNS

1. Signs Condition 1 of Resolution R-2010-0447, Control No. 2004-616, which currently states:

Wall signs shall be prohibited on the following:

- a. west facade of Building A;
- b. north facade of Building I;
- c. north 175 feet of the east facade of Building I; and,
- d. all facades of a parking structure. (BLDG PERMIT: BLDG - Zoning)

Is hereby amended to read:

Wall signs shall be prohibited on the north and west facade of Building I. (BLDG PERMIT: BLDG - Zoning)

2. Painted wall signs shall be prohibited. (ONGOING: CODE ENF - Zoning) (Previous Signs Condition 2 of Resolution R-2010-0447, Control No. 2004-616)

3. Prior to final approval by the Development Review Officer (DRO), the site plan shall be revised to indicate additional decorative paving treatment (pre-cast concrete paver blocks or stamped concrete) as follows:

- a. within the intersections located immediately north of the access drives from West Atlantic Avenue; and,
- b. this paving shall cover the entire area of the applicable drive aisle surface as shown on the approved plan. (DRO: ZONING - Zoning) (Previous Site Design Condition 3 of Resolution R-2010-0447, Control No. 2004-616)

SITE DESIGN

1. Previous Site Design Condition 1 of Resolution R-2010-0447, Control No. 2004-616, which currently states:

Prior to final approval by the Development Review Officer (DRO), the entire length of the following building facades shall be designated as additional primary frontage and designed to primary frontage standards:

- a. west facade of Building B;
- b. west facade of Building C;
- c. north facade of Building G; and,
- e. north facade of Building H. (DRO: ZONING - Zoning)

Is hereby amended to read:

Prior to final approval by the Development Review Officer (DRO), a minimum of 60 percent of the building facade shall be designated as Primary Frontage and designed to the Standards for Primary Frontage (excepting the "contiguous" requirement) with the remainder of the building facade designed to Standards for Secondary Frontage:

- a. Building A2 (Freestanding Building) east facade;
 - b. Building B1 south facade;
 - c. Building C1 (Freestanding Building) north and west facade;
 - d. Building C2 north facade; and,
 - e. Building H north facade.
- (DRO: ZONING - Zoning)

2. Prior to final approval by the Development Review Officer (DRO), a minimum of 50% of the required plaza seating shall be placed in shade locations. (DRO: ZONING - Zoning)

3. Prior to final approval by the Development Review Officer (DRO), the site plan shall be amended to indicate primary frontages along the west side of Building I (SE) and the east side of Building I (SW).(DRO: ZONING - Zoning)

USE LIMITATIONS

1. Outdoor storage or placement of any material, refuse, equipment or debris shall not be permitted on the property. (ONGOING: CODE ENF - Zoning) (Previous Use Limitations Condition 1 of Resolution R-2010-0447, Control No. 2004-616)

2. Repair or maintenance of vehicles shall not be permitted on the property, excluding incidental and emergency repairs. (ONGOING: CODE ENF - Zoning) (Previous Use Limitations Condition 2 of Resolution R-2010-0447, Control No. 2004-616)

3. Use Limitations Condition 3 of Resolution R-2010-0447, Control No. 2004-616, which currently states:

The storage of rental trucks/trailers or outside vendors shall not be permitted on the property, excluding events authorized by a Special Permit. (ONGOING: CODE ENF - Zoning)

Is hereby amended to read:

The storage of rental trucks/trailers or outside vendors shall not be permitted on the property, excluding events in the Amphitheater Plaza or other events authorized by a Special Permit. (ONGOING: CODE ENF - Zoning)

4. Use Limitations Condition 4 of Resolution R-2010-0447, Control No. 2004-616), which currently states:

One (1) single tenant occupying more than 25,000 square feet shall be permitted within each of the following buildings only, as indicated on the site plan dated April 14, 2008:

- a. Building A;
- b. Building B;
- c. Building H;
- d. Two (2) single tenants occupying more than 25,000 square feet shall be permitted within Building I

e. The indoor entertainment use shall be considered one of the approved single tenants occupying more than 25,000 square feet. The indoor entertainment use may be located within Building B, or Building H, or Building I. (ONGOING: CODE ENF-Zoning)

Is hereby amended to read:

One (1) single tenant occupying more than 25,000 square feet shall be permitted within each of the following buildings only, as indicated on the site plan dated April 18, 2011:

- a. Building A1;
- b. Building B1;
- c. Two (2) single tenants occupying more than 25,000 square feet shall be permitted within Building I; and
- d. The indoor entertainment use shall be considered one of the approved single tenants occupying more than 25,000 square feet. The indoor entertainment use may be located within Building B1 or Building I. (ONGOING: CODE ENF-Zoning)

5. One Type I restaurant that exceeds 1,500 square feet shall be permitted and shall remain in the location as designated on the master plan or shall be subject to the ULDC as amended whichever is less restrictive. (ONGOING: CODE ENF - Zoning) (Previous Use Limitations Condition 5 of Resolution R-2010-0447, Control No. 2004- 616)

UTILITIES

1. . If any relocation/modifications to the County's existing facilities are required that are a direct or indirect result of the development, the developer shall pay for the complete design and construction costs associated with these relocations/modifications. (ONGOING: Utilities-Utilities) (Previous Utilities Condition 1 of Resolution R-2010-0447, Control No. 2004- 616)

2. Prior to the first Certification of Completion for the project, the Property Owner shall grant to Palm Beach County a minimum 20 feet wide utility easement crossing the preserve area adjacent to the west boundary of the to be developed parcel. (CC: BLDG: Utilities) (Previous Utilities Condition 2 of Resolution R-2010-0447, Control No. 2004- 616)

