

MINUTES

REGULAR MEETING – PLANNING BOARD

October 28, 2021

Minutes of the Regular Meeting of the Planning Board of The City of Daytona Beach, Florida, held on Thursday, October 28, 2021 at 6:00 p.m., in the Commission Chambers, City Hall, 301 South Ridgewood Avenue, Daytona Beach, Florida.

- 1. **Call to Order**
- 2. **Roll Call.**

Tony Barhoo (Vice Chair)	Present
Helen Humphreys	Present @ 6:05 pm
Michael McLean	Present
James Newman	Present
Tony Servance (Chair)	Present
Milverton Robinson	Present @ 6:05 pm
Cathy Washington (Secretary)	Present

Also Present:

- Ben Gross, Deputy City Attorney
- Dennis Mrozek, Planning Director
- Reed Berger, Redevelopment Director
- Doug Gutierrez, Senior Planner
- Hannah Ward, Planner
- Paula Long, Planner
- Rose Askew, Planning Coordinator
- Vanessa Trimble, Planning Technician

3. **Approval of Minutes**

Approval of the Minutes of the October 28, 2021 Regular Planning Board Meeting held at City Hall, 301 South Ridgewood A venue, Daytona Beach, Florida.

**Board Action**

It was moved by Mr. McLean to approve the minutes as corrected, seconded by Mr. Barhoo. The motion passed 5-to-0 with the breakdown as follows:

Tony Barhoo (Vice Chair)	Yea
Helen Humphreys	
Michael McLean	Yea
James Newman	Yea
Tony Servance (Chair)	Yea
Milverton Robinson	
Cathy Washington (Secretary)	Yea

**New Items**

**4. Napier Apartments, Ph. 2 – Site Plan – DEV2021-091 (Quasi-Judicial Hearing)**

A request by Parker Mynchenberg, Parker Mynchenberg & Associates, Inc. on behalf of Napier Apartments LLC (developer) to allow for the construction of 120 additional multifamily dwelling units as part of Phase 2 of the Napier Apartments multifamily complex located on the east side of Williamson Blvd., directly across from the entrance to Advent Health.

**Staff Presentation**

Hannah Ward, Planner, presented the staff report which was included as part of the packet. She stated the property is to allow for the construction of 120 additional multifamily dwelling units as part of phase two of the Napier Apartments multifamily complex. The property is located on the east side of Williamson Blvd., directly across from the entrance to Advent Health.

Mr. Barhoo asked if the ingress and egress on Williamson, would be the only entrance.

Ms. Ward stated there is a second entrance proposed in phase two, but the main entrance is in phase one.

Mr. Newman asked for a key to explain what the symbols mean.

Ms. Ward stated she would provide one.

**Applicant Presentation**

Steve Buswell, Parker Mynchenberg & Associates, stated the buffers are the typical scenic setback plan. He stated Ms. Wards presentation mentioned five buildings, but there are six, but the number of units had not changed and is still 120. He stated he is there to answer any questions.

Ms. Humphreys suggested other types of landscape such as pittosporum as oppose to shrub palmetto.

**Citizens Comments**

No comments

**Board Action**

It was moved by Mr. Barhoo to approve the request per staff recommendations. Mr. Newman seconded the motion in accordance with the staff report as presented. The motion passed 7-to-0 with the breakdown as follows:

Tony Barhoo (Vice Chair)	Yea
Helen Humphreys	Yea
Michael McLean	Yea
James Newman	Yea
Tony Servance (Chair)	Yea
Milverton Robinson	Yea
Cathy Washington (Secretary)	Yea

5. **14 S Halifax – Redevelopment Beachside-Gateway Residential/Mixed Use (RDB-3) Rezoning DEV2021-003 (Quasi-Judicial Hearing)**

A request by Jessica Gow, Esq., Cobb Cole, on behalf of the property owner, Morgan & Parker, LLC, to rezone 0.1± acre of land located at 14 S. Halifax Avenue, from Redevelopment Beachside - Gateway Residential/Mixed-Use (RDB-3) and Residential Professional (RP) to Redevelopment Beachside - Gateway Residential/Mixed-Use (RDB-3), to allow for short term rentals.

**Staff Presentation**

Reed Berger, Redevelopment Director, presented the staff report which was included as part of the packet. He stated the property is located at 14 S. Halifax Avenue, from Redevelopment Beachside - Gateway Residential/Mixed-Use (RDB-3) and Residential Professional (RP) to Redevelopment Beachside - Gateway Residential/Mixed-Use (RDB-3), to allow for short term rentals and to allow consistency in the zoning. Mr. Berger stated it went before the Beachside Redevelopment Board recommended approval 3 to 1.

Mr. Robinson asked why one board member voted no. He stated he was looking to see it in the minutes.

Mr. Berger stated the member, Mr. Libby had a concern in general regarding Surfside single-family area east and south across Halifax. His concern is that this would be an encroachment on the neighborhood.

Mr. Robinson asked what the applicants' response to that was.

Mr. Berger stated the applicant would be able to speak to that. He stated the comment was not discussed in depth by the rest of the board.

Mr. Robinson asked if the rest of the Redevelopment board considered encroachment issue.

Mr. Berger stated they did not consider it an encroachment.

Mr. Robinson stated the issue of encroachment would be put aside if they approved the rezoning.

Mr. Berger stated the question goes away.

Ms. Humphreys stated it makes sense to straighten out the zoning split.

Mr. Newman asked if the City had an ongoing lawsuit concerning short term rentals.

Ben Gross, Deputy City Attorney, stated no, and this would not pose any issues in terms of the statutory preemption on local regulations.

Mr. Newman asked what percentage of the property Redevelopment was, and what was RP. He stated it looks like the majority of the property is RP. He asked if it made sense to move that over. He stated he sees that as encroachment.

Mr. Berger stated more of the lot is zoned RP right now. He stated if they look at the future land use, that area is intended for future development. He stated they have been looking at a hotel as one of the plans to do commercial projects at the river. He stated it was intended to make it all commercial.

