

MINUTES
REGULAR MEETING – PLANNING BOARD

July 23, 2009

Minutes for the Regular Planning Board for The City of Daytona Beach, Florida, held on Thursday, July 23, 2009 at 6:00 p.m., in the Commission Chambers, City Hall, 301 South Ridgewood Avenue, Daytona Beach, Florida.

Board members Present were as follows:

John McGhee, II
Jeff Hurt
Tracey Remark
Edith Shelley
Bob Hoitsma
John McGuinness
Larry Moore
James Neal
Cathy Washington

Absent Members:

Janet LeSage

Staff members present:

Mr. Richard Walton, Planning Director
Mr. Thad Crowe, Planning Manager
Ms. Carrie Lathan, Assistant City Attorney
Ms. Rose Askew, Planning Technician

1. **Call to Order**

Robert Hoitsma, Chair called the meeting to order at 6:08 pm.

2. **Roll Call**

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

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3. **Approval of the Minutes:** June 4, 2009 Special Planning Board Meeting & June 25, 2009 Regular Planning Board Meeting

Mrs. Shelley stated she called in a correction on the June 4th minutes, page 14, 10th line down under Board Comments. She stated it should read “Mrs. Shelley stated she did agree with the judge’s findings that the request was consistent with the character of the neighborhood” because her point was the character was blighted.

Board Motion

It was moved by Mrs. Remark to approve the June 4, 2009 Special Planning Board Meeting Minutes with corrections as noted. Seconded by Mr. McGhee.

Board Action

The motion was approved 9-to-0.

Mr. Neal stated he had one correction to the June 25th meeting minutes. He stated he was not present at the meeting.

Board Motion

It was moved by Mrs. Shelley to approve the June 25, 2009 Planning Board Meeting Minutes with corrections as noted. Seconded by Mr. Moore.

Board Action

The motion was approved 9-to-0.

4. **Right-of-Way Street Vacation, DEV 2007-151, Carol Street**

A request by Joseph H. Hopkins, P.E., The Performance Group, on behalf of George Nour, to approve an 880± foot right-of-way street vacation located on a portion of Carol Street between Bellevue Avenue and Shady Place.

Staff Presentation

Thad Crowe, Planning Manager gave a brief PowerPoint presentation. He stated this was a request for a right-of-way street vacation for a piece of property located off Bellevue Avenue just west of Nova Road. He stated the applicant was requesting to vacate only the eastern 15 feet and northern 880± feet and that all properties fronting on Carol Street had access to either Bellevue Avenue or Nova Road. He stated the 30-foot width was substandard and would require the City to acquire additional property to improve it and utility providers had provided letters of no objection (currently sewer line and cable line in easement). Mr. Crowe stated the City’s Utility Department was requesting that the entire 30-feet remain a utility easement for existing sewer lines and other potential utilities. He stated the LDC criteria for a right-of-way vacation was as

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follows: “no street or easement dedicated to the public shall be vacated unless the City Commission determines that the property is not required for public use.” He stated it was staff’s opinion that the property was not required for public use, since properties are accessed by other roads and the width was substandard. Mr. Crowe stated staff was recommending approval, with the conditions that a 15-foot wide easement be provided to the City for existing sewer lines, a 5-foot wide easement be provided to Bright House for the existing cable line, and that the entirety of the 30-foot easement remain a utility easement.

Mr. Moore stated he was curious with housing and or apartments being built if City staff had any concerns that by closing off the access there would be problems regarding fire or police.

Mr. Crowe replied the request had been reviewed and approved by the fire department and the development review engineer; most of the apartments and development fronted on Nova Road and had no rear access. He stated typically the fire department had a threshold where they required a second means of access that he believed was 150 units and he also believed if there was a second access point it would constitute what was called a loop drive on Nova Road. He stated at the time of site plan review the fire and engineering departments reviewed the plan and determined that there was adequate life and safety protection for ingress and egress.

Mrs. Shelley asked who was responsible for maintaining Carol Street at the present time.

Mr. Crowe replied it was a City easement so it did fall under the City’s responsibilities.

Mrs. Shelley stated that was what she thought and the photo shown was old because that was not what the property presently looked like.

Mr. Crowe stated that was correct, he used a photo from last fall.

Mrs. Shelley stated she visited the property today and it was obvious the property was not being properly maintained.

Mr. Crowe stated typically if there was just a sewer and cable line running through the property, there was not a need to maintain the street for public access.

Mrs. Remark stated previously it was said that the applicant needed the 30-foot right-of-way vacation in order to provide what was needed for landscape buffer and parking lot and that they could not build without it. She asked if what was being presented now stated they could build it with 15-feet less.

Mr. Crowe replied the applicant should respond to that question but staff certainly did not mean to imply that the property was not developable without the full 30-feet.

Mrs. Remark stated so they could develop the property with only the 15-feet and also meet the requirements of the City.

