

RESOLUTION 12-R124

COUNCIL ITEM 11B
DATE 12/10/12

A RESOLUTION OF THE CITY OF PORT ST. LUCIE, FLORIDA, MAKING FINDINGS OF FACT AND DETERMINING CONCLUSIONS OF LAW PERTAINING TO THE WILSON GROVES APPLICATION FOR DEVELOPMENT APPROVAL, A DEVELOPMENT OF REGIONAL IMPACT, AND CONSTITUTING THIS RESOLUTION AS AN AMENDED AND RESTATED DEVELOPMENT ORDER BY THE CITY OF PORT ST. LUCIE IN COMPLIANCE WITH LAW; AND PROVIDING FOR AN EFFECTIVE DATE AND A TERMINATION DATE.

WHEREAS, on July 19, 2004, the City of Port St. Lucie, Florida ("City"), entered into that certain Annexation Agreement to establish the terms and conditions upon which approximately 9,451 acres of agricultural land in unincorporated St. Lucie County, Florida ("Western Annexation Area"), would be annexed into the City for the purpose of urban development; and

WHEREAS, the signatories to the Annexation Agreement included ACR Acquisition, LLC, owner of 2,451.179 acres, more or less, known as Wilson Groves, located in the Western Annexation Area; and

WHEREAS, ACR Acquisition, LLC ("Developer") is a Delaware limited liability company with its principal place of business in Boynton Beach, Florida; and

WHEREAS, Florida Power & Light Company ("FPL") is a Florida company is the owner of 47.566 acres, more or less, located contiguous to the property of ACR Acquisition, LLC. and with whom together comprise the entirety of the properties which are the subject of that certain development known as the Wilson Groves Development of Regional Impact ("Wilson Groves DRI"); and

WHEREAS, FPL has authorized the Developer and Land Design South of Florida, Inc. a Florida corporation, ("LDS"), to pursue the Wilson Groves DRI and has further authorized LDS to act as FPL's agent in all matters including but not limited to agreeing on FPL's behalf to any conditions which result from such Wilson Groves DRI approval process, such authorization being evidenced in the subject Application for Development Approval ("ADA"); and

WHEREAS, the Wilson Groves DRI ("Project") is a proposed mixed-use development of regional impact to be located on approximately 2,498.745 acres, more or less, located in the Western Annexation Area, as more particularly described in Composite Exhibit "A" ("DRI Property"); and

WHEREAS, on August 31, 2004, the Treasure Coast Regional Planning Council ("TCRPC") convened a pre-application conference at which the Developer, LDS and various agencies addressed methodology issues and other preliminary matters concerning the Project; and

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WHEREAS, on September 13, 2005, pursuant to section 380.06, F.S., the Developer filed an Application for Development Approval ("ADA") for the Project, to be located on the DRI Property, and supplemented it with two sufficiency responses (dated March 3, and July 14, 2006, along with compendium documents on August 2, 2006) and,

WHEREAS, complete copies of these submissions and other review materials were provided to the City of Port St. Lucie ("City"); the Florida Department of Community Affairs ("DCA"); TCRPC, and other review agencies; and

WHEREAS, under contract to the City, the TCRPC prepared the Western Annexation Traffic Study (dated January, 2006) ("WATS") for the Project and other proposed developments within the Western Annexation Area, and

WHEREAS, on August 2, 2006 the application and supporting materials were determined to be sufficient for purposes of review; and

WHEREAS, notice regarding public hearings for the Application for Development Approval was provided by publication in the Port St. Lucie News on August 18, 2006; and

WHEREAS, on September 15, 2006, the TCRPC recommended approval of the Application for Development Approval with conditions; and

WHEREAS, on October 3, 2006, the Planning and Zoning Board of the City of Port St. Lucie held a public hearing on the Application for Development Approval and recommended approval with conditions; and

WHEREAS, on October 23, 2006, the City Council of the City of Port St. Lucie ("City Council") held a public hearing to consider the Project, the TCRPC regional report, and comments upon the record made at said public hearing, afforded all interested persons an opportunity to be heard and present evidence, and adopted Resolution No. 06-R104, approving the Project subject to conditions; and

