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City Attorney's Office
City of Stuart
121 SW Flagler Street
Stuart, FL 34994



ADOPTED

INSTR # 1900533
OR BK 02098 PG 2855
Pgs 2855 - 2866; (12pgs)
RECORDED 01/03/2006 02:47:04 PM
MARSHA EWING
CLERK OF MARTIN COUNTY FLORIDA
RECORDED BY C Burkey

BEFORE THE CITY COMMISSION
CITY OF STUART, FLORIDA

ORDINANCE NUMBER 2061- 05

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA AMENDING AND RESTATING AN INDUSTRIAL PLANNED UNIT DEVELOPMENT (IPUD) ORIGINALLY GRANTED BY ORDINANCE No. 1994-04, FOR AN INDUSTRIAL PARK "FLEX" SPACE BUSINESS CENTER OF 65,457 SQUARE FEET CONSISTING OF SIX (6) BUILDINGS ON THE 9.32 ACRE PARCEL ON THE SOUTH EAST SIDE OF SAVANNAH ROAD AND SR 707 PROVIDING FOR APPROVAL OF A MASTER/FINAL SITE PLAN; PROVIDING CONDITIONS FOR COMPLIANCE WITH SITE DESIGN QUALITATIVE DEVELOPMENT STANDARDS TO ESTABLISH THE "INDUSTRIAL PARK AT AVONLEA," AN INDUSTRIAL PLANNED UNIT DEVELOPMENT (IPUD); DECLARING THE IPUD DEVELOPMENT TO BE CONSISTENT WITH THE COMPREHENSIVE PLAN OF THE CITY; APPROVING CERTAIN DEVELOPMENT DOCUMENTS; APPROVING CERTAIN CONDITIONS OF DEVELOPMENT; REPEALING ALL ORDINANCES IN CONFLICT HEREWITH; PROVIDING A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE; PROVIDING FOR ACCEPTANCE BY THE APPLICANT; AND PROVIDING FOR DIRECTIONS TO THE CITY CLERK.

* * * * *

WHEREAS, the Industrial Planned Unit Development (IPUD) for the 9.32 acres at the south side of Savannah Road and State Road 707 was granted by Ordinance No. 1994-04,

adopted July 26, 2004, and recorded at Official Records Book 1930, Page 149 of the Public Records of Martin County, Florida ('the "Property"); and

WHEREAS, the IPUD was approved for an industrial park "flex" space business center consisting of 65,457 square feet within six (6) buildings on the site; and

WHEREAS, Industrial Park at Avonlea, LLC, a Florida Limited Liability Company is the owner/ applicant of the Property; and

WHEREAS, the Owner has committed to the City that its development will comply with all Development Documents, plans, standards and conditions approved by the City; and that it will bind its successors in title to any such commitments made upon approval of the IPUD; and

WHEREAS, the City Commission held a properly noticed hearing at a regularly scheduled City Commission meeting to consider the application; and

WHEREAS, at the hearing the Owner showed by substantial competent evidence that the application is consistent with the Comprehensive Plan, and Land Development Code of the City, and with the procedural requirements of law; and

WHEREAS, the City Commission has determined the application is consistent with the overall planning an WHEREAS, the owner's representative, Frank Wacha, Jr. has requested certain amendments to the original IPUD; and the City Commission has considered and determined the amendments are in keeping with the overall intent, standards and conditions of the IPUD, and otherwise conform to all ordinances and development standards of the city; and

WHEREAS, this restatement replaces all of the terms and conditions of Ordinance No. 1994-04.

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

SECTION 1: The foregoing recitals are true and adopted as findings of fact and conclusions of laws.

SECTION 2: A legal description of the Property is set forth in "Exhibit A" attached hereto and made a part hereof by reference. A map depicting the Property is attached hereto as "Exhibit B" and made a part hereof by reference.

SECTION 3: The property is zoned as "Avonlea Industrial Park Planned Unit Development" (IPUD). This ordinance, including the development agreement at the bottom of this ordinance, and is hereby approved and shall be executed by the Owner and by the City and recorded in the Martin County, Florida, Public Records. The Owner's written acceptance of this Ordinance shall constitute an agreement with the City for the purposes expressed herein, but the same shall not be construed as a "Development Agreement," as provided in Section 163.3221, Florida Statutes.

SECTION 4: The IPUD zoning classification is consistent with the Comprehensive Plan of the City of Stuart, Florida.

SECTION 5: The zoning map of the City shall be amended in proper part to reflect this amendment.

