

MINUTES
REGULAR MEETING – PLANNING BOARD

August 27, 2009

Minutes for the Regular Planning Board for The City of Daytona Beach, Florida, held on Thursday, August 27, 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 (6:48 PM)
Edith Shelley
Bob Hoitsma
John McGuinness
Larry Moore
James Neal
Kevin Fishback
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 6:03 pm.

2. **Roll Call**

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

3. **Presentation**

Certificate of Appreciation presented to Mr. Samuel Rogers from the Mayor, City Commission, City Manager, Planning Board and staff, for his dedicated service on the City of Daytona Beach Planning Board.

Mr. Hoitsma presented Mr. Rogers with a plaque from the City and thanked him on behalf of the Mayor, City Commission and City Manager for all of his dedicated time and service on the Planning Board and Midtown Redevelopment Area Board.

Mr. Rogers thanked everyone for the honor. He stated it had been a privilege to serve on both the Planning Board and Midtown Redevelopment Area Board. He stated he grew up in a time period when African Americans were not able to have a presence on City boards and considered this a great honor. He asked the current Board members to continue what they were doing for the City and stated he would watch the meetings on television. He introduced his son, Eric Rogers.

4. **Approval of the Minutes:** July 23, 2009

Mrs. Shelley asked to have the sentence on page 16, third sentence from the bottom stricken.

Board Motion

It was moved by Mr. Hurt to approve the July 23, 2009 Planning Board Meeting Minutes as amended. Seconded by Mr. Moore.

Board Action

The motion was approved 9-to-0.

Mr. Hoitsma welcomed Kevin Fishback to the Board.

5. **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. *(Continued from the July 23, 2009 Planning Board Meeting)*

Staff Presentation

Thad Crowe, Planning Manager gave a brief PowerPoint presentation. He stated the Board had reviewed this particular request several times but for the benefit of the new Board member, he would give a brief summary. He stated originally the applicant had proposed to change the entire right-of-way from Shady Place all the way to Bellevue Avenue but he was now requesting to vacate the portion from Bellevue Avenue to the south end of parcel "E" and

then vacate the remaining part only on the 15-foot adjacent to parcels "C & B". He stated the right-of-way was 30-feet which did not meet the City's LDC requirements of 50-feet; the utility providers had submitted no objection letters and there were both sewer and cable lines in the right-of-way. He stated if approved, staff was requesting that the entire 30-feet remain a utility easement. Mr. Crowe stated at the last meeting the applicant requested a continuance in order to get photographs to clear up the confusion about access to Shady Place and also to provide the Board with an environmental report on the development potential of parcel "B". He stated the Board directed staff to come back with general information on access easements pertaining to general access, temporary construction access and permanent access. He stated the City did not have a formal policy for access easements but typically when the City had an access easement that was not being used it was not maintained. He stated for temporary construction access, they are looked at on a case-by-case basis to make sure it was meeting public safety requirements. He stated for permanent access easements, the LDC allowed driveway access for individual parcels and in the event the easement was vacated, each of the parcels would be required to have a private driveway access off of Bellevue Avenue. Mr. Crowe stated to Mr. Neal that staff arranged a meeting between the applicant and owner of parcel "B" but no resolution was reached between the two. He read the LDC requirement for vacation and stated staff's position was that the property was not required for public use; it was substandard because it did not meet the 50-foot requirement for a right-of-way and staff was recommending approval with the condition that the entire right-of-way remain a utility easement.

Applicant Presentation

Joe Hopkins, 100 Marina Point Drive, Daytona Beach distributed a packet of information that included photographs and maps of parcel "B". He gave a brief history on the parcel and gave a detailed environmental report on its development potential. He restated the criteria for evaluating a right-of-way vacation and referenced Mr. Crowe's comments on whether or not the parcel had public interest. He showed a photograph of Carol Street and stated you could clearly see that Carol Street did not go anywhere; it connected between Bellevue Avenue and Shady Place and with all of the other properties contiguous to it already developed, he did not believe there appeared to be a valid public interest in improving it. Mr. Hopkins stated the road was substandard, would require additional right-of-way dedication and tremendous cost to improve it and the City would be obligated to maintain it. He stated he felt they had demonstrated there was not an interest to the overall public but there was an interest to the parcel owner and she had been very clear that her interest was to gain access to her property. He stated he had shown the Board a series of photographs that went 360 degrees around the property that showed it was accessible from public right-of-ways and improved areas without the access to Carol Street. He stated he spoke with various City staff and was told there was not a policy regarding use of unimproved right-of-ways within The City of Daytona Beach and he stated he believed there should be because what is happening right now was the apartment complex was gaining access to Bellevue Avenue using Carol Street and there was a legitimate public safety concern by allowing this to continue. He asked the Board to approve the request and stated by vacating the street they would actually eliminate the public safety concern.

