

SEMINOLE COUNTY GOVERNMENT  
AGENDA MEMORANDUM

**SUBJECT:** Rezone from OP (Office Professional) to PCD (Planned Commercial Development District). (Paul Partyka, applicant)

**DEPARTMENT:** Planning & Development **DIVISION:** Planning

**AUTHORIZED BY:** Donald Fisher **CONTACT:** Jeff Hopper **EXT** 7431

**Agenda Date** 9/09/03 **Regular**  **Consent**  **Work Session**  **Briefing**   
**Public Hearing – 1:30**  **Public Hearing – 7:00**

**MOTION/RECOMMENDATION:**

1. Enact an ordinance to APPROVE the request for rezoning from OP (Office Professional) to PCD (Planned Commercial Development) on 1.8 acres on the east side of Tuskawilla Road, ¼ mile north of Red Bug Lake Road, subject to conditions listed in the development order, (Paul Partyka, applicant); or
2. DENY the request for rezoning from OP (Office Professional) to PCD (Planned Commercial Development) on 1.8 acres on the east side of Tuskawilla Road, ¼ mile north of Red Bug Lake Road, (Paul Partyka, applicant); or
3. CONTINUE the public hearing until a time and date certain.

(District 2 – Comm. Morris)

(Jeff Hopper, Senior Planner)

**BACKGROUND:**

The applicant is requesting approval of a PCD on a 1.8 acre site on the east side of Tuskawilla Road. Intended use of the property is a 150-seat seafood restaurant in a 6,000 square foot building. The proposed site plan shows sufficient parking and landscaping, and, with a few exceptions, meets applicable regulations of the Land Development Code. The request includes waivers to certain Code provisions as discussed in the staff report.

**PLANNING & ZONING COMMISSION RECOMMENDATION**

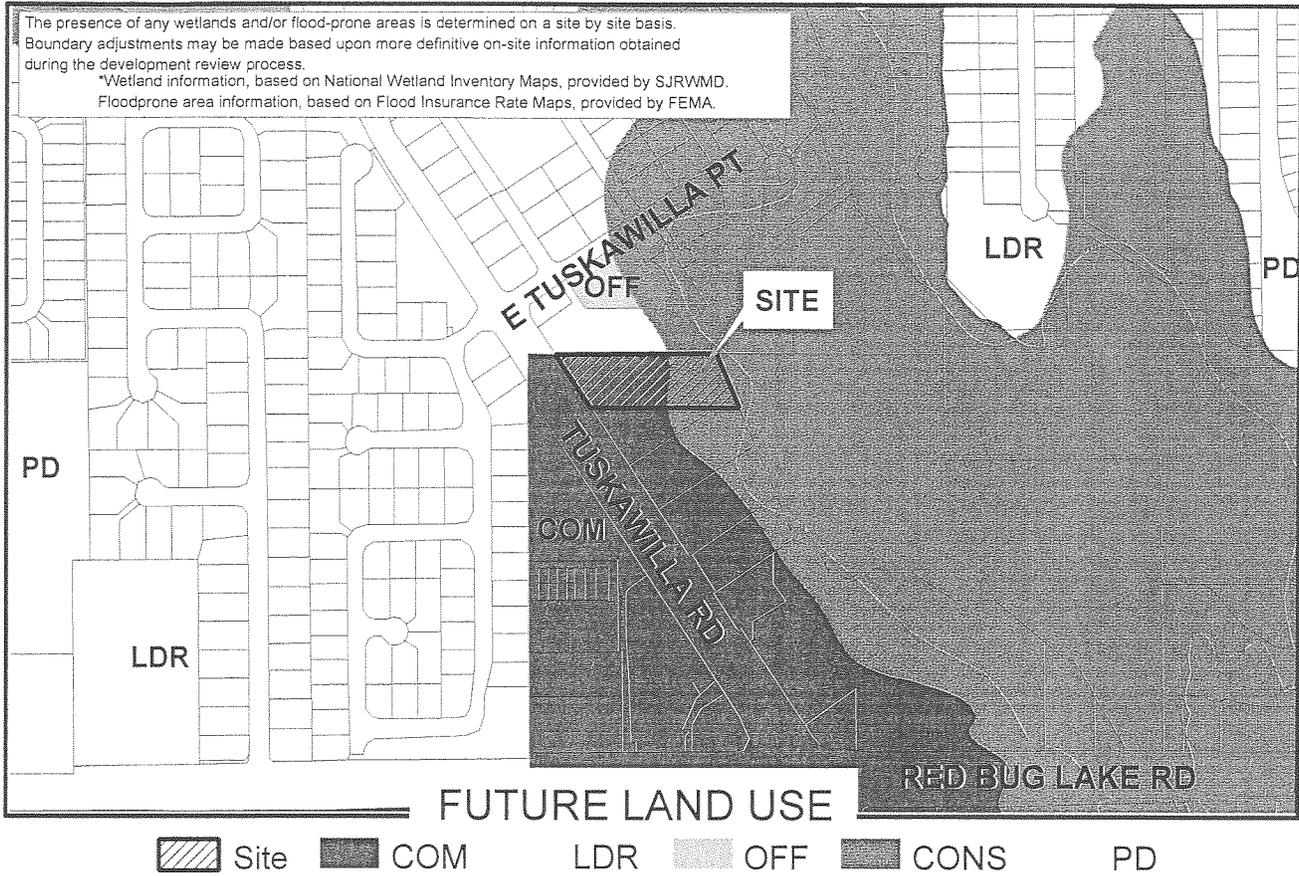
On August 6, 2003, the Planning & Zoning Commission voted 4-1 to recommend APPROVAL of the request subject to the following conditions:

<b>Reviewed by:</b>
Co Atty: _____
DFS: _____
OTHER: <u>MW</u>
DCM: <u>SS</u>
CM: <u>JB</u>
File No. <u>ph700pdp02</u>

- a. Outdoor sound amplification shall be prohibited.
- b. A minimum 7-foot buffer, including a 6-foot brick or masonry wall, shall be provided along the north property line.
- c. Outdoor seating shall be permitted on the south side of the building only.

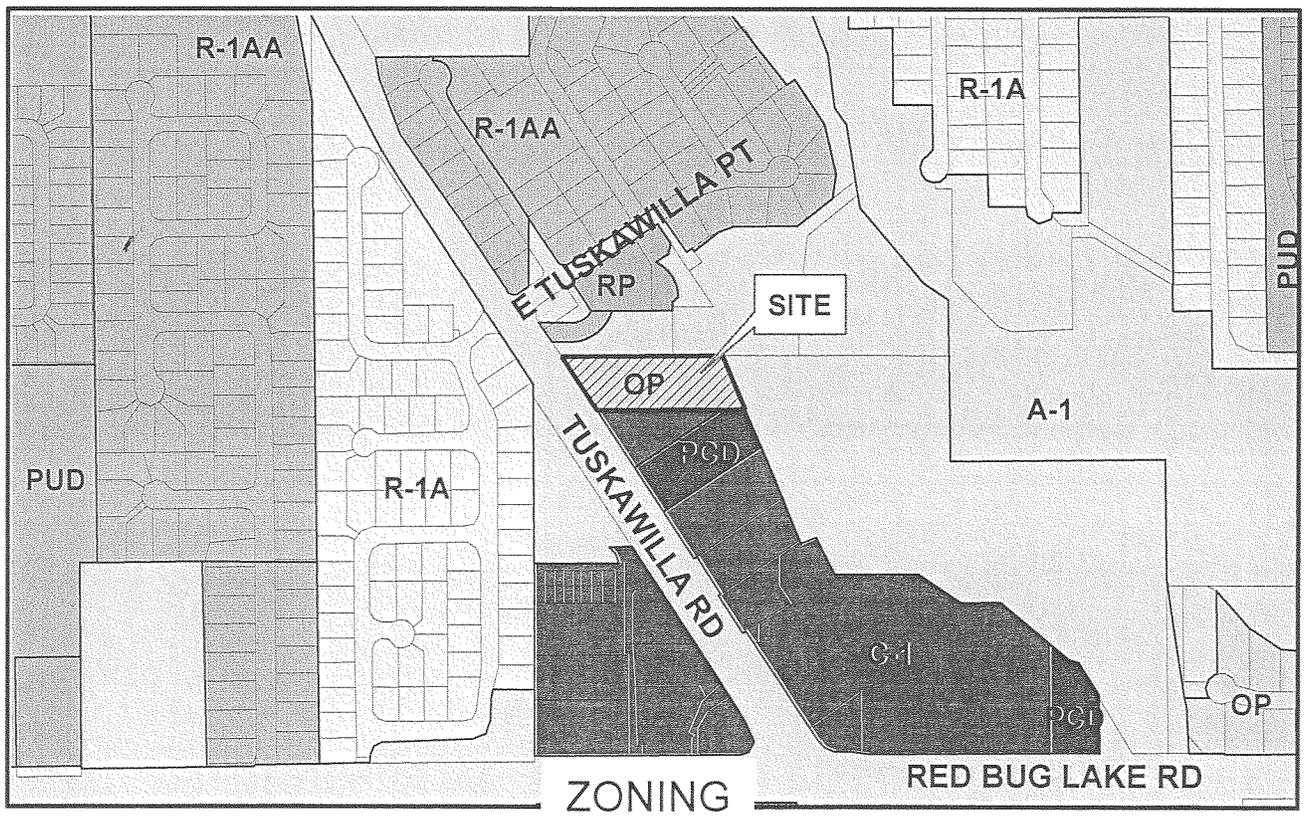
**STAFF RECOMMENDATION:**

Staff recommends APPROVAL of the requested PCD classification per the attached Development Order.



Applicant: NAI Realvest Partners, Inc.  
 Physical STR: 24-21-30-506-0000-0070  
 Gross Acres: 1.816 BCC District: 2  
 Existing Use: Vacant Commercial  
 Special Notes: None