Mr. Newman asked why it wasn't zoned that way. He asked why they don't go on property lines.

Mr. Gross stated in this instance, the zoning did go with the property line, but had been conveyed to include a portion of the adjoining platted lot. He stated the zoning does follow the plot line.

Mr. Newman asked, but not the property lines.

Mr. Gross stated the zoning follows the platted property lines.

Mr. Newman asked if they were following parcel lines, not property lines.

Mr. Gross stated they're following plotted parcel lines. He stated to do otherwise would require the City to obtain surveys and record deed information for every lot.

Mr. Robinson asked if they change this, would the homes north of Halifax also be subject to RDB zoning.

Mr. Berger stated they would be considered under their own merit at whatever time someone wanted to rezone additional property. He stated only one property is being considered, one lot.

**Applicant Presentation**

Jessica Gow, Cobb Cole Law Firm, 121 N Ridgewood Avenue, gave a brief history of the property. She stated there are no changes suggested to the actual building, but the site would have some upgrade to allow the use. She stated at the redevelopment meeting, one of the concerns voiced by the dissenting member was, having a short-term rental would reduce the opportunity for home ownership. She stated there were concerns the RP does allow for office uses, and the home could be converted to an office. She stated it is site specific zoning and would not change surrounding properties.

**Citizens Comments**

John Nicholson, 413 N Grandview Avenue stated he would normally say save this property but under the circumstances, it's gone.

**Board Action**

It was moved by Ms. Washington to approve the request per staff recommendations. Ms. Humphreys seconded the motion in accordance with the staff report as presented. The motion passed 6-to-1 with the breakdown as follows:

Tony Barhoo (Vice Chair)	Yea
Helen Humphreys	Yea
Michael McLean	Yea
James Newman	Nay
Tony Servance (Chair)	Yea
Milverton Robinson	Yea
Cathy Washington (Secretary)	Yea

**6. Hillwood – Large Scale Comprehensive Plan Amendment DEV2021-077 (Legislative Hearing)**

A request by Mark A. Watts, Esquire, Cobb Cole, on behalf of Event Equipment Leasing, Inc. & Southeastern Hay & Nursery, Inc., for approval of a Large Scale Comprehensive Plan Amendment, generally located approximately 1,200 feet southeast of the intersection of Williamson Blvd and Bellevue Avenue, changing the Future Land Use Map designation from City Commercial Amusement (CA) of 101± acres and Volusia County Activity Center - Industrial (AC-I) of 110± acres, to Mixed Use (MU) for a total of 211.0± acres of land, and amending the Future Land Use Element Neighborhood “Q”, creating new issue (g).

**Staff Presentation**

Doug Gutierrez, Principal Planner, stated this project also has a rezoning and asked to present them both. Mr. Gutierrez presented the staff report which was included as part of the packet to change the Future Land Use Map designation from City Commercial Amusement (CA) of 101± acres and Volusia County Activity Center - Industrial (AC-I) of 110± acres, to Mixed Use (MU) for a total of 211.0± acres of land and amending the Future Land Use Element Neighborhood “Q”, creating new issue (g), limiting nonresidential square-footage.

Mr. McLean state the existing FLU map, under maximum intensity there are two different numbers, he’d like to know which is correct.

Mr. Gutierrez stated the one in the matrix.

Mr. McLean made reference to flood zones and asked if the developer or residents would be required to have flood insurance.

Mr. Gutierrez stated or develop on foot above the flood elevation. He stated that would be at the site plan level.

Mr. Robinson asked if they were going to preserve the wetlands.

Mr. Gutierrez stated they would have to.

**Citizens Comments**

See item 7

**Board Action**

It was moved by Mr. Barhoo to approve the request per staff recommendations. Mr. Newman seconded the motion in accordance with the staff report as presented. The motion passed 7-to-0 with the breakdown as follows:

Tony Barhoo (Vice Chair)	Yea
Helen Humphreys	Yea
Michael McLean	Yea
James Newman	Yea
Tony Servance (Chair)	Yea
Milverton Robinson	Yea
Cathy Washington (Secretary)	Yea

7. **Hillwood – Planned Development-General (PD-G) Rezoning DEV2021-078 (Quasi-Judicial Hearing)**

A request by Mark A. Watts, Esq., Cobb Cole, on behalf of Event Equipment Leasing, Inc. & Southeastern Hay & Nursery Inc., to rezone 211± acres of land from General Industrial (M-3) and Major Sports District (MSD) to Planned Development-General (PD-G) to allow for the development of large-scale light industrial uses, as well as limited high-intensity commercial uses and institutional uses. The property is located approximately 1,200 feet southeast of the intersection of Williamson Blvd. and Bellevue Ave., on the south side of Bellevue Ave., across from the Daytona Beach International Airport.

**Staff Presentation**

Hannah Ward, Planner, presented the staff report which was included as part of the packet to rezone 211± acres of land from General Industrial (M-3) and Major Sports District (MSD) to Planned Development-General (PD-G). The property is located approximately 1,200 feet southeast of the intersection of Williamson Blvd. and Bellevue Ave. intersection. She stated it's currently developed as crop land and is directly across from south of the Daytona Beach International Airport. She stated instead of it being a 624,000 square-foot building, it is 2,844,050. The 624,000 is the ground floor. She stated there are five floors that comprise the full number.

Mr. McLean asked about parking requirements and why they were not dealt with specifically.

Ms. Ward stated they will be following code requirements for parking.

Ms. Humphreys stated her concern about anything being too tall that could cause problems with the airfield be next to it.

Ms. Ward stated if they are within a flight path, they have to obtain approval from the FAA.

**Applicant Presentation**

Mark A. Watts, Cobb Cole Law Firm, 231 N Woodland Boulevard, Deland Florida stated he was there to answer any questions. He stated the primary purpose of both projects is to consolidate some things that are different right now. He stated this is about jobs, about industrial and commercial uses.