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Mrs. Shelley asked where she would have had to go to see Shady Place.

Mr. Hopkins replied she would have had to drive through the parking lot of the apartment complex.

Mr. Moore asked if that was the only entrance to Shady Place.

Mr. Hopkins replied Shady Place was accessible from Nova Road and Terrace but not accessible from Carol Street.

Citizen Comments

Rita Cameron, 335 Bucknell Drive, Daytona Beach spoke in opposition of the request. She stated in continuance with Mrs. Shelley's question, going down Carol Street there were posts in the road so she would have to encroach on someone else's property. She stated she had one question that was unresolved at the meeting held a few days ago and she was sure there was supposed to be another meeting before tonight. She stated her concern was the utility in the center of Shady Place (photo labeled Shady Place, west at the top and east at the bottom). She stated she was told someone would check on that because there were a lot of questions that came up at the meeting that were not answered. Mrs. Cameron asked if someone could answer her questions now.

Mr. Hoitsma asked Mrs. Cameron to ask all of her questions now.

Mrs. Cameron replied that was her only question.

Mr. Hopkins stated within the area contiguous to Nova Road there was a power pole, fire hydrant, telephone box and a water service. He asked the Board to keep in mind that Shady Place was 55-feet wide and he did not know the exact location of the utilities within the right-of-way but he did know there was a 19-foot separation between the power pole and the fire hydrant; there was a 12-foot separation between the telephone box and the fire hydrant and there was a 10.5-foot separation between the telephone box and the water heater, all together that totaled 41.5-feet and somewhere there was an additional 13.5-feet of right-of-way. He stated his point was Mrs. Cameron's concern was whether or not the utilities would have to be moved in order for her to gain access to her property and the answer was absolutely not. He showed a photograph of his vehicle on Shady Place between the fire hydrant and the telephone.

Mrs. Cameron stated she had been before the Board five times and her one final statement was her parcel may not be worth the millions the other parcels were worth and it may not be as buildable but to her it was. She asked the Board for the same consideration at using her property to gain access down Carol Street if there is an easement there. She stated she appreciated the Board taking time to listen to her.

Board Comments

Mr. Hoitsma asked staff if there was a way Carol Street could ever be used as a street for the approach into parcel "B". He asked if parcel "B" were ever developed would it have to have access either on Bellevue Avenue or Shady Place.

Mr. Crowe replied that was correct, as an improved right-of-way it could not be used because it did not meet code requirements for width. He stated if the parties could come to some kind of understanding about shared driveway access, it could then be served but not as a public right-of-way.

Mr. Moore asked if that suggestion was brought up at the meeting.

Mr. Crowe replied yes but the two parties could not come to an agreement.

Board Motion

It was moved by Mr. Hurt to approve Right-of-Way Street Vacation, DEV 2007-151, Carol Street. Seconded by Mrs. Shelley.

Mrs. Shelley stated before the Board voted she wanted to say she appreciated the efforts put forth by both parties and that this had been more difficult than anyone would have thought. She stated the Board deals with street vacations quite a bit and she was sorry there was not a meeting of the minds to make the Board's decision much easier.

Mr. Hoitsma stated unfortunately when the Board votes someone had to win and someone had to lose and it would be better if the parties could come to an agreement.

Board Action

The motion was approved by roll-call-vote 7-to-2, with the breakdown as follows:

| | |
|----------------|-------------|
| Mr. McGhee, II | Nay |
| Mr. Hurt | Yea |
| Mrs. Remark | Not Present |
| Mrs. Shelley | Yea |
| Mr. Hoitsma | Yea |
| Mr. McGuinness | Yea |
| Mr. Moore | Yea |
| Mr. Neal | Yea |
| Mr. Fishback | Yea |
| Ms. Washington | Nay |

6. **Appeal of Administrative Decision, DEV 2009-078, 613 North Halifax Avenue**

A request by Michael McQuarrie, Zahn Engineering, Inc., to appeal the decision of an administrative official's interpretation of the Land Development Code (LDC), Article 18 (Appearance Standards), Section 1 (Compatibility), regarding minimum height and setbacks for a multifamily or nonresidential structure adjacent to a single-family or duplex residential uses or districts.

Ms. Washington announced that she had received Form 8B Memorandum of Voting Conflict from Mr. McGuinness. She stated he was able to participate in the discussion on this item, but he could not vote.

