

RESOLUTION NO. R-93- 1362

RESOLUTION APPROVING ZONING PETITION DOA77-48(B)
DEVELOPMENT ORDER AMENDMENT
PETITION OF **GEORGE T. ELMORE**

WHEREAS, the Board of County Commissioners, as the governing body of Palm Beach County, Florida, pursuant to the authority vested in Chapter 163 and Chapter 125, Florida Statutes, is authorized and empowered to consider petitions relating to zoning; and

WHEREAS, the notice and hearing requirements, as provided for in Article 5 of the Palm Beach County Land Development Code, have been satisfied; and

WHEREAS, Zoning Petition DOA77-48(B) was presented to the Board of County Commissioners at a public hearing conducted on October 28, 1993; and

WHEREAS, the Board of County Commissioners has considered the evidence and testimony presented by the petitioner and other interested parties, and the recommendations of the various county review agencies; and

WHEREAS, this approval is subject to Article 5, section 5.8 (Compliance with Time Limitations), of the Palm Beach County Land Development Code and other provisions requiring that development commence in a timely manner; and

WHEREAS, the Board of County Commissioners made the following findings of fact:

1. This Development Order Amendment is consistent with the Palm Beach County Comprehensive Plan.
2. This Development Order Amendment complies with relevant and appropriate portions of Article 6, Supplementary Use Standards of the Palm Beach County Land Development Code.
3. This Development Order Amendment is consistent with the requirements of the Palm Beach County Land Development Code.
4. This Development Order Amendment, with conditions as adopted, is compatible as defined in the Palm Beach county Land Development Code and generally consistent with the uses and character of the land surrounding and in the vicinity of the land proposed for development.
5. This Development Order Amendment, with conditions as adopted, complies with standards imposed on it by applicable provisions of the Palm Beach County Land Development Code for use, layout, function, and general development characteristics.
6. This Development Order Amendment meets applicable local land development regulations.
7. This Development Order Amendment, with conditions as adopted, minimizes adverse effects, including visual impact and intensity of the proposed use on adjacent lands.
8. This Development Order Amendment has a concurrency exemption and therefore complies with Art. 11 (Adequate Public Facility Standards) of the Palm Beach County Land Development Code.

9. This Development Order Amendment, with conditions as adopted, minimizes environmental impacts, including but not limited to water, air, stormwater management, wildlife, vegetation, wetlands and the natural functioning of the environment.
10. This Development Order Amendment, with conditions as adopted, will result in logical, timely and orderly development patterns.

WHEREAS, Article 5 of the Palm Beach County Land Development Code requires that the action of the Board of County Commissioners be adopted by resolution.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, that Zoning Petition DOA77-48(B), the petition of GEORGE T. ELMORE AS TRUSTEE; W. G. LASSITER JR.; HOME DEPOT U.S.A., INC., for a DEVELOPMENT ORDER AMENDMENT in the General Commercial (CG) Zoning District, to increase square footage, previously approved on a parcel of land legally described in EXHIBIT A, attached hereto and made a part hereof, and generally located on a vicinity sketch as shown on EXHIBIT B, attached hereto and made a part hereof, was approved on October 28, 1993, subject to the conditions of approval described in EXHIBIT C, attached hereto and made a part hereof.

Commissioner Marcus moved for the approval of the Resolution.

The motion was seconded by Commissioner Aaronson and, upon being put to a vote, the vote was as follows:

Mary McCarty, Chair	--	Absent
Burt Aaronson	--	Aye
Ken Foster	--	Aye
Maude Ford Lee	--	Aye
Karen T. Marcus	--	Aye
Warren Newell	--	Aye
Carol A. Roberts	--	Absent

The Chair thereupon declared that the resolution was duly passed and adopted this 28th day of October, 1993.