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Mr. Crowe replied yes he believed they could and they would have to design it to meet code.

Mr. Hurt stated for it to be an actual public access someone would have to give the City 20-feet and in its current state of 30-feet, it could not ever be developed into an access road.

Mr. Crowe replied that was correct.

Mr. Hoitsma asked if they were able to use the same 30-feet for the 5-foot easement also.

Mr. Crowe apologized for the confusion. He stated technically they could work with a 15-foot easement but the utilities department had requested to keep the entire Carol Street as a utility easement and not an access easement and that would include the cable easement also. He stated with a utility easement, the developer could plan around it by putting landscape buffers and certain types of plants but they could not build structures.

Mrs. Remark stated in keeping the entire 30-feet as a utility easement would that mean within the 15-feet they could not build on it. She asked if it could be made into an impervious surface or a parking lot.

Mr. Crowe replied that would be a judgment call from the Utilities Department. He stated he knew sometimes they allowed people to pave certain areas with the understanding that it might have to be torn up at their own expense if access was required.

Applicant Presentation

Joseph Hopkins, The Performance Group, 100 Marina Point Drive, Daytona Beach stated he felt Mr. Crowe had covered all of the staff related issues and they had gone through and reviewed the request in detail and they had staff's support. He stated he felt from a planning standpoint, they had done their homework. He stated he was representing George Nour, who was the owner of parcel "E and D". He stated the development of the dilapidated home on the property was contingent upon the right-of-way vacation and Mr. Nour owned the very successful industrial park that was on parcel "D" and what they were trying to do was incorporate parcel "E" into the industrial park but being bisected by the right-of-way was prohibiting them from carrying the industrial zoning on the other side. Mr. Hopkins stated this was discussed with staff prior to Mr. Walton or Mr. Crowe's employment with the City and their objective was to vacate the section so they would have contiguous property to continue the expansion of the industrial park. He stated parcel "C" was owned by Mr. Saboungi and they had developed a residential complex that incorporated the 15-feet that he would obtain through the vacation; it had been incorporated into the site plan. He stated what that did was allow them to use his half of the right-of-way for setbacks, buffers etc. Mr. Hopkins stated keeping in mind that it was substandard, they had already developed parcel "D", and so they could not dedicate land to make it a conforming right-of-way. He stated parcel "B" was the only parcel that was undeveloped that had some impact as a result of the vacation and parcel "B" had access off of Bellevue Avenue and Shady Place, which was a 55-foot right-of-way, well within the standards of City code. He stated if they were to improve Carol Street they would essentially be creating a dead end situation, which would require a cul-de-sac, which would require additional right-of-way dedication or make a

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connection to Shady Place. He stated there was no benefit to the segment of right-of-way they were requesting to vacate and City staff was in agreement. Mr. Hopkins stated the vacation was important for the development of the project and also to the owners that were contiguous to the property and parcel "A" was already developed and the owner had no interest in the request.

Mrs. Remark stated the motion that was approved back in November 2008 was that the applicant would meet with the property owners to resolve the issues and if they could not be resolved the request would be withdrawn. She asked if he had met with the property owners and all issues had been resolved.

Mr. Hopkins replied yes he had met with the property owners and there were still some issues with the owner of parcel "B". He stated the previous request was for the full 30-feet and historically the City preferred not to create these type segments of right-of-ways so what they did was sponsored a request to vacate the entire segment of Carol Street and in doing that they had to preserve utility easements. They went to the owner of parcel "A" and parcel "B" and asked if they would sign the easement so they could vacate the right-of-way; they did not get their support. He stated now they were back with the proposal before the Board as a result of their non support.

Rita Cameron, 335 Bucknell Drive, Daytona Beach stated she was one of the owners of "parcel B". She stated the other two owners were present but she would be the spokesperson. She asked Mr. Hopkins if he stated to Mrs. Remark that he met with the property owners because he had not met with the parcel "B" property owners and her understanding from the November 2008 meeting was that they would meet.

Mr. Hopkins replied it was a play on semantics because he had a conversation with Mrs. Cameron because the tax record only reflected her as the property owner. He stated she had two other partial owners, of which one was her son. He stated he did not meet with the collective group of owners but he had spoken with Mrs. Cameron and explained their objectives and could not come to an agreement to solidify an easement.

Mrs. Cameron spoke in opposition of the request. She stated the applicant had not met with her or the other owners of parcel "B" since the November meeting but she had received a phone call to try to set up a meeting to come up with a compromise. She stated she asked what they were willing to give and the applicant's reply was nothing; they wanted to show her what they were proposing in an effort to try to get her to understand better. She stated a compromise was supposed to be give and take on both sides, so in that event there was nothing further to discuss. Both parties said ok and hung up. She stated you could call that a meeting but nothing was accomplished or resolved. Mrs. Cameron stated her concern was the applicant was back before the Board recommending the full vacation of Carol Street which was what she felt would be a land-grab, so parcel "E" and parcel "D" could become a contiguous parcel. She stated if parcel "C" were their true objective, why they weren't asking to solely vacate the section of parcel "C" and parcel "A" and leave the rest of the road open, which would allow access to her property from the rear. She stated Mr. Hopkins misspoke when he stated she had rear access to her property off of Shady Place because it was a nonexistent street and therefore no rear access was available. Mrs. Cameron stated her parcel was currently listed with a realtor but presently she had no plans to sale or develop it but in order to sell it, they would need rear access. She asked the Board not to grant the request.