	Amend/ Rezone#	From	To
FLU	--	--	--
Zoning	Z2003-014	OP	PCD





Rezone No: Z2003-014

From: OP To: PCD

 Parcel

 Subject Property



NOT TO SCALE

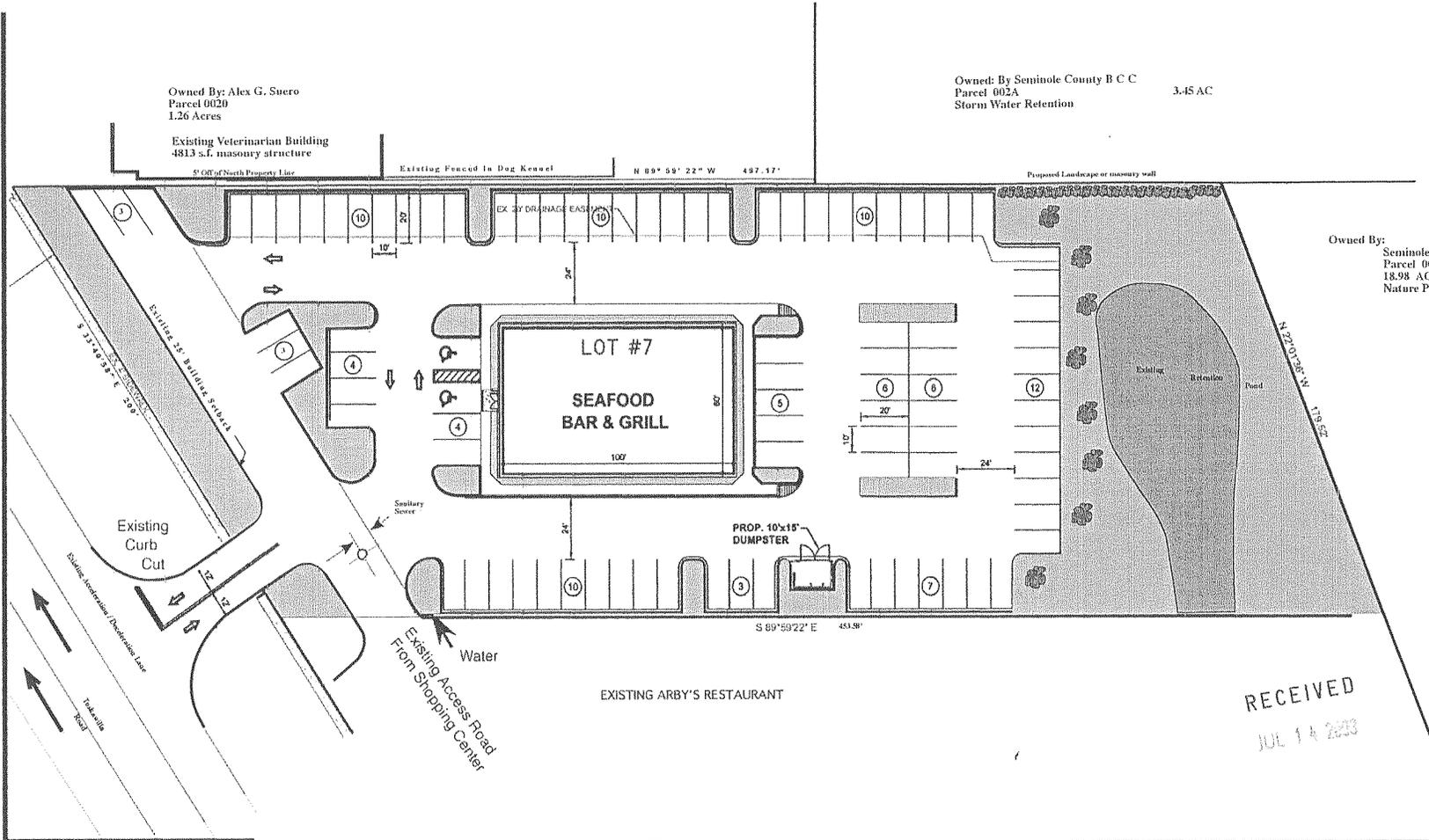
February 1999 Color Aerials

Owned By: Alex G. Suero  
Parcel 0020  
1.26 Acres

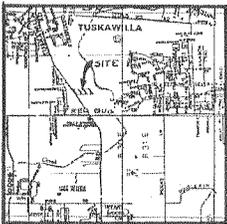
Existing Veterinarian Building  
4813 s.f. masonry structure

Owned By: Seminole County B C C  
Parcel 002A  
Storm Water Retention  
3.45 AC

Owned By:  
Seminole County B C C  
Parcel 0040  
18.98 AC  
Nature Preserve



Project: Red Willow Plaza; 1295 Tuskawilla Road



Legal: Lot 7, Red Willow Plaza II  
Plat Book 35, Pg 100, Seminole County FL

Owner: Hacienda Development Corp.

Project Data:

Impervious:	55,373.5 s.f.	70%
Open:	23,731.3 s.f.	30%
Grass Area:	79,105.0 s.f.	100%

Proposed Use: Limited to Current C-1 Uses/Conditional Uses

Zoning: Presently Office Professional (OP)  
Requesting change to PCD

Building Height: 35' Max

Building Set backs:

Front	25'
Side	5'
Rear	25'

Lighting: Shop box Cutoff Style <16'

Utilities: Water & Sewer- Seminole County

General Notes

Contracted for a 150 Seat Seafood Restaurant

Parking: 150/0 = 32.5 Required  
33 Provided

Hours of Operation:  
11 am - 12 pm Sunday thru Thursday  
11 am - 1 am Friday and Saturday

No Deliveries: 9 pm - 7 am

Outdoor Seating: West and South Only

Landscaping: 10% Internal

North Drainage Easement: Reinforced Concrete Drainage Pipe will support Vehicular Traffic

Buffers: Shall be Bermed Landscaped or Masonry wall

Existing Retention Pond: Restore

## TUSCAWILLA CENTRE

REQUEST INFORMATION	
<b>APPLICANT</b>	Paul Partyka
<b>PROPERTY OWNERS</b>	Hacienda Development Corp.
