

MINUTES  
REGULAR MEETING – PLANNING BOARD

June 28, 2012

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Minutes for the Regular Planning Board for The City of Daytona Beach, Florida, held on Thursday, June 28, 2012, at 6:00 p.m., in the Commission Chambers, City Hall, 301 South Ridgewood Avenue, Daytona Beach, Florida.

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Board members Present were as follows:

Jeff Hurt  
Tracey Remark  
Bob Hoitsma  
Janet LeSage  
John McGuinness  
Louis Moore  
James Neal  
Cathy Washington  
Matthew Bohon

Absent Members:

Shirley Benjamin

Staff members present:

Richard Walton, Planning Director  
Reed Berger, Redevelopment Director  
Dennis Mrozek, Senior Planner  
Thomas Weitnauer, Principal Planner  
Carrie Lathan, Assistant City Attorney  
Jason Jeffries, Redevelopment Project Manager  
Rose Askew, Planning Technician

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1. **Call to Order**

Louis Moore, Chair called the meeting to order at 6:00 pm.

2. **Roll Call**

Ms. Washington called the roll and noted members present as listed above.

3. **Approval of the Minutes:** May 24, 2012

**Board Motion**

It was moved by Mr. Hurt to approve the May 24, 2012 Planning Board Meeting Minutes. Seconded by Mrs. Remark.

**Board Action**

The motion was approved 9-to-0.

4. **Large Scale Comprehensive Plan Amendment – Daytona Commercial Amusement, DEV2012-049**

A request by Robert A. Merrell, III, Esq., Cobb Cole and Bell, on behalf of International Speedway Corporation and Event Equipment Leasing, LLC, for approval of a Large Scale Comprehensive Plan Map Amendment, changing the Future Land Use Map designation from General Industrial to Commercial Amusement for 114± acres of land and adding a new Neighborhood P issue and policy to limit residential development for the subject parcel to a maximum of 1,500 residential units. The property is generally located north of International Speedway Boulevard and west of Bill France Boulevard and also encompasses both sides of Dunn Avenue north and west of the Palm Terrace Elementary School.

**Staff Presentation**

Thomas Weitnauer, Principal Planner gave a PowerPoint presentation that included the request as written above and stated approval of the proposed amendment will allow consolidation of all of International Speedway Corporation's land holdings into one consistent Future Land Use Map designation, which will help make more efficient master planning of uses more commonly associated with Commercial Amusement land use designation. He stated the majority of the property is undeveloped; however there is one light industrial park on the west side of Dunn Avenue with a separate light industrial building on the northeast corner of Industrial Parkway and Avenue C. Palm Terrace Elementary School is surrounded by the proposed parcels. He stated the majority of parcels around the site are already designated General Industrial and the Speedway Corporation's landholdings to the south already have Commercial Amusement FLU designation. Mr. Weitnauer stated the applicant will have a PMD rezoning request on the July 26<sup>th</sup> Planning Board Agenda. The purpose of the PMD rezoning will be to align the property with the PMD currently zoned for the Speedway Corporation's Daytona Live property. He stated to address the proposed FLUM designation of Commercial Amusement that allows residential with a maximum density of 40 units per acre the applicant is proposing to add a new issue and policy to Neighborhood P of the Comprehensive Plan that will limit them to only 1,500 residential units within the 114± acre subject property. He stated the amendment will generate a decrease on the demand for available water and sewer and traffic. He stated staff recommends approval of the LSCPA request and a majority vote of Planning Board members present is required to recommend approval to the City Commission.

**Applicant Presentation**

Robert A. Merrell, 150 Magnolia Avenue, Daytona Beach complemented Mr. Weitnauer on a very good presentation of his item and stated there were several provisions in Mr. Weitnauer's report regarding consistency with the City's Comprehensive Plan and Vision Plan that he hopes the Board reviewed. He reiterated Mr. Weitnauer's statement regarding the PMD rezoning that is tentatively scheduled for the July 26<sup>th</sup> Planning Board Meeting and stated the project will be even bigger than the Daytona Live project. He stated he was available for any questions the Board may have.

**Citizen Comments**

No citizen comments.

**Board Comments**

No Board comments.

**Board Motion**

It was moved by Mr. Hurt to approve Large Scale Comprehensive Plan Amendment – Daytona Commercial Amusement, DEV2012-049. Seconded by Ms. Washington.

**Board Action**

The motion was approved 9-to-0.

Mr. Moore stated there should have been two votes for this request; one for the map amendment and one for the text amendment.

Mr. Walton stated the motion was for the entire amendment.

Mr. Moore stated he read in the staff report that there would be two parts to this request and each would require a separate vote.

Mr. Walton stated the amendment request has two parts but the motion that was made included both.

**Board Motion**

It was moved by Mr. Hurt to approve Large Scale Comprehensive Plan Map Amendment and the new Neighborhood P issue and policy for Daytona Commercial Amusement, DEV2012-049. Seconded by Mrs. Remark.

**Board Action**

The motion was approved 9-to-0.

5. **Small Scale Comprehensive Plan Amendment – Ocean Dunes, DEV2012-052**

A request by the Development and Administrative Services Department, Planning Division to approve a Small Scale Comprehensive Plan Amendment, changing the Future Land Use Map designation from Retail to Level 1 Residential for 2.86± acres of land. The property is generally located on the east side of Ocean Dunes Terrace between Poinsettia Road and Ocean Dunes Road and also includes certain parcels between Ocean Dunes Road and Rosalyn Avenue west of South Atlantic Avenue that are adjacent to commercial uses fronting South Atlantic Avenue.