Staff Presentation

Thad Crowe, Planning Manager stated this request was associated with 613 North Halifax Avenue, a 100± foot wide lot, located just north of the Seabreeze Bridge, on the river. He stated it had a companion amendment that was a Planned Commercial Development (PCD) multi-story mixed use building that had problems due to the height. He stated in Article 18 of the LDC there was a step back table that was applied when buildings were adjacent to single-family developments. Mr. Crowe stated basically developers were required to have greater setbacks for greater height on a sliding scale and staff considers Cobblestone Village, which was to the north of the project, to be a single-family townhome development and based on staff's interpretation, the applicant had chosen to appeal. He stated the applicant's interpretation was that Cobblestone Village was a multi-family development and therefore not subject to the compatibility tables and height limitations and staff's position has always been that this was a long standing townhome development, which actually preceded the LDC's definition of a townhome. He stated it may not meet the exact definition of a townhome, but when ever staff finds something in the LDC we must try to find the best match. Mr. Crowe stated regarding noticing requirements, staff provided an incorrect map to the applicant that only showed a strip of the land zoned Residential Professional (RP) and not the entire parcel and the letter that went to the neighbors did correctly notice the 150-foot radius but the map was incorrect. He stated the second noticing issue was with the legal advertisement. He stated the legal ad that ran did not include a map because it was staff's belief that this request was strictly a text provision of the LDC and therefore did not require a map and after the advertisement had gone out staff found out that even if it was a text provision of the LDC being looked at if it was applicable to a piece of property, a map should have been included with the legal advertisement. He stated after conferring with the Legal Department, staff was requesting to have this item continued to the September 24, 2009 Planning Board Meeting to make sure all required advertising requirements were met. Mr. Crowe stated he wanted the Board to know if they chose to proceed, their decision could be challenged due to the notice issues.

Mr. Walton stated staff notified the applicant was notified as soon as staff was aware of the LDC requirement on having a map in the legal advertisement. He stated on Wednesday, staff received a request for continuance from the applicant to item allow time to properly notice the item. He stated this morning staff received a request asking to rescind the letter sent on Wednesday and proceed tonight. He informed the Board that in their folders staff had provided some additional backup documentation that supported staff's interpretation. The first document was Ordinance No. 72-188, which put standards in place regarding townhouse developments. He stated what is in the LDC today references townhouse developments, which was a modification from the original ordinance and was put in place after Cobblestone Village was approved and put in place. He stated the second document was Ordinance No. 94-575, which amended LDC, Article 18 (Compatibility Standards), Section 1 (Building Appearance). He stated in the purpose and intent for the change, the language prior to the change discussed compatibility standards were intended to protect single-family residential districts from incompatible, non-residential multi-family uses. He stated the amendment changed the language to require protection of low intensity land uses from higher intensity land uses, which staff felt, was the situation with this project. He stated what was also added was the language *"by requiring the higher intensity land uses to design and maintain their facilities to reduce impacts upon the lower intensity land uses through appropriate project orientation setbacks for taller structures and recreation facilities."* Mr. Walton informed the Board that the applicant had also provided some documentation in support of their request.

Mr. Hoitsma asked for a more detailed clarification of the timeline on the advertising issues.

Mr. Crowe replied the advertising issues came to the forefront on yesterday. Staff immediately notified the applicant of the situation. Based on the issues surrounding the legal advertisement and map that was included with the neighbor notification letters, the applicant requested (email) a continuance, which was also shared with the attorney in opposition. This morning staff received notification (email) that the applicant was requesting to rescind the request for continuance and proceed tonight.

Mr. Hoitsma asked Mr. Crowe if Mr. Morris told people that this would happen.

Mr. Crowe replied he would have to let Mr. Morris respond to that question.

Mr. Walton stated he wanted to give a little background on how this came about. He stated when the applicant came in some time ago to discuss different ways to develop the property not being a PD staff recommended that with the challenges they were having trying to develop the property; a lot of the problems could be resolved through PD process. He stated only recently did the applicant indicate that they would proceed through the PD process. He stated they could ask for modifications to LDC requirements through the PD process and this particular project was one where that could happen. He stated there were several other projects the applicant had where they were asking for LDC modifications through PD requirements but this particular project they were choosing to have it decided on before their PD application was completed even though it could be rolled in and included as part of the PD with public benefit shown.

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Mr. Moore stated the issue appeared to have a lot to do with height and specifications. He asked the height of the proposed building.

Mr. Walton stated he believed at the current time the proposed height was 11 stories but the applicant was still at the technical review stage and he believed the applicant wanted an answer to this request before they finalized their application.

Mr. Hoitsma asked Mr. Morris what actions he took when he was told the applicant had requested a continuance.

Jim Morris, 420 South Nova Road, Daytona Beach stated he received a phone call from Mr. Crowe informing him about the email in reference. He stated at that point he called Mr. McGuinness who represents Cobblestone Village, who are his clients and told him the item would be continued tonight and that he could inform the residents they did not have to attend tonight because the applicant had requested a continuance. He stated after he and Mr. McGuinness talked, Mr. McGuinness attended the beachside meeting and advised those residents that the item was being continued. Mr. Morris stated this morning during his meeting with Ms. Lathan he received a phone call from his office informing him that the City had received a subsequent email from the applicant asking to withdraw the request to continue, and in fact move forward with the public hearing. He stated as soon as he finished the meeting with Ms. Lathan, he called Mr. McGuinness to inform him of the new request but there was not adequate time to re-inform residents of what had occurred. He stated by the conduct of the applicant, and he did not believe it was intentional, the residents that were entitled to have notice were not noticed even if the technical requirements had been met. He stated respectfully he felt the request should be continued to allow everyone the opportunity to be present and be heard.