COMPLIANCE

1. In granting this approval, the Board of County Commissioners relied upon the oral and written representations of the property owner/applicant both on the record and as part of the application process. Deviations from or violation of these representations shall cause the approval to be presented to the Board of County Commissioners for review under the compliance condition of this approval. (ONGOING: MONITORING - Zoning)

2. Failure to comply with any of the conditions of approval for the subject property at any time may result in:

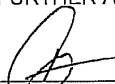
- a. The issuance of a stop work order; the issuance of a cease and desist order; the denial or revocation of a building permit; the denial or revocation of a Certificate of Occupancy (CO); the denial of any other permit, license or approval to any developer, owner, lessee, or user of the subject property; the revocation of any other permit, license or approval from any developer, owner, lessee, or user of the subject property; revocation of any concurrency; and/or
- b. The revocation of the Official Map Amendment, Conditional Use, Requested Use, Development Order Amendment, and/or any other zoning approval; and/or
- c. A requirement of the development to conform with the standards of the Unified Land Development Code (ULDC) at the time of the finding of non-compliance, or the addition or modification of conditions reasonably related to the failure to comply with existing conditions; and/or
- d. Referral to code enforcement; and/or
- e. Imposition of entitlement density or intensity.

Staff may be directed by the Executive Director of PZ&B or the Code Enforcement Special Master to schedule a Status Report before the body which approved the Official Zoning Map Amendment, Conditional Use, Requested Use, Development Order Amendment, and/or other zoning approval, in accordance with the provisions of Section 2.E of the ULDC, in response to any flagrant violation and/or continued violation of any condition of approval. (ONGOING: MONITORING - Zoning)

6. Affiant further states that Affiant is familiar with the nature of an oath and with the penalties provided by the laws of the State of Florida for falsely swearing to statements under oath.

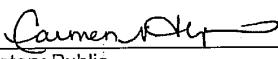
7. Under penalty of perjury, Affiant declares that Affiant has examined this Affidavit and to the best of Affiant's knowledge and belief it is true, correct, and complete.

FURTHER AFFIANT SAYETH NAUGHT.



Thomas K. McGowan, Affiant
(Print Affiant Name)

The foregoing instrument was acknowledged before me this 26th day of January, 2011, by Thomas K. McGowan, [who is personally known to me or [] who has produced _____ as identification and who did take an oath.



Notary Public
Carmen N. Thompson
(Print Notary Name)
NOTARY PUBLIC
State of INDIANA at Large
My Commission Expires: April 22, 2015

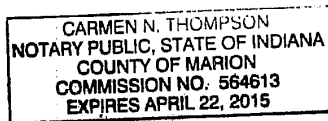


EXHIBIT "A"

PROPERTY

LEGAL DESCRIPTION: (OVERALL SITE)

TRACTS 97, 98, 99 AND THAT PORTION OF TRACT 100 LYING WITHIN 365.00 FEET OF THE EAST LINE OF SAID TRACT 99, TRACTS 124, 125, 126 LESS THE SOUTH 40.0 FEET THEREOF; TRACT 127 LESS THE SOUTH 81.0 FEET THEREOF; AND TRACT 128 LESS THE SOUTH 40.00 FEET THEREOF, ALL BEING IN BLOCK 18, PALM BEACH FARMS COMPANY PLAT NO. 1, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 2, PAGES 26, 27 AND 28, PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA,

AND LESS THAT PORTION OF TRACT 124 DESCRIBED AS FOLLOWS:
BEGINNING AT THE NORTHWEST CORNER OF TRACT 124, BLOCK 18, PALM BEACH FARMS COMPANY PLAT NO. 1, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 2, PAGES 26, 27 AND 28, PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA; THENCE NORTH 89°08'50" EAST, ALONG THE NORTH LINE OF SAID TRACT 124, A DISTANCE OF 133.94; THENCE SOUTH 01°03'00" EAST, A DISTANCE OF 669.45 FEET TO A POINT ON A LINE 110.0 FEET NORTH OF AND PARALLEL TO THE SOUTH LINE OF SAID TRACT 124; THENCE SOUTH 89°32'49" WEST, ALONG SAID PARALLEL LINE, A DISTANCE OF 133.30 FEET TO A POINT ON THE WEST LINE OF SAID TRACT 124; THENCE NORTH 01°06'19" WEST, ALONG SAID WEST LINE, A DISTANCE OF 668.52 FEET TO THE POINT OF BEGINNING.