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

PALM BEACH COUNTY, FLORIDA
BY ITS BOARD OF COUNTY
COMMISSIONERS

DOROTHY H. WILKEN, CLERK

BY: *[Signature]*
COUNTY ATTORNEY

BY: *[Signature]*
DEPUTY CLERK

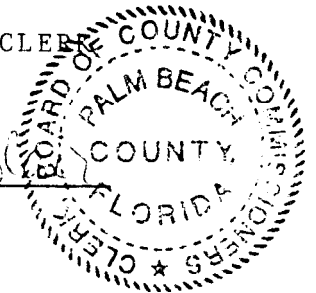


EXHIBIT A

LEGAL DESCRIPTION

**LEGAL DESCRIPTION OF OVERALL PROPERTY
WESTERN PLAZA**

A parcel of land lying in Section 6, Township 45 South, Range 42 East, Tracts 21 and 22, Block 8 and Tracts 5 and 6, Block 10, THE PALM BEACH FARMS COMPANY, PLAT NO. 3, according to the plat thereof, as recorded in Plat Book 2, on pages 45 through 54, said parcel of land being more particularly described as follows:

Beginning at the intersection of the South line of said Tract 6, Block 10 (said South line of Tract 6 also being a North line of WESTWOODS, P.U.D. recorded in Plat Book 34 on pages 131 through 134) with a line 40 feet East, of as measured at right angles and parallel with the West line of said Tract 6;

Thence, North 89°-22'-39" East (all bearings cited herein are related to the assumed meridian used for the plat of WESTWOODS) along the South line of said Tract 6 and said North line of WESTWOODS, P.U.D., a distance of 720.00 feet;

Thence, North 02°-58'-25" East along that portion of the West line of said WESTWOODS, P.U.D. lying West of Lots 40 through 49, a distance of 1660.22 feet to the intersection with the South line of those lands described in the quit claim deed recorded in Official Record Book 2831 on page 1927 (said South line being a line 130 feet South of as measured at right angles and parallel with the centerline of the West Palm Beach Canal. The centerline of the West Palm Beach Canal is the same as that which is shown on the right of way and TOPO map for the West Palm Beach Canal, drawing number W.P.B.-3, Sheet 9 of 19, prepared June 1956 and revised March 29, 1961 by the Central and Southern Florida Flood Control District); North 88°-29'-34" West along said South line, a distance of 749.99 feet to the intersection with the East line of those lands described in the quit claim deed recorded in Official Record Book 2819 on page 1155 (said East line being a line 40 feet East of as measured at right angles and parallel with the West Tract lines of the aforementioned Tracts 21 and 22, Block 8 and Tract 6, Block 10);

Thence, South 01°-53'-41" West along said East line, a distance of 1186.02 feet;

Thence, South 01°-57'-46" West continuing along said East line, a distance of 500.46 feet to the POINT OF BEGINNING.

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TOGETHER WITH all of that certain abandoned 50 foot PALM BEACH FARMS COMPANY, road right **of** way lying between Blocks 8 and 10 and contained within the above described parcel of land; said right of **way was** abandoned under Resolution No. R-78-209 and is recorded in Official Record **Book** 2831 on pages 1619 and 1620.

SUBJECT TO easements, restrictions, reservations and rights of way **of** record and to a temporary casement recorded in Official Record Book 2831 on pages 1924 through 1926.

TOGETHER WITH PARCEL 2:

The Vest 40.00 feet of Tract 21, lying South of West Palm Beach Canal and West 40.00 feet **of** Tract 22, all in Block 8, and West 40.00 feet of Tract 6, Block 10, all of the above shown on the Plat of PALM BEACH FARMS COMPANY, PLAT NO. 3, recorded in **Plat Book** 2, Pages 45 to, 54.

SUBJECT TO existing easements, restrictions, reservations and rights of way **of** record.