Mrs. Remark stated because she thought she would not be in attendance tonight, she spoke with Mr. Crowe on yesterday and was told the item was being continued. She stated based on that conversation she left her notes at home and she also called the person who does emails to the Seabreeze University Neighborhood Watch and they were all emailed information that said the item was being continued. She stated she did not have time to get back in touch with the person before she left for Gainesville this morning so they were not re-informed about the change.

Mr. Moore asked if originally the applicant was supposed to supply a map with the notice and if that was not done would it be acceptable.

Mr. Hoitsma stated that was why he was saying it probably opened it up to some legal questions.

Ms. Lathan stated it opened it up to be challenged if the Board chose to move forward tonight.

Mrs. Shelley stated she was more than comfortable with continuing the item based on the advertising issues and with the large amount of additional information that was distributed tonight by the applicant.

Applicant Presentation

Michael McQuarrie, Zahn Engineering, 240 South Palmetto Avenue, Daytona Beach stated they would like to be heard tonight if possible. He stated when they received the call from Mr. Crowe on yesterday afternoon, he sent out a quick email saying ok, if they had to continue they would. He stated between that time and this morning they read the section of the City's LDC that discussed appeals to staff's decisions and the language read they were entitled to be heard within 45 days of their application submittal. He stated taking into consideration the cost and time put into the project, he was respectfully requesting to be heard tonight.

Mr. Walton informed the Board that in the applicant's email they had quoted the City's LDC, Article 4, Section 10.2 that reads "*The appropriate board shall hold a public hearing on the appeal within 45 days after the application is submitted, and after the provision of mail notice and legal advertisement in accordance with section 1.6 of this article. The mail notice area shall be 150 feet from the property.*" He stated the item was on schedule for this evening so that requirement had been met.

Mr. McQuarrie stated the end of the 45 days was September 6th and that just happened to be his birthday so he knew the exact date.

Mrs. Remark asked if the continuance was required since the 45 day requirement had been met.

Ms. Lathan replied the Board had opened up the public hearing so it did meet that requirement but they did not have to vote.

Mrs. Remark asked if the Board could vote to continue the item before they heard the applicant's presentation because if that were not the case, that would mean they would have to listen to the presentation twice.

Mr. Hoitsma stated based on all of the things that had happened he knew he could not vote on the request tonight.

Mr. McQuarrie stated they would love to give their information to the Board tonight so if the item were continued tonight, they would have a month to review the information.

Mr. Morris stated it was procedurally proper to continue the item now and from the standpoint of people having an opportunity to be heard, he represented only one group but there were many other people that were not present due to the current circumstances. He stated the right thing to do would be to continue the request and let the applicant make a full presentation at the next meeting where there could be a full public hearing.

Ms. Washington stated personally she did not think it would be fair to the individuals that were not present to listen to the presentation and have discussion tonight. She recommended continuing the item so the Board could read the documents distributed tonight and have a full

hearing at the next meeting.

Mr. McQuarrie stated the issue in front of the Board tonight was not a site plan application and he felt any approval or continuance would have no affect on the site plan that was proposed for 613 North Halifax Avenue.

Board Motion

It was moved by Mrs. Remark to continue Appeal of Administrative Decision, DEV 2009-078, 613 North Halifax Avenue to the September 24, 2009 Planning Board Meeting. Seconded by Mr. Moore.

Board Action

The motion was approved 9-to-0 with Mr. McGuinness abstaining.

7. **Land Development Code Text Amendment, DEV 2009-079, Prohibited Signs**

A request by the Planning Board, to amend the Land Development Code (LDC), Article 18 (Appearance Standards), Section 6 (Signs), Sub-Section 6.6 (Prohibited Signs), to strike language that allows deviation from prohibition of specific signs elsewhere in the LDC.

Staff Presentation

Thad Crowe, Planning Manager gave a brief PowerPoint presentation. He stated the request was a result of concerns several Board members had with the lack of finality in the Prohibited Sign section of Article 18, Section 6.6 of the LDC. He stated the Board had concerns with staff's interpretation of the language "*except to the extent specifically provided otherwise*" and that interpretation was that prohibited signs could be allowed through the special use, public use, semi-public use and planned development process. He stated staff's understanding was that the Board opposed electronic messaging signs being allowed in those categories. Mr. Crowe stated staff reviewed the criteria to determine what affect the change would have on the health, safety and welfare of the neighborhood and the City because some of the Boards concerns were that allowing such prohibited signs would negatively impact neighborhoods due to the visual distractions and the reduced aesthetics. He stated staff's position was that the use of such signs would be better determined on a case-by-case basis because they may be appropriate in certain settings. He used a festival market setting as an example where they might be appropriate. Mr. Crowe stated it was staff's belief that this prohibition would not allow the flexibility needed for unique signage in special situations and therefore staff was recommending denial of the request.

