BEFORE THE CITY COMMISSION
CITY OF STUART, FLORIDA

RESOLUTION NUMBER 113-2018

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA APPROVING A MINOR AMENDMENT TO THE "STUART CENTRE" COMMERCIAL PLANNED UNIT DEVELOPMENT (CPUD) ON PROPERTY LOCATED ON THE EAST SIDE OF SE FEDERAL HIGHWAY; THEREBY ALTERING THE PROJECT'S EXISTING MASTER SITE PLAN TO CREATE THE DEVELOPMENT OF AN OURPARCEL AT 2331 SE FEDERAL HIGHWAY, TO DEMOLISH AN EXISTING 4,729 SQUARE FOOT RESTAURANT (DENNY'S) AND ALLOW THE CONSTRUCTION OF A 2,845 SQUARE FOOT FAST FOOD RESTAURANT WITH DRIVE THRU (PDQ); PROVIDING AN EFFECTIVE DATE; PROVIDING FOR A TIMETABLE OF DEVELOPMENT; AND FOR OTHER PURPOSES.

* * * * *

WHEREAS, the City Commission approved the Stuart Centre Commercial Planned Unit Development (CPUD) on a 1.14 acre outparcel of said CPUD, located on the east side of SE Federal Highway; and

WHEREAS, Stuart Centre Investors, LLC, is the Owner ("Owner") of the outparcel property, legally described as set forth in "Exhibit A", whose request for development consists of demolishing 4,729 square feet restaurant (Denny's) and constructing a 2,845 square foot fast food restaurant with drive thru (PDQ); and

WHEREAS, the applicant is requesting a minor amendment to the CPUD on behalf of the petitioner, PDQ, Inc., a Florida Profit Corporation ("Applicant"); and

WHEREAS, the City Commission held a properly noticed hearing at a regularly scheduled City Commission meeting held on November 13, 2018 to consider the minor amendment to the Stuart Centre CPUD; and

WHEREAS, at the hearing the applicant showed by substantial competent evidence that the application is consistent with the Stuart Comprehensive Plan, and the 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 and development goals and objectives of the City; and

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

SECTION 1: 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. The revised and new conditions of development for the property are attached hereto as **Exhibit "C"** and made a part hereof by reference, and each shall constitute one of the development documents.

SECTION 2: The following documents on file as public records of the City, at the office of the City Clerk in City Hall, and attached hereto as **Exhibit "D"**, hereinafter the "Development Documents", shall be deemed a part of the development conditions applicable to the Property:

1. **Site Plan (Concept Plan for PDQ), by VHB, last revised 08.10.18.**
2. **Landscape Plan and Building Elevation by VHB, dated 11.13.18.**

SECTION 3: In all other respects and except as amended hereby, the CPUD documents

and conditions for development, and previously approved minor amendments shall remain in full force and effect.

SECTION 4: All ordinances or parts of ordinances in conflict with this ordinance or any part thereof are hereby repealed to the extent of such conflict. If any provision of this ordinance conflicts with any prior contractual provision between the City and the developer of the site, this ordinance shall prevail.

SECTION 5: Except as otherwise provided herein, no development permits, site permits or building permits 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 permits, or other development approvals or orders shall be issued by the City to the owner 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 6: Following the adoption and acceptance of this ordinance by the Owner, and in addition to any other action for failure to complete development or otherwise 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. Upon a finding of a material breach of the Development Documents and therefore, the Ordinance(s) adopting the same, the City

Commission may impose or do any or all of the following:

a. Initiate the process to amend or repeal this or any other ordinance pertaining to the development.
b. Direct the City Development Director to initiate the process to rezone the CPUD property or any portion of the CPUD property.
c. Impose an administrative penalty of up to $1,000.00 for each violation, and up to $5,000.00 for each repeat violation that occurs, along with all reasonable costs, including attorney's fees incurred by the City.

Any breach of any provision or condition of this CPUD ordinance by the developer shall be considered a zoning violation subject to any remedies provided herein, or as otherwise provided by law. In the event a violation found continues from day to day, each day the violation is found to continue shall be deemed a separate violation.

SECTION 7: 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 8: This resolution shall be effective upon the adoption by the City Commission, and proper execution by the Owner.

SECTION 9: The complete execution and recording of this Ordinance by the City Clerk shall occur no later than 45 days from the date of this approval, failing which this ordinance shall be void.

Resolution 113-2018
Minor Amendment to Stuart Centre to allow a PDQ

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

	YES	NO	ABSENT	ABSTAIN
KELLI GLASS LEIGHTON, MAYOR				
BECKY BRUNER, VICE MAYOR				
EULA R. CLARKE, COMMISSIONER				
MERRITT MATHESON, COMMISSIONER				
MIKE MEIER, COMMISSIONER				

ADOPTED on this _____ day of _____, 2018.