AND LESS THAT PORTION OF TRACT 128 DESCRIBED AS FOLLOWS:
COMMENCE AT THE SOUTHEAST CORNER OF SECTION 18, TOWNSHIP 46 SOUTH, RANGE 42 EAST; THENCE SOUTH 89°32'49" WEST, ALONG THE SOUTH LINE OF SAID SECTION 18, A DISTANCE OF 100.35 FEET TO THE SOUTHWEST CORNER OF TRACT 128, BLOCK 18, PALM BEACH FARMS COMPANY PLAT NO. 1, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 2, PAGES 26, 27 AND 28, PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA; THENCE NORTH 01°02'51" WEST ALONG THE WEST LINE OF SAID TRACT 128, A DISTANCE OF 40.00 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE ALONG SAID WEST LINE NORTH 01°02'51" WEST, A DISTANCE OF 62.00 FEET; THENCE ALONG A LINE 102.00 FEET NORTH OF AND PARALLEL WITH THE SOUTH LINE OF SAID SECTION 18 NORTH 89°32'49" EAST, A DISTANCE OF 101.83 FEET; THENCE ALONG A LINE 102.00 FEET NORTH OF AND PARALLEL WITH THE SOUTH LINE OF THE SOUTHWEST QUARTER OF SECTION 17, TOWNSHIP 46 SOUTH, RANGE 42 EAST SOUTH 89°58'59" EAST, A DISTANCE OF 82.45 FEET; THENCE NORTH 44°29'01" EAST, A DISTANCE OF 36.07 FEET TO A POINT ON THE EAST LINE OF THE WEST 210 FEET OF SAID TRACT 128; THENCE ALONG SAID EAST LINE SOUTH 01°02'51" EAST, A DISTANCE OF 87.75 FEET; THENCE NORTH 89°58'59" WEST, ALONG A LINE 40.00 FEET NORTH OF AND PARALLEL TO THE SOUTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 17, A DISTANCE OF 109.09 FEET; THENCE SOUTH 89°32'49" WEST ALONG A LINE 40.00 FEET NORTH OF AND PARALLEL TO THE SOUTH LINE OF SAID SECTION 18, A DISTANCE OF 100.93 FEET TO THE POINT OF BEGINNING.

CONTAINING 41.18 ACRES, MORE OR LESS.

Disclosure of Beneficial Interest Ownership form

Created 01/22/2007
Updated 01/31/2007

EXHIBIT "A"

PROPERTY

LEGAL DESCRIPTION: (DEVELOPMENT AREA)

TRACT 97, LESS THE EAST 195.0 FEET THEREOF, TRACTS 98, 99 AND THAT PORTION OF TRACT 100 LYING WITHIN 365.00 FEET OF THE EAST LINE OF SAID TRACT 99, TRACTS 124, 125, 126 LESS THE SOUTH 40.0 FEET THEREOF; TRACT 127 LESS THE SOUTH 81.0 FEET THEREOF; AND TRACT 128 LESS THE SOUTH 40.00 FEET, THE EAST 195.00 FEET AND THE SOUTH 240.0 FEET OF THE WEST 210.0 FEET THEREOF ALL BEING IN BLOCK 18, PALM BEACH FARMS COMPANY PLAT NO. 1, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 2, PAGES 26, 27 AND 28, PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA,

AND LESS THAT PORTION OF TRACTS 124, 125, 126 AND 127 DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID TRACT 124; THENCE NORTH 01°06'19" WEST, ALONG THE WEST LINE OF SAID TRACT 124, A DISTANCE OF 40.0 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE NORTH 01°06'19" WEST, ALONG SAID WEST LINE, A DISTANCE OF 70.00 FEET TO A POINT ON A LINE 110.00 FEET NORTH OF AND PARALLEL TO THE SOUTH LINE OF SAID TRACTS 124 AND 125; THENCE ALONG SAID PARALLEL LINE NORTH 89°32'49" EAST, A DISTANCE OF 615.66 FEET; THENCE NORTH 01°04'09" WEST, A DISTANCE OF 12.50 FEET TO A POINT ON A LINE 1320.0 FEET SOUTH OF AND PARALLEL TO THE NORTH LINE OF TRACTS 98, 99 AND 100, BLOCK 18, OF SAID PLAT OF PALM BEACH FARMS COMPANY PLAT NO. 1; THENCE NORTH 89°00'55" EAST, ALONG SAID PARALLEL LINE, A DISTANCE OF 691.41 FEET TO A POINT ON THE EAST LINE OF SAID TRACT 127; THENCE SOUTH 01°02'51" EAST, ALONG SAID EAST LINE, A DISTANCE OF 47.92 FEET TO A POINT ON A LINE 81.0 FEET NORTH OF AND PARALLEL TO THE SOUTH LINE OF SAID TRACT 127; THENCE SOUTH 89°32'49" WEST, ALONG SAID PARALLEL LINE, A DISTANCE OF 326.41 FEET TO A POINT ON THE WEST LINE OF SAID TRACT 127; THENCE SOUTH 01°04'09" EAST, ALONG SAID WEST LINE, A DISTANCE OF 41.00 FEET TO A POINT ON A LINE 40.0 FEET NORTH OF AND PARALLEL TO THE SOUTH LINE OF SAID TRACTS 124, 125 AND 126; THENCE SOUTH 89°32'49" WEST, ALONG SAID PARALLEL LINE, A DISTANCE OF 980.64 FEET TO THE POINT OF BEGINNING.

AND LESS THAT PORTION OF TRACT 124 DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF TRACT 124, BLOCK 18, PALM BEACH FARMS COMPANY PLAT NO. 1, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 2, PAGES 26, 27 AND 28, PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA; THENCE NORTH 89°08'50" EAST, ALONG THE NORTH LINE OF SAID TRACT 124, A DISTANCE OF 133.94; THENCE SOUTH 01°03'00" EAST, A DISTANCE OF 669.45 FEET TO A POINT ON A LINE 110.0 FEET NORTH OF AND PARALLEL TO THE SOUTH LINE OF SAID TRACT 124; THENCE SOUTH 89°32'49" WEST, ALONG SAID PARALLEL LINE, A DISTANCE OF 133.30 FEET TO A POINT ON THE WEST LINE OF SAID TRACT 124; THENCE NORTH 01°06'19" WEST, ALONG SAID WEST LINE, A DISTANCE OF 668.52 FEET TO THE POINT OF BEGINNING.