Mrs. Remark asked Mr. Crowe to tell her the difference between a use and a standard because the language was being interpreted under a public use but in the LDC everything pertaining to signs fell under Article 18 Appearance Standards, which had nothing to do with use.

Mr. Crowe stated he did not quite understand the question.

Mrs. Remark stated right now staff's re-interpretation of the language "*except to the extent specifically provided otherwise*" allowed prohibited signs based on the language in Article 4, Section 5 (Public or Semi-Public Use). She referenced the definition of uses in Article 3 and stated uses from a planning perspective had to do with multi-family, business, retail, etc. She asked staff to explain how a sign had anything to do with a planning use when the only place it was discussed in the LDC was under Appearance Standards.

Mr. Crowe stated signs were a characteristic of uses; they were associated with a use and therefore the argument could be made that by putting up a sign, the use was being revised.

Mrs. Shelley stated she was disturbed to see blow-up and pennant signs in the staff report and stated it reflected that current staff was not with the City when the current language was put in place. She stated it was the community that stated they did not want excessive pennants and flags at market places and she knew there were other things going on but the standard was set by the community. She stated prior to current staff's arrival, the Board held a workshop and looked at the new lighting techniques and it was still deemed by the community that they did not want those types of signs. Mrs. Shelley stated she felt when you start looking at what could be done through the semi-public use criteria that included a lot.

Mr. Crowe stated staff wanted her to know they appreciated and respected her point of view and were looking for direction on how to proceed. He stated if the prohibition was approved the Temporary Promotional Activities (TPA) section of the LDC, which allowed some of these types of signs, would then be conflicting.

Mrs. Shelley stated she understood and that section had always been a bone of contention for her.

Mr. Hurt asked how this would affect venues inside areas like the e-zone.

Mrs. Shelley stated there was nothing against lighted signs.

Mr. Hurt stated he was referencing informational signs that had moving text.

Mrs. Remark replied the Board did not oversee signs inside the venue.

Mr. Walton stated only signs visible from the right-of-way were regulated.

Mrs. Shelley stated it was interesting to her that the LDC referenced following the new urban standards because in her recent travels the new urban communities she saw did not want those types of signs and they were seen as tacky. She stated in that sense, the City's LDC was in conflict. She stated people often referenced Las Vegas as an example for LED signs, but they were currently building a new urban community and LED signs were prohibited.

Mr. Moore stated apparently the subject had resurfaced because the City Attorney had a

different interpretation.

Mrs. Shelley stated it was a change of interpretation.

Mr. Moore asked Mrs. Remark to read her written comments into the record.

Mrs. Remark read her comments into the record (Attachment A).

Citizen Comments

Mary Ann Jackson-Trumbull, 925 North Grandview Avenue, Daytona Beach spoke in favor of the request. She asked to change her Request To Speak form from against to in favor of. She stated she felt a lot of the signs being referenced were very unappealing and she felt if each sign got looked at on a case-by-case basis there would be problems.

Board Comments

Mr. Moore asked staff to clarify what the statement “such a case-by-case evaluation was best reserved through criteria provided in the LDC” meant. He stated he did not believe the LDC provided any criteria for this and asked for clarification on the language “*and allows policy makers to interpret criteria and clear flexibility as warranted.*” He also asked who the policy makers were.

Mr. Walton replied the policy makers were the City Commission.

Mr. Moore stated the City Commission had already made their ruling on two different occasions.

Mrs. Shelley stated apparently there was a new revision being worked on to be brought before the City Commission but due to the Board’s discussion last month it was now an item on this month’s agenda. She stated when you consider allowing this for semi-public uses; it would include churches, daycare centers, schools and non-profits, which would open a can of worms.

Mrs. Remark stated she wanted the record to note that the policy makers did not request the revision.

Mr. Crowe stated to answer Mr. Moore’s question, all of the applications require a site plan and site plans have specific criteria that could be interpreted on a case-by-case basis. He stated he was not trying to be argumentative but they did have something to do with compatibility and impacts on neighboring properties and staff had the ability to limit, condition or deny impacts when it was determined that there was a negative impact.

Mrs. Remark asked if there could also be a variance prohibition.

Mr. Walton stated it could not be done tonight and staff would have to research to find where that was referenced in the LDC and what would be required to do what she was asking.