**Staff Presentation**

Thomas Weitnauer, Principal Planner gave a PowerPoint presentation that included the request as written above, the historic designation of the property and the current zoning. He stated the purpose for the proposed amendment was to rectify a past oversight in the Future Land Use map designation in the Ocean Dunes area and all of the lots included in the amendment were residential (10 single-family, 1 duplex and one sliver of land). He stated staff was told that a letter from Ocean Dunes Home Owners Association (HOA) in support of the amendment was hand delivered to Board members. He stated four of the lots were contributing structures on the South Peninsula National Register of Historic Places District. Mr. Weitnauer stated going from retail to residential land use will result in a decrease in demand for public facilities and staff recommends approval.

Mrs. Remark asked if the land use had always been retail.

Mr. Walton stated staff searched back as far as the 90s and the land use retail then.

**Citizen Comments**

Janet Hamer, 520 Ocean Dunes spoke in support of the request. She stated she was speaking on behalf of the Historic Ocean Dunes Neighborhood Association, which was comprised of approximately 100 property Owners. She addressed Mrs. Remark's question regarding the retail land use. She stated her understanding was when A1A was widened in the 1960s, as a compromise for parking to merchants on the west side of A1A the City rezoned and allowed encroachment into the residential areas. She stated over the years as the LDC and Comprehensive Plan were amended, it got lost in the process.

Mrs. Remark stated she knew the other things were changed but the Future Land Use Map was not changed.

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Ms. Hamer stated yes the other things did change and prior to when it was changed, in 1997 the residents petitioned to have it changed it was part of the zoning ordinance. She stated Ocean Dunes was probably the only beachside neighborhood that had maintained its single-family owner occupied area and has never had to receive assistance from the City for redevelopment. She stated when it comes to beachside neighborhoods; any type of encroachment in a beachside neighborhood could be the tipping point to blight and deterioration.

### **Board Comments**

Mr. Bohon stated he did not receive the letter from the HOA.

Mr. McGuinness stated he felt this was an excellent extra protection to the neighborhood.

Mr. Hoitsma stated he felt this neighborhood had done an excellent job in keeping the character of the neighborhood and anything that could be done to keep it that way should be done.

Mrs. Remark stated she felt not changing the Future Land Use Map was an oversight and considering the neighborhood, the historic area, and the Comprehensive Plan policies for that area in terms of preserving residential, this is the right thing to do.

Mr. Hoitsma stated he agreed with Mrs. Remark and he felt the City needed to get the local historic designation for the neighborhood.

### **Board Motion**

It was moved by Mr. Hurt to approve Small Scale Comprehensive Plan Amendment – Ocean Dunes, DEV2012-052. Seconded by Mr. McGuinness.

### **Board Action**

The motion was approved 9-to-0.

## **6. Land Development Code Text Amendment – Parking in the RDB-5 Zoning District, DEV2012-002**

A request by the Development and Administrative Services Department, Redevelopment Division, to amend the Land Development Code (LDC), Article 8 (Supplemental Performance Standards), Section 2 (Access Parking and Traffic Safety), to amend parking requirements for existing buildings in the RDB-5 zoning district (Atlantic Avenue retail), in an effort to reduce the number of vacant storefronts and visual blight along the South Atlantic Avenue corridor.

### **Staff Presentation**

Reed Berger, Redevelopment Director gave a PowerPoint presentation that included the request as written above and stated this request was an attempt to change vacancy rates in the RDB-5 zoning district. He stated there are some stores that have been vacant quite a bit and staff felt by relaxing the parking requirements they may be able to fill some of vacant properties. He stated

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the proposed amendment has a provision that will allow remote parking if it is located 400 feet or less from the building but the business owner would be required to sign a lease for 10 years. He stated the Main Street-South Atlantic Redevelopment Board discussed this request at two of their meetings. The Board concluded and staff agreed that 1,500 feet from the building would be better and the lease would be for three years. He stated the Main Street-South Atlantic Redevelopment recommended approval of the proposal by a vote of 9-to-0. Staff supports the Board's recommendation.

Mr. Hoitsma stated he noticed this request would run through December 31, 2016. He asked what would happen if in 2014 someone wanted to open a business under this provision.

Mr. Berger stated if a business owner comes in right before 2016, they would be allowed to move in under the current terms and the next day they would be grandfathered.

### **Citizen Comments**

Gilbert Myara, 43 South Atlantic Boulevard, Daytona Beach spoke in support of the request. He stated some of the properties Mr. Berger spoke in reference to were his and he was having a very difficult time renting out the properties because the current parking requirements were impossible to meet. He stated he recently found out that the City changed the parking requirements a couple of years ago and asked the Board to consider grandfathering in the businesses that were in place prior to the parking requirements being changed.

John Nicholson, 413 North Grandview Avenue, Daytona Beach stated he read the request several times and he still did not have a clear understanding of what was being proposed. He stated there were other streets like Seabreeze and Main Street that did not have parking requirements and did not appear to have any problems with parking. He stated in the Board's packet, the staff report list the A1A corridor as having 614 parking spaces but what it did not say is there was an additional 2,000 paid parking spaces in the area that were owned privately or by the City. He stated he believed that was more than enough parking availability. He stated two hotels were lost with the 2004 hurricanes which caused a loss of business in the area and asked the Board to grandfather in the businesses in the area and treat them the same way businesses were being treated on Seabreeze and Main Street.

### **Board Comments**

No Board comments.

### **Board Motion**

It was moved by Mrs. Remark to approve Land Development Code Text Amendment – Parking in the RDB-5 Zoning District, DEV2012-002. Seconded by Mr. Neal.

### **Board Action**

The motion was approved 9-to-0.

Agenda items 7 through 13 are listed in the order they were discussed at the meeting.