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Mr. Hoitsma asked if she currently had access to the rear of her property from Carol Street.

Mrs. Cameron replied yes but the grass was very high and there was a lot of debris, which made it difficult.

Mr. Hoitsma asked who was responsible for the upkeep.

Mrs. Shelley replied the City.

Mr. Hoitsma asked why the City should pay for maintenance on a street that could not be used.

Mr. Hurt stated it cannot be used as a street because it is not 50-feet.

Mrs. Remark stated it was a platted right-of-way so it fell under the City's responsibility whether it wants it or not.

Mr. Hoitsma asked if it were changed to an easement would the City be responsible for maintenance.

Mr. Crowe stated the City had a lot of paper streets and unless they needed to be utilized on a regular basis there was not a reason to maintain them because that was an expensive proposition.

Mr. Moore stated he visited the property earlier today and he did see what he thought was a little lane that might have been Carol Street and it was overgrown but he could not find Shady Place.

Mrs. Shelley stated she also visited the property earlier today and she could not find rear access to the property. She stated it was a very large parcel and when you look at the frontage on Bellevue Avenue, it is not very large in comparison to the total size of the property. She stated the ditch in front of the property was pretty well defined, which would make it extremely difficult to access the property. Mrs. Shelley stated she understood the property owners point because you would have to go a long distance on a four wheeler to access the property from the rear.

Mr. Moore stated parcel "D" was already developed so he wanted to know what was going to be put on parcel "E" and what was the size of the parcel.

Mr. Hopkins replied it was approximately 150' x 300' and it would be an expansion of the industrial park similar to the development on parcel "D". He stated to Mrs. Shelley that Shady Place was open and there was a ditch that ran right next to it.

Mrs. Shelley stated when she drove down Shady Place; she dead ended at a parking lot.

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Mr. Hopkins stated there was a ditch that ran parallel to the south side of Shady Place that was open but he was not sure if it was maintained by the County or the City. He stated on the south side of the apartment complex on parcel "A" there was a green track of land which was Shady Place, it was passable, it could be improved and it met City code. He stated Carol Street did not meet code and he did not understand how the City would justify a variance for Carol Street for anyone that submits a request. He stated Shady Place could be improved in accordance with City standards, which would give rear access to the property.

Mrs. Shelley stated what she thought Mrs. Cameron was saying was once parcel "B" was developed Carol Street might become moot and she wanted to know how she would be able to get to the rear of her property for development.

Mr. Moore stated he thought they could access the rear of their property because Shady Place was already 50-feet, which met City standards. He stated he also wanted to point out that parcel "B" and "E" had access off of Bellevue Avenue so it was not like "E" was being cut off.

Mr. Hopkins stated the objective of the vacation was to have "D" and "E" contiguous.

Mr. Moore asked why he would not end at "E".

Mr. Hopkins replied because they were also looking out for the interest of parcel "C" as well.

Mr. Moore asked if the same person owned parcel "C".

Mr. Hopkins replied different property owner with a different interest but he was representing the owners of parcels "C", "D" and "E".

Mrs. Cameron stated she had driven down Carol Street and it stopped at the beginning of parcel "A" because it is blocked off. She stated there were approximately five or six large posts that had been put in the ground to prevent through access. She stated the other concern was the drainage ditch and there was no way to get over it. She stated she would not have any objections to a vacation of Carol Street from the beginning of parcel "C" down to the end of parcel "A". She stated her objection was from parcel "D" to Bellevue Avenue.

Board Comments

Mrs. Remark asked staff if there were anything without the vacation that would prohibit the owner of parcel "D" from seeking a zoning change on parcel "E".

Mr. Walton stated what would prevent it would be that the Comprehensive Plan would not allow it to have the same use as parcel "D". He stated the Comprehensive Plan could be changed to a land use consistent with the land use on "D".

Mrs. Remark stated the staff report read "without the improvement of Shady Place" and asked if the word "improvement" meant the City would actually make it a real road, paying for utilities, sewer and water lines.

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Mr. Walton replied the road would be required to be built up to code.

Mrs. Remark asked if the City did that would there be impact fees.

Mr. Walton stated the logical scenario would be if a development came in on parcel "B" that was of the size that required two ways in and two ways out staff would typically require the developer to improve Shady Place from Nova Road to their property and put in another entrance off of Bellevue Avenue.