Mr. McLean referred to the neighborhood meeting and questions asked by DME Holdings.

Mr. Watts stated those questions guided the meeting. He stated it was made clear that they support the project.

**Citizens Comments**

No comments

**Board Action**

It was moved by Mr. McLean to approve the request per staff recommendations, provided all LDC modifications are accepted. Ms. Humphreys seconded the motion in accordance with the staff report as presented. The motion passed 7-to-0 with the breakdown as follows:

Tony Barhoo (Vice Chair)      Yea

Helen Humphreys	Yea
Michael McLean	Yea
James Newman	Yea
Tony Servance (Chair)	Yea
Milverton Robinson	Yea
Cathy Washington (Secretary)	Yea

**8. Hallmark Heritage Planned Development – General (PD-G Rezoning DEV2020-056 (Quasi-Judicial Hearing)**

A request by A. Joseph Posey, Esquire, Storch Law Firm, on behalf of the First United Methodist Church of Ormond Beach Inc (property owner), to rezone the 42.2± acres of the property subject to the First United Methodist Church PD to a new Planned Development, to allow for a mixed-use development to include a variety of residential, medical, limited commercial uses, and adding telecommunication towers as a permitted use. The property is generally located on the west side of Williamson Boulevard, north of Strickland Range Road, approximately 750 feet southeast of the intersection of memorial Medical Parkway and Williamson Boulevard.

**Staff Presentation**

Paula Long, Planner, presented the staff report which was included as part of the packet to rezone the 42.2± acres of the property subject to the First United Methodist Church PD to a new Planned Development, to allow for a mixed-use development, and adding telecommunication towers as a permitted use. She stated the property is currently vacant and undeveloped. She stated at the October 20, 2021 City Commission meeting, after the applicant voiced the concerns of the planning board, the City Commission agreed that telecommunication uses should be added as permitted uses. She stated the commission and applicant understood it would need to go back to Planning Board in accordance with the Land Development Code (LDC).

Ms. Humphreys suggested a change on page 3, letter H. She stated she would like them to change the word “encourage” and add “require the use of engineering and careful siting to avoid potential damage to adjacent properties from tower failure.”

Ms. Long stated the language was taken directly from the LDC.

Mr. Newman asked if it was heard before the Commission on October 20<sup>th</sup> and how was it voted.

Ms. Long stated it is coming to second reading to have a public hearing. She stated it passed.

Mr. Mrozek stated the vote was 6-to-0 in favor.

Mr. Gross stated the language they are referring to is a purpose section in the LDC, it’s not the operative rules. He stated there are rules that are more specific, that implement those sections and protect against power failure.

**Applicant Presentation**

Joey Posey, 420 S. Nova stated the board saw this project several months ago. He stated part of coming back is to make good on what they said they would do. He stated their comments are being heard. He stated what went before the commission, evolved from their comments. He stated he is there to answer any questions.

**Citizens Comments**

Ann Ruby, 137 Park Avenue asked if a cell tower is a permitted use, does land have to be set aside to have it.

Mr. Gross stated there has to be someone willing to build it. He stated the industry looks at holes in coverage in zones and independent companies compete to acquire land to fill those holes. They then work with various telecommunication providers to get preleases set up. He stated this works like any other permitted use in a PD or standard zoning district, it allows the marketplace to determine whether the use is going to be placed or not.

Ms. Ruby asked if it would have to be placed before it's built up.

Mr. Gross stated they could fit a telecommunication tower within the PD after a portion of it was developed residentially.

**Board Action**

It was moved by Ms. Washington to approve the request per staff recommendations. Ms. Humphreys seconded the motion in accordance with the staff report as presented. The motion passed 7-to-0 with the breakdown as follows:

Tony Barhoo (Vice Chair)	Yea
Helen Humphreys	Yea
Michael McLean	Yea
James Newman	Yea
Tony Servance (Chair)	Yea
Milverton Robinson	Yea
Cathy Washington (Secretary)	Yea

**9. Smoking Lounges – Land Development Code (LDC) Text Amendment DEV2021-133 (Legislative Hearing)**

A request by the Development and Administrative Services Department, Planning Division, to amend Article 5 (Use Standards) and Article 11 (Definitions and Interpretation) of the Land Development Code, to add Smoking Lounges as a permitted use in certain zoning districts, to describe types of smoking lounges, and add use specific standards to govern the uses.

**Staff Presentation**

Rose Askew, Planning Coordinator presented the staff report that was included as part of the packet for the text amendment request. She stated the request was to amend Article 5 (Use Standards) and Article 11 (Definitions and Interpretation) of the Land Development Code, to add Smoking Lounges as a new use category, adding use specific standards to govern the uses; designating zoning districts that will allow the new uses; and adding definitions for all smoking establishments under the new use category. She stated recently staff has received requests from applicants requesting to establish hookah bars and lounges in various locations throughout the City. She read the definition for hookah bar/lounge and stated the use is currently licensed as a retail establishment but operates more similarly to a bar or lounge and may or may not include the sale and service of alcoholic beverages. She stated currently, the Florida Statutes do not include a definition for hookah bar/lounges and do not include

regulations to govern the use. The Statutes do include laws that govern tobacco smoking and/or vaping in retail tobacco or vape shoppes. Some of the restrictions on the use include age restrictions, distance separation requirements from schools K-12 and from licensing requirements.