8. **Land Development Code Text Amendment – Permitting Dogs in Designated Outdoor Public Food Service Establishments, DEV2012-045**

A request by the Development and Administrative Services Department, Redevelopment Division, to amend the Land Development Code (LDC), Article 17 (Conditions and Requirements for Specific Uses), Section 2 (Uses), to establish procedures that would allow dogs in designated outdoor portions of public food service establishments, in accordance with Florida Statutes 509.233.

**Staff Presentation**

Jason Jeffries, Redevelopment Project Manager read the request as written above and stated health codes in the State of Florida do not allow any type of animal in any type of dining areas, including outdoor areas, but the State does allow individual cities to adopt an ordinance allowing dogs in dining areas. He stated if approved this could be allowed citywide. Recently one of the business owners in the Downtown area received a warning from the Health Department because they had a dog in their outdoor dining area. The business owner is requesting the City to allow dogs in outdoor areas of restaurants. He stated staff supports the Downtown Redevelopment Board's recommendation for approval of this request.

Mr. Hoitsma asked what the State's reason was for not allowing animals in public food service establishments.

Mr. Jeffries replied for sanitary reasons and he wanted to clarify that the request was only for outdoor dining areas. He stated the use was common in urban areas.

Mr. Moore stated he likes dogs but he did not want to eat with them even if it was outside and he would not support the request.

Mrs. Remark asked if there was a fee to get the permit.

Mr. Jeffries replied he believed there would be a fee and it would be done administratively.

She asked if that would need to be added to Article 20.

Mr. Walton replied no, fees were taken out of the LDC.

Mrs. Remark asked if Code Enforcement would be responsible for responding to complaints.

Ms. Lathan replied yes.

Mr. Jeffries stated in addition to our Code Enforcement regulations, they would still be held to the State health code enforcement regulations.

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Mrs. Remark stated she thinks it is a great idea and she would support the request. She stated she was glad it would be citywide.

Mr. Hurt asked what would happen if a restaurant owner did not want dogs in their outside area.

Mr. Jeffries replied they were not required to apply for the permit.

Ms. LeSage stated she was on the fence but the discussion has helped her make a decision. She stated it is nice that restaurants have the option to allow dogs if they want them.

### **Citizen Comments**

No citizen comments

### **Board Comments**

No additional Board comments.

### **Board Motion**

It was moved by Mr. Hurt to approve Land Development Code Text Amendment – Permitting Dogs in Designated Outdoor Public Food Service Establishments, DEV2012-045. Seconded by Mr. McGuinness.

### **Board Action**

The motion was approved 7-to-2.

Jason Jeffries, Redevelopment Project Manager gave a brief summary on the relationship between agenda items 7, 9, 10 and 11. He stated the commonality with the four agenda items start with the Renaissance Place RPUD request, which is on the back portion of the property. The remaining portion of the property along Beach Street is being requested to be rezoned to RDD-3, which is already an allowable zoning use in the Downtown district. He stated there was not a pending development project for that portion of the site. Mr. Jeffries stated there were two proposed LDC text amendment requests related to the two proposed rezoning requests. The first amendment was agenda item seven, the request to only allow drive-up windows in specific areas and the second proposed amendment request was agenda item nine, to allow assisted living facilities (ALF) in redevelopment areas. He stated the ALF request is because it is currently prohibited in redevelopment areas and it cannot be allowed through the PD process.

Mrs. Remark stated she understood the items were related but they would be voted on individually.

Mr. Jeffries stated yes each item would be taken independently but he wanted to give the Board some background details on how the items were related.

7. **Land Development Code Text Amendment – Restaurants with Drive-Up Windows, DEV2012-046**

A request by the Development and Administrative Services Department, Redevelopment Division, to amend the Land Development Code (LDC), Article 12 (Redevelopment Areas and Districts), Section 3 (Redevelopment Districts Use Schedules), to clarify that restaurants with drive-up windows are allowed as a conditional use in specific redevelopment zoning districts and prohibited in others; and amending, Section 5 (Schedule of Conditions), to revise the conditions for restaurants with drive-up windows.

**Staff Presentation**

Jason Jeffries, Redevelopment Project Manager stated with the request to rezone the front portion of the Beach Street Condo project from Residential Planned Unit Development (RPUD) to RDD-3, which for the most part is on Ridgewood Avenue in the Downtown area, staff believes there should be a corresponding text amendment with the request to insure that drive-up windows would only be allowed on Ridgewood Avenue in the downtown area. He stated the RDD-3 zoning use allows certain auto uses such as boat sales, auto parts services and drive-up windows and that Ridgewood Avenue was more commercial oriented than the mixed-use zoning districts in RDD-1 and RDD2. He stated the RDD-3 uses were designed so that they could only be used on Ridgewood Avenue. Mr. Jeffries stated with relation to drive-up windows, there was no such restriction on that zoning use. He stated while going through the amendment process, staff identified some glitches in the current code. He stated in many of the redevelopment districts that allow restaurants (A1 and A2) the definition for A2 essentially refers to fast food restaurants, which creates a conflict in the code because it allows this type of restaurant as a permitted use but has drive-up windows as a conditional use. He stated in the staff report, the chart that has zoning uses for the Downtown and Main Street zoning districts has a clarification that excludes drive-up windows in certain districts in redevelopment areas. He stated the Downtown-Balough Road Redevelopment Area Board recommended approval of the proposed LDC text amendment request and staff supports the Board's recommendation.

Mr. Moore asked if walk-up windows would be permitted.

Mr. Jeffries replied restaurants could have walk-up windows because that was not the same as drive-up windows.

Mr. Moore asked if that would be an A1 restaurant because on page two, of the staff report the proposed language says no service would be permitted for walk-up windows, drive-up windows or parked cars.