Mrs. Remark stated so if the request was approved tonight and the owner of parcel "B" wanted to develop at some point in the future and they needed access they would be responsible for the improvements.

Mr. Walton replied yes.

Mr. Crowe stated and staff would not allow utilization of Carol Street because it does not meet City code.

Mr. Hoitsma asked what the statement meant, when staff said the applicant would not be allowed to utilize Shady Place until they had had improved it.

Mr. Crowe stated the street would have to be improved to meet City code.

Mr. Hoitsma stated but they could not do that for Carol Street, due to the right-of-way width.

Mr. Crowe stated that was correct because Carol Street did not meet City code. He stated it could only be used for utilities but not for public access.

Mrs. Cameron asked if there was access from Shady Place to Nova Road or to the street to the west.

Mr. Walton replied there was a platted right-of-way but a road did not exist.

Ms. Washington stated she passed that entrance and there was not an entrance from Nova Road to Shady Place.

Mr. Walton stated there was legal platting.

Ms. Washington stated but you cannot turn there right now.

Mr. Walton stated that was correct it would have to be improved and it would be part of the design required by the developer.

Mrs. Cameron asked who was currently utilizing the property and where was there access from Shady Place to the west.

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Mr. Walton replied the lines were platted but the road did not exist. He stated the legal right was there for someone to build it.

Mrs. Cameron stated when she drove down Terrace Road everything she saw was residential and there was not a road that ran through there.

Mr. Walton stated he did not believe Shady Place had any bearing on the request before the Board tonight.

Mrs. Cameron stated she did.

Mr. Walton stated if someone came in and wanted to build Shady Place there was a legal right to build and clear on it. He stated it was not uncommon to have platted nonexistent roads and people put their fences, playgrounds, etc there. He stated it does not make it legal but it does happen.

Mrs. Cameron asked if she wanted to drive her vehicle to the back of her property today, how she would do that. She stated if she wanted to sell and/or develop the property, she would need access to the rear without having to build bridges or go over drainage ditches. She asked to be allowed the same privilege the other property owners had been granted. She asked the Board not to grant the vacation.

There was additional discussion among the Board members and Mrs. Cameron about rear access to her property.

Citizen Comments

John Nicholson, 413 North Grandview Avenue, Daytona Beach spoke in opposition of the request. He stated he felt the applicant did not need the vacation to develop on his property. He felt the property owner could build on it the way it was; it would cost a little bit more and take longer but it could be done. He stated the owner of parcel "B" on the other hand would not be able to develop on her property and would have difficulty selling it if the request was approved. He asked the Board to consider both property owners benefits when they voted.

Mr. Hopkins stated the property would be zoned to a Planned Industrial District (PID) and one of the conditions the planning staff imposed on his client was that the property could not stand alone and be a PID because it did not meet the minimum acreage. The property would also require a comprehensive plan amendment from residential to industrial.

Mrs. Remark asked Mr. Hopkins for further clarification on parcel "E". She asked if Carol Street were not involved and they were only working with parcel "E", was he saying City staff said he could not seek a comprehensive plan amendment and rezoning.

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Mr. Hopkins replied not for the industrial development. He stated this request went back prior to current planning staff. He stated there were comprehensive plan policies that read residential development was not encouraged because it was in part of the flight way, so they successfully rezoned parcel "D" to a PID, which was consistent with the Comprehensive Plan. They then acquired parcel "E" and staff's position was they would support bringing the parcel into the development but it would have to be contiguous with parcel "D", which was what prompted the need for the vacation of Carol Street; otherwise it would not meet the minimum acreage requirement for a PD.

Mrs. Remark stated so you were just following through on what you had been directed to do from City staff.

Mr. Hopkins replied that was correct.

Mr. Walton asked Mr. Hopkins which was correct, his drawing by Zahn Engineering showing Shady Place as 50-feet wide or the survey by Horizon showing it as 55-feet wide.

Mr. Hopkins replied 55-feet.

Board Comments

Mr. Hurt stated he knew Shady Place was a platted right-of-way that had access to the south side of the property plus the 30-foot easement was not being vacated up to the south corner of "C" and the north corner of "A", which gave additional access. He stated Carol Street could not ever be a platted road because of the constraints and he knew no one would give them 20-feet. He stated if they vacate it between "E" and "D", it would take the easement off of the City's property line and put it on the property owner's cost and they would have to pay taxes on the piece of easement that was City property.

Mr. Moore stated if you do that you would then close access for part of "B". He suggested the owners of "B" and "D" get together and share the cost to build Shady Place so they would have access.

There was additional discussion on ways to resolve the issues between property owners.

Mr. Hoitsma asked the property owners if they thought there was any way they could resolve their issues.