WHEREAS, on July 23, 2008, the Developer submitted Notification of Proposed Change No. 1 ("NOPC No. 1") to TCRPC to amend certain conditions of approval for the Project regarding transportation, affordable housing, and dates for phases, buildout and termination, with complete copies to the City, DCA and other review agencies; and

WHEREAS, the Legislature has enacted and the Governor has signed into law Chapter 2007-204, Laws of Florida, which provides that "all phase, buildout, and expiration dates for project that are developments of regional impact and

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under active construction on July 1, 2007, are extended for 3 years regardless of any prior extensions and such extensions are not a substantial deviation and may not be considered when determining whether a subsequent extension is a substantial deviation; and

WHEREAS, on October 7, 2008, the Planning and Zoning Board of the City of Port St. Lucie held a public hearing on NOPC No. 1 and recommended approval; and

WHEREAS, on October 27, 2008, the City Council held a public hearing to consider NOPC No. 1, the TCRPC regional report, and comments upon the record made at said public hearing, and afforded all interested persons an opportunity to be heard and present evidence, and adopted Resolution No. 08-R136, approving NOPC No. 1 subject to conditions; and

WHEREAS, on July 9, 2010, the Developer submitted Notification of Proposed Change No. 2 ("NOPC No. 2") to TCRPC to amend certain conditions of approval for the Project regarding the greenway, transportation, wetlands, listed species, and parks and recreation, and Map H with complete copies to the City, DCA and other review agencies; and

WHEREAS, on January 4, 2011, the Planning and Zoning Board of the City of Port St. Lucie held a public hearing on NOPC No. 2 and recommended approval; and

WHEREAS, on January 24, 2011 the City Council held a public hearing to consider NOPC No. 2, the TCRPC comments, and comments upon the record made at said public hearing, and afforded all interested persons an opportunity to be heard and present evidence, and adopted Resolution No. 11R-01, approving NOPC No. 2 subject to conditions; and

WHEREAS, on June 2, 2011, Governor Scott signed into law House Bill 7207, which extends for 4 years all commencement, phase, buildout and expiration dates (including associated mitigation requirements) for projects that are currently valid developments of regional impact, regardless of any previous extension. HB 7207 further provides that the 4-year extension is not a substantial deviation; and

WHEREAS, on June 13, 2011, by virtue of Executive Order 11-128, Governor Scott declared a state of emergency for the entire State of Florida due to the ongoing danger of wildfires. Governor Scott subsequently extended Executive order 11-128 two times – once for 60 days (to October 4, 2011) by virtue of Executive Order 11-172 issued on August 5, 2011 and then for an additional 30 days (to November 3, 2011) by virtue of Executive Order 11-202 issued on October 4, 2011. The duration of the emergency declaration was thus 126 days (i.e., from July 1, 2011 to November 3, 2011).

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Chapter 2011-142, Laws of Florida, provides that a declaration of state of emergency by the Governor tolls specified permits and authorizations, including development orders and build-out dates, for the duration of the emergency declaration, and extends such permits and authorizations for 6 months in addition to the tolling period.

WHEREAS, On June 25, 2012, by virtue of Executive Order 12-140, Governor Scott declared a state of emergency for the entire State of Florida due to Tropical Storm Debby. The duration of this executive order is 60 days which together with an additional 6 month tolling as provided under Florida Statute Section 252.363 allows for a total of an 8 month extension to development orders and build out dates for Developments of Regional Impact; and

WHEREAS, on October 11, 2012, the Developer submitted Notification of Proposed Change No. 3 ("NOPC No. 3") to TCRPC to amend certain conditions of approval for the Project regarding the phasing, buildout and expiration dates and transportation with complete copies to the City, DCA and other review agencies; and

WHEREAS, on December 4, 2012, the Planning and Zoning Board of the City of Port St. Lucie held a public hearing on NOPC No. 3 and recommended ; and

WHEREAS, on December 10, 2012 the City Council held a public hearing to consider NOPC No. 3, the TCRPC comments, and comments upon the record made at said public hearing, and afforded all interested persons an opportunity to be heard and present evidence; and

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PORT ST. LUCIE, FLORIDA:

FINDINGS OF FACT

The City Council, having considered all the documents, comments, testimony and evidence presented to it, finds as follows:

1. The above recitals are true and correct, and are incorporated into this Development Order by this reference.
2. The Project as modified is consistent with the State Comprehensive Plan.
3. The Project as modified is consistent with the Port St. Lucie Comprehensive Plan and the Port St. Lucie Land Development Regulations.