Ms. Lathan stated it appeared the majority of the request was geared toward message signs and if they struck out the language "*except to the extent of specifically provided otherwise*" it would make section 6.18 in complete conflict because it talked about TPAs allowing banners and twirling. She asked if it would address the issue to leave in that language and instead under number three where it says "*signs allowing different copy to be shown*" adding the sentence "this cannot be waived through the public use, semi-public use or planned development process.

Mrs. Shelley stated until now, no one had ever interpreted it that way and what the Board was specifically trying to say was they did not want to open this can of worms with the LED signs.

Mrs. Remark stated rather than doing what Ms. Lathan suggested, would it be better to put language in to 6.18 that was very specific to TPAs because the language Ms. Lathan suggested would still allow the pennants and twirling.

Ms. Lathan stated she was concerned that in Section 6.6 it would say none of those types of signs were allowed and then in Section 6.18 and it would say you could have them in this situation. She stated she felt it was creating a conflict.

Mrs. Remark recommended the language "except as currently allowed under the criteria of Section 6.18 under the TPA provisions." She stated the language could be tweaked but it needed to be clear that Section 6.18 was the only place they were allowed.

Mrs. Shelley stated the statement "*except to the extent*" had always been in reference to TPAs until now.

Ms. Lathan recommended adding the language in Sub-section 6.8 "except as provided in Section 6.18, the following signs or sign characteristics."

Mrs. Remark stated that language would work because it was strictly referencing TPAs, which was what it meant all along.

Board Motion

It was moved by Mrs. Remark to approve Land Development Code Text Amendment, DEV 2009-079, Prohibited Signs, adding the language in Sub-section 6.8 "except as provided in Section 6.18, the following signs or sign characteristics are prohibited in all districts and no permit shall be issued authorizing erection of the following." Seconded by Mrs. Shelley.

Board Action

The motion was approved by roll-call-vote 9-to-1, with the breakdown as follows:

| | |
|----------------|-----|
| Mr. McGhee, II | Yea |
| Mr. Hurt | Nay |
| Mrs. Remark | Yea |
| Mrs. Shelley | Yea |
| Mr. Hoitsma | Yea |
| Mr. McGuinness | Yea |
| Mr. Moore | Yea |
| Mr. Neal | Yea |
| Mr. Fishback | Yea |
| Ms. Washington | Yea |

8. **Right-of-Way Street Vacation, DEV 2009-066, Weaver Street**

A request by the Engineering Division to approve a 260± foot right-of-way street vacation for Weaver Street between Charles Street and approximately 100 feet south of the right-of-way of Dr. Mary McLeod Bethune Boulevard.

Staff Presentation

Thad Crowe, Planning Manager stated there was some confusion surrounding the neighbor notifications letters and therefore staff was requesting to continue the request to next month's meeting to make sure the request was properly noticed.

Board Motion

It was moved by Mrs. Shelley to continue Right-of-Way Street Vacation, DEV 2009-066, Weaver Street to the September 24, 2009 Planning Board Meeting. Seconded by Mr. Moore.

Board Action

The motion was approved 10-to-0.

9. **Land Development Code Text Amendment, DEV2009-087, Prohibition of New or Expanded Social Service Uses in Redevelopment Areas**

A request by the City Commission and Planning Board, to amend the Land Development Code (LDC), Article 2 (Definitions), Section 2.1 (Definitions indicating uses and categories of uses), to add a definition for Social Service uses; and to amend LDC Article 12 (Redevelopment Areas and Districts), Section 2.2, to prohibit new or expanded social service uses in redevelopment areas.

Staff Presentation

Thad Crowe, Planning Manager stated due to concerns raised by the Planning Board and City Commission about an increasing concentration of social service uses in redevelopment areas, particularly the Downtown Redevelopment area and impacts of these uses on City's revitalization efforts staff had drafted language proposing to prohibit new and expanded uses until such time that impacts of such uses could be gauged and addressed. He defined social service uses as "uses that provide services, such as financial assistance, food, clothing, shelter, medical care, counseling, and referrals to low-income, homeless, or unemployed population at no or reduced fees; or similar services" and recommended adding the definition in Article 2 (Definitions), Section 2.1 (Use Definitions) of the LDC. He stated staff was also recommending adding social service uses to the prohibited uses to the list of uses prohibited within all redevelopment areas (Article 12 (Redevelopment Areas and Districts), Section 2.2 (Uses Specifically Prohibited)). He stated when staff reviewed the criteria for changing the LDC the below criterion was used:

1. Criterion a: change in conditions since zoning adopted?

Response: yes, continued establishment of such uses within redevelopment areas.

2. Criterion b: amendment compatible with existing development patterns?

Response: predominant uses are office and residential uses – social service uses are not compatible when attracting high pedestrian traffic and loitering.

Mr. Crowe stated staff was recommending approval of the request to define social service uses in Article 2, Section 2.1 and to prohibit such uses in redevelopment areas (Article 12, Section 2.2).