Mrs. Remark replied she believed it was only removing the drive-up windows. The walk-up windows would stay.

Mr. Jeffries replied correct.

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Mrs. Remark asked if someone would be allowed to put a Sonic Restaurant in the area.

Mr. Jeffries replied Sonic Restaurants fall under A3 because it is a car hop service.

Mrs. Remark asked who would be serving customers that were in parked cars for the A1 restaurant use.

Ms. Lathan stated she believed that would be similar to the service that Outback Restaurants have where they bring your order to your car door.

Mr. Jeffries read the definition for A1 was conventional restaurants having 100 or more seats, tables or booths, counter service and all service shall be indoor. No walk-up service is permitted. A2 restaurant uses may provide walk-up or drive-up window service. The chart in the staff report is excluding drive-up windows from the A2 restaurant use. He stated to keep in mind that the proposed LDC Re-write would change all of this language again.

Mr. Hoitsma asked if the language on page four of the staff report under RDD-1 meant that business services were only allowed above the ground floor. He stated it says the same thing for professional services

Mr. Jeffries replied that was for Beach Street and the language had been that way since 1989 when the LDC was adopted.

Mrs. Remark stated this may have come up as a result of the Beach Street Condos project but it really was not tied to that project because her understanding of what Mr. Jeffries was saying was the use did not belong on Beach Street.

Mr. Jeffries replied yes if you look at the Downtown Redevelopment Plan and the Nottingham Plan the language clarifies that more auto type uses would preferably be on Ridgewood versus Downtown.

Mr. Walton stated it is pedestrian versus auto and the City wants pedestrian traffic downtown, which is why commercial has to be on the ground floor.

### **Citizen Comments**

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Robert Merrell, 150 Magnolia Avenue, Daytona Beach stated he was representing the property owners that Mr. Jeffries made reference to having some type of relationship to the request. He stated he nor his client necessarily had an objection to the proposed amendment request but he did want to add some clarity to Mr. Moore's question. He stated there was some discussion at the redevelopment board meeting and his client did not want a fast-food restaurant developed on the site and that they were leaning more toward a restaurant like Outback. He stated the terminology of drive-up versus drive-through should be clarified more.

Ms. Washington stated she thought that language was clarified during the redevelopment board's discussion.

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Mrs. Remark asked Ms. Lathan if the language really made a difference.

Ms. Lathan replied no. Staff had further discussion on drive-up versus drive-thru after the Redevelopment Board meeting and decided it was not necessary to change the language especially since walk-up windows is included in the definition of A2 restaurants.

### **Board Comments**

No additional Board comments.

### **Board Motion**

It was moved by Mrs. Remark to approve Land Development Code Text Amendment – Restaurants with Drive-Up Windows, DEV2012-046. Seconded by Mr. McGuinness.

### **Board Action**

The motion was approved 9-to-0.

## **9. Land Development Code Text Amendment –Assisted Living Facilities, DEV2012-059**

A request by the Development and Administrative Services Department, Redevelopment Division to amend the Land Development Code, Article 2 (Definitions), Section 3 (Use Designations), to add a definition for assisted living facilities and amend the definition for community residential homes; Article 9 (Residential Districts), Section 2 (Residential District Use Schedule), to add assisted living facility as a conditional use to certain residential zoning districts; Article 10 (Tourist Districts), Section 2 (Tourist Districts Use Schedule), to add assisted living facility as a conditional use to certain tourist zoning districts; Article 11 (Business Districts), Section 2 (Business Districts Use Schedule), to add assisted living facility as a conditional use to certain business zoning districts; and Article 17 (Conditions and Requirements for Specific Uses), Section 2 (Uses), to establish conditional use criteria for the establishment of assisted living facilities in certain zoning districts as a conditional use and amend the conditions for community residential homes.

### **Staff Presentation**

Jason Jeffries, Redevelopment Project Manager stated this request was related to the Renaissance Place request. He stated this proposed amendment came about because in the current LDC assisted living facilities fall within the definition of community residential homes. He stated the definition in the LDC refers to Florida Statutes (FS) 419, which deals with community residential homes as the State regulates them and 400 deals with adult care facilities. He stated at some point the State amended FS 400 and it became FS 429 and because the City's LDC has the language "as these sections are amended" the City Attorney's Office made the determination that assisted living facilities fall within community residential homes. Mr. Jeffries stated FS 429 currently deals with three parts, adult daycare, assisted living facilities (generally 15 or more people) and adult family care homes, which is under five people. He stated the

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proposed amendment is staff's attempt to pull assisted living facilities out of the definition for community residential homes. He stated through discussions with the City Attorney, it was determined that adult daycare would fall under the City's current definition for daycare facilities because the definition refers to both adults and children. Mr. Jeffries stated in the proposed draft adult family care homes would continue to fall under the definition of community residential homes. He stated assisted living facilities are essentially a type of retirement facility and that there were varying levels of assistance provided. He stated to address the issue of allowing assisted living facilities in the downtown area staff has created a new definition for assisted facilities, which now only refers to FS 429 and revised the definition for community residential home facilities. The proposed changes would not prohibit assisted living facilities in redevelopment areas and would be allowed in certain districts as a conditional use. Mr. Jeffries stated the Board should have received some additional proposed changes that were a result of some additional work from the City Attorney's Office. He stated this request was taken to the Downtown-Balough Road Redevelopment Board on June 5<sup>th</sup>. The Board recommended approval 7-to-1. He stated staff supports the Board's recommendation.

Mrs. Remark asked if her understanding was correct, that currently assisted living facilities of any type fall under residential homes.

Ms. Lathan replied correct.