Ms. Askew stated the Land Development Code only provides regulations that for cigar bars. No regulations are currently in place to govern hookah bars/lounges and similar uses. She stated the reason there are not any regulations in place is because the uses are new in the Daytona Beach area. She stated the use is licensed as a retail establishment, which is typically an establishment where the product is purchased and taken off premises for consumption. She stated because of the nature of the use it is causing problems because the establishments operate similar to a bar or nightclub. Another issue are the hours of operation. Because it is licensed as a retail establishment there are not any limitations on hours of operations. As a result, when bars and nightclubs close their patrons go to hookah establishments to continue their bar/nightclub experience. Ms. Askew stated to address the issues arising due to the operation of hookah establishment, staff is proposing to amend Articles 5 and 11 of the LDC to add definitions and use specific standards that will govern all existing and potential smoking establishments in the City, including but not limited to hookah lounges hookah clubs, cigar bars, cigar clubs and vapor bars. The amendment request also includes an amendment to the permitted use table to designate specific zoning districts where smoking establishments will be allowed. She stated to get ideas on the type of regulations that are in place staff reviewed hookah regulations in other cities. The draft regulations include some of those regulations, but they have been modified to fit how the establishment operate in our city. She stated the actual amendment will be to Section 5.2.B.22.f to modify the language to fit the new types of smoking establishments. She stated some of the regulations include requirements to meet Florida Building Code requirements for specific types of ventilation for smoking establishments; requiring live entertainment to be located inside, no cover charge and cease by 10:00 p.m. Sunday through Thursday and by midnight on Friday and Saturday. The proposed regulations allow smoking establishments to sell, serve, or dispense beer and wine to its patrons for on-site consumption pursuant to a State of Florida 2COP alcohol license, but does not allow the 4COP license which is typically for bars and nightclubs. The allowance to have alcohol is further regulated by limiting the maximum square feet where the service is provided to 2,000 square feet and requirement to meet the regulations relating to alcohol located in the City's Code of Ordinances and Section 6.21 of the LDC.

Ben Gross, Deputy City Attorney stated so to be clear what you are saying is if a smoking lounge was allowed to dispense the alcoholic beverages, they would be required to comply with existing provisions in the LDC.

Ms. Askew replied that is correct. She stated staff is also proposing provision to require smoking establishments to be closed between the hours of 12:00 am and 7:00 am, unless they are operating under an extended hours permit, issued by the City's Permit & Licensing Department. She stated regulations for extended hours permits are in the City's Code of Ordinances. Those regulations are specific to establishments that are open past midnight and want to serve alcohol.

Mr. Gross stated some of the regulations are to address complaints to the Police Department regarding how hookah establishment patrons were continuing to party after bars and nightclubs closed. He stated because hookah establishments are licensed as retail establishments, they do not have limitations on hours of operation. He stated by creating smoking establishments as a separate use category it creates closing hour restrictions and a provision that will be added in the Code of Ordinance to require smoking establishments that request extended hours permits to install security cameras. He stated this is a regulation that is already in place for other types of alcoholic establishments that serve alcohol after hours. He stated this regulation was a request by the City's Police Department.

Ms. Askew stated proposed zoning districts that will allow smoking establishments include Business Retail 1 (BR-1), Business Retail 2 (BR-2), Business Automotive (BA), Tourist/Office/Restaurant (T-2), Tourist/Office/Retail (T-4), and Tourist/Highway Interchange (T-5). She stated these are the zoning districts that current allow cigar lounges. She stated the amendment request also includes an amendment to Article 11 to add a definition for smoking lounges. She read the proposed definition in its entirety including uses that are not included in the definition. She stated another proposed definition to be added is for a hookah bar/lounge. Ms. Askew stated staff recommends approval of the text amendment to amend Article 5 and 11, of the Land Development Code (LDC), to add Smoking Lounges as a new use category; adding use specific standards that will govern uses under this category; designating zoning districts that will allow the uses; and adding definitions for smoking establishments and all uses under this new use category. A majority vote of the Planning Board members present and voting is required to recommend approval to the City Commission

### **Citizens Comments**

Sandy Murphy, 136 Park Avenue, Daytona Beach spoke in favor of the amendment request. She commended the Planning Department for being so responsive to the issues that the police have brought up about what is going on Seabreeze and why they have such a difficult time policing that. She encouraged staff not to let the perfect be the enemy of the good. She stated she feels if the uses can be redefined from retail to smoking establishments that will give a time when the establishments are required to shut down which will stop some of the drama and crime in the Seabreeze area. She stated she feels that would be a great first step. She stated from what she has heard in meetings with the Police Department they would be grateful to have something like this in their arsenal to help get things under control.

Ann Ruby, 137 Park Avenue, Daytona Bach spoke in favor of the amendment request. She stated she has been chairman of the Beachside Neighborhood Watch for quite a few years and one of the things they spend a lot of time discussing is the mess on Seabreeze. She stated it has become very clear that allowing hookah bars stay open til 5:00 a.m. allows the mess to continue. She stated if the Board continues the item because they want it to be perfect, they get to continue to exist just as they are. She stated she hoped the Board could see upset she was because she was very excited to see this amendment. She stated the residents need this amendment to get Seabreeze under control. She stated she feels the amendment should be passed tonight and make changes later. She stated right now the police and residents in the area need the help. She asked the Board not to continue the request and to recommend approval.

Ms. Humphreys stated Seabreeze is the highest crime area in the City. The other area is right near Atlantic Avenue where the theatre use to be. She stated she hears Ms. Ruby's frustration and would be happy to rescind the motion and vote to recommend approval.

Mr. Gross stated he thinks the motion has been made but there was not a second.

Mr. McLean stated it was more from a discussion standpoint. He stated he did not make a full motion. He stated he understands Ms. Ruby's comments and the passion that came through in her voice. He stated they want to be sure that they do not throw the baby out with the bathwater. He stated he believes the Board has made their point to the folks that need to know the issues that need to be addressed to make a good thing better, so perhaps tonight start with good and work towards better.

Mr. Servance asked if they could proceed with what they have as a working document and how would the amendments come into play with the Board's suggestions. He asked if the suggestions could be added before the request goes to the City Commission or would the request have to come back to the Board.