SECTION 6: The following documents, on file as public records of the City at the office of the City Development Department in City Hall, hereinafter the "Development Documents", shall be deemed a part of the development regulations applicable to the Property:

A. "Final Site Plan" prepared by Laurence L. Parr, Landscape Architect, dated 12/30/03 and revised November 4, 2005;

B. "Landscape Plan" prepared by Laurence L. Parr, Landscape Architect, dated 10/27/030and revised 11/07/05;

C. "Building Elevations" prepared by Braden & Braden accepted by the Development Department on 6/22/05

Except as otherwise provided herein, no building permits, certificates of occupancy or other development orders or approvals shall be issued by the City except in compliance with the aforesaid Development Documents. Failure to comply with the Development Documents, or with any term or condition of development set forth in this ordinance, shall be deemed a zoning violation and no further building permits, certificates of occupancy or other development approvals shall be issued by the City until the violation has been resolved, and the matter may become the subject of a code enforcement action brought by the City.

SECTION 7: The zoning of the Property is subject to the conditions of development set forth in "Exhibit C" attached hereto and made a part hereof by reference.

SECTION 8: Except as otherwise provided herein, no building permits, certificates of occupancy or other development orders or approvals shall be issued by the City except in compliance with the aforesaid Development Documents. The failure of the Developer to complete development, or to comply with the Development Documents, or with any term or condition of development set forth in this ordinance, shall be deemed a zoning violation and no further building permits, certificates of occupancy or other development approvals or orders shall be issued by the City until the violation has been resolved, and the matter may become the subject of a code enforcement action brought by the City. This section shall not impair the due process or other legal rights of the Developer to seek administrative or judicial redress.

SECTION 9: In addition to any other action for failure to complete development or to comply with the Development Documents, the City Development Director may obtain a hearing before the City Commission, and shall thereupon give at least five (5) days written notice of the

time, date and location of the hearing, along with specific notice of the alleged breach. At the hearing before the City Commission the developer may appear, and may contest the allegation of breach or explain the reason or reasons for the breach.

In the event a breach is found to have occurred, the City Commission may initiate the process to amend or repeal this PUD ordinance. In the event a breach is found to have occurred, the City Commission may also direct that the City Development Director to initiate the process to rezone the PUD property or any portion of the PUD property.

Any breach of any provision or condition of this PUD ordinance by the developer shall be considered a zoning violation subject to any remedies provided therefor in this PUD ordinance, as well as any other remedies provided by law.

In the event a material breach of this ordinance, and acceptance and agreement, by the developer is found to have occurred, the City Commission may impose an administrative penalty. Upon a finding by the City Commission that any material condition of PUD approval has been breached, the City Commission may impose a penalty of up to $1,000.00 for each violation, and each repeat violation that occurs, along with all reasonable costs, including attorneys fees incurred by the City. In the event the violation found is a continuing violation from day to day, each day the violation is found to continue may be deemed a separate violation.

SECTION 10: All ordinances or parts of ordinances in conflict with this ordinance or any part thereof be and the same are hereby repealed to the extent of such conflict.

SECTION 11: If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared severable.

SECTION 12: If any provision of this ordinance conflicts with any contractual provision between the City and the developer of the site, this ordinance shall prevail.

SECTION 13: This ordinance shall take effect immediately upon adoption at second reading.

PASSED on first reading this 5th day of December, 2005.

Commissioner MORTELL offered the foregoing ordinance and moved its adoption. The motion was seconded by Commissioner KRAUSKOPF and upon being put to a roll call vote, the vote was as follows:

	YES	NO	ABSENT
KARL J. KRUEGER, MAYOR			X
CAROL WAXLER, VICE MAYOR (ABSTAIN)			
JEFFREY KRAUSKOPF, COMMISSIONER	X		
MARY HUTCHINSON, COMMISSIONER	X		
MICHAEL MORTELL, COMMISSIONER	X		

ADOPTED on second and final reading this 12 day of December 2005

ATTEST:

CHERYL WHITE
CITY CLERK

KARL J. KRUEGER
MAYOR

APPROVED AS TO FORM
AND CORRECTNESS:

PAUL J. NICOLETTI
CITY ATTORNEY

RENDERED & FILED IN
THE OFFICE OF
THE STUART CITY CLERK
ON Dec 12, 2005.