TOGETHER WITH PARCEL 3:

Commencing at the intersection of South line of Tract 6, Block 10, THE PALM BEACH FARMS COMPANY PLAT NO. 3 as recorded in Plat Book 2, on pages 45 through 54; (said South line **of** Tract 6 also being a North line **of** WESTWOODS, P.U.D., recorded in Plat **Book** 34 on pages 131 through 134) with a line 40.00 feet East of as measured at right angles and parallel with the West line of said Tract 6; Thence, South 89°-22'-39" West (all bearings cited herein are related to the assumed meridian used for the plat of WESTWOODS, P.U.D.) along the projection of the South line of said Tract 6 and said North line of WESTWOODS, P.U.D., a distance of 40.04 feet to the POINT OF BEGINNING:

Thence, continue South 89°-22'-39" West, a distance of 71.87 feet to the East face of the East guard rail of State Road No. 7;

Thence, along said guard rail the following three courses and distances;

Thence, North 01°-52'-19" East, a distance of 342.25 feet;

Thence, North 00°-58'-13" East, a distance of 298.90 feet;

Thence, North 00°-12'-26" West, a distance of 210.99 feet to intersect the West line said Section 6;

Thence, North 01°-53'-41" East, along the West line of said Section 6, a distance of 838.59 feet to intersect the Southerly right **of** way line of the C-51 Canal, as recorded in Official Record **Book** 2831, page 1927;

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Thence, South 88°-29'-34" East, along said Southerly right of way line, a distance of 85.10 feet to intersect the West line of Tracts 21 and 22, Block 8; and Tract 6, Block 10, THE PALM BEACH FARMS COMPANY, PLAT NO. 3;
Thence, South 01°-53'-41" West along said West tract lines, a distance of 1185.73 feet;
Thence, South 01°-57'-46" West along said West line of Tract 6, a distance of 502.24 feet to the POINT OF BEGINNING.

SUBJECT TO existing easements, restrictions, reservations and rights of way of record.

TOGETHER WITH PARCEL 4:

A parcel of land lying in Tracts 21 and 22, Block 8 and Tracts 5 and 6, Block 10, THE PALM BEACH FARMS COMPANY, PLAT NO. 3, according to the plat thereof, as recorded in Plat Book 2, on pages 45 through 54; said parcel of land is more particularly described as follows:

Beginning at the intersection of the South line of said Tract 6, Block 10 (said South line of Tract 6 also being a North line of WESTWOODS, P.U.D. recorded in Plat Book 34 on pages 131 through 134 of the public records of Palm Beach County, Florida) with a line 40.00 feet East of as measured at right angles and parallel with the West line of said Tract 6;
Thence, North 89°-22'-39" East (all bearings cited herein are related to the assumed meridian used for the plat of WESTWOODS) along the South line of said Tract 6 and said North line of WESTWOODS, P.U.P., a distance of 720.00 feet;
Thence, North 02°-58'-25" East along that portion of the West line of said WESTWOODS F.U.D. lying West of Lots 40 through 49, a distance of 1660.22 feet to the intersection with the South line of those lands described in the quit claim deed recorded in Official Record Book 2831 on page 1927 (said South line being a line 130.00 feet South of as measured at right angles and parallel with the centerline of the West Palm Beach Canal. The centerline of the West Palm Beach Canal is the same as that which is shown on the right of way and TOPO map for the West Palm Beach Canal, drawing number W.P.B.-3, sheet 9 of 19, prepared June 1956 and revised March 29, 1961 by the Central and Southern Florida Flood Control District);
Thence, North 88°-29'-34" West along said South line, a distance of 100.03 feet;

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Thence, South 02"-58'-25" East on a line 100.00 feet West of as measured at right angles and parallel with the West line of said WESTWOODS, P.U.D., lying West of Lot 40 through 49, a distance of 1505.32 feet;
Thence, South 46°-10'-32" West, a distance of 85.18 feet
Thence, South 89°-22'-39" West, a distance of 675.21 feet to the East face of the East guardrail of State Road No. 7;
Thence, South 01°-52'-19" West along said East face of guardrail, a distance of 100.10 feet;
Thence, North 89°-22'-39" East, a distance of 111.91 feet to the POINT OF BEGINNING.