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4. The Project as modified is consistent with the TCRPC's Wilson Groves Development of Regional Impact Assessment Report dated September 2006.
5. The Project is not located in an area of critical state concern designated pursuant to section 380.05, F.S.
6. This Development Order includes adequate provisions for the public facilities needed to accommodate the impacts of the proposed development pursuant to the requirements of Section 380.06, F.S.
7. NOPC No. ~~2~~ 3 and its supporting documentation were reviewed as required by Chapter 380 F.S., and the local land development regulations and are incorporated into this Development Order by this reference.
8. NOPC No. ~~2~~ 3 does not constitute a substantial deviation from the Development Order adopted by the City Council on ~~October 27, 2008~~ January 24, 2012 and is otherwise approved, subject to the conditions set forth in this Development Order.

CONCLUSIONS OF LAW

The City Council, having made the findings of fact set forth above, makes the following conclusions of law:

9. The City Council is the governing body with legal jurisdiction over the DRI Property and is authorized and empowered by Chapter 380, F.S., to issue this Development Order.
10. The Project as modified is approved for development pursuant to section 380.06, F.S., on the DRI Property attached as Composite Exhibit "A", subject to the conditions of approval set forth in Exhibit "B" of this Development Order and the Equivalency Matrix attached as Exhibit "C", all of which are incorporated into this Development Order by this reference.
11. Development shall be located substantially as depicted on the Master Development Plan (Map H) attached as Exhibit "D", which is incorporated into this Development Order by reference.
12. Development shall be consistent with the Port St. Lucie Comprehensive Plan, the Port St. Lucie Land Development Regulations and this Development Order.
13. Within 10 days after adoption of this Development Order, the City Clerk shall render copies of this Development Order with all attachments, certified as complete and accurate, by certified mail (return receipt

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requested) to the Developer, LDS, DCA and TCRPC as required by Rule 9J-2.025(5), F.A.C.

14. This Development Order shall take effect, following rendition, as provided by law.
15. Notice of the adoption of this Development Order or any amendment shall be recorded by the Developer, within 30 days after its effective date, in accordance with sections 28.222 and 380.06(15)(f), F.S., with the Clerk of the Circuit Court of St. Lucie County, Florida. The notice shall specify that this Development Order runs with the land and is binding on the Developer, its agents, lessees, successors or assigns. A copy of such notice shall be forwarded to the Port St. Lucie Planning and Zoning Department within seven days after recordation.
16. The Project as modified shall not be subject to down-zoning, unit density reduction or intensity reduction or other reduction of approved land uses before the expiration date of this Development Order, unless either (a) the Developer consents to such a change, or (b) the City demonstrates that a substantial change in the conditions underlying the approval of the Development Order has occurred, or that the Development Order was based on substantially inaccurate information provided by the Developer, or that the change is clearly established by the City as essential to the public health, safety or welfare.
17. This Development Order shall not preclude the City from requiring the payment of impact fees and/or other fees for development or construction within the Project, provided such fees are assessed in accordance with a duly adopted ordinance and are charged to all other similarly situated developers for the same activities within all other areas of the City.
18. In the event that the Developer violates any condition of this Development Order, or otherwise fails to act in substantial compliance with this Development Order, the City may stay the effectiveness of this Development Order on the identifiable tract or parcel, or portion of the tract or parcel owned by the person or entity violating the condition, and within the DRI Property described in Exhibit "A", after a stated compliance date. The Developer shall be given a written notice of violation by the City and a reasonable period of time to cure the violation. The Developer may petition the City Council for review of the notice of violation, prior to the stated compliance date, and said review shall be conducted at a public hearing. Filing of a petition for review shall delay the effectiveness of the notice of violation until the review has been conducted. If the violation has not been cured or corrected by the stated compliance date, all further development permits, approvals and services for the development said tract or parcel, or portion of tract or parcel, shall be withheld until the