Mr. Gross stated the addition of conditions such as no admission of minors, posting of warnings should be in the Code of Ordinances because we don't want anybody to be a nonconforming use with regard to things that are needed for police power. He stated your other suggestion was to look at restricting the redevelopment areas where they could go. He stated there is nothing being presented tonight that would allow the uses in redevelopment districts. Mr. Gross stated right now, cigar lounges, which would be one of the uses are currently allowed in several redevelopment districts and other retail uses are allowed in plenty of them. He stated this amendment would remove cigar lounges and the other uses that come under the term smoking lounge from that. As a result of this they would only be allowed in BR-1, BR-2, BA, T-2, T-4, and T-5. He stated currently, cigar lounges are allowed in T-2, T-4, and T-5, but not other retail. He stated again, from staff's perspective, these uses function more like restaurants and bars in terms of the number of people assembling and his understanding is you do find restaurants and bars in those districts. He stated he does not know what the Seabreeze zoning is, and Dennis has already reported on what is allowed in the Midtown Redevelopment zoning districts. He stated this would not allow these uses in the Midtown Redevelopment districts.

Mr. Mrozek stated the other thing staff was discussing was taking the request forward to City Commission as a change to the Code of Ordinances which is something staff is still planning to do. So, with these hours of operation that we're talking about, that's going to be part of the Code of Ordinances. He stated this text amendment will match up with regulations being put in the Code of Ordinances.

Mr. Gross stated the reason to list the hours of operation in the text amendment is not legally necessary because it is being added in the Code of Ordinances. The purpose of the text amendment is to put regulations in place for people that want to open a hookah bar. He stated it is more of a cookbook that lets them know what regulations they must comply with to establish the use on the property.

Mr. McLean asked Mr. Gross where would the limitation on alcohol fit into play.

Mr. Gross replied I guess it would depend on whether the need to prohibit alcohol is based on the proximity of the use to incompatible uses or whether based on information that the police might have. He stated he does not have that information yet.

Mr. McLean asked if that was a process that could be used to make a determination, but possibly different from what is being discussed tonight.

Mr. Gross stated maybe one of the ways it comes back is if there is an interest in adding the new use at a later point to some of the zoning districts where cigar lounges are allowed, do that with restrictions in those particular areas. He stated that would be on the zoning side.

John Nicholson, 413 North Grandview Avenue, Daytona Beach spoke in favor of the request. He stated this is the third specialty use discussed. He stated 15 years ago it was decided that restaurants on Main Street could not compete, so we had a special zone made. If you had \$10,000 worth of kitchen equipment, then you could serve liquor. He stated unfortunately, there's six of our restaurants that do not have kitchen equipment, but they do have liquor. He stated then we went to wine bars and with them came two hard liquor establishments and the biker bar that was established on Main Street.

He stated now we are going to a third one. He asked the Board to think twice about allowing liquor in these establishments. He stated it is absolutely correct that you want to pass this tonight because it is needed. The City wants to change the closing hours from 3:00 a.m. to 2:00 a.m. He stated for the last three months he has been going to Seabreeze at 2:30 in the morning every Friday and Saturday night to see what actually is going on and he feels the hookah bar is the problem. At 2:30 a.m. last call for alcohol at nightclubs and bars. By quarter to three almost 80 percent of the people are gone. He stated the hookah bar is the last thing standing except for Waffle House and the little pizza restaurant next door. Everything else is closed. Now the hookah bar stayed open til 5:15 a.m. this past weekend. He stated there were 500 people standing outside two weekends ago. They literally take up the three buildings in front of the establishment, the sidewalk in front of the buildings, the side street and the sidewalk on the far side of building. He stated it is extremely dangerous, but that is where all the kids go. Mr. Nicholson stated what they smoke is irrelevant, it is the hours and the problems that arise. He stated of the 12 to 15 officers he spoke with, every single one of them mentioned hookah bars. He stated the gentleman that was killed a couple of months ago on Williamson and Beville Road was at the hookah bar right before he was killed. There have been several incidents with stabbings and gunshots that come after the hookah bar which are not your run of the mill problems that come with nightclubs and bars. Mr. Nicholson stated the loophole is that hookah bars can stay open as long as they want. He stated the proposed ordinance changes the use from retail to something else which is why he was asking the Board to listen to Ann and pass the request tonight.

### **Board Comments**

Mr. Mclean stated I know you said you were putting these regulations together from ground zero in the midst of an environment where some of these types of establishments have already been operating under different circumstances. He stated Ms. Askew's presentation included a reference to Lilburn, Georgia and Hillsborough County as two government entities with regulations for hookah bars/lounges that staff reviewed and used to draft the City's proposed regulations. He stated he was hopeful that as part of the process staff will require the establishments to have the State of Florida's retail tobacco license, City business license, and consider the possibility of not allowing alcohol at the establishments.

Mr. Gross stated just to be clear, the uses would be regulated regardless of whether they served alcohol. He stated they would subject to the limitations on opening and closing, regardless of whether they serve alcohol.

Mr. McLean stated his point was that the examples of regulations staff used did not allow alcohol in these types of establishments and he feels that might that be something to consider as we move forward. He stated he understands this is a first draft and the regulations are still being worked on, but he feels those types of items should be strongly looked at moving forward.

Mr. Gross stated the City Attorney's office met with staff and there was an initial draft proposed that would prohibit the service of alcohol. He stated the problem is that these are legitimate businesses and so imposing restrictions such as hours of operation there must be some evidence that the hookah bars are a problem. He stated there is evidence that hookah bars are a problem, but we do not have evidence that the problems are only in hookah establishments that serve alcohol. He stated this first set gives us the opportunity to put some regulations in place. He stated if we then have to proceed

incrementally, we can do that with evidence that will provide more of a legally defensible position if the regulation is challenged.

Mr. Robinson stated to Ms. Askew, in the staff report the City of Lilburn was referenced. He stated the Hookah Vapor Bar was highlighted or circled. He stated he may be wrong but there was not an age limit proposed by the change. He asked if the age limitation was covered by State Statutes because it is a retail establishment, he does not think anyone under 18 should be allowed. He asked Ms. Askew to explain why the proposed regulations did not include an age limit.