Mr. Hopkins stated he felt they had made an attempt and as Mrs. Cameron indicated she had her hand out. He stated the vacation request was a public use test and should be evaluated based on the public interest. He stated he knew the environmental condition of parcel "B" was poor at best; it had considerable wetland impacts as well as environmental constraints. He stated if the Board wanted to take all of these factors into account he was willing to continue the request for 30 days, get photos of Shady Place and also get an environmental report on the development potential of parcel "B". Mr. Hopkins stated staff has said there is no public interest and they support the request yet the issue about access to parcel "B" seems to be the focus. He stated there were multiple access points to parcel "B". He stated for every development he had done it was his responsibility if access was needed to improve the access and he felt what was happening tonight was a double standard.

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Mr. Neal stated with all of that being said, the owner of parcel "B" made a statement saying they would gladly sit down for discussion. He stated they were obviously not satisfied with the previous efforts made to resolve their issues and he felt the way to get things worked would be to sit down and discuss the issues, no matter how much you may not want to. He stated he felt it would help to create a friendly working atmosphere and if things could not be worked out after the meeting, then go out, do the test and come back before the board.

Mr. Hopkins stated he appreciated Mr. Neal's comments and he agreed with him but he felt they had made an effort to resolve the issues but their hand was out and they were not able to put anything in it. He stated his clients had paid twice for the entire section of Carol Street to be vacated and he felt by tabling the discussion tonight to allow him the opportunity to clean up a couple of issues about access he felt he could zero in on some of those issues for the Board.

Board Motion

It was moved by Mrs. Shelley to continue Right-of-Way Street Vacation, DEV 2007-151, Carol Street to the August 27, 2009 Planning Board Meeting. Seconded by Mr. Moore.

Board Action

The motion was approved 9-to-0.

Mr. Hoitsma asked staff to look into the possibility of legal action that could be taken against the City for promises made by previous City staff that was not being fulfilled.

Mr. Hopkins replied no, not from their perspective. He stated this was done during discussions and not a firm commitment.

Mrs. Shelley stated in the past the Board had rejected staff recommendations.

Mr. Hoitsma asked if the City would allow construction equipment to go down Carol Street.

Mr. Walton replied he would check.

5. **LDC Amendments, DEV 2008-152, Department of Management Services/Division of Blind Services - Site Plan Substantial Modification**

A request by Jeffrey S. Jackson, P.E., Zev Cohen & Associates on behalf of the Department of Management Services (DMS), to approve substantial modifications to the existing site plan for the Division of Blind Services, 25± acres of land, located south of Dunn Avenue, north of Willis Avenue, between Stadium Road and White Street, to allow for the addition of a dining hall, dormitory, upgraded storm water management system, and modifications/improvements to vehicular and pedestrian connections.

Staff Presentation

Thad Crowe, Planning Manager gave a brief PowerPoint presentation. He stated the request was from the Division of Blind Services, which functioned under the State of Florida and they were requesting substantial modifications to the approved site plan. He stated because the site plan was over 20,000 square feet, the request had to come before this Planning Board for final approval. He stated the property was located at the southwest quadrant of Dunn Avenue and White Street. Mr. Crowe stated the 25-acre campus was home of the Center for the visually impaired and it provided education, training, and support services for the visually impaired. He stated the campus expansion included a 22-unit dormitory, dining hall, improvement of parking areas, replacement of sidewalks that were in disrepair, and stormwater and landscape upgrades to meet LDC. Mr. Crowe stated the request met LDC requirements, was in keeping with the area, no adverse impacts were expected and had proper ingress and egress to the site. He stated the site layout planed for vehicular and pedestrian movement, upgraded the landscape and was not in conflict with the Comprehensive Plan. Mr. Crowe stated staff was recommending approval of the site plan as submitted, with the condition that a copy of all applicable permits be provided and certified by the engineer of record.

Applicant Presentation

Bobby Ball, Zev Cohen and Associates, 300 International Speedway Boulevard, Ormond Beach, thanked City staff for their assistance with such a unique project. He stated he was available to answer any questions the Board might have.

Board Comments

Mr. Hoitsma complemented the applicant on the landscaping.

Mr. Hurt stated he had a cousin that attended the school and was living on her own because of the instruction and guidance she received there.

Board Motion

It was moved by Mrs. Remark to approve LDC Amendments, DEV 2008-152, Department of Management Services/Division of Blind Services - Site Plan Substantial Modification subject to City staff condition. Seconded by Mr. Neal.

Board Action

The motion was approved 9-to-0.