CONTAINING 32.45 ACRES, MORE OR LESS.

TOGETHER WITH THAT PORTION OF TRACT 128 DESCRIBED AS FOLLOWS:

A PARCEL OF LAND LYING IN SECTIONS 17 AND 18, TOWNSHIP 46 SOUTH, RANGE 42 EAST, BEING A PORTION OF TRACT 128, BLOCK 18 OF THE PALM BEACH FARMS

EXHIBIT "A"

PROPERTY

COMPANY PLAT NO. 1, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 2, PAGES 26 THROUGH 28 OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHEAST CORNER OF SAID SECTION 18, TOWNSHIP 46 SOUTH, RANGE 42 EAST; THENCE SOUTH 89°32'49" WEST, ALONG THE SOUTH LINE OF SAID SECTION 18, A DISTANCE OF 100.35 FEET TO THE SOUTHWEST CORNER OF SAID TRACT 128, BLOCK 18; THENCE ALONG THE WEST LINE OF SAID TRACT 128, BLOCK 18 NORTH 01°02'51" WEST, A DISTANCE OF 40.00 FEET; THENCE CONTINUE ALONG SAID WEST LINE NORTH 01°02'51" WEST, A DISTANCE OF 88.92 FEET TO A POINT ON A LINE 1320.00 FEET SOUTH OF AND PARALLEL WITH THE NORTH LINE OF TRACT 97, BLOCK 18 OF SAID PALM BEACH FARMS COMPANY PLAT NO. 1, SAID POINT BEING THE POINT OF BEGINNING; THENCE CONTINUE ALONG SAID WEST LINE NORTH 01°02'51" WEST, A DISTANCE OF 111.09 FEET TO THE NORTH LINE OF THE SOUTH 240.00 FEET OF THE AFOREMENTIONED TRACT 128, BLOCK 18; THENCE ALONG SAID NORTH LINE NORTH 89°32'49" EAST, A DISTANCE OF 103.83 FEET; THENCE CONTINUE ALONG SAID NORTH LINE SOUTH 89°58'59" EAST, A DISTANCE OF 42.44 FEET TO THE WEST LINE OF THE EAST 195.00 FEET OF SAID TRACT 128; THENCE ALONG SAID WEST LINE SOUTH 01°03'00" EAST, A DISTANCE OF 109.38 FEET TO A LINE 1320.00 FEET SOUTH OF AND PARALLEL WITH THE NORTH LINE OF THE AFOREMENTIONED TRACT 97, BLOCK 18; THENCE ALONG SAID PARALLEL LINE SOUTH 89°00'55" WEST, A DISTANCE OF 146.26 FEET TO THE POINT OF BEGINNING.

CONTAINING 0.37 ACRES, MORE OR LESS.

TOTAL DEVELOPMENT AREA CONTAINING 32.82 ACRES, MORE OR LESS.

EXHIBIT "B"

DISCLOSURE OF OWNERSHIP INTERESTS IN APPLICANT

Affiant must identify all entities and individuals owning five percent or more ownership interest in the Property. Affiant must identify individual owners. For example, if Affiant is an officer of a corporation or partnership that is wholly or partially owned by another entity, such as a corporation, Affiant must identify the other entity, its address, and the individual owners of the other entity. Disclosure does not apply to an individual's or entity's interest in any entity registered with the Federal Securities Exchange Commission or registered pursuant to Chapter 517, Florida Statutes, whose interest is for sale to the general public.

Name	Address	Percentage of Interest
(1) KRG Delray Beach, LLC	30 S. Meridian Street Suite 1100 Indianapolis, IN 46204	50%
KRG Delray Beach, LLC is owned by a publically traded company		
(2) Atlantic TMD, LLC	6420 Congress Avenue Suite 2000 Boca Raton, FL 33487	50%
Breakdown of Atlantic TMD, LLC:		
Garrett Bender	6420 Congress Avenue Suite 2000 Boca Raton FL 33487	1/3rd (16-2/3%)
Teri Gevinson	6420 Congress Avenue Suite 2000 Boca Raton FL 33487	1/3rd (16-2/3%)
Jeffrey Kransdorf	32 Tall Pine Lane, Short Hills, NJ 07080	1/3rd (16-2/3%)

Disclosure of Beneficial Interest Ownership form

Created 01/22/2007
Updated 01/31/2007

Floridian have come to expect an upscale experience when attending movies and this facility will provide just such an experience. However, to do so, the height of the building needs to accommodate these design features.

VARIANCE CRITERIA

Section 2.B.3.E. of the Palm Beach County ULDC states that in order to authorize a variance, the Palm Beach County Zoning Commission shall and must find that the seven criteria listed below have been satisfied. The criteria for each variance request follows.

1. SPECIAL CONDITIONS AND CIRCUMSTANCES EXIST THAT ARE PECULIAR TO THE PARCEL OF LAND, BUILDING OR STRUCTURE, THAT ARE NOT APPLICABLE TO OTHER PARCELS OF LAND, STRUCTURES OR BUILDINGS IN THE SAME ZONING DISTRICT:

Variance 1. – Special conditions are created as a result of the development of a site plan to meet the goals of providing the necessary services to the residents in the area, while creating the ability to successfully lease the center so as to provide those services. Additionally, there are some site planning challenges associated with the shape of the parcel with the 15.04 acre preserve area to the northwest and west creating somewhat of an 'L' shape land area for the development. This special condition is not applicable to other parcels of land in the same zoning district, as the only other TMD in the Agricultural Reserve is more symmetrically shaped. The special conditions associated with the areas where streets intersect with the Main Street, or even where the two Main Streets intersect, naturally create some traffic conflicts best mitigated by allowing for the free flow of traffic without the impacts associated with cars backing out into moving traffic in these limited areas on the site.