Mrs. Remark stated looking at the proposed use schedule on pages two and three in the staff report, assisted living facilities are being taken out of R1 and R2 zoning areas.

Mr. Jeffries replied correct, because of the definition of assisted living facilities where it is 15 or more individuals with the density requirements you would not want them in those zoning districts.

Mrs. Remark asked if assisted living facilities were currently allowed in R1 and R2 zoning districts.

Mr. Walton replied no, if they have seven or less individuals, the federal government supersedes the City's zoning.

Mrs. Remark what about facilities that fall between seven and 15 individuals.

Mr. Walton replied Mrs. Remark was mixing density and use.

Ms. Lathan stated the way the City defines assisted living facilities is 15 or more individuals, which means if the facility 14 individuals it would fall under the definition of community residential homes as long as they meet all of the other criteria.

Mr. Moore restated all of the articles in the LDC that were being amended to allow assisted living facilities in a certain area. He stated he felt that was a lot of changes just to allow this and there is not a builder. He stated he has concerns with changing land uses without having a concrete project for the requested changes.

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Mrs. Remark asked if staff made a recommendation when the request was presented to the Downtown-Balough Road Redevelopment Area Board.

Mr. Jeffries stated staff supported the proposed amendments. He stated from a staff perspective he did not believe there were any concerns about clarifying the definition for assisted living facilities. He stated there could be issues concerning what zoning districts they are allowed in and he feels the definition for community residential homes is too broad. He stated when you look back at the legislative record, he was not sure if the City's intent was to prohibit assisted living facilities.

Mrs. Remark stated the LDC language is "as amended."

Ms. Lathan stated the old term was "adult congregate living facility" but FS has dropped the term "congregate" and it is now called "assisted living facility" and has been moved to a different section of the statutes.

Mr. Jeffries stated he was not sure when the blight study was completed. He does not know if it was ever intended that this type of retirement facility was really a blighting influence on the downtown area. He stated the minutes from the Downtown-Balough Road Redevelopment Area Board Meeting reflect that the Board had concerns about the project and that they felt a little more comfortable about the project because its location was not on prime riverfront property.

Mr. McGuinness asked if the City had any assisted living facilities currently in operation.

Mrs. Remark replied the City has 21 out of 50 registered ALFs within a nine mile radius of the 32114 area code of which three are within the Downtown Redevelopment Area. She stated that data is available on both the Housing and Urban Development (HUD) and State of Florida websites.

Mrs. LeSage stated she agrees with Mr. Moore that she did not want to put the cart before the horse and that she would like to see more concrete interest before all of the proposed zoning changes were approved.

### **Citizen Comments**

Robert Merrell, 150 Magnolia Avenue, Daytona Beach stated to Mr. Moore that he did not feel they were making a lot of changes to the LDC for one project. He gave a summary of what his client was trying to do and stated he did not feel it was necessarily relevant whether or not there was a currently a builder for the project. He stated this amendment was approving the ALF in the downtown area; the amendment further clarified the City's LDC.

**Board Comments**

Mr. Hurt stated he had a different perspective on assisted living care. He stated his aunt moved to an ALF after her husband passed away. He stated she does not require any type of medical care but she felt safer living in that environment. He stated these types of facilities are for people that do not require assistance but need a safe place to live where they can socialize with people their age. He stated he sees ALFs as an asset.

Mr. Hoitsma stated he was not sure he thought Mr. Hurt's comments were accurate. He stated he believed it was an 80,000 square foot building with 100 units.

Mr. Merrell stated the building was not what was being discussed in this request; that was the next item on the agenda.

Ms. Washington stated the Downtown Board had a lengthy discussion on this amendment request and the big piece that threw the Board members off was the proposed definition for ALFs. She stated once they received a clear definition it made it easier to decide what was going on.

Mr. Hurt stated sometimes when you paint with a broad brush sometimes you include things you did not necessarily want to be included. When you try to single out one thing to get rid of it, it encompasses things that were not intended to be included.

Mrs. Remark stated to say no there is not any nursing care needed would be ignoring the statutes. She stated according to FS 429 ALFs are not just for the elderly; they are for people 18 and older. She stated the proposal would not change where ALFs are allowed within the City; it defines the different size homes. She stated after speaking with the City Attorney this afternoon she now understands the proposed amendment would change what was allowed in the recently approved North Ridgewood Overlay District because what was prohibited in that district were community residential homes which currently ALFs fall under. She stated the proposed amendment takes ALFs out of the definition for community residential homes and allows them in zoning areas, which would require amending the North Ridgewood Overlay District to prohibit ALFs. She stated the way the proposed amendment is written it appears that ALFs will only be allowed on principal arterial streets but the LDC does not clearly name what streets are considered principal arterial streets, which means this amendment could include streets in the Midtown Redevelopment Area. Mrs. Remark stated when you read the statutes, as they have been amended; all of these types of homes still fall under Title 30's Social Welfare Section because they are considered social welfare uses. She stated 38 percent of these types of homes fall within the City's redevelopment areas, 24 percent are in downtown. Mrs. Remark stated currently in the downtown area there are over 2,000 household or living units for senior citizens through ALFs and various other types of community and assisted housing programs. She stated she feels Daytona Beach has done more than its fare share of dealing with social services and she agrees with City legal staff that this falls under community residential homes, which falls under social services provisions. She stated she disagrees with Mr. Merrell's statement regarding this not being his project was inaccurate because the proposed LDC amendment

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request came as a result of Mr. Merrell's client's project. She stated fortunately the City's legal staff saw the entire picture and determined that the LDC would need to be amended before the project could be approved. Mrs. Remark briefly talked about why ALFs were becoming popular and stated she believed a determination of need should have to be shown. She stated if this amendment is approved she feels there needs to be clarification of what streets are considered principal arterial streets/roads and the possibility of requiring a minimum parcel size. She stated she is not in favor of this request and feels it is the wrong direction for the City because the front part of the property is a key component to redevelopment in the Downtown Redevelopment Area.