6. Discussion on Senate Bill 360

Staff Presentation

Richard Walton, Planning Director gave a summary on Senate Bill 360. He stated the bill was passed at the very end of the latest session in Tallahassee and it generated in his opinion a considerable amount of discussion. He stated the bill was approximately 45 pages long but his summary only hit the highlights. He stated the purpose for the bill was the State Legislature found that in urban centers transportation could not be effectively managed and mobility could not be improved strictly by expanding roadway capacity and that a range of transportation alternatives were needed. Mr. Walton stated because of this they created Transportation Concurrency Exception Areas (TCEA), which is designated to be exempt from the state's minimal transportation concurrency requirements. He stated they would occur in communities that were designated as dense urban land areas (DULA) and the State of Florida was not reviewing Comprehensive Plans in TCEAs. He stated the definition of a DULA that directly related to Daytona Beach was "a municipality with an average of at least 1,000 people per square mile of land area and a minimum total population of at least 5,000." Mr. Walton stated staff believes because the population comes off of an estimate and the acreage started with the data from the 2000 Census plus land that had been annexed into the City minus water which came out to approximately 1,002 people per square mile, which is barely over the line. He stated the Office of Economic and Demographic Research will perform an evaluation annually to determine continued eligibility and if Daytona falls off the list, there were other ways to designate TCEAs. He stated this bill only exempts statute's pertaining to transportation concurrency requirements and the City's transportation concurrency requirements still remain; City's home rule power is not limited and we can adopt ordinances or impose fees; any contracts, agreements, or development orders entered into prior to creation of TCEAs are not affected and because the City qualified as a DULA, within two years, we must adopt land use and transportation strategies to support and fund mobility within the TCEA, including alternative modes of transportation and the strategies needed to reflect the regions shared vision. Mr. Walton stated in reference to mobility fees, the state shall evaluate and consider the implementation of a mobility fee to replace the existing transportation concurrency system and the fee should provide for mobility needs, ensure development provides mitigation for its impacts on the transportation system in proportion to those impacts, fairly distribute the fee among the governmental entities responsible for maintaining the impacted roadways and promote compact, mixed-use, energy-efficient development. He stated DCA and DOT were continuing the mobility fee studies and must submit a joint report to the Legislature by December 1, 2009. He stated Senate Bill 360 appears that it is here to stay, however OPPAGA must submit a report on TCEAs and address methods used to implement and fund transportation strategies, and the effects of those strategies to the legislature by February 1, 2015. Mr. Walton stated the DRI review process has been eliminated in TCEAs; if development is located partially outside TCEAs, it is still subject to DRI review; previously approved DRI development orders may continue to be effective, but the developer may opt out of the process but if someone is in the process they have the option to proceed or not proceed. Mr. Walton stated any DEP permit or water management district permit with an expiration date from September 1, 2008 through December 1, 2012 is extended for two years from the date of expiration; extensions include any

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local government-issued development order or building permit related to a DRI; written notice must be given to the authorizing agency by December 31, 2009. He stated extensions include any local government issue development order or building permit related to a DRI only. He stated the Secretary of DCA quickly came out with a press release after the bill was passed indicating that it had no affect on local governments development orders and permits, however it would be up to the local government to determine how they would want to handle them. He stated in addition there quite a few exceptions. He stated the bill did provide the City some opportunities and staff was looking forward to exploring those options.

Board Comments

Mrs. Shelley stated she attended a meeting a few days ago and there seemed to be some confusion on permit extensions. She stated Representative Dorothy Hukill was speaking and her interpretation was that permit extensions were automatic if they were without changes.

Mr. Walton replied he thought many individuals believed that was the intent of the bill but the Secretary of Community of Affairs was the person charged with interpreting the legislation and if someone wanted to challenge that interpretation the only way they would win the challenge would be if the agency in charge of enforcing the bill did not have a reasonable interpretation and their interpretation is that it does not affect anything other than stated issued permits. He stated they do not have the authority to tell local governments how to handle local permits.

Mrs. Shelley stated that Representative Hukill stated Secretary Pelham sent out a memo immediately after that to correct what he previously said and perhaps people were not reading through his updated memo.

Mr. Walton replied he had a copy of the memo if she wanted to read it.

Mrs. Shelley stated she was just stating what was said at the meeting because there were some questions and apparently Ormond Beach was treating it a certain way and we were treating it different from them.

Mr. Walton stated clearly there were people that believed that the purpose and intent was for all permits but the state does not have the authority to tell local governments that. He stated staff would address that issue and recommend some guidelines to handle the issue.

Mrs. Shelley asked if TCEA was automatic.

Mr. Walton replied he believed it was automatic. He stated the City was designated one but we would have to do a comprehensive plan amendment and modify everything to take out the part pertaining to transportation concurrency exception area. He stated last night at the Volusia Growth Management Commission meeting (VGMC) their planner indicated that any city that preceded that way would likely find the amendment not in compliance due to the negative effect on surrounding jurisdictions. He recommended sitting down jointly with other cities through the Metropolitan Planning Organization (MPO) to come up with a solution that would work for everyone. He stated he believed our chances would be much better if a group amendment was submitted that the County and MPO and surrounding neighbors were all in agreement with.

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Mrs. Remark asked if for lack of growth, the City was no longer eligible to be in a DULA, what would happen with the lack of transportation concurrency.