<b>REQUEST</b>	Rezone from OP (Office Professional) to PCD (Planned Commercial Development District)
<b>HEARING DATE(S)</b>	P&Z: August 6, 2003      BCC: September 9, 2003
<b>SEC/TWP/RNG</b>	24-21-30-511-0000-0020
<b>LOCATION</b>	East side of Tuskawilla Rd., ¼ mile north of Red Bug Lake Rd.
<b>FUTURE LAND USE</b>	Commercial
<b>FILE NUMBER</b>	Z2003-014
<b>COMMISSION DISTRICT</b>	District 2 (Morris)

### OVERVIEW

**Zoning Request:** The applicant is requesting approval of a PCD on a 1.8 acre site on the east side of Tuskawilla Road. Intended use of the property is a 150-seat seafood restaurant in a 6,000 square foot building. The proposed site plan shows sufficient parking and landscaping, and, with a few exceptions, meets applicable regulations of the Land Development Code.

A Low Density Residential (LDR) land use designation on neighboring property to the north nominally triggers the active/passive buffer requirement of the Land Development Code. However, the existing use of that adjacent site is a veterinary clinic, Tuskawilla Oaks Animal Hospital, which was permitted by Special Exception in the A-1 zoning district. Because of the commercial nature of the existing use, Staff has no objection to reducing the normal buffer requirement as described in the Staff Recommendations section of this report.

**Existing Land Uses:** The existing zoning designations and land uses are as follows:

	Zoning	Future Land Use	Existing Land Use
<b>North</b>	A-1	LDR	Veterinary clinic, County retention facility
<b>South</b>	C-1	Commercial	Restaurant
<b>East</b>	A-1	LDR	Vacant
<b>West</b>	R-1A	LDR	Single Family

For more detailed information regarding zoning and land use, please refer to the attached map.