Variance 2. – A special circumstance exists in the effect of the development market on the ability for the proposed TMD to realize a successful tenant leasing program. The South Florida environment, as well as the specific demographics in the surrounding area, contributes to the circumstances affecting the leasing market in the area. Both national and local tenants have indicated the previously approved development plan for the project and the lack of sufficient parking in the vicinity of the storefronts result in consumers not continuing the length of the Main Street to patronize all the users of the development. The issues associated with leasing both unbuilt and built TMD's in the Agricultural Reserve is not associated only with this TMD. Canyon TMD, the other allowed TMD development in the Ag Reserve, has also struggled with the leasing process, as evidenced by recent Development Order amendments for that project. Those DOA's also resulted in development plan revisions and use approval revisions to address the ever changing leasing market. As such, the special circumstance is consistent with the difficulties associated with other lands in the same zoning district. However, as there are only two such TMD's in the Ag Reserve, there are no other zoning approvals in the same district in which to compare the special circumstance.

Variance 3. – A special circumstance exists which is peculiar to the proposed Publix Structure, which is not applicable to other structures or buildings in the same zoning district. The Publix Grocery Store chain is an established successful business enterprise in the South Florida market and is well versed on the requirements necessary to be met during the design of their various store proto-types. In this case, the store design is based on a 241' linear footage for the building. This is an established design which meets the needs of the demands associated with the demographics and population of this area of Palm Beach County. The provision of a grocery store within the TMD is a critical commercial component not only to the success of the center but to provide needed services in the area.

Variance 4. - A special condition exists in that the provision of a successful, proven product type and size for the grocery store use necessary to provide needed commercial services to the residents in this area of the County, in and of itself, exceeds the maximum square footage allowed for free standing buildings in the TMD. That, in turn, limits the ability to provide a financial institution to provide for another needed service in the area. Both uses necessitate designs which, within the TMD section, create free standing buildings, but are uses specifically envisioned for the commercial areas within the Ag Reserve.

Variance 5. - Again, the special circumstance exists in the effect of the development market on the ability for the proposed TMD to realize a successful tenant leasing program, as well as to provide for the needed services for the residents in the surrounding area. The use of a financial institution is typically a critical component of most mixed use type centers, as well as the more common form of 'mixed use' development of Multiple Use Planned Development. The drive-through component of the use is critical to the success of the business, and the design which necessitates the variance to the queuing code requirements is necessary to provide for an urban form of development, while protecting the pedestrian connectivity of the Main Street.

Variance 6. – Special circumstances exist which are peculiar to the structure, that are not applicable to other structures in the same zoning district. These special circumstances relate to the necessary design of the structure in order to allow for the type of movie going experience the residents in the area have come to expect when patronizing upscale theaters. As there is only one other TMD in the Agricultural Reserve, and that TMD program does not include a theater, the circumstances are unique to this building in this zoning district and tier.

2. SPECIAL CIRCUMSTANCES AND CONDITIONS DO NOT RESULT FROM THE ACTIONS OF THE APPLICANT:

Variance 1. – The special conditions of this variance are not the result of the actions of the applicant but rather the result of the design process to meet the realities of a changing market to create a successful, viable project. The special conditions

associated with the site design are creating by defining a design that will attract the caliber of tenants necessary to support the center and provide the services needed by the residents of the area, as well as a result of some site design constraints associated with the shape of the parcel.

Variance 2. – The special circumstances of this variance are not the result of the actions of the applicant but rather the result of the design process to meet the realities of a changing market to create a successful, viable project. The redesign of the street cross section will be well received by the users needed to fulfill the goals of the TMD, that being commercial uses for the surrounding residents in this area of the County. The special circumstance associated with issues of meeting the leasing requirements and needs of potential users in the center is not the result of the action of the applicant.

Variance 3. – The special circumstance in regard to the size of the Publix Grocery store prototype design is not a result of the actions of the applicant, but rather a result of an established South Florida grocery business creating a design tailored to meet the needs of the demographics and population of this area of Palm Beach County.

Variance 4. – The special circumstance associated with the square footage necessary for a successful grocery store operation is not the result of the actions of the applicant, but a result of time tested operational analysis of a proven leader in the grocery industry in South Florida. This one user, which was a use envisioned for TMD's in the Ag Reserve to allow nearby grocery shopping opportunities for the residents, exceeds the maximum allowed square footage for free standing buildings. This, in turn, limits the viability from a code standpoint of a Financial Institution with drive thru's, which is another needed service for the area residents, and is not the result of the applicant, but the result of uses which require special design characteristics to be successful.

Variance 5. - The special circumstances of this variance are not the result of the actions of the applicant but rather the result of the design process to meet the realities of a changing market to create a successful, viable project. The redesign of the financial institution's drive through facilities are a result of adjusting the typical design of a use commonly found in mixed use development to accommodate the urban form of development and to support the Main Street.

Variance 6. – The special circumstances of this variance are not the result of the actions of the applicant but rather the result of evolving industry design standards for indoor movie theaters. A use such as this has been long awaited in this area of the Ag Reserve. In order to attract a user to make the significant investment necessary, consideration needs to be given to their experience in regard to the facilities and the design proposed for same to insure a successful product.