Mr. Walton stated he believed that was one of the things the Legislature would handle in the next two years because it really was not addressed in the bill and there certainly was a possibility it could happen. He stated if it does happen we would be responsible for putting transportation concurrency back into our Comprehensive Plan.

7. **Other Business**

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

Mrs. Shelley stated the Board met on Tuesday, July 7th at noon. She stated the Board had two action items. The first was a site plan for Restaurant Chavala, located at 500 South Ridgewood Avenue that was approved unanimously and the second was the Riverfront Master Plan, which the Board decided to go with concept number one, which had more flexible green space, smaller buildings with reduced view blockage of the river, more potential access to the river and more shade via trees. She stated the Downtown Beach Partnership made some additional recommendations that were approved unanimously. She stated the concept was on the City's website. She stated the Board also discussed a feasibility study and their fall meeting dates.

B. **Midtown Redevelopment Area Board Report**

No report.

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

No report.

D. **Public Comments**

John Nicholson, 413 North Grandview Avenue, Daytona Beach stated with regard to the right-of-vacation issue, six months ago the City paved when they had the opportunity to have a 50-foot wide two way street on Hollywood on the beachside. He stated the City chose not to have a 30-foot wide right-of-way and instead it is a 23-foot wide right-of-way including sidewalk. He stated again it had been three months since the last discussion on submerged land, Floor Area Ratio (FAR) and time limits on permits issued.

E. **Staff Comments**

Mr. Walton stated the email received from Kevin Fishback with comments on the discussion surrounding LDC changes to advisory board appointments. He stated staff was asked and provided the language that was packaged and sent to the City Commission for the first meeting in August. He stated staff was recommending approval of the Commission's changes plus the two additional recommendations from this Board.

F. Board Member Comments

Mrs. Shelley stated she had two things she wanted to address; the first one was regarding board appointments. She stated she felt Mr. Fishback had some excellent points on defining the criteria used to define a business owner. She stated she had gone back and re-read the minutes and she was not happy with her recommendation to change the language to “qualified individuals”. She stated the reason she chose the language “qualified individuals” was because it was listed somewhere else in the code but when she went back and looked at it again, she felt the Board should leave the language as “qualified electors” because residents were talking about wanting registered voters and she was not sure if by changing the language to qualified individuals perhaps it changed the intent. She asked the Board if they would like to take a vote to leave the language as qualified electors.

The consensus of the board was not to vote on the change.

Mrs. Shelley stated the second thing she wanted to discuss was on LED signs. She stated she had gone back and pulled the minutes from the Board’s last discussion on LED signs and she had also gone back through the LDC because staff made a statement regarding the Daytona State College (DSC) being able to request the sign through the public use process and even if it was a public use it did not go to the City Commission for approval. She stated if you go back and look at the LDC; it specifically prohibits LED signs as a public use. She stated when the item came before the Board, it was something that was very important to the community and there were multiple business owners that did not want the signs. She stated the Board attended a workshop that was held by a private business owner and they were presented with the better lighting and the community still rejected it. She stated she also noticed in the February 28, 2008 Planning Board Meeting Minutes that Mr. Crowe stated a billboard company had approached the City. She stated the Board made it clear if a billboard company wanted that use, they had to go through the process and cover the cost for it instead of using City staff time since citizens did not want it. Mrs. Shelley stated the Board made it clear that this was not wanted in the City and that Mr. Walton stated “the intent was to open a small loophole for public messages because there were some uses that were clearly a public benefit and staff is trying to create language to fit that benefit.” She stated the Board made it clear that the residents did not want LED signs for public messages either.

Mr. Walton stated when staff did the round of minor amendments to the code there were actually two amendments. He stated one was dealing with billboards and the other was message centers and he thought the billboard company wanted billboards not LED signs.

Mrs. Shelley stated she was very concerned about DSC putting up a sign that did not go through the proper channels and she did not believe the sign was a legal sign. She stated she believed the sign was larger than the City’s sign ordinance allowed and she did not believe it was fair for a large entity to be able to circumvent the process. She stated she was also very concerned about the Peabody Auditorium sign that was currently being proposed. Mrs. Shelley stated it also was not the proper size and they too were trying to get the sign approved through the public use process. She stated she had spoken with several business owners that have asked if DSC can have that type of sign why can’t they have one. She asked staff what was going to happen to the DSC sign.

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Mr. Walton stated he knew there had been some discussion about the sign, some of the City Commissioners had asked about the sign; staff was doing some research and he knew there had been some discussions with DSC and he would have a better report for the Board at the August meeting.

Mrs. Shelley stated she wanted it on the record to state when something was not in the City's LDC at all, when something was strictly prohibited it was not something where someone could go to the Board of Adjustment and have it changed. She stated it should have to go through the full process and she was not happy to hear the way the Peabody Auditorium proposed sign was presented at some City Board meetings because it was not a legal sign and had apparently been presented in a way that made some board members believe it was. She stated she wanted to go on record to state it is not a legal sign.