ATTEST:

_____
MARY R. KINDEL
CITY CLERK

_____
KELLI GLASS LEIGHTON,
MAYOR

APPROVED AS TO FORM AND CORRECTNESS:

_____
MICHAEL J. MORTELL
CITY ATTORNEY

CITY'S ACKNOWLEDGMENT

The above Ordinance, Acceptance and Agreement was acknowledged before me this _____day of _____, 2018, by Kelli Glass Leighton and Mary R. Kindel, the Mayor and City Clerk, respectively, of the City of Stuart, Florida, a Florida municipal corporation.

_____
Notary Public, State of Florida
My Commission Expires:

Notary Seal

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

ACCEPTANCE AND AGREEMENT

BY SIGNING THIS ACCEPTANCE AND AGREEMENT, THE UNDERSIGNED HEREBY ACCEPTS AND AGREES TO ALL OF THE TERMS AND CONDITIONS CONTAINED 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 RESOLUTION. 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 RESOLUTION, ITS CONDITIONS, AND THE DEVELOPMENT PLANS AND DOCUMENTS, THE UNDERSIGNED UNDERSTANDS AND AGREES THAT THIS RESOLUTION 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:

_____

Print Name: _____

_____

Print Name: _____

_____

Stuart Centre Investors, LLC (Owner)

By:_____

David Coppa, (CEO)

OWNERS' ACKNOWLEDGMENT

The above Ordinance, Acceptance and Agreement was acknowledged before me this _____day of _____, 2018, by David Coppa , the CEO of Stuart Centre Investors, LLC.

_____
Notary Public, State of Florida
My Commission Expires:

Notary Seal

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

WITNESSES:

_____

Print Name: _____

_____

Print Name: _____

_____

PDQ, Inc. (Applicant)

By:_____

_____

OWNERS' ACKNOWLEDGMENT

The above Ordinance, Acceptance and Agreement was acknowledged before me this _____day of _____, 2018, by_____, the _____ of PDQ, Inc.

_____
Notary Public, State of Florida
My Commission Expires:

Notary Seal

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

EXHIBIT “A” LEGAL DESCRIPTION

RECORD LEGAL DESCRIPTION

A parcel of land lying in Section 10, Township 38 South, Range 41 East, Martin County, Florida, being more particularly described as follows:

Commencing at the Southwest corner of Section 10; thence, South 89°22'38" East, along the South line of Section 10, a distance of 783.69 feet to a point on the baseline of survey for State Road No. 5 (U.S. Highway No. 1); thence North 41°22'55" West, along said baseline, a distance of 588.56 feet; thence North 48°37'05" East, a distance of 53.75 feet to a point on the Easterly existing right-of-way line for said State Road No. 5 and the Point of Beginning; thence North 41°22'55" West, along said Easterly along the existing right-of-way line, a distance of 182.26 feet; thence North 48°42'26" East, a distance of 245.55 feet; thence South 41°29'41" East, a distance of 202.66 feet; thence South 48°33'38" West, a distance of 233.94 feet to a point on the Easterly right-of-way line of State Road No. 5; thence North 41°22'55" West, along said right of way line, a distance of 13.39 feet; thence South 81°03'49" West, along said right of way line, a distance of 14.23 feet to the Point of Beginning.