## **SITE ANALYSIS**

### **Facilities and Services:**

1. Adequate facilities and services must be available concurrent with the impacts of development. If required by the concurrency review, additional facilities and services will be identified.
2. The proposed zoning is consistent with the adopted future land use designation assigned to the property, and does not alter the options or long range strategies for facility improvements or capacity additions included in the Support Documentation to the Vision 2020 Plan.
3. Seminole County will provide water and sewer service to the site.
4. Information on stormwater capacity and outfall will have to be provided prior to Final Site Plan approval.

**Compliance with Environmental Regulations:** At this time there are no concerns regarding compliance with environmental regulations.

**Compatibility with surrounding development:** The proposed PCD zoning classification is compatible with the surrounding existing uses.

### **PLANNING & ZONING COMMISSION RECOMMENDATION**

On August 6, 2003, the Planning & Zoning Commission voted 4-1 to recommend APPROVAL of the request subject to the following conditions:

- a. Outdoor sound amplification shall be prohibited.
- b. A minimum 7-foot buffer, including a 6-foot brick or masonry wall, shall be provided along the north property line.
- c. Outdoor seating shall be permitted on the south side of the building only.

### **STAFF RECOMMENDATION**

Staff recommends APPROVAL of the request subject to the following additional conditions:

- a. The structure shall be set back a minimum of 50 feet from the north property line.
- b. The site shall be limited to C-1 district permitted uses, but shall include alcoholic beverage sales within a bona fide restaurant as defined in Section 30.1353 of the Land Development Code. If a use other than a restaurant is proposed, a major amendment to the PCD may be required.

- c. Hours of operation shall be 11 a.m. – midnight Sunday through Thursday, and 11 a.m. -1 a.m. Friday and Saturday.
- d. Outdoor seating shall be provided only on the west and south sides of the building.
- e. Retention pond shall be amenitized per Section 30.1344 of the Land Development Code. This shall be determined at Final Site Plan review.
- f. Outdoor lighting fixtures shall be limited to shoebox-cutoff style fixtures not more than 16 feet in height, projecting no more than 0.5 foot-candles at property lines..
- g. The architectural style of the building shall be compatible with residential. Elevations shall be provided at Final Master Plan.
- h. Building height shall be limited to a maximum of 35 feet.
- i. Applicant shall provide paved pedestrian paths connecting the building to public sidewalks on Tuskawilla Road.
- j. Delivery times shall be limited to 9:00 a.m. to 9:00 p.m.

**SEMINOLE COUNTY DEVELOPMENT  
ORDER**

On September 9, 2003, Seminole County issued this Development Order relating to and touching and concerning the following described property:

Legal description attached as Exhibit A.

(The aforescribed legal description has been provided to Seminole County by the owner of the aforescribed property.)

**FINDINGS OF FACT**

**Property Owner:** HACIENDA DEVELOPMENT CORP.

**Project Name:** TUSCAWILLA CENTRE PCD

**Requested Development Approval:** Rezoning from OP to PCD (Planned Commercial Development)

The Development Approval sought is consistent with the Seminole County Vision 2020 Plan and will be developed consistent with and in compliance to applicable land development regulations and all other applicable regulations and ordinances.

The owner of the property has expressly agreed to be bound by and subject to the development conditions and commitments stated below and has covenanted and agreed to have such conditions and commitments run with, follow and perpetually burden the aforescribed property.

Prepared by: JEFF HOPPER  
1101 East First Street  
Sanford, Florida 32771

**NOW, THEREFORE, IT IS ORDERED AND AGREED THAT:**

- (1) The aforementioned application for development approval is **GRANTED**.
- (2) All development shall fully comply with all of the codes and ordinances in effect in Seminole County at the time of issuance of permits including all impact fee ordinances.
- (3) The conditions upon this development approval and the commitments made as to this development approval, all of which have been accepted by and agreed to by the owner of the property are as follows:

- a. The structure shall be set back a minimum of 50 feet from the north property line.
- b. A minimum 7-foot buffer shall be provided along the north property line, including a 6-foot brick or masonry wall.
- c. The site shall be limited to C-1 district permitted uses. Uses may include alcoholic beverage sales within a bona fide restaurant as defined in Section 30.1353 of the Land Development Code. If a use other than a restaurant is proposed, a major amendment to the PCD shall be required.
- d. Hours of operation shall be 11 a.m. – midnight Sunday through Thursday, and 11 a.m. -1 a.m. Friday and Saturday.
- e. Outdoor seating shall be provided only on the south side of the building.
- f. Retention pond shall be amenitized per Section 30.1344 of the Land Development Code.
- g. Outdoor lighting fixtures shall be limited to shoebox-cutoff style fixtures not more than 16 feet in height, projecting no more than 0.5 foot-candles at any property line.
- h. The architectural style of the building shall be compatible with residential development. Elevations shall be provided and evaluated at Final Master Plan.
- i. Building height shall be limited to a maximum of 35 feet.
- j. Applicant shall provide paved pedestrian paths connecting the building to public sidewalks on Tuskawilla Road.
- k. Delivery times shall be limited to 9:00 a.m. to 9:00 p.m.
- l. Outdoor sound amplification shall be prohibited.