ACCEPTANCE AND AGREEMENT

BY SIGNING THIS ACCEPTANCE AND AGREEMENT, THE UNDERSIGNED HEREBY ACCEPTS AND AGREES TO ALL OF THE TERMS AND CONDITIONS CONTAINED IN ORDINANCE 1994-04, AS AMENDED BY THIS ORDINANCE NUMBER 2061-05, AND IN ALL EXHIBITS, ATTACHMENTS AND DEVELOPMENT DOCUMENTS, INTENDING TO BE BOUND THEREBY, AND THAT SUCH ACCEPTANCE AND AGREEMENT IS DONE FREELY, KNOWINGLY, AND WITHOUT ANY RESERVATION, AND FOR THE PURPOSES EXPRESSED WITHIN THE ABOVE ORDINANCE. IF IT IS LATER DISCOVERED THAT THE UNDERSIGNED, OR ITS SUCCESSORS OR ASSIGNS HAVE FAILED IN ANY MATERIAL WAY TO DEVELOP THIS COMMERCIAL PLANNED UNIT DEVELOPMENT ACCORDING TO THIS ORDINANCE, ITS CONDITIONS, AND THE DEVELOPMENT PLANS AND DOCUMENTS, THE UNDERSIGNED UNDERSTANDS AND AGREES THAT THIS ORDINANCE MAY BE AMENDED OR REPEALED BY THE CITY COMMISSION, AND THAT OTHER ACTIONS MAY BE TAKEN AGAINST THE UNDERSIGNED BY THE CITY, INCLUDING BUT NOT LIMITED TO CODE ENFORCEMENT ACTIONS, PERMIT AND LICENSING REVOCATIONS, AND ALL APPLICABLE CIVIL AND CRIMINAL ACTIONS.

IN WITNESS WHEREOF THE UNDERSIGNED HAS EXECUTED THIS ACCEPTANCE AND AGREEMENT:

WITNESSES:

INDUSTRIAL PARK AT AVONLEA, LLC,
a Florida Limited Liability Company

David Collier
Print Name: DAVID COLLIER

By: _____
Its Representative

Mary A. Ghianuly
Print Name: Mary A. Ghianuly

OWNERS ACKNOWLEDGMENT

The above Ordinance, Acceptance and Agreement was acknowledged before me this 21 day of ~~October~~ December, 2005, by FRANK WACHA, the Representative of Industrial Park at Avonlea, LLC.

Mary A. Ghianuly
Notary Public, State of Florida
My Commission Expires:

Notary Seal

Notary Public State of Florida
Mary A Ghianuly
My Commission DD388433
Expires 02/18/2009

Personally Known __X__ OR Produced Identification _____
Type of Identification Produced _____

CITY'S ACKNOWLEDGMENT

The above Ordinance, Acceptance and Agreement was acknowledged before me this 13 day of DECEMBER, 2005, by Karl J. Krueger, and Cheryl White, the Mayor and City Clerk, respectively, of the City of Stuart, Florida, a Florida municipal corporation.

PAUL J. NICOLETTI
Commission # DD0104686
Expires 7/26/2008
Bonded through
(800-432-4254) Florida Notary Assn., Inc.

Notary Public, State of Florida
My Commission Expires:

Notary Seal

Personally Known __X__ OR Produced Identification _____
Type of Identification Produced _____

EXHIBIT "C"

The following conditions are incorporated into the ordinance and PUD agreement:

1. The development shall be subject to the Master/Final Site Plan prepared by Laurence L. Parr, Landscape Architect, dated 12/30/03 and revised on 11/4/05. Job # 0325.00.

2. The development shall be subject to the Landscape Plan prepared by Laurence L. Parr, Landscape Architect, dated 10/27/03 and revised on 11/7/05. Job # 0325.00.

3. The development shall be subject to the Tree Survey/Site Plan Overlay prepared by Laurence L. Parr, Landscape Architect. Revision dated 11/02/05.

4. The development shall be subject to the Tree Restoration Planting Area Plan prepared by Laurence L. Parr, Landscape Architect. Dated 11/3/05.

5. The development shall be subject to the building elevations prepared by Braden & Braden, and accepted by the Development Department on 6/2205. Job # 05298.

6. Permitted uses on the subject property include all uses consistent with the B-4 and I Zoning District with the exception of the following prohibited uses:

   - Business or Professional Offices exceeding 50% or more of office space for each individual tenant space.
   - Heavy industrial manufacturing operations which are deemed to be harmful to the health safety and welfare based on substantial noise, smoke, dust, cold, radiation emissions, glare, night illumination, vibrations, smell, risk of spills, fires, explosions, or other physical hazards.
   - Slaughterhouses.
   - Wrecking or salvage yards.
   - Concrete or asphalt processing plants.
   - Uses which require the issuance of occupational licenses for businesses operating from mini-warehouse facilities.
   - Drive thru restaurants.
   - Bars, cocktail lounges, pubs, beer gardens or similar uses.
   - Adult businesses.
   - Stealth communication facilities/towers.
   - Commercial retail.
   - Outdoor automotive repair of motor vehicles and marine vessels.
   - Boat storage.

7. Prior to the issuance of a development permit a contribution, in the amount of $63,525.00 shall be submitted to the City Development Department for mitigation of the removal of protected trees in accordance with the Natural Resource Protection Standards of the City's Land Development Regulations, Section 5.05.03. The total monetary contribution may be adjusted based on a revised tree mitigation plan submitted by the developer subject to the review and approval of the Development Department prior to the issuance of a Site Development Permit.