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violation is corrected. For purposes of this condition, the terms “tract” and “parcel” shall mean “any quantity of land capable of being described with such definiteness that its boundaries may be established, which is designated by its owner or developer as land to be used or developed as a unit or which has been used or developed as a unit, located within the DRI Property legally described in Exhibit ‘A’ attached hereto and the Master Development Plan (Map H) ~~in the ADA.~~ located in Exhibit “D” attached hereto.

19. Upon request, and in accordance with the City’s adopted certificate of concurrency fee, in the development review fee schedule, the City shall provide to the Developer a letter stating whether the portion of the Project at issue is in compliance with applicable conditions of this Development Order.
20. Pursuant to Section 380.06(5)(c), F.S., the Project shall be bound by the rules adopted pursuant to Chapters 373 and 403, F.S., in effect at the time of issuance of this Development Order.
21. Compliance with this Development Order shall be monitored through normal City permitting procedures, the procedures listed in the specific conditions of approval, and review of the biennial report. The local official responsible for assuring compliance with this Development Order is the Director of Planning and Zoning.
22. This Development Order shall be binding upon the Developer, FPL and its assigns or successors in interest. Any reference herein to any governmental agency shall be construed to mean any future instrumentality which may be created and designated as successor in interest to, or which otherwise possesses any of the powers and duties of, any referenced governmental agency in existence on the effective date of this Development Order.
23. It is declared to be the City’s intent that, if any section, subsection, sentence, clause, condition or provision of this Development Order is held to be invalid by a court of competent jurisdiction, the remainder of this Development Order shall be construed as not having contained said section, subsection, sentence, clause, condition or provision and shall not be affected by such holding.

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PASSED AND ADOPTED on this ____ day of _____.

**CITY COUNCIL OF THE CITY OF
PORT ST. LUCIE, FLORIDA**

JoAnn M. Faiella, Mayor

ATTEST:

Karen A. Phillips, City Clerk

APPROVED AS TO FORM:

Roger G. Orr, City Attorney

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COMPOSITE EXHIBIT "A"

LEGAL DESCRIPTION OF DRI PROPERTY

ACR Properties, LLC Property

The Alan Wilson Grove plat, according to the plat thereof, as recorded in plat book 12, page 50, of the public records of St. Lucie County, Florida, less the west 5.00 feet thereof.

Together with:

The East one-half Sections 30 and 31, Township 37 South, Range 39 East, less the East 200.00 feet thereof.

Said lands situate in St. Lucie County, Florida. Containing 106,773,334 square feet or 2451.179 acres, more or less, subject to easements, restrictions, reservations, covenants and rights-of-way of record.

FPL Property

The East 200.00 feet of sections 30 and 31, Township 37 South, Range 39 East, St. Lucie County, Florida.

Said lands situate in St. Lucie County, Florida. containing 2,071,967 square feet/47.566 acres, more or less, subject to easements, restrictions, reservations, covenants and rights-of-way of record.

Note: The remainder of the exhibits will be attached when they are finalized.

PORT ST. LUCIE CITY COUNCIL

AGENDA ITEM REQUEST

MEETING: REGULAR X SPECIAL

DATE: 12-4-12

ORDINANCE RESOLUTION X MOTION

PUBLIC HEARING 12-10-12 LEGAL AD PUBLISH DATE 11-21-12 (copy attached)

NAME OF NEWSPAPER St. Lucie News Tribune

ITEM: P12-130. Wilson Groves DRI Amendment/Notice of Proposed Change – 3rd Amendment

RECOMMENDED ACTION: The Planning & Zoning Board on December 4, 2012, unanimously voted to table the proposed amendment to the January Planning & Zoning Board meeting.

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EXHIBITS: A. Newspaper Advertisement
B. Memorandum

SUMMARY EXPLANATION/BACKGROUND INFORMATION: The proposed amendment is to change conditions of approval for the project regarding the phasing, buildout, and expiration dates and transportation.