Walter J. [Signature]
PLS 3884

EXHIBIT B
VICINITY SKETCH

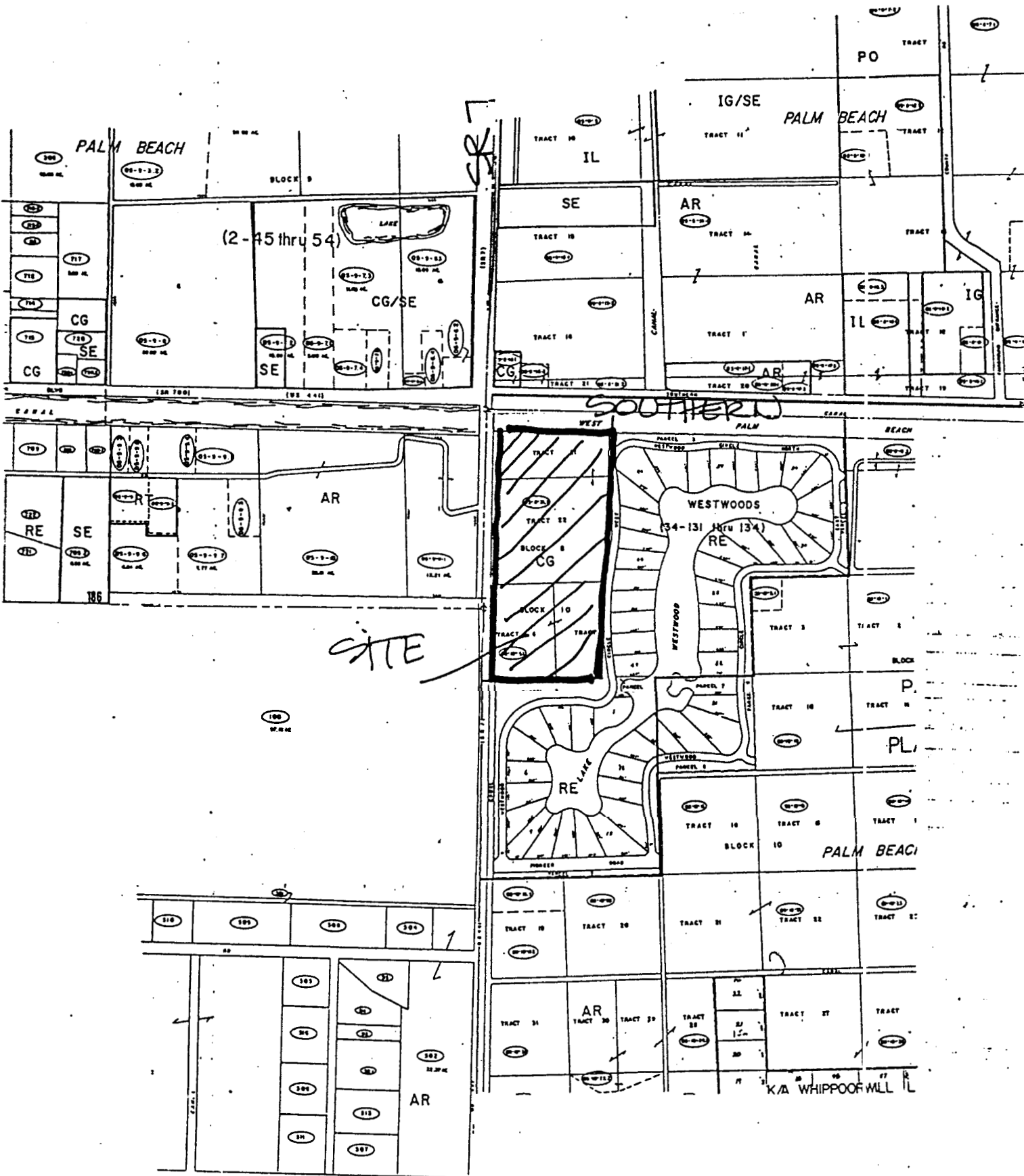


EXHIBIT C

CONDITIONS OF APPROVAL

A. GENERAL

1. All previous conditions of approval applicable to the subject property, as contained in Resolutions R-89-441 have been consolidated as contained herein. The petitioner shall comply with all previous conditions of approval, unless expressly modified. (MONITORING)
2. Resolution No. R-77-483, adopted April 28, 1977, is hereby repealed. (Previously Condition No. 1 of Resolution R-89-441) (ZONING)
3. Condition No. 2 of Resolution R-89-441, which currently states:

Prior to certification, the site plan shall be amended to indicate the following:

- a. Labelling of all stacking lanes.
- b. Required perimeter landscape buffer.
- c. Relocate signs out of landscape strips.
- d. A minimum of a (3) three car stacking distance from the menu board for the fast food parcel.

Is hereby amended to state:

Prior to site plan certification by the Development Review Committee, the petitioner shall amend the site plan to indicate:

- a. Tabular data to include all square footage of the development as defined in the ULDC;
 - b. Parking calculation which reflects all square footage pursuant to Section 7.2 and Section 6.8.E.7(3) of the ULDC;
 - c. Delineate the affected areas of this petition;
 - d. Remove all parking along the east property line;
 - e. Delineate all required storage areas and relocated dumpster locations; and,
 - f. All required landscaping. (ZONING)
4. Simultaneously with submission to the Site Plan Review Committee the petitioner shall submit a corrected survey or site plan, as applicable, to correspond with the respective site plan or survey. (Previously Condition No. 3 of Resolution R-89-441) (ZONING)
 5. Prior to Site Plan Review Committee Certification the petitioner shall submit a Unity of Control for review and approval by the Zoning Division and the County Attorney. Prior to the issuance of the first building permit, the petitioner shall record the Unity of Control. (Previously Condition No. 8 of Resolution R-89-441) (ZONING)

6. **To mitigate compatibility with adjacent residential area, no outdoor loudspeaker system audible off site shall be permitted. (CODE ENFORCEMENT)**
7. **To mitigate compatibility with adjacent residential area, no pick up or deliveries shall be allowed on the site, including solid waste pickup, prior to 7:00 a.m. nor later than 10:00 p.m. (CODE ENFORCEMENT)**
8. **To mitigate compatibility with adjacent residential area, all delivery and/or loading areas shall be screened from view by an eight (8) foot high wing wall consistent with the color and character of the principle structure. (BUILDING)**
9. **To mitigate compatibility with adjacent residential, no outdoor storage or placement of any material, refuse, equipment or debris shall be permitted in the rear of the facility except within designated dumpster location. (CODE ENFORCEMENT)**
10. **To mitigate compatibility with adjacent residential area, dumpsters along the eastern perimeter shall be relocated a minimum of fifteen (15) feet from the east property line and screened in accordance with the ULDC. (ZONING)**
11. **To mitigate compatibility with adjacent residential area, all eastern oriented facades for proposed expansion shall have a solid opaque wall to the roof line. (BUILDING)**
12. **To mitigate compatibility with adjacent residential area, overnight storage or parking of delivery vehicles or trucks shall not be permitted on site, except within the loading and delivery areas designated on the site plan. (BUILDING/CODE ENFORCEMENT)**
13. **To Ensure compliance with conditions required to mitigate compatibility with adjacent residential, the petitioner shall comply with all applicable conditions of approval prior to issuance of any further building permit. (ZONING)**
14. **Prior to site plan certification the petitioner shall demonstrate, in a manner and form acceptable to the County Attorney, its legal right to discharge unto the existing lake within the Westwood subdivision east and south of the subject property. (COUNTY ATTORNEY)**
15. **Prior to issuance of any building permits, the petitioner shall fund up to \$7551.85 plus all expenses necessary for the installation of an aeration system in the existing lake within the Westwood Subdivision. (ZONING)**

B. HEALTH

1. **Generation and disposal of hazardous effluents into sanitary sewerage system shall be prohibited unless adequate pretreatment facilities approved by the Florida Department of Environmental Regulation (FDER) and Agency responsible for sewage works are constructed and used by project tenants or owners generating such effluents. (Previously Condition No. 9 of Resolution R-89-441) (HEALTH)**

2. Condition No. 10 of Resolution R-89-441, which currently states:

Sewer service is available to the property. Therefore, no septic tank shall be permitted on the site.