(4) This Development Order touches and concerns the aforescribed property and the conditions, commitments and provisions of this Development Order shall perpetually burden, run with and follow the said property and be a servitude upon and binding upon said property unless released in whole or part by action of Seminole County by virtue of a

document of equal dignity herewith. The owner of the said property has expressly covenanted and agreed to this provision and all other terms and provisions of this Development Order.

(5) The terms and provisions of this Order are not severable and in the event any portion of this Order shall be found to be invalid or illegal then the entire order shall be null and void.

**Done and Ordered on the date first written above.**

By: \_\_\_\_\_  
Daryl G. McLain  
Chairman  
Board of County Commissioners

Attest:

\_\_\_\_\_  
Maryanne Morse  
Clerk to the Board of County Commissioners

OWNER'S CONSENT AND COVENANT

COMES NOW, the owner, HACIENDA DEVELOPMENT CORP., on behalf of itself and its heirs, successors, assigns or transferees of any nature whatsoever and consents to, agrees with and covenants to perform and fully abide by the provisions, terms, conditions and commitments set forth in this Development Order.

\_\_\_\_\_  
Witness

\_\_\_\_\_ By: \_\_\_\_\_  
Print Name

MARK WALLSCHLAEGER  
President of Hacienda Development Corp.

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Print Name

STATE OF FLORIDA

COUNTY OF \_\_\_\_\_

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State and County aforesaid to take acknowledgments, personally appeared MARK WALLSCHLAEGER, President of Hacienda Development Corp, and is personally known to me or who has produced \_\_\_\_\_ as identification and who acknowledged and executed the foregoing instrument.

WITNESS my hand and official seal in the County and State last aforesaid this \_\_\_\_\_ day of \_\_\_\_\_, 2003.

\_\_\_\_\_  
Notary Public, in and for the County and State  
Aforementioned  
My Commission Expires:

## EXHIBIT A

LEGAL DESCRIPTION: Lot 7, RED WILLOW PLAZA

According to the Plat thereof, as recorded in Plat Book 35, Pages 99 and 100 of the public records of Seminole County, Florida.

A portion of the Northeast  $\frac{1}{4}$  of Section 24, Township 21 South, Range 30 East, Seminole County, Florida, being more particularly described as follows:

BEGINNING at a point located on the easterly right-of-way line of Tuskawilla Road (140 foot right-of-way) a distance of 1,296.02 feet northwesterly from the intersection of said easterly right-of-way line of Tuskawilla Road and the northerly right-of-way line of Red Bug Lake Road (150 foot right-of-way), as measured along a said easterly right-of-way line of Tuskawilla Road N33 40'58"W a distance of 200.00 feet to a point; thence leaving said right-of way line of Tuskawilla Road and running S89 59'22"E a distance of 503.18 feet to a point; running thence S22 01'36"E a distance of 179.57 feet to a point; running thence S89 59'22"W a distance of 459.59 feet to a point lying on the easterly right-of-way line of Tuskawilla Road and the POINT OF BEGINNING; said tract of land containing 1.84 acres as shown on that certain preliminary plat prepared for Pridgen and Associates, dated December 13, 1985, last revised March 17, 1986, by Harling, Locklin and Associates, Inc.

LESS

Parcel 168

Begin at the Southwest corner of Lot 7, RED WILLOW PLAZA as recorded in Plat Book 35, Pages 99 and 100, Public Records of Seminole County, Florida; thence run N32 59'34"W 200.00 feet to the Northwest corner of said Lot 7 a distance of 6.01 feet to a point lying 5.00 feet East of the Westerly line of said Lot 7 by perpendicular measure; thence run S32 59'34"E 199.91 feet to the South line of said Lot 7; thence run S89 57'02"W 5.96 feet to the point of beginning, containing therein 1,000 square feet more or less.