Citizen Comments

Chris Daun, 132 Pierce Avenue, Daytona Beach spoke in favor of the amendment. He asked if the amendment would prohibit any federal or state government agency such as Housing and Urban Development (HUD) or Department of Children and Families from being allowed in redevelopment areas. He also asked the Board if they would consider adding temporary and day labor halls to the prohibited business list for redevelopment areas. He asked if the list of prohibited uses in redevelopment areas could be applied to the areas designated as scenic thoroughfares.

Mr. Walton stated he recommended not doing that because it was a significant difference from what the staff report read and also because it was not discussed or advertised for the public to review.

Mr. Daun stated that was ok as long as staff was open to doing it but his understanding was the purpose of the scenic classification was to beautify gateways into the City.

Mary Anne Jackson-Trumbull, 925 North Grandview Avenue, Daytona Beach spoke in favor of the amendment. She stated she was disturbed by the article in the newspaper today. She stated she knew people were looking at the residents and City staff that did not want new or expanded social services in redevelopment areas as not caring about the poor but that was not the case. She stated what the residents and she believed the City wanted was the responsibility to be shared with surrounding cities. She stated at the public hearing for Catholic Charities most of the speakers in favor of their request were residents from Port Orange, Ormond Beach and other surrounding cities. She asked about the rights of the residents and business owners in neighborhoods where there was a predominate amount of social services. Mrs. Jackson-Trumbull stated she felt it was a shame that people were interpreting the City and its residents as not caring about the poor because the record reflects just the opposite.

Troy Ray, 215 Bay Street, Daytona Beach stated he was the Executive Director for Halifax Urban Ministries and he was in opposition of the amendment. He stated he inferred from staff's presentation in section 2.1 and 2.2 of the LDC that the primary focus of the amendment was not the homeless population. He inferred that from the definition given for social service uses and the fact that social service use was added where homeless shelters already existed. He stated he felt the language of the narrative indicated deterioration of property values and the possibility of increased risks to residents in the area due to the presence of the homeless. Mr. Ray stated the people that were being served primarily were Daytona residents who were trying to get by on a limited budget and the only reason they had not become homeless was because they were able to receive social services. He stated his concern was if the amendment got passed, the need for the City Commission to have discussions with all of the stakeholders involved would go away. He recommended delaying expansion of existing social services or new ones instead of prohibiting them.

Craig Oulton, 668 Herbert Street, Port Orange spoke in opposition of the amendment. He asked that prior to approval of the amendment the City meet with all stakeholders affected.

Julie Shaw, Executive Director for Disability Solutions for Independent Living, 1195 Palmetto Avenue, Daytona Beach, spoke in opposition of the amendment. She stated her agency was a new social service agency in the neighborhood but her agency was unique. She stated she felt her agency fell under the definition staff was proposing for social service uses and that concerned her because her agency served all persons with disabilities no matter what their social status, ethnicity, religion or employment status. She stated she moved her agency from Ormond Beach to Daytona Beach to help with the indigent and homeless in this community and as a result of that move, they have been able to find homes and employ people with disabilities. Ms. Shaw stated her agency does a lot more than that, they bring professionals downtown for business luncheons and meetings and they spend money in the downtown area businesses. She stated her current budget of approximately \$365,000 was about to double and with that it would generate a little under a million dollars in the redevelopment area. She stated she was confused by the amendment and felt some technical work and tweaking needed to be done. She felt the definition of social services was very broad and the language "or similar services" could include a physical therapy office that provided medical care to an unemployed insured person and the City needed to take a closer look at social services because if they were moved out, the City would also be moving out the money generated from the

services.

Lorraine Whitterman, Flagler County resident spoke in opposition of the amendment.

James France, volunteer for Disability Solutions for Independent Living Agency spoke in opposition of the amendment and about additional services the agency offered.

Board Comments

Mr. Hoitsma stated staff was bringing this item forward at the request of the Board and that it was not the first time the issue had been brought up. He stated he resented people thinking tonight was the first time the issue had been brought before the Board because it had been discussed for quite some time.

Mrs. Remark stated she thought Mr. Daun brought up a good point regarding prohibition of legitimate government agencies.

Mr. Walton stated he did not think a government office would be a prohibited from going into the redevelopment areas it would depend on the types of services they wanted to offer.

Mrs. Remark asked if the amendment would require anyone that was currently operating in the area to shut down or move.

Mr. Walton replied absolutely not.

Mrs. Remark stated she was not sure how just saying social services under Section 2.2 would stop an expansion and asked if expansion meant space or people.

Mr. Walton replied it referenced space and it would be handled in the same manner as conditional uses or uses that required special conditions. They would have to come back through the process.

Mrs. Remark stated many of things she heard tonight were uses that were already prohibited in the redevelopment areas and have been for quite some time and temporary labor halls were also prohibited in the Downtown area.