Mrs. LeSage stated she works in a medical office and to her there is a clear and distinct difference between independent living which Mr. Hurt spoke about and ALFs. She stated she agrees with Mrs. Remark's comments and has very big concerns regarding whether this is what is best for the downtown area. She stated Bishops Glen is a good example of the progression of care that usually occurs. She stated they have independent living, assisted living and full nursing care but Mr. Merrell's project is not that and she does not feel this is the best use for the downtown area.

Mr. Merrell stated he was not originally going to speak on this request because he does not believe it is his item but since his project has been referenced several times, he felt compelled to speak. He stated he and Mrs. Remark may agree that there is a market place being recognized by investors and developers, more particularly the owner of this piece of property, but the property was not purchased solely for that purpose. He stated he feels if the Board takes a good look at the project, they will find that it is a good transition and he could not imagine that the property owner would develop a project on two acres that would ruin the other eight acres. He stated there is a place for social service uses and he does agree that Daytona Beach has done their fare share but at the end of the day, the property owner does not want to do a social service on the property; they want to do an upscale assisted living facility. He stated to Mrs. LeSage that there would be some assistance given to residents and he was not trying to hide that but there would not be medical or psychological treatment, which means there will not be any drug and alcohol rehabilitation but he did not see a harm in having younger residents living in the facility. He stated if the Board would like he would hold off on further discussing the project that was next on the agenda.

Mr. Moore replied yes he would prefer he waited until the next item to give further details.

Mr. Walton stated he feels staff needs to hear what the Board's thoughts are on this request and encouraged the Board not to consider one single project or piece of property when reviewing proposed zoning regulation changes. He stated this request if approved will apply to more than one piece of property and more than one use.

Mr. Moore stated he understands what Mr. Walton was saying but he still felt the next item on the agenda should have been reviewed before this one.

Mrs. Remark stated the City could not make our regulations more restrictive than the State law. She stated the City could not keep out what the State law allows in. She stated she agreed with Mrs. LeSage that independent living was completely different from ALFs. She stated she agreed

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that this should not be linked to the project because if it is approved it will affect the entire City.

Mr. Moore stated he felt the request needed to be returned to staff for reworking and clarification. He stated he was not opposed to what staff was proposing but he felt the request were to be approved the way it is currently being proposed would cause a mess.

Ms. Washington asked Mr. Merrell if his client had considered using the term “independent living” instead of ALF.

Mr. Merrell stated he did not believe his client had gone anywhere into the level of detail discussed at the last two Planning Board meetings. He stated he would invite his client to attend the next hearing and he agreed that if the Board was not comfortable with the proposed LDC amendment request it should be further reviewed. He stated if this request is going to be approved tonight he did not feel he would be able to present the ALF agenda item tonight. He stated the straight zoning request was not a part of this and he would be happy to present that request tonight. Mr. Merrell stated if the Board would like to delay approving this request tonight and talk through the ALF project he would be agreeable to that. He stated the Board’s options were to hold off on approving this request and allow staff to rework it but allow Mr. Jeffries to give his presentation on the ALF and then decide whether or not there were other issues that needed to be addressed. He stated if the Board continues this request, he will request to have the next item on the agenda continued also.

Mrs. Remark stated it might be more than a small tweaking if this goes back to staff and they concludes that Mr. Merrell’s project is a social service use. She stated the Comprehensive Plan amendment that was just passed was to equalize the over population of these types of services in the City and she feels that is a big determination that staff will have to make.

Mr. Merrell stated he felt the Board received a pretty complete and thorough staff report that reflects City staff feels the current LDC flawed because it makes reference to an antiquated statutory reference.

Mr. Moore stated he felt the way this request was presented was flawed.

Mr. Merrell stated he felt Mr. Moore needed to take into account Mrs. Remark’s comments regarding the statutory reference creates a social service definition. He stated he does not believe the State has weighed in on that issue at all. He stated staff is trying to correct the LDC to make reference to the statute as is exists now.

Mrs. Remark stated she felt staff was trying to amend the LDC to allow Mr. Merrell to do an RPUD.

Mr. Moore stated he agreed.

Mr. Merrell stated if his project had not come forward, staff may not have found the error. He asked Mrs. Lathan for her comments.

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Ms. Lathan stated Mr. Merrell’s statement regarding the current LDC referencing a statute that is not the way it was when it was first adopted is correct but she does not necessarily agree with his comments regarding the intent.

Mr. Merrell stated this request was a piece of legislation that clarifies the City’s LDC and brings it in line with the FS.

Mr. Walton stated the other part of this request deals with where ALFs would be allowed.

Mr. Merrell stated that was why he conceded to the Board’s comments regarding the need to further address where this should be allowed.

Mr. Moore stated to Board members that they had the option to vote in favor or against the request or vote to send it back to staff for further work.

Mrs. Remark asked Ms. Lathan how the motion should be made. She asked how the Board would word a motion to send the request back to staff.

Ms. Lathan replied whoever makes the first motion, the Board could either vote in favor or in opposition of the motion and that based on the outcome of the vote, the Board could chose to make a second motion for the request to go back to staff for further review. She stated if that happens, the Board would need to give staff some direction.

**Board Motion**

It was moved by Mrs. Remark to approve Land Development Code Text Amendment –Assisted Living Facilities, DEV2012-059. Seconded by Mr. Hurt.