8. A Minor PUD Amendment shall be required for an individual tenant(s) exceeding 50% or more of office space for each individual tenant space.

9. The Wetland and Upland Preserve Area shall be placed under a conservation easement and shall remain in perpetuity. Prior to the issuance of a development permit, approval documents from South Florida Water Management District (SFWMD) shall be provided to the City. The Conservation Easement shall be recorded in the public records at Martin County. In addition, no permits will be issued until the documents are recorded and the restoration of the preserve area is completed prior to the issuance of Certificate of Occupancy for the first building.

10. The final design of the buildings, with the exception of the two buildings facing Savannah Road may be modified subject to the review and approval of the Planning and Development Department. If staff and the developer are unable to reach a consensus on a building design a Minor Pud Amendment shall be required. All buildings are subject to the requirements set forth in Section 6.09.00 of the Land Development Regulations.

11. The development shall be subject to the requirements set forth in Section 7.02.00 **Outdoor Storage.**

12. Erosion and dust control measures to be implemented during construction shall be provided on the civil engineering plans and submitted during final site plan review. Water tricks shall be provided by the applicant as necessary during construction in order to reduce dust generated on-site.

13. Pervious concrete shall be maintained in accordance with the manufactures specifications on the material.

14. All regulatory agency permits, including but not limited to the South Florida Water Management District, Army Corp of Engineers, Florida Department of Transportation shall be obtained by the applicant and copies provided to the City prior to the issuance of development permits.

15. Development shall comply with the City's Concurrency Management System prior to the issuance of development permits. A concurrency reservation certificate shall be binding upon the applicant meeting the following three standards:

    - Site Plan construction approval;
    - The issuance of building permits to commence construction; and
    - Pays all applicable impact and permit fees.

16. Final site plan construction drawings shall be reviewed and approved by all applicable city departments.

17. A subdivision plat shall be approved by the City Commission and shall be recorded in the public records at Martin County prior to the issuance of any development permits.

18. Time table for development shall be as follows:

    A building and site development permit shall be submitted no later then December 31, 2006 and a certificate of occupancy shall be obtained no later then December 31, 2010.

19. Construction activity shall be limited to 7:00 am to 7:00 pm Monday through Friday; and 8:00 am to 6:00 pm Saturday and Sunday.

20. A traffic signage plan shall be required with the final site plan review which provides for safe vehicular and pedestrian circulation and addresses potential conflicts.

21. Backflow preventions devices and above ground utilities shall be delineated on the landscape plans during final site plan review and shall be out of view from the public right-of-way.

22. One ground based monument sign shall be permitted for the project along SR 707. The sign shall be limited to a maximum of 60 square feet/30 square feet each sign face and limited to a maximum of six feet in height. All signage colors shall be earth tone muted colors. The sign shall be architecturally consistent with the architecture of the principal buildings. Illumination of the sign shall be ground based. Cabinet or box lighting is prohibited.

23. Building addresses and/or numbers shall be in plain view and shown on each building plan submitted at the time of building permit application in accordance with the city code.

24. All mechanical equipment associated with the development shall be roof top or located behind the building. Equipment shall be equipped with decorative screening or landscaped with hedge material.

25. Street furniture provided on-site shall be of high quality and aesthetically pleasing appearance. Street furniture shall be reviewed and approved by staff prior to the issuance of a building permit.

26. Applicant shall provide a digital boundary survey and site plan prior to the issuance of a development permit.

27. No accessory buildings or storage sheds shall be permitted.

28. No temporary or modular buildings are permitted on the property.

29. Bollards shall be painted with a muted color that compliments the building color.

30. Billboards are prohibited on the property.

31. Banners and any other sign or advertising device not in accordance with the city's Land Development Regulations are prohibited.

32. A sales trailer shall be allowed on-site and shall be certified by the Department of Community Affairs. The sales trailer requires a separate permit.

33. The sidewalk along Savannah Road shall be constructed at a minimum width of six feet. Proof of permits from Martin County/FDOT is required prior to the issuance of a development permit. Internal sidewalks shall be a minimum of five feet in width.

34. The development shall be subject to the decorative lighting detail submitted by the applicant. The maximum height of light poles shall be limited to 15 feet in height. A light reading measured from the common boundary shall be required during final site plan review to demonstrate that no light source exceeds 0.2 foot candles from the common boundary.

35. All landscape areas shall be provided with an irrigation system of sufficient capacity to maintain the landscaping in a healthy growing condition.

36. The city's landscape inspector shall have the opportunity to inspect all trees and/or landscape material with the landscape architect prior to installation. The developer shall bear the pass-thru fee for landscape consulting fees not to exceed $1,500.00.

37. A Landscape Maintenance Agreement, executed in accordance with the Land Development Regulations, shall be submitted prior to the issuance of a certificate of occupancy.

38. "Hat racking" of trees is prohibited on the property.