3. GRANTING THE VARIANCE SHALL NOT CONFER UPON THE APPLICANT ANY SPECIAL PRIVILEGE DENIED BY THE COMPREHENSIVE PLAN AND THIS CODE TO OTHER PARCELS OF LAND, BUILDINGS OR STRUCTURES IN THE SAME ZONING DISTRICT:

Variations 1. and 2. - The granting of the variance will not confer any special privilege denied by the plan or the code to other parcels of land in the same zoning district. Should any other AGR/TMD wish variances to code requirements, they would simply need to adequately address the seven criteria contained herein on a project specific basis in order to have the variance granted.

Variance 3. - The granting of the minor variance will not confer any special privilege to the applicant denied to other structures in the same zoning district. Any other AGR TMD has the ability to request variance approval to code requirements upon adequately addressing the variance criteria. In fact, the Palm Beach County Board of Adjustment approved a more significant variance for the other AGR TMD on December 21, 2006. The Canyon TMD requested and received approval to allow a single tenant to have a building frontage length of 287', a variance of 47 linear feet, based on adequate justification, including the position that the size/frontage of the store for that TMD was based on determinations associated with what would be necessary to serve the population in the surrounding communities. When compared to the portion of this request applicable to the actual front façade of the Publix (one foot), the requested variance is minimal.

Variance 4. - The granting of the variance will not confer any special privilege denied by the plan or the code to other parcels of land in the same zoning district. In fact, the other TMD that has been constructed in unincorporated Palm Beach County had the same challenges and was granted a similar variance as appropriate justification was provided.

Variance 5. - The granting of the variance will not confer any special privilege denied by the plan or the code to other parcels of land in the same zoning district. Should any other AGR/TMD wish variances to code requirements, they would simply need to adequately address the seven criteria contained herein on a project specific basis in order to have the variance granted.

Variance 6. - The granting of the variance will not confer any special privilege denied by the plan or the code to other parcels of land in the same zoning district. Should any other AGR/TMD wish variances to code requirements, they would simply need to adequately address the seven criteria contained herein on a project specific basis in order to have the variance granted. It should be noted that, should at some time a TMD with an indoor theater be proposed within the Urban/Suburban Tier, it would be limited to 45' and two stories. Both the Urban/Suburban Tier and the AGR Tier allow for a third story of residential uses, but only the AGR Tier restricts the height of the structure to 35'.

4. LITERAL INTERPRETATION AND ENFORCEMENT OF THE TERMS AND PROVISIONS OF THIS CODE WOULD DEPRIVE THE APPLICANT OF RIGHTS COMMONLY ENJOYED BY OTHER PARCELS OF LAND IN THE SAME ZONING DISTRICT, AND WOULD WORK AN UNNECESSARY AND UNDUE HARDSHIP:

Variance 1. – The literal interpretation of the code would deprive the applicant of rights commonly enjoyed by other parcels of land in the same zoning district. There exists only one other AGR TMD in Palm Beach County, that being the Canyon Town Center TMD located at the southeast corner of Boynton Beach Blvd. and Lyons Road. The approved Site Plan for Pod A of the TMD appears to depict areas very similar to the proposed waiver areas included in this request for the Delray Marketplace TMD. As such, the literal interpretation would deprive the applicant of similar design being implemented by other land in the same zoning district and would work an undue hardship, as meeting the literal terms of the code would create, rather than mitigate, the inherent traffic flow concerns created by the development pattern mandated by the code.

Variance 2. - The literal interpretation of the code would deprive the applicant of rights commonly enjoyed by other parcels of land in the same zoning district. In addition, the intent of the code is being met with the design as proposed. The design goals of the TMD include promoting a mix of uses in a manner that creates a stronger pedestrian orientation through design, placement and organization of building, plazas, common public space, and dispersed parking. The provision of additional parking via the one way drive aisles with angled parking allows for a more even distribution of parking, with additional parking available directly in the vicinity of the shopping opportunities on the Main Street. The goal of a pedestrian oriented environment is still met via the provision of the pedestrian walkway between the drive aisles and the 15 foot pedestrian sidewalk adjacent to the storefronts. Literal interpretation of the code would work an unnecessary and undue hardship on the applicant as the viability of the project would be affected.

Variance 3. – The literal interpretation of the code would deprive the applicant of rights commonly enjoyed by other parcels of land in the same zoning district and work an unnecessary and undue hardship. As previously mentioned, the granting of the larger variance for the Canyon TMD Publix Grocery building was already deemed an acceptable deviation from the code requirements by the Board of Adjustment. In this request, the variance being requested for the actual façade frontage of the building is only one (1) foot, from the allowed 240 feet to 241'. The additional 54 linear foot variance being requested to accommodate the canopy of the drive through on the west side of the building and the screening wall for the service area on the east side of the building are removed from the front façade and do not have any impact on the appearance of the building façade. Additionally, the intent of the code is still met as the design of the frontage meets the architectural enhancements outlined in the ULDC in order for the building to be designed at a frontage length of 240 feet.

Variance 4. – The literal interpretation of the code would deprive the applicant of rights commonly enjoyed by other parcels of land in the same zoning district. The applicant is requesting a variance of 5.74% to the allowance for two free standing buildings. A greater variance was previously approved for the other TMD in the Ag Reserve. The literal interpretation of the code would impact the ability to provide for needed uses, including the grocery and financial institution, needed to meet the needs of the residents in the area.