Ms. Askew replied the City follows the State of Florida's regulations and they have a limitation on age. She stated in the State of Florida, currently you must be 21 years of age regardless to whether we put the regulation in our Code. She stated however, staff does plan on putting age restrictions on smoking establishments. She stated these are just some of the guidelines from other cities that had some of the same experiences we are having so we used them as a guide in preparing this draft amendment. She stated it does not mean the City's ordinance will be exactly the same as their regulations. Ms. Askew stated to answer your question the State has a requirement that patrons of these types of establishment have to be 21 years or older.

Mr. Robinson stated another issue he has that he did not see addressed the requirement for smoking establishments to have some kind of information such as posters that warns patrons on the dangers of smoking. He asked if that could also be included in the regulations.

Ms. Askew stated information on smoking is not something that is typically part of LDC regulations, but the Legal Department may be able to address that subject. She stated staff cannot require establishments to provide information regarding the dangers of smoking because it is not related to the day-to-day operation of the business.

Mr. Robinson state however, you are talking about how they should operate and they are doing this from the floor of the foundation and he sees a contradiction in terms of if you're telling them how to operate and then you say, oh, we can't tell them to do this. He stated he feels the City can require as part of the regulations in this new category.

He asked Mr. Gross if the City could require smoking establishments to put up posters on the dangers of smoking.

Mr. Gross replied that was not something that was presented to the Legal Department as part of the draft regulations. He stated it is something they could research if ask to do so. He stated he does not know whether the City can't do it because it would depend in part on whether based on the experience of the police, that kind of requirement would be helpful and there are some limited preemption provisions in the Florida statutes that limit what the City can do.

Mr. Robinson stated he feels that would be a good health issue to look into. He stated another issue he has distance separation from schools, residential areas, and churches.

Ms. Askew replied earlier in the presentation it was stated that the regulations in the Florida Statutes have distance separation requirements from schools K-12. The City would be required to follow this regulation.

Ms. Humphreys stated as to the age restriction she feels that never works because if a kid wants to smoke they get someone else to it for them. She stated to her this was a huge step backwards because

there were cigars and that kind of stuff sold near her business on Main Street and every time they came in her store they had to open the front and back door to air it out. She stated on International Speedway there was a business that had vaping and they stood outside and smoked. She stated when you come of a restaurant and there would be a group smoking you would have to walk into the street to get around them. She stated all she can see is trouble and she hopes the City does not go down this path.

Mr. Gross stated the thing to look at now is they are operating as other retail establishments and there are no restrictions on their ability to do that. He stated if the Board's direction to staff is to take additional steps, they should encourage that because the situation right now is no regulations are currently in place.

Ms. Humphreys stated she definitely would like stronger restrictions.

Mr. Servance encouraged staff to look at some of the ideas the Board has discussed as possible regulations because the City is trying to change its image and putting these regulations in place can help. He stated these particular types of businesses, especially on the beachside is one more element that causes problems. He asked staff to provide the Board with some background data such as police calls, activities on the property to assist with helping make a decision on their recommendation to the City Commission. Mr. Servance stated there are also some establishments on Main Street that serve alcohol that do not have microwaves in lieu of full kitchens. He stated whatever is put together make sure it is solid if the establishment sells alcohol and food is part of establishment's operations require them to have a full kitchen that meets all LDC regulations for compliance.

Ms. Askew stated anyone that serves food is required to meet the LDC's regulations. She stated however, the Florida Statutes has strict regulations regarding preparation of food in smoking establishments. She stated smoking establishments have strict requirements for ventilation and are typically not allowed to cook food.

Mr. Servance asked if these uses had to be opened throughout the entire City. He stated he cannot see a cigar lounge in the Midtown Redevelopment.

Mr. Mrozek stated earlier the table that reflects the zoning districts where these uses would be allowed was shown. He stated what we did not show are the zoning districts in the redevelopment areas where cigar lounges are already permitted. He stated that was going to be one of his question to the Board. He stated the discussion includes a lot of things that staff would like to work on and come back to the Board with some of these changes are. He stated one of these questions to the Board was going to would you like these types of uses to be allowed in zoning districts where cigar lounges are currently permitted. He stated what staff can do is provide the Board with a list of the current redevelopment zoning districts that allow cigar lounges so you will have some idea where they might be able to operate. Mr. Mrozek stated then the Board can say whether you want to include those districts with them.

Ms. Askew stated staff is working with the Police Department to get reports of police calls and the types of activities that have been occurring. She stated this information will used to clarify why putting these regulations in place is so important.

Mr. Servance asked staff to provide data on the number of hookah establishments are located in surrounding cities and how many are actually in Daytona Beach.

Ms. Washington stated she thought she heard Mr. Mrozek say in Midtown the uses had already been approved.

Mr. Mrozek replied cigar lounges are currently permitted in the RDM-3 zoning district.

Ms. Askew stated that is only for cigar lounges. It does not include hookah bars and lounges, but they are a retail use so when you look at uses that are considered retail uses, if one currently wanted to open in a redevelopment zoning district that could happen.

Mr. Mrozek stated just taking a look at the permitted use table the use is classified as “other retail sales establishment” and is currently permitted in the RDM-1, RDM-2, RDM-3, and RDM-5 zoning districts. The regulations would remove the use from being allowed in some of these zoning districts and only allow it in zoning districts that allow smoking establishments.

Ms. Washington asked if there was a way to prohibit these uses.

Mr. Gross replied no, we can restrict where they are allowed. He stated we don't have to allow them in residential districts just like we do not allow retail uses in residential zoning districts. He stated this is part of a larger effort. One of the reasons why staff is also proposing to adopt regulations into the Code of Ordinances will provide police power. He stated some of the more important regulations the Board has been concerned with, like restricting hours of operation, adding posters, age limits, etc. those regulations will all be located in the Code of Ordinances. The reason for locating them in the Code of Ordinances is because staff does not want those regulations to be looked at as nonconforming. Those regulations are police power regulations. He stated he understood the Boards comments to him, and those regulations were already going to be moving forward in the Code of Ordinances regardless of whether the Board recommends approval or the City Commission adopts it. He stated this text amendment is more of a mechanism to put regulations in place regardless of whether one business vacates, and another opens up. He stated it is a way to give staff a process to notify owners of these types of business the requirements to establish the use.