EXHIBIT "B" SURVEY

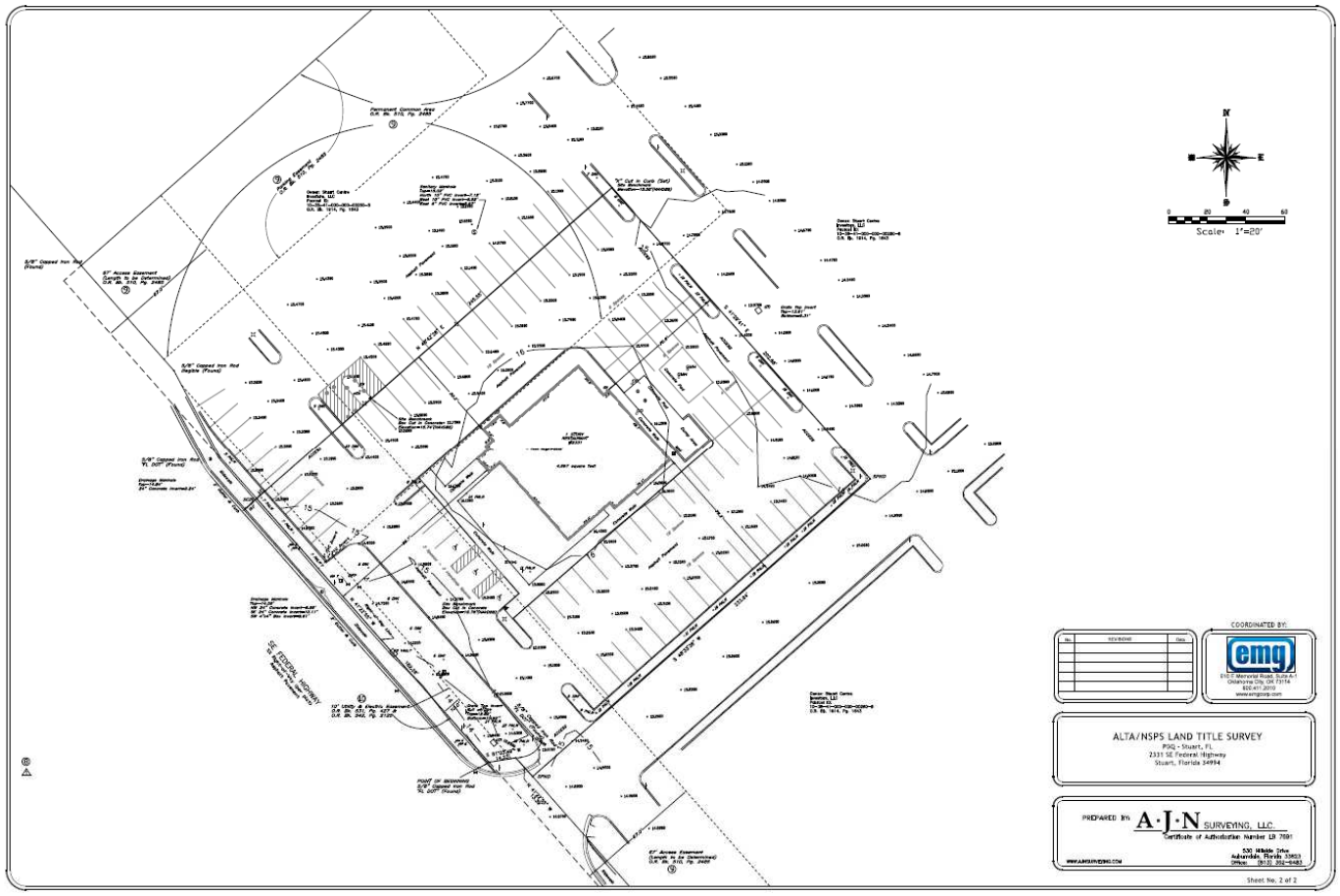


EXHIBIT "C"
DEVELOPMENT CONDITIONS

Approved Plans and Documents

1. The project shall comply with the Site Plan by Vanasse, Hangen, and Brustlin, Inc (VHB), dated 08.10.18.

2. The project shall comply with the Landscape Plan and Building Elevation by VHB, dated 11.13.18.

3. The creation of an outparcel is defined by the Land Title Survey, prepared by AJN Surveying, LLC., dated 6.15.18.

4. Any modification to the CPUD outparcel Final Site Plan, due to final engineering, that exceeds 5% of the approved building footprint, building setbacks, density, building location, parking size, location and number, drainage areas, and location of landscaping shall require further approval by the City Commission via a public hearing.

Landscaping

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

6. The City's landscape inspector shall have the opportunity to inspect all tress and/or landscaping material with the landscape architect prior to installation.

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

Construction

8. The applicant agrees to re-strip the parking areas within the outparcel and any parking areas within the CPUD affected by construction prior to the issuance of a certificate of occupancy.

9. The applicant shall provide a digital boundary survey and the final site plan prior to the issuance of a development permit.

10. Final Site Plan construction drawings shall be reviewed and approved by all applicable City departments.

11. All regulatory agency permits shall be obtained by the applicant and copies provided to the City prior to initial construction.

12. Construction activities shall be limited from 7:00am to 6:00pm Monday thru Saturday.

13. All mechanical equipment associated with the PDQ shall be roof top or located behind the building. Roof top equipment shall be screened with a decorative screening or if located behind the building, equipment shall be landscaped with hedge material.

14. Erosion and dust control measures to be implemented during construction shall be provided on the civil engineering plans and submitted during the final site plan review. The applicant shall provide a 6' opaque construction screen around the entire outparcel.

Development Timetable

15. The timetable for development shall be as follows:

    a. Site and Building Permit submission – January 1, 2020
    b. Certificate of Occupancy – January 1, 2021.

Signage

16. The signage within the PDQ outparcel shall be consistent in size and style with the signage throughout the Stuart Centre PUD. The signage shall also comply with the City of Stuart's Land Development Code.

Platting

17. Prior to the issuance of a site or building permit, the applicant shall plat the Stuart Centre shopping center and the PDQ outparcel to include appropriate access easements and any other necessary easements or plat language.

EXHIBIT "D"
DEVELOPMENT DOCUMENTS