Mr. Hoitsma referenced the handout distributed to Board members that talked about other communities having the same issues with social services that the City was having.

Mr. Hurt stated everyone was in support of the services offered; it was the concentration of all of the agencies in one area that was the issue. He stated he was not aware of any homeless shelters or feeding halls in Port Orange or Ormond Beach but he did know there were people in those cities that required the services.

Mr. Fishback asked what the purpose of the amendment was if most of the services were already prohibited.

Mrs. Shelley stated the amendment was only adding the language that was underlined. She stated they were specifically talking about the redevelopment areas and not the entire City of Daytona Beach.

Board Motion

It was moved by Mrs. Shelley to approve Land Development Code Text Amendment, DEV2009-087, Prohibition of New or Expanded Social Service Uses in Redevelopment Areas. Seconded by Mr. Hurt.

Board Action

The motion was approved 10-to-0.

10. **Other Business**

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

No report.

B. **Midtown Redevelopment Area Board Report**

No Report

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

Absent

D. **Public Comments**

No Comments

E. **Staff Comments**

Mr. Walton stated he had two things he wanted to discuss. The first was a report on Daytona State College's sign. He stated staff met with representatives from the college and there was a disagreement regarding state law that exempted state colleges from having to go through the building permit process and because the building code dealt with signage, they believed they were exempt from having to go through the City's process. He stated since the meeting they had made substantial changes to the timing between messages and the sign no longer flashed the way it used to. He stated they had also submitted an application requesting a semi-public use permit but it had not gone through the technical review process. Mr. Walton stated he believed the college wanted to work with the City and not fight over the legislation they believed allowed them to put the sign up.

Mr. Moore stated as of yesterday, the sign was stationary.

Mr. Walton stated the second thing he wanted to discuss was in reference to the three LDC discussion items the Board had directed staff to bring back at the September meeting. He stated staff had a pretty good idea what the board wanted pertaining to Floor Area Ratio (FAR) and submerged lands but the one on planned development time limits staff need a little guidance. He stated right now there was a template that was given to applicants when they came in to submit PD applications. The template has a standard five year timeframe that listed all of the clauses required for all PD agreements. He recommended not putting time limits in the ordinance because some PDs could be one building while others could be multiple buildings and it would be very difficult to have a time limit that was one size fits all. Mr. Walton stated when applicants submit applications requesting more than five years, staff did not support the request and because of the diversity in PDs putting language in the LDC that would be more specific or restrictive would be difficult to do.

Mr. Hoitsma asked the Board members if they felt the template should be made part of the official requirements because projects were getting approved and then never get completed. He stated there needed to be a way to prevent this.

Mrs. Shelley stated the City Commission had also had this discussion and they were concerned that no ground was being broken.

Mrs. Remark asked if the template staff was using had requirements about certain permits having to be done in certain time frames or was it looked at on a case-by-case basis.

Mr. Walton asked Mr. Crowe to respond to Mrs. Remark's question.

Mr. Crowe stated the template was created recently and what it basically did was give the applicants five years to get all of their construction permits in order and then an additional two years for all construction to be completed.

Mrs. Remark asked if the template was part of the LDC.

Mr. Crowe replied it was not part of the LDC but staff would inform the Board of any deviations from the template.

Mrs. Remark stated but the template could be changed by the next group of staff. She stated her understanding of what the Board was trying to do was make the time frame standard across the board so projects would get completed. She stated she agreed that the template was a good place to start with meeting the Board and City Commission's concerns.

Mr. Hoitsma stated he remembered in the past the Board had allowed extensions due to economic hardships.

Mrs. Shelley stated the reason so many projects were approved was because the City was trying to incentivize and it was very frustrating to hear people say the City was so strict that people could not build here when in all actuality, almost every project that came forward was approved; they just never broke ground.

Mr. Hoitsma asked the Board what they would like staff to bring forward at the next meeting.

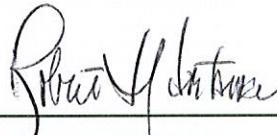
Mrs. Remark stated the template was a good place to start the discussion and then maybe look at economic realities.

F. **Board Member Comments**

Mrs. Remark stated she thought Mr. Daun's suggestion on scenic thoroughfare buffers was a good idea but she did not know if it would be just social services or if would get to be too broad. She stated she would not want to start to see temporary labor halls around thoroughfares and she felt many of the prohibitions in the redevelopment areas seemed to make sense when she looked at the list in the LDC of where the City's scenic thoroughfares were located. She stated she would also be interested in a variance prohibition for signs as well.

Adjournment

There being no further actions to come before the board, the meeting was adjourned at 8:17 pm.



ROBERT HOITSMA
Chair

ATTEST:



CATHY WASHINGTON
Secretary