Is hereby amended to state:

Sewer service is available to the property. Therefore, no septic tank shall be permitted on this site. All existing onsite sewage disposal systems must be abandoned in accordance with Chapter 10D-6, FAC., and Palm Beach County ECR-I. (HEALTH)

3. Condition No. 11 of Resolution R-89-441, which currently states:

Water service is available to the property. Therefore, no well shall be permitted on the site to provide potable water.

Is hereby amended to state:

Water service is available to the property. Therefore, no well shall be permitted on the site to provide potable water. All existing onsite potable water supply systems must be abandoned in accordance with Palm Beach County ECR-11. (HEALTH)

C. LANDSCAPE

1. Simultaneously with application submittal to the Site Plan Review Committee, the petitioner shall submit an alternative landscape betterment plan for the landscape buffers along the eastern property line. This alternative landscape betterment plan shall include the landscape plans for the western buffer of the Westwoods Planned Unit Development (Zoning Petition No. 77-47). The alternative landscape betterment plan buffer shall equal or exceed thirty-five (35) feet and shall receive landscape treatment meeting the requirements of Section 500.35.E of the Landscape Code. This plan shall be subject to approval by the Zoning Division. (Previously Condition No. 12 of Resolution R-89-441) (ZONING)
2. Prior to the issuance of a building permit, the developer shall submit a copy of the approved alternative landscape betterment plan which meets or exceeds the requirements stated in Condition No. 12 above. No Certificate of Occupancy shall be issued until the landscape plan has been installed and received approval from the Zoning Division. (Previously Condition No. 13 of Resolution R-89-441) (ZONING)
3. To mitigate compatibility with adjacent residential, all trees required to be planted on site by this approval, in the affected area as indicated on the certified site plan, shall meet the following minimum standards at installation:
 - a. Tree height: fourteen (14) feet.
 - b. Trunk diameter: 3.5 inches measured 4.5 feet above grade.
 - c. Canopy diameter: seven (7) feet. Diameter shall be determined by the average canopy radius at 3 points measured from the trunk to the outermost branch tip. Each radius shall measure at least 3.5 feet in length. (ZONING)

D. LANDSCAPING ALONG THE EAST PROPERTY LINE (ABUTTING RESIDENTIAL)

1. To mitigate compatibility with adjacent residential, landscaping and buffering along the east property line shall be upgraded to include:
 - a. A minimum fifteen (15) foot wide landscape buffer strip free and clear of all utility easements or other encumbrances that may impede the required landscaping; and,
 - b. One (1) native canopy tree planted every twenty (20) feet on center. (ZONING)
2. To mitigate compatibility with adjacent residential area, the petitioner shall remove all existing parking along the east property line. This area shall be used for landscaping and may only be encroached by the existing two dumpster areas. (ZONING/BUILDING)
3. Prior to November 1, 1994, the petitioner shall pay up to \$10,000 of invoices upon presentation by the Westwood Property Owners Association (WPOA) for landscaping along the property line abutting the existing shopping center. The petitioner shall be relieved of any portion of this responsibility not installed by the WPOA prior to November 1, 1994. (MONITORING)

E. ENGINEERING

1. Condition No. 4 of Resolution R-89-441 which currently states:

The developer shall retain the stormwater runoff in accordance with all applicable agency requirements in effect at the time of the permit application. However, at a minimum, this development shall retain onsite three (3) inches of the stormwater runoff generated by a three (3) year-one (1) hour storm as required by the Permit Section, Land Development Division. The drainage system shall be maintained in an acceptable condition as approved by the County Engineer. In the event that the drainage system is not adequately maintained as determined by the County Engineer, this matter will be referred to the Code Enforcement Board for enforcement. (ENGINEERING)