**Board Action**

The motion failed by roll-call vote of 3-to-6, with the breakdown as follows:

Mr. Hurt	Yes
Mrs. Remark	No
Mr. McGuinness	No
Mr. Bohon	Yes
Mr. Moore	No
Ms. Washington	Yes
Mr. Hoitsma	No
Mr. Neal	No
Mrs. LeSage	No
Ms. Benjamin	Absent

Mr. Moore stated he was not so much opposed to the request as he was with the way it was presented.

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Mr. Walton asked if the Board would be more in support of the request if it were limited to just the Downtown Redevelopment Area and all references to other areas of the City were removed.

Mr. Moore stated he thought it would have to be allowed citywide.

Mr. Walton stated no, it could be made a permitted use only in the Downtown Redevelopment Area.

Mrs. Remark stated she believed the first question that needed to be answered was whether or not the request was considered a social service. She stated if it is determined that it is a social service, the request it will not meet the Comprehensive Plan requirements for quite some time.

Mr. Walton stated he was assuming the intent was that it is not a social service use.

Mrs. Remark stated she still believed it needed further research to get a concrete answer.

Mr. Jeffries stated, keep in mind that the current code only prohibits ALFs in redevelopment areas so if the Board makes the decision to only allow them in the Downtown Redevelopment Area, the request would have to go back to the Downtown-Balough Road Redevelopment Area Board for consideration.

Mrs. Remark stated that is why she feels that the first thing that has to happen is to make the determination whether or not it is a social service use.

Mr. Merrell stated he sensed that there were six Board members that were not comfortable with the proposed amendment the way it is currently written and he feels some of the discomfort may have been a result of the discussion regarding social service uses. He stated he disagrees with the Board's thoughts and feels City staff needs to do some more work on the language to determine whether or not something was brought forward that was already illegal in the City. He asked the Board to reconsider the denial and instead request the proposed amendment be taken back to staff for further tweaking.

Mr. Moore asked Mrs. Remark if she wanted to make a motion to reconsider the denial.

Mrs. Remark replied no she was not in favor of continuing the request.

Mr. Merrell stated if the denial vote stands, he would like to request a continuance for agenda item number 10 until further clarification on item number nine was made.

10. **Rezoning, Residential Planned Unit Development – Renaissance Place, DEV2011-010 (Quasi-Judicial Hearing)**

A request by Robert A. Merrell, III, Esq. on behalf of Mark Papak, President, 400 Beach Street Acquisition, LLC, to rezone the current Beach Street Condos Residential Planned Unit Development (RPUD), located at Mullally and Daytona Streets to the Renaissance Place RPUD, for the construction of a 29,200 square foot assisted living facility with associated parking,

utilities and stormwater facilities. *(Continued from the May 24, 2012 Planning Board Meeting)*

**Staff Presentation**

No staff presentation.

**Applicant Presentation**

No applicant presentation.

**Citizen Comments**

No citizen comments.

**Board Comments**

No Board comments.

**Board Motion**

It was moved by Mrs. Remark to continue Rezoning, Residential Planned Unit Development – Renaissance Place, DEV2011-010 to the August 23, 2012 Planning Board Meeting. Seconded by Ms. Washington.

**Board Action**

The motion was approved 9-to-0.

11. **Rezoning to RDD3 from Residential Planned Unit Development – Beach Street Condos, DEV2011-099 (Quasi-Judicial Hearing)**

A request by Robert A. Merrell, III, Esq. on behalf of Theodore Stotzer, with 400 Beach Street Acquisition, LLC, to rezone 7.29± acres of land located at 300 North Beach Street from Residential Planned Unit Development (RPUD) to RDD-3, to make the zoning consistent with surrounding properties for redevelopment of the site. *(Continued from the May 24, 2012 Planning Board Meeting)*

**Staff Presentation**

Jason Jeffries, Redevelopment Project Manager stated gave a PowerPoint presentation that included the request as written above and stated the site was located in the 300 block of North Beach Street and that there had already been quite a bit of discussion on the request. He restated that this was a portion of the front part of the Beach Street Condos project site and the back portion was the site of the proposed ALF. He stated the Downtown-Balough Road Redevelopment Board recommended approval and staff supports the Board's recommendation.

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Mrs. Remark asked how it would work if the proposed rezoning was approved. She asked if this would be considered a major amendment to the entire RPUD.

Ms. Lathan replied this was a separate portion.

Mr. Walton stated Mr. Merrell only requested a continuance of the ALF item.

Mrs. Remark asked what the outcome would be for the entire RPUD if this rezoning request were approved.

Ms. Lathan replied the other portion of the RPUD would remain with expired development rights and this portion could be rezoned to RDD-3.

Mrs. Remark stated this request was being made because the owner feels there is no feasibility of doing what the current RPUD says.

Mr. Jeffries replied that was correct and staff concurred.

Mr. McGuinness asked why the zoning was not going back to RDD-4.

Mr. Jeffries replied RDD-4 allows more auto and motorcycle related uses and the RDD-3 was more in line with the goals policies of the Redevelopment Plan.

### **Applicant Presentation**

Robert Merrell, 150 Magnolia Avenue, Daytona Beach stated they held a neighborhood meeting and the neighbors were in favor of the project, including the ALF.

### **Citizen Comments**

Armisted Ellis, 319 North Ridgewood Avenue, Daytona Beach stated he owns property on San Juan that fronts on Ridgewood and he believes the proposed project will improve the character of the neighborhood and he supports the request.

### **Board Comments**

No Board comments.

### **Board Motion**

It was moved by Mr. Hurt to approve Rezoning to RDD3 from Residential Planned Unit Development – Beach Street Condos, DEV2011-099. Seconded by Mrs. Remark.

### **Board Action**

The motion was approved 9-to-0.