IF PRESENTATION IS TO BE MADE, HOW MUCH TIME WILL BE REQUIRED?

SUBMITTING DEPARTMENT: Planning Department

DATE: 12/4/12

**NOTICE OF PUBLIC HEARINGS
WILSON GROVES – DEVELOPMENT OF REGIONAL IMPACT
AMENDMENT/NOTICE OF PROPOSED CHANGE**

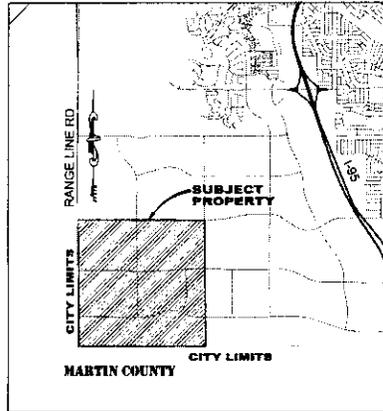
Public notice is hereby given by the CITY OF PORT ST. LUCIE of a PUBLIC HEARING for the proposed change to the Wilson Groves – Development of Regional Impact file number P12-130 /Resolution No. 12-R124. This amendment provides for changes to the approved Development Order. The request is to amend certain conditions of approval for the project regarding the phasing, buildout and expiration dates and transportation. The property is located north of the C-23 Canal and east of Range Line Road. Legal Description: The Alan Wilson Grove Plat, and portions of Sections 30 & 31, Township 37 South, Range 39 East.

The public hearing will be held at the **December 10, 2012**, meeting of the City Council at **7:00 PM** in the City Hall Council Chambers, Building “A”, 121 SW Port St. Lucie Blvd., Port St. Lucie, Florida.
The proposed Resolution No.12-R124, information on the report and the development of regional impact application may be reviewed between the hours of 8:00 AM and 5:00 PM at the City’s Planning & Zoning Department, City Hall, Building “A”, 121 SW Port St. Lucie Blvd., Port St. Lucie, Florida.

In accordance with the Americans with Disabilities Act of 1990, persons needing special accommodation to participate in this proceeding should contact the City Clerk’s office at 772-871-5157 for assistance.

Members of the public are welcome to attend the Public Hearing and provide oral or written comments on the matter. Written comments may be submitted to: 121 SW Port St. Lucie Blvd., Port St. Lucie, Florida, Attn.: Planning and Zoning Department.

General Location Map: The project as shown below is generally located



NOTICE: No stenographic record by a certified court reporter will be made of the foregoing meeting. Accordingly, any person who may seek to appeal any decision involving the matters noticed herein will be responsible for making a verbatim record of the testimony and evidence at said meeting upon which any appeal is to be based. Items listed in this public notice may not appear in the same order on the Board’s final agenda. Please contact the Planning & Zoning Department at 871-5212 to obtain a copy of the final agenda.



Item # 7(A)

Memorandum

TO: DANIEL HOLBROOK, AICP, PLANNING & ZONING DIRECTOR
FROM: GREGORY J. ORAVEC, CITY MANAGER
DATE: DECEMBER 3, 2012
SUBJECT: P12-130 WILSON GROVES DRI AMENDMENT/NOPC

As per our discussions, I continue to work with the owners and representatives of Wilson Groves, Riverland Kennedy and Southern Grove in order to effectuate their divorce from unified development order conditions. As you know, this has been a very challenging process. Though we have made significant progress, I believe that important conditions including the phasing of roadway improvements and the plan for Becker Road are still unsettled. Therefore, this memorandum serves to request that the subject item be tabled until the Planning & Zoning Board meeting of January so that we can finalize the form of these conditions.

If you have any questions or require additional information, please do not hesitate to contact me.

Thank you.

c: Roger G. Orr, City Attorney
Jeff Bremer, Assistant City Manager
Pam Booker, Senior Assistant City Attorney
Roxanne Chesser, PE, Civil Engineer
Anne Cox, AICP, Assistant Director of Planning and Zoning
Southwest Annexation Area Developers