Variance 5. – The literal interpretation of the code would deprive the applicant of rights commonly enjoyed by other parcels of land in the same zoning district. The applicant is requesting a variance to allow the stacking for the teller lanes to be reduced from five spaces to three. However, the intent of the code to provide for adequate stacking is still met as the project has been designed to allow for the parking lot access aisle to the south of the building to serve as a bypass lane, thereby encouraging bank patrons to park and utilize the interior bank facilities should the drive through lanes be occupied. The applicant believes this is actually beneficial to the better promotion of the Traditional Marketplace Development goals, by fostering more pedestrian traffic along the Main Street and allowing for the potential for bank customers to continue along the Main Street and patronize other businesses.

Variance 6. – The literal interpretation of the code would deprive the applicant of rights commonly enjoyed by other parcels of land in the same zoning district. While there are no other TMD's existing or approved, other than the Canyon Town Center TMD located within the AGR TMD, the TMD zoning district in the Urban/Suburban Tier allows for two stories building to be 45' in height. Even within the Agricultural Reserve Tier, the TMD itself was created to provide for entertainment uses for the residents in this area of the County. The literal enforcement of the code will limit the ability of the user to provide the type of entertainment product and experience anticipated by the residents in the area.

5. GRANTING OF THE VARIANCE IN THE MINIMUM VARIANCE THAT WILL MAKE POSSIBLE THE REASONABLE USE OF THE PARCEL OF LAND, BUILDING OR STRUCTURE:

Variance 1. – The granting of the variance is the minimum variance necessary to make reasonable use of the parcel of land. The innovative site design provided for and the goal of meeting the intent of the code creates some traffic flow issues which are adequately mitigated by the design depicted and the variance requested.

Variance 2. – The granting of the variance is the minimum variance necessary to make reasonable use of the parcel of land. Leasing coordination with the retail users envisioned for this project have made apparent the requirement for sufficient parking to be located in the vicinity of the storefronts. By providing for the one way drive aisle and angled parking design, it is the minimum variance necessary to meet the needs of the users and provide the distribution of parking on the project to better

meet the needs and convenience of the resident's in the area while shopping at the marketplace.

Variance 3. – The granting of the variance is the minimum necessary to make reasonable use of the building. As previously mentioned, a grocery store is a critical component to the success of the TMD and must be designed so as to meet the needs of the surrounding communities. The variance in regard to the actual front building façade equates to only one (1) linear foot, and is consistent with an established prototype design utilized by Publix. This will allow for the construction of the facility without requiring changes to construction documents and result in a more timely and efficient construction process for the building. The additional variance amount of 25'± linear feet associated with the canopy for the drive through allows for an additional needed commercial service in the area and the placement of the canopy, with the point of service setback from the building frontage by 27.4' reduces the visual impact on the front façade. Additionally, the screen wall on the east side of the structure is located at the rear of the building and has no impact on the appearance of the front façade. The variance requested is the minimum necessary to avoid any issues in regard to these to features of the building during the building permitting process.

Variance 4. – The granting of the variance is the minimum variance necessary to make reasonable use of the parcel of land. By allowing an variance for free standing buildings, it will allow for the uses of both a grocery store and financial institution in a proven design to provide these services to meet the needs of the residents in the surrounding communities, without having them to venture into the Urban/Suburban Tier of the County.

Variance 5. – The granting of the variance is the minimum variance necessary to make reasonable use of the parcel of land. Reducing the stacking for the teller lanes to three spaces is the minimum request necessary to allow for full spaces to be provided past the point of service and to allow the three lanes to orderly transition down to the one narrower lane to exit out onto the Main Street while incorporating mechanisms to accommodate the pedestrians on the Main Street.

Variance 6. – The granting of the variance is the minimum variance necessary to make reasonable use of the structure. Today's indoor movie theater product and experience is different than even a few years ago. Stadium seating with taller screens has come to be expected by the movie going public. The introduction of balcony seating, while a relatively new concept, has been well received by the movie-going public. The variance for an increase in height of nine feet (9') is the minimum necessary to allow the user to provide an innovative product and experience to the patrons of the entertainment facility and the residents of this area of the Ag Reserve.

6. GRANTING OF THE VARIANCE WILL BE CONSISTENT WITH THE PURPOSES, GOALS, OBJECTIVES, AND POLICIES OF THE COMPREHENSIVE PLAN AND THIS CODE:

Variance 1. - *The granting of the variance will be consistent with the purposes, goals and objectives of the plan and the code. The variance is consistent with Policies 4.4.4-a and 4.4.4-c in that it still provides the community with an alternative form of commercial development that promotes concentrated mixed use development. The waiver of the will also not make the development inconsistent with the direction in the Plan in item 7. to amend the Code to create street design that promotes pedestrian usage. A continuous pedestrian system is still maintained in the development.*

Variance 2. - *The granting of the variance will be consistent with the purposes, goals and objectives of the plan and the code. The variance is consistent with Policies 4.4.4-a and 4.4.4-c in that it still provides the community with an alternative form of commercial development that promotes concentrated mixed use development. It still promotes a stronger pedestrian orientation through design while dispersing parking.*

In addition, the variance is consistent with the direction in the Plan in item 7. to amend the Code to create street design that promotes pedestrian usage. With the proposed design, allows for convenient pedestrian connection between the sides of the Main Street with a pedestrian walkway separating the drive aisles, and an environment encouraging the customer to continue down the Main Street to 'window shop' by offering the convenient pedestrian connections to uses on the other side of the street. The provision of additional parking in the vicinity of the storefronts also promotes more pedestrian activity as their cars are more conveniently located. This avoids them having to make their way back to a more remote area of parking and potentially leaving the center rather than patronize other shops/uses. The variance consistent with the Plan, it is also consistent with the Code as the code was crafted to implement the policies of the Plan