Ms. Washington asked if the police would step in when they disobey the regulations.

Mr. Gross stated the City has the ability to punish violations of the LDC as a misdemeanor through code enforcement and they are adding the same kind of capabilities under the Code of Ordinances.

Ms. Humphreys stated she was concerned with mixing alcohol and whatever is going to be smoked. She stated she read in the packet that Georgia had problems with stabbings and feels whatever can be done to put restrictions in place that will not impact other businesses should be done.

Mr. Robinson asked if hookah establishments that are already operating be grandfathered to continue operate.

Mr. Gross replied the age limit and ventilation regulations are a matter of state law and there is nothing the City can do to waive those regulations. He stated the only thing that may be a grandfathering may be hookah establishments that are operating in zoning districts that the use will not be allowed in after the ordinance is adopted. The hours or operation restrictions Ms. Askew mentioned will be in the Code of Ordinances. He stated the City is not preempted from repeating state regulations in our code. He stated the reason for that is because it is a public safety issue.

Mr. Mrozek stated the Board has provided a lot of great information and staff is going to look at it. He stated it will take a little bit of time to go through some of it so if the item is continued, he would like it to be continued to the December 16<sup>th</sup> meeting. That will give staff a little more time to put all the information together for the Board's packets.

Mr. Servance stated that sounded good to him.

Mr. Newman stated unlike a cigar bar, you cannot walk out of a hookah with a hookah. He stated he quit walking down Main Street because he could not stand the smoke, but those are cigars and stand out in the street and smoke them. He stated he was probably the only Board member that had been in a hookah bar. He stated it was an Egyptian restaurant up on International Speedway that was half hookah bar and half restaurant. He stated when you were in the restaurant you could not smell the smoke because they kept it ventilated so well. He stated it was his understanding that the Federal Government requires a warning on the back of all tobacco products which is probably a given that they would be required to have some type of warning. He stated he was not one 100 percent sure but may the Legal Department could clarify that. He stated he hated to be the only one supporting this, but those things came to mind during the discussion. He stated he feels the alcohol component should be heavily regulated.

**Board Action**

Mr. McLean stated in case it was interpreted that he made a motion earlier, he would like to rescind that motion and make a motion to approve the request per staff recommendations with the requested addition and changes proposed by the Board. Ms. Humphreys seconded the motion. The motion passed 7-to-0 with the breakdown as follows:

Tony Barhoo (Vice Chair)	Yea
Helen Humphreys	Yea
Michael McLean	Yea
James Newman	Yea
Tony Servance (Chair)	Yea
Milverton Robinson	Yea
Cathy Washington (Secretary)	Yea

Mr. Robinson asked if the motion should have included to add the Boards recommendations.

Mr. Gross stated it might be appropriate for you to recommend that in the companion to this ordinance, that is going to be going into the code that would also regulate hours and require permits for extended hours to also include restrictions on age of the people entering and posting of warnings. He asked if those were the two that he heard be opposed to the posting of health warnings.

Mr. McLean asked if he needed to revise his motion.

Mr. Gross replied no because the Legal Department's recommendation is that those kinds of restrictions go into the code regardless. He stated if you make this as a separate motion that will be part of the record for the code provision that goes forward.

Mr. McLean asked if a second motion was needed.

Mr. Gross replied they do not need another motion.

Mr. Gross replied no because the Legal Department's recommendation is that those kinds of restrictions go into the code regardless. He stated if you make this as a separate motion that will be part of the record for the code provision that goes forward.

Mr. McLean asked if a second motion was needed.

Mr. Gross replied they do not need another motion.

**10. Other Business**

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

No comments

**B. Midtown Redevelopment Area Board Report**

No comments

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

No comments

**D. Public Comments**

John Nicholson, 413 N Grandview Avenue, stated his concern regarding submerged land before projects start. He stated his concern regarding parking garages.

Tracey Remark, 815 N Oleander Avenue, asked that some that voted yes to the motion on smoking establishments reconsider their vote and send this request back to staff for additional work. She stated she lives in the Seabreeze area and Ms. Ruby does not. She stated she has lived with this before and after hookahs and she feels to allow something that is going to continue to open more places for alcohol use which is already a problem is not good. She stated there is a way that Hillsborough County, Tampa, and other communities in this state has done it without allowing any kind of alcohol. Mrs. Remark stated as a 35-year sober alcoholic beer and wine is just as much of a problem as a mixed drink. She stated do not think that just because only beer and wine are being proposed that that it is not a problem. She stated there is a way to do this and she gets the difference between Code of Ordinance and LDC, but this is like what happened with Internet Cafes, it happened before there was legislation in place. She stated to do legislation where staff, who deals with this daily is recommending a continuance to work on all the suggestions the Board has discussed, get additional information from the Police Department, and bring the request back with the additional information would be the best option. She stated she was just as upset as Ms. Ruby, but the last thing Daytona Beach needs, when the mayor and everyone else is trying to turn around the image the City is to do something to keep it from happening now rather than in February is negligible. She asked the Board to keep in mind that the only things coming up is the Turkey Rod Run and Christmas and by the time this would get to the Commission to get something done staff would have had time to look at 21 and underage restrictions on smoking. She stated she did not get a chance to hear the entire discussion because she was rushing to get to the meeting. She stated there is seven times more nicotine in a hookah than there is a cigarette, and she has dealt with health for 48 years and her father died from lung cancer, but this is not a healthful type of thing. She stated she is not saying if someone wants it they do not have the right to choose but the police do not need something in pieces. She stated the City needs some that is a whole. She repeated her request to have someone reconsider their vote and undo what was just done and sent it back to staff. She stated one of the places where BR-2 uses are

allowed opens the allowance for beer and wine to all of Nova Road, ISB and south all the way down A1A, and all of Midtown.