AN ORDINANCE AMENDING THE LAND DEVELOPMENT CODE OF SEMINOLE COUNTY; PROVIDING FOR THE REZONING OF CERTAIN DESCRIBED REAL PROPERTIES LOCATED IN UNINCORPORATED SEMINOLE COUNTY FROM OP (OFFICE PROFESSIONAL) TO PCD (PLANNED COMMERCIAL DEVELOPMENT) DISTRICT; PROVIDING FOR SPECIFIC DEVELOPMENT CONDITIONS BY MEANS OF A DEVELOPMENT ORDER; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF SEMINOLE COUNTY, FLORIDA:

**Section 1. LEGISLATIVE FINDINGS.**

(a) The Board of County Commissioners hereby adopts and incorporates into this Ordinance as legislative findings the contents of the document titled "Tusawilla Centre."

(b) The Board hereby determines that the economic impact statement referred to by the Seminole County Home Rule Charter is unnecessary and waived as to this Ordinance.

**Section 2. REZONING.**

The zoning classification assigned to the following described property is changed from OP (Office Professional) to PCD (Planned Commercial Development):

**Legal Description Attached as Exhibit A**

**Section 3. CODIFICATION.** It is the intention of the Board of County Commissioners that the provisions of this Ordinance shall not be codified.

**Section 4. SEVERABILITY.** If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, it is the intent of the Board of County Commissioners that the invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared severable.

**Section 5. EFFECTIVE DATE.**

A certified copy of this Ordinance shall be provided to the Florida Department of State by the Clerk of the Board of County Commissioners in accordance with Section 125.66, Florida Statutes. This Ordinance shall become effective upon the date of its filing by the Florida Department of State and recording of Development Order #3-20000014 in the official land records of Seminole County.

ENACTED this 9th day of September, 2003.

BOARD OF COUNTY COMMISSIONERS  
SEMINOLE COUNTY, FLORIDA

By: \_\_\_\_\_  
Daryl G. McLain  
Chairman

EXHIBIT "A"

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**MINUTES FOR THE SEMINOLE COUNTY  
LPA / P&Z COMMISSION  
AUGUST 6, 2003**

**Members present:** Alan Peltz, Dick Harris, Ben Tucker, Beth Hattaway, and Dudley Bates

**Members absent:** Thomas Mahoney, Chris Dorworth

**Also present:** Jeff Hopper, Senior Planner, Matt West, Planning Manager, Cathleen Consoli, Senior Planner, J.V. Torregrosa, Planner, Jim Potter, Development Review, Mahmoud Najda, Development Review Manager, Karen Consalo, Assistant County Attorney, J.R. Ball, Development Review, Don Fisher, Director of Planning and Development, Gary Rudolph, Utilities Manager and Candace Lindlaw-Hudson, Sr. Staff Assistant.

- F. Tuscawilla Centre;** NAI Realvest Partners, Inc. / Paul Partyka, applicant; 1.8 Acres; rezone from OP to PCD for a restaurant; located on the east side of Tuskawilla Road 1/4 mile north of Red Bug Lake Road. (Z2003-014)

Commissioner Morris – District 2  
Jeff Hopper, Senior Planner

Mr. Hopper stated that the applicant is requesting approval of a PCD on a 1.8 acre site on the east side of Tuscawilla Road. Intended use of the property is a 150-seat seafood restaurant in a 6,000 square foot building. The proposed site plan shows sufficient parking and landscaping, and, with a few exceptions, meets applicable regulations of the Land Development Code. The request includes waivers to certain Code provisions.

The applicant is requesting approval of a PCD on a 1.8 acre site on the east side of Tuscawilla Road. Intended use of the property is a 150-seat seafood restaurant in a 6,000 square foot building. The proposed site plan shows sufficient parking and landscaping, and, with a few exceptions, meets applicable regulations of the Land Development Code.

A Low Density Residential (LDR) land use designation on neighboring property to the north nominally triggers the active/passive buffer requirement of the Land Development Code. However, the existing use of that adjacent site is a veterinary clinic, Tuskawilla Oaks Animal Hospital, which was permitted by Special Exception in the A-1 zoning district. Because of the commercial nature of the existing use, the normal buffer requirement should be reduced.

The restaurant proposal includes a full-service bar, although the majority of the facility's revenue would be generated by food sales. The site is not within 1,000 feet of a church or school. The Code also provides for separation distances of 500

feet from the entrance to the facility, and 100 feet from the closest vertical surface of the building, to property having a residential zoning or land use designation. Mr. Hopper said that the site location and submitted site plan do not meet these requirements in relation to the veterinary clinic property to the north. However, the subject property is 500 feet from developed residential property, assuming that residents of Tuskawilla Point to the west make use of legal pedestrian crossings.