Mrs. Remark stated the Peabody Auditorium sign was only on paper right now and that it would go before the Historic Preservation Board Meeting at their August meeting.

Mrs. Shelley stated the point was that they were trying to go through as a public use which would not come through this board and the LDC strictly prohibits it to go through as a public use.

Mrs. Remark stated she was on the City Commission when this code was adopted and she was very clear on what the Commission's intent was for this. She stated she spoke with Marie Hartman and apparently she was interpreting Article 18, Section 6.6 (Prohibited Signs), first phrase "except to the extent specifically provided otherwise" as meaning not Board of Adjustment but a public use. She stated that is also why they are saying the Peabody Auditorium Sign can go through as a public use which falls under Article 4, Section 5. Mrs. Remark stated DSC did not use the public use process and she had personally turned them in to Code Enforcement as a code violation. She stated apparently the only way to fix this would be to wait for 18 months when the new LDC is complete and in the mean time watch a proliferation of these types of things happen all over the City. She stated the City wanted a public use; they would not have to come before the Board.

Mrs. Shelley stated it also states "unless specifically provided otherwise" and the public use is specifically excluded.

Mrs. Remark stated Mrs. Hartman stated the Commission could overturn that provision.

Mrs. Shelley stated she knew that was Mrs. Hartman's interpretation and she wanted to state for the record that she was not very happy with that interpretation and she believed it was a way to circumvent the intent of the community because it has been discussed multiple times in public discussion and Mrs. Hartman has been with the City long enough to know that was not the intent. She stated if this was what they wanted to do, then it should go through the proper channels. She stated she felt the City needed to walk very carefully if it was being opened up as a public use because when the Ocean Center sign was put up by the County, it caused huge outcry from the residents.

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Mrs. Remark asked is the Board could get rid of the language “except to the extent specifically provided otherwise?”

Mr. Hoitsma asked what the word “otherwise” meant.

Mrs. Remark replied the interpretation was that phrase allows the applicant go to Article 4, Section (Public Use) which gives the City Commission the authority to overturn the provision.

Mr. Walton stated it could also be done through a Planned Development (PD).

Mr. Hoitsma asked the Board if they would like staff to come back next month with new language.

Mr. Hoitsma stated he thought the Board was very specific in the language.

Mrs. Remark recommended the language read, “the following signs or sign characteristics are prohibited in all districts, no permit shall be issued authorizing any of the following” and then list the types of signs not permitted.

There was open discussion about the language, interpretation of the language and types of signs that were not permitted.

Mrs. Shelley stated that was what bothered her about staff that was around when the code was put in because they know it is and always was clear.

Mr. Hoitsma asked Mr. Walton to draft language for the August meeting.

Mrs. Remark stated she also wanted to address Mrs. Shelley’s comments earlier about the language “qualified individuals.” She stated she felt it belonged there because sometimes that was the only way you would be able to get an architect and that is why it can’t be only an elector. She stated that language is also under criteria for the Code Enforcement Board. She stated addressing Mr. Fishback’s letter, generally no one gets into how much of the business a person owns. She stated as long as the person has a business license that is all required. She stated his letter is much more specific than the intent was meant to be.

Mrs. Shelley stated his point was he wanted members to all be residents.

Mrs. Remark stated she would not be in attendance at the August meeting for personal reasons.

Mrs. Shelley stated she believed Mr. Rogers should receive more than a thank you certificate. She stated he served multiple years on the Midtown Redevelopment Area Board and on the Planning Board and she would like to have a presentation where he receives a little bit more than a certificate. She stated she believed community volunteers deserved to have recognition for their time spent because they worked hard for the community. She asked to invite him to the August meeting and do the presentation then.

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Mr. Hoitsma asked Mr. Walton if he felt a plaque could be done by the August meeting.

Mr. Walton replied he first needed to check on Mr. Roger's availability for the August meeting.

Mr. Hoitsma stated he had one additional comment. He stated he felt Mr. Nicholson was correct about the discussions on submerged lands, FAR and time limits on planned developments. He stated he felt right now would be a good time to start addressing these issues. He asked the Board if staff should come back with draft language on the August agenda.

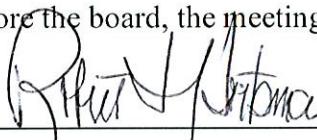
Mrs. Remark asked if the items could be put on the September agenda so she could be a part of the discussion.

Mr. Moore stated it would be interesting to go back and review the discussion on submerged land and Ormond Beach already has something in place on submerged lands.

Mrs. Shelley asked staff to get a copy of Ormond Beach's documents on submerged land.

Adjournment

There being no further actions to come before the board, the meeting was adjourned at 8:13 pm.



ROBERT HOITSMA
Chair

ATTEST:



CATHY WASHINGTON
Secretary