Is hereby deleted. [REASON: CODE REQUIREMENT]

2. If required by the County Engineer or the South Florida Water Management District the developer shall design the drainage system such that storm water runoff from the parking areas and paved surfaced area shall be separate from those areas which may contain hazardous or undesirable waste from the proposed site. (Previously Condition No. 5 of Resolution R-89-441) (ENGINEERING)
3. Condition No. 6 of Resolution R-89-441 which currently states:

Developer shall construct at the intersection of State Road 7 the projects south and the north entrance concurrent with onsite paving and drainage improvements and shall be completed prior to the issuance of any Certificate of occupancy:

- a) left turn Pane north approach.
- b) right turn lane south approach unless a permit from the Florida Department of Transportation for any portion of Condition No. 6 cannot be obtained at which case this portion of the condition shall not be enforced subject to review by the County Engineer.
- c) a three (3) lane entrance road.
- d) signalization/if warrant as determined by the County Engineer and approved by the Florida Department of Transportation.

Any right-of-way required for the construction of these improvements shall be funded entirely by the property owner. (ENGINEERING)

Is amended to state:

Developer shall construct at the intersection of State Road 7 the projects south and the north entrance concurrent with onsite paving and drainage improvements and shall be completed prior to the issuance of any Certificate of Occupancy:

- a) right turn lane south approach unless a permit from the Florida Department of Transportation for any portion of Condition No. 6 cannot be obtained at which case this portion of the condition shall not be enforced subject to review by the County Engineer.
- b) signalization/if warrant as determined by the County Engineer and approved by the Florida Department of Transportation.

Any right-of-way required for the construction of these improvements shall be funded entirely by the property owner. (ENGINEERING)

[NOTE: a) is completed]

- 4. The developer shall pay a Fair Share Fee in the amount and manner required by the "Fair Share Contribution for Road Improvements Ordinance" as it presently exists or as it may from time to time be amended. The Fair Share Fee for this project presently is \$340,126.00 (12,696 trips X \$26.79 per trip) to be paid in its entirety prior to the issuance of the first building permit for the main center. Should building permits for the parcels (other than the main center) along State Road 7 and State Road 80 be sought, the users shall pay the standard Impact Fee rate based upon their square footage. The total amount of these impact fees shall be credited toward the \$340,126.00. (Previously Condition No. 6 of Resolution R-89-441) (IMPACT FEE COORDINATOR)
- 5. Nothing herein shall preclude the issuance of any approval to the Lake Worth Drainage District for government structures. (Previously Condition No. 16 of Resolution R-89-441) (ZONING/ENGINEERING)
- 6. The property owner shall construct at the project's entrance road and State Road 80 concurrent with on site paving and drainage improvements.
 - a. left turn lane, east approach
 - b. right turn lane, west approach

- c. signalization if warranted as determined by the County Engineer and approved by the Florida Department of Transportation

Any right-of-way required for this construction shall be funded in its entirety by the property owner.

Should any of these turn lanes not be permitted by the Florida Department of Transportation then that portion of the condition shall not be enforced, subject to concurrent review by the County Engineer. (Previously Condition No. 17 of Resolution R-89-441) (ENGINEERING)

[NOTE: a and b completed; c - No warrants are met at this time]

F. SIGNS

1. No off-premise signs shall be permitted on site. (Previously Condition No. 15 of Resolution R-89-441) (ZONING - Building)

G. MONITORING

1. Condition No. 14 of Resolution R-89-441, which currently states:

Failure to comply with the conditions herein may result in the denial or revocation of a building permit; the issuance of a stop work order; the denial of a Certificate of Occupancy on any building or structure; or the denial or revocation of any permit or approval for any developer-owner, commercial-owner, lessee, or user of the subject property. Appeals from such action may be taken to the Palm Beach County Board of Adjustment or as otherwise provided in the Palm Beach County Zoning Code. Violations of the conditions herein shall constitute violation of the Palm Beach County Zoning Code.

Is hereby deleted. [REASON: Code Requirement]