Preliminary research by staff indicates that the neighboring lot to the north is still in the A-1 Agricultural district, despite being shown on available zoning maps as R-1AA. Mr. Hopper stated that although staff will continue investigating this zoning discrepancy, the active/passive buffer and residential separation requirements apply because of the future land use designation of the animal hospital site. Any or all of these requirements may be waived or reduced by the Board of County Commissioners through the PCD approval.

Staff recommendation was for approval with the following conditions:

- a. The structure shall be set back a minimum of 50 feet from the north property line.
- b. A minimum 5-foot buffer shall be provided along the north property line, including a 6-foot brick or masonry wall.
- c. The site shall be limited to C-1 district permitted uses, but shall include alcoholic beverage sales within a bona fide restaurant as defined in Section 30.1353 of the Land Development Code. If a use other than a restaurant is proposed, a major amendment to the PCD may be required.
- d. Hours of operation shall be 11 a.m. – midnight Sunday through Thursday, and 11 a.m. -1 a.m. Friday and Saturday.
- e. Outdoor seating shall be provided only on the west and south sides of the building.
- f. Retention pond shall be amenitized per Section 30.1344 of the Land Development Code. This shall be determined at Final Site Plan review.
- g. Outdoor lighting fixtures shall be limited to shoebox-cutoff style fixtures not more than 16 feet in height, projecting no more than 0.5 foot-candles at property lines..
- h. The architectural style of the building shall be compatible with residential. Elevations shall be provided at Final Master Plan.
- i. Building height shall be limited to a maximum of 35 feet.
- j. Applicant shall provide paved pedestrian paths connecting the building to public sidewalks on Tuskawilla Road.
- k. Delivery times shall be limited to 9:00 a.m. to 9:00 p.m.

Paul Partyka, applicant, stated that this site plan gives proper landscaping and more trees than are necessary by Code. He agrees to a wall for noise abatement. He is concerned for the neighbors. The nearest home is 600 feet away, across the

retention pond. He supports staff comments and his client will agree to a wall or berm. He would like to bring in a restaurant here. Mr. Partyka showed a series of photos of buildings in the area.

Commissioner Hattaway asked if there were any pictures of the area to the west.

Mr. Partyka said no, that the area to the west was conservation.

Commissioner Harris asked about the lights from the cars entering the business at night shining across the retention pond to the houses on the other side.

Mr. Partyka stated that there would be buffering.

Commissioner Peltz asked about the access drive in front of Arby's Restaurant.

Mr. Partyka stated that the access driveway to Arby's stops at the end of that property.

No one spoke from the floor in favor of the application.

Dr. Alex G. Suero spoke in opposition. He stated that he wrote a letter on July 27, 2003. He is concerned about the 5 foot setback from his clinic. He has animals housed on that side of the building and he is concerned that they will be disturbed by noises from the proposed parking lot and that the animals would become aroused at night by the activity outside. He thought that the zoning would be OP (Office Professional). This proposed use will be open too late. He wants a wall and increased setbacks.

Mr. Partyka stated that he wants to be a good neighbor.

Commissioner Peltz asked Mr. Partyka if he could agree to a 20 foot buffer on the north.

Mr. Partyka stated that he would consider a wall, but that he needed the 5 foot setback to fulfill parking requirements on the site.

Commissioner Hattaway asked about the outdoor seating. Seating on the west is not good. There should only be seating outdoors on the south side of the site.

Commissioner Tucker suggested that the restaurant could use silent reminder equipment in lieu of loudspeakers to call people in to their tables.

The public hearing was now closed.

Commissioner Tucker asked Matt West and Don Fisher if this was the same area Mr. Vihlen had made an application for 13 years ago for a vet clinic. The veterinary clinic at that time was required to have been soundproofed.

Mr. Fisher stated that this is a transitional use between the commercial veterinary clinic and the residential zoning. A 5 foot non-residential to non-residential zoning setback was allowed for parking. The buffer can be 7 feet with a 2 foot overhang on 18 feet parking spaces (in lieu of 20 feet). Typically buffering is best achieved with a 6 foot masonry wall.

Commissioner Tucker asked if the Board had ever precluded outdoor amplification of sound before.

Mr. Fisher said that the Board had done so in the past.

**Commissioner Bates made a motion to recommend approval as per the conditions in the development order, including no exterior amplification of sound and no exterior seating on the west side of the building.**

**Commissioner Hattaway seconded the motion.**

**The motion passed by a vote of 4 – 1. Commissioner Peltz voted “no.”**