Variance 3. - *The granting of the variance will be consistent with the comprehensive plan and the code as the request provides commercial services necessary for the adjacent communities. It also complies with Policy 4.4.4-b, in that it provides for a mix of community services uses, such as grocery store, financial institution, entertainment and other retail, office and restaurant uses.*

Variance 4. - *The granting of the variance will be consistent with the comprehensive plan and the code as the request provides commercial services necessary for the adjacent communities. It also complies with Policy 4.4.4-b, in that it provides for a mix of community services uses, such as grocery store, financial institution, entertainment and other retail, office and restaurant uses. While the Plan does not permit the siting of 'freestanding' or 'big box' uses, the grocery and financial uses do not fall under this policy as they are permitted uses and are provided for as part of a mixed use project.*

Variance 5. - *The granting of the variance will be consistent with the comprehensive plan and the code as the request provides commercial services necessary for the adjacent communities, in a form required for the success of the financial institution. As mentioned, the drive through component of the financial institution is critical to the business operation. The variance also complies with Policy 4.4.4-b, in that it provides for a viable use, as well for a for a mix of community services uses which includes the financial institution.*

Variance 6. - *The granting of the variance will be consistent with the purposes, goals and objectives of the plan and the code. The variance is consistent with Policies 4.4.4-a and 4.4.4-c in that it provides the community with an alternative form of commercial development that promotes concentrated mixed use development. It also complies with Policy 4.4.4-b, in that it provides for a mix of community services uses, such as grocery store, financial institution, entertainment and other retail, office and restaurant uses.*

7. THE GRANTING OF THIS VARIANCE WILL NOT BE INJURIOUS TO THE AREA INVOLVED OR OTHERWISE DETRIMENTAL TO THE PUBLIC WELFARE:

Variance 1. – *The variance to the requirement for on-street parking on both sides of the two way streets in the development does not cause any detriment to the public welfare. In fact, the relief in regard to the spaces in the areas requested will provide for a smoother flow of traffic and avoid stacking issues, to the benefit of the public welfare.*

Variance 2. – *The granting of the variance will not be injurious to the area or detrimental to the public welfare. The granting of the variance will be beneficial to the public welfare as it will allow for leasing to attract an integrated mix of uses to the TMD to meet the needs of the residents. In addition, it will provide for sufficient parking for the public along the Main Street, while also providing for safe pedestrian connection between both sides of the Main Street via the walkway between the one way drive aisles. The urban form of pedestrian connectivity along the store fronts will also be maintained via the 15' sidewalks adjacent to the storefronts.*

Variance 3. - *The granting of the variance will not be injurious to the area or detrimental to the public welfare. The increase of one (1) linear foot of the front façade of the building will not create any negative public impacts and will not even be noticeable to the public. The variance associated with the drive through canopy of the west side of the structure is setback from the front façade and allows for a needed, yet convenient method of residents in the area to drop off and pick up prescriptions, especially when they are ill and do not wish to park and enter the store, which is beneficial to the public welfare. Likewise, the screening wall located to the rear of the building on the east side screens the service area from the public view, benefiting the aesthetics of the center.*

Variance 4. - *The granting of the variance will not be injurious to the area or detrimental to the public welfare. The variance will benefit the public by allowing the provision of a proven grocery product type, including the provision of a drive thru pharmacy window for residents' benefit. Likewise, the provision of a drive thru financial institution will provide for that service in close proximity to the residential developments in the area. Pedestrian connections to the remainder of the TMD are maintained to these free standing uses via the trellis pedestrian to Publix. Likewise, the Financial Institution is only separated from Building C2 on the Main Street by 38.7 feet, maintaining the pedestrian environment along this section of the Main Street.*

Variance 5. - *The granting of the variance will not be injurious to the area or detrimental to the public welfare. The variance will allow for the redesign of the drive through lanes by relocating the point of service to allow for three spaces past the point of service with adequate area for the three cars to orderly merge into the one exit lane. It also allows the pedestrian sidewalk to be located further to the north, allowing the existing cars greater visibility of the pedestrians in the area. Additionally, the redesign includes a speed bump, a stop sign, and additional signage prior to where the car would cross the sidewalk, providing for a pedestrian friendly environment in this area of the Main Street, while allowing for the provision of a needed service.*

Variance 6. - *The granting of the variance will not be injurious to the area or detrimental to the public welfare. The granting of the variance will allow an increase in building height of only nine feet (9'). The ULDC already allows for an exception in the AGR TMD for the three story buildings with residential uses on the third floor. In that case, the Height Exceptions listed in Art. 3.D.1.E.4. are allowed to be 45 feet in height, adding potentially an additional ten feet for those items on top of the building(s).*

Additionally, the structure is setback from West Atlantic Blvd. approximately 956 feet. It is setback from the north property line and the existing nursery use to the north approximately 168 feet. This consists of a 25 foot landscape buffer, with a 15' setback to the proposed 35' height multifamily buildings. A two way drive aisle with parallel parking on one side separates the structure from the multifamily buildings.

To the east, the structure is setback approximately 168 feet from the 110' Lyons Road right of way. To the west of the Lyons Road right of way is the 100' rural parkway, with a two way drive aisle with 90 degree parking further to the west. These setbacks and separations make the additional nine feet in building height negligible.

The applicant feels that this variance request complies with the required variance criteria and respectfully request approval of this application. The project manager at