13. **Land Development Code Text Amendment – Code Enforcement Citation Process, DEV2012-070**

A request by The City of Daytona Beach, Code Enforcement Division, to amend Article 1 (Purpose, Administration and Enforcement), Section 8.1 (Enforcement and Penalties) of the Land Development Code (LDC), to increase penalties for LDC violations and add a provision generally prohibiting the issuance of development orders for any real property with code violations or unpaid Code Enforcement fines or outstanding civil penalties; and amending Article 2 (Definitions) to add a definition for “itinerant or transient violation.”

**Staff Presentation**

Hector Garcia, Community Compliance Standards Manager read the proposed definition for itinerant or transit violations and gave examples of what constituted as itinerant or transit violations. He stated the purpose of this request is because the Code Enforcement Division is starting a proactive citation process that is in line with the City’s vision for clean aesthetically appealing buildings and green spaces. He stated the citation process was authorized by Florida Statute, Chapter 162, Part II to enforce LDC violations. He stated proposed increase in fines would off-set the administrative and processing costs, with the intent of increasing the compliance rate and lowering repeat violations. He stated the process would generally prohibit the issuance of development orders for real property that was subject to uncorrected violations or where the owner/occupant had unpaid code fines or civil penalties. He stated Police Chief recommends approval of the request.

**Citizen Comments**

No citizen comments.

**Board Comments**

Mrs. Remark asked if there was any kind of due process for people parking on their lawn or if the lawn is overgrown.

Mr. Garcia replied the current process is as follows: Owner/occupant is issued a warning that includes a specific timeframe to comply. If it is corrected within the allotted timeframe and then the violation is done again, then a citation would be issued.

Mrs. Remark asked if this process was in lieu of going before the Special Magistrate or Code Enforcement Board.

Mr. Garcia replied this was for violations that were being repeated numerous times. It will not substitute the Code Enforcement process. He stated this was an added tool to assist with stopping repeat violators.

Mr. McGuinness asked if the process for overgrown lots would still go through the current

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process.

Mr. Garcia replied yes this would predominately be for businesses that snub their noses at the City's code requirements.

Mr. Moore asked if photographs with the date and time were taken.

Mr. Garcia replied yes.

Mr. Moore asked what happens if people do not pay the fine.

Mr. Garcia replied it was a civil process and they would have to go before a judge in county court.

**Board Motion**

It was moved by Mrs. Remark to approve Land Development Code Text Amendment – Code Enforcement Citation Process, DEV2012-070. Seconded by Mr. McGuinness.

**Board Action**

The motion was approved 9-to-0.

12. **Other Business**

A. **Downtown/Balough Road Redevelopment Area Board Report**

Ms. Washington reported the Board met on July 10, 2012 at 12:00 PM in City Commission Chambers. She stated with the exception of the Board's monthly reports from Code Enforcement all of their items were covered on tonight's agenda.

B. **Midtown Redevelopment Area Board Report**

No report.

C. **Main Street/South Atlantic Redevelopment Area Board Report**

Mrs. Remark reported that the Board met on July 14, 2012 at 6:00 PM in City Commission Chambers. The Board reviewed a conceptual site plan for 801 South Atlantic Avenue. She stated the Board was very positive about the proposed project but there is not any infrastructure to support the project and a lot has to happen for this project to come to fruition. She stated Joe's Crab Shack had the highest opening sales of any of their properties that has ever opened in the United States.

D. **Public Comments**

John Nicholson, 413 North Grandview Avenue stated Peabody Auditorium was not included with public properties on the maps for RDD-5 and five churches had also been excluded. He asked if the Board could have a discussion about putting a suburban overlay on a redevelopment

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area before the LDC Re-write is completed and adopted. He stated he does feel it would be a good fit for redevelopment areas, especially Main Street. He asked if West Minster (*formerly San Pablo Episcopal Church*) and the Baptist church were considered to be ALFs because if they are considered social service uses he would like to know how they were different from the proposed ALF agenda item.

### **E. Staff Comments**

Mr. Walton apologized for his absence from last month's meeting.

### **F. Board Member Comments**

Mr. Moore reminded everyone that their Form 8 – Statement of Financial Interest was due by July 1<sup>st</sup>.

Mrs. Remark wished everyone a happy Fourth of July holiday.

Mr. Moore stated Ms. Benjamin was not present tonight due to the death of her mother. He stated he had a card that he wanted all of the Board members to sign and that flowers were being sent.

Ms. Washington stated the way the information presented to the redevelopment board regarding the ALF was that it would be an upscale facility and would be more so like the example Mr. Hurt gave about his aunt.

Mr. Moore asked if dollar values were given.

Ms. Washington replied dollar amounts were discussed but it was not presented as though it would have been a social service use.

Mr. Moore stated it was his understanding that dollar amounts were avoided.

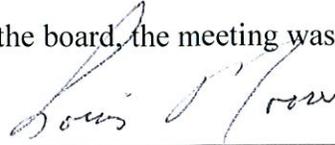
Mr. Walton stated he attended some of the meetings and the Redevelopment Board struggled with determining what the quality of the facility would be. He recalls that the Board was told that would be handled through the PD agreement at a later date.

Mr. McGuinness stated an ALF will be subject to a lot of federal regulations about nondiscrimination, so it is highly unlikely that the applicant would have high class clientele with lots of money because there is no way to do that when the federal government is involved.

Ms. Washington stated the explanation the Redevelopment Board was given was that it would be an upscale facility and that is why she asked tonight if the applicant had a problem with changing the language from ALF to independent living.

**Adjournment**

There being no further actions to come before the board, the meeting was adjourned at 8:18 PM.



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LOUIS MOORE  
Chair

ATTEST:



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CATHY WASHINGTON  
Secretary