Mr. Gross stated there is nothing in the definition of hookah bar that would permit alcoholic beverages and under the LDC there are separate regulations for establishments that deal with alcoholic beverages. He stated any hookah bar that operates with alcoholic beverages would be required to meet the use provisions for that. So, if there is a hookah bar in a zoning district that does not allow alcoholic beverages they could not have that use. Nothing in the proposed ordinance changes that.

Mrs. Remark stated both Hillsborough County and Tampa figured out a way to make it work and she knows the Board can figure out a way to make it work, even if it means coming up with a way to redefine it. She stated she would much rather give staff a chance to do that.

Ben Gross, Deputy City Attorney, stated Hillsborough's ordinance that restricted the use of alcohol was not in its LDC, it was a police power regulation just like the regulations we talked about that we're doing to track separately already.

Ms. Remark stated but from what she read in the staff report it also allows them to add a beer and wine license.

Mr. Gross replied it is not.

Mrs. Remark stated it is under Section 5.2.B.

Mr. Mrozek stated yes, that is correct.

Mr. Gross stated there is currently a provision that allows cigar lounges to serve alcohol until 1:00 a.m. and that provision is not being changed. Since that provision is not being changed, we are not changing that prohibition to apply to smoking lounges. He stated that's still a provision on cigar lounges that there was nothing in the staff report to suggest changing that.

There was additional discussion between Mrs. Remark and Mr. Gross regarding her interpretation of the proposed amendment request.

Mr. Mrozek stated what staff was planning to do was include cigar lounges under smoking lounges which included the use specific standards to say that a smoking lounge may sell, serve, and dispense beer and wine to its guests with approval of a 2COP alcohol license through the State of Florida.

Mrs. Remark stated that is why she feels this needs to go back to allow staff to do additional work on it.

Ann Ruby, 137 Park Avenue asked if under the current regulations hookah bars could serve wine and beer.

Mr. Mrozek replied they can apply for an alcohol license.

Ms. Ruby stated then we are in the exact same situation and the same places that can serve wine and beer.

Mr. Mrozek stated yes, there is nothing that would restrict them from applying for a beer and wine license. He stated according to the way the regulations are written they would be able to keep the beer and wine license.

Ms. Ruby stated she see why Mrs. Remark was upset but what is being proposed relating to alcohol is not different from what is already allowed. She stated she feels the beer and wine issue is a separate issue because changing the use from retail use to a smoking establishment use will greatly restrict their hours of operation which will clear people out sooner and there will be less reason to hang around on Seabreeze. She stated if this gets rescinded it would not change anything.

Mr. Servance stated the Board has voted on the request and now there are two surface issues that have some of the same elements, but the designs are different. He asked how that could be fixed.

Mr. Gross stated if a member wants to move that the prior recommendation be amended to state that the authorization to serve alcohol beverages til 1:00 a.m. would not be extended to all smoking lounges but would stay with cigar lounges and if that motion was seconded and then if you ask for public comment, that motion if adopted would be wrapped up in the recommendation.

Mr. Robinson asked what would prevent a hookah lounge from becoming a cigar store and having the hookah equipment in there.

Ms. Askew stated there are some very specific regulations in place for cigar lounges. They are required to have a minimum of 5,000 cigars on display at all times, specific criteria for setup and hours of operation, and how the establishment can operate. If a hookah bar decides to change their use to a cigar bar, they would be required to meet the regulations in the LDC before they could begin to operate. Cigar bars cannot have food and have very limited hours. She stated if a hookah bar decided to change their use to a cigar bar it reduces the hours of operation.

Mr. Mrozek stated he thinks there is also a regulation on cigar bars that do not allow them to stay open til 1:00 a.m. but they cannot sell alcohol past a certain time.

Mr. Servance asked Mr. Gross how the Board could fix the motion if there were members that had some unreadiness about what was recommended.

Mr. Gross replied he suggested an alternative that would be more straightforward, however if the Board want to just resent the motion someone on the winning side of the motion would have to request to move for reconsideration. It would then have to be seconded and a majority vote of members present would have to vote in favor of the new motion.

Mr. McLean stated he believes what the Board did tonight and what they approved was a framework for the Board to begin down this journey. He stated there is a lot of opinions, a lot of discussion, a lot of history but he thinks the Board made it very clear the areas that there are holes that need to be plugged. He stated if staff does not understand that he would be very surprised given the quality of our staff. He stated he thinks the Board made it very clear what the finish line is and this recommendation for approval is the beginning of the process. He stated he does not feel revisiting, and reworking does not make a lot of sense because they have already sent a message of the ideas they want to see.

Mr. Newman stated the recommendation to staff was to look into health recommendation and age limits. He asked if they should add banning alcohol to the list.

Board members stated they thought they already had.

Mr. Servance stated it included age limits, health concerns, closing times and banning alcohol.

Mr. Robinson stated another concern that was brought up was locations.

Mr. Servance added locations to the list.

**E. Staff Comments**

Mr. Mrozek stated staff will include a key in the future per Mr. Newman's request. He stated regarding the communication towers, they are more cognoscenti of the need for the towers especially west of I95. He stated they will make sure to include telecommunication use as a permitted use for some of the PD-Rezoning within those zoning districts.

**F. Board Member Comments**

Mr. McLean stated this isn't going away and he appreciates the support for this.

Mr. Newman thanked staff for their presentations and being thorough.

Mr. Robinson asked for the meeting dates in November and December.

Mr. Mrozek stated normally they are on the fourth Thursday but those months it will be the third Thursday, which is November 18 and December 16.

**10. Adjournment**

There being no further discussion or comments the meeting was adjourned at <Time.>



\_\_\_\_\_  
Tony Servance  
Chair

ATTEST:



\_\_\_\_\_  
Cathy Washington  
Secretary