MINUTES

REGULAR MEETING – PLANNING BOARD

September 24, 2009

Minutes for the Regular Planning Board for The City of Daytona Beach, Florida, held on Thursday, September 24, 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
Janet LeSage
John McGuinness
Larry Moore
Kevin Fishback
Cathy Washington

Absent Members:

James Neal

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 6:06 pm.

2. **Roll Call**

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

3. **Approval of the Minutes**: August 27, 2009

Board Motion

It was moved by Mrs. Shelley to approve the August 27, 2009 Planning Board Meeting Minutes. Seconded by Mr. Moore.

Board Action

The motion was approved 10-to-0.

6. **Bayberry Colony Rezoning - RPUD Agreement Amendment, 2009-076**

A request by Andre Anderson, AICP, Planning Design Group, on behalf of KB Homes, Inc., to approve an amendment to an approved Residential Planned Unit Development (RPUD) for 365± acres of land including the existing Bayberry Colony subdivision, located on the west side of LPGA Boulevard, approximately 1.4 miles west of I-95, to allow for reduction in minimum living areas.

Mr. Hoitsma stated this item was being moved ahead because there was a chance it would be continued to the October Planning Board Meeting.

Applicant Presentation

Andre Anderson, AICP, Planning Design Group, on behalf of KB Homes, Inc., requested a continuance to the October 22nd Planning Board Meeting to allow them time to meet with the residents in an effort to clarify exactly what the request was for. He stated briefly, the request was to reduce the square footage from 1,500 to 1,425 and from 1,700 to 1,650 on 89 parcels on the north side of the subdivision, which is close to Tournament Drive, near the elementary school.

Board Motion

It was moved by Mrs. Shelley to continue Bayberry Colony Rezoning - RPUD Agreement Amendment, 2009-076 to the October 22, 2009 Planning Board Meeting to allow the applicant time to meet with citizens and residents to clarify the request. Seconded by Mr. McGhee.

Board Action

The motion was approved 10-to-0.

Continued Items:

4. **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 use or district. ***(Continued from the August 27, 2009 Planning Board Meeting)***

Staff Presentation

Thad Crowe, Planning Manager gave a brief PowerPoint presentation. He stated the request was to appeal an administrative decision made by Mr. Walton, Planning Director pertaining to the interpretation of Land Development Code (LDC), Article 18 (Appearance Standards), Section 1 (Compatibility) for maximum height and setbacks for multi-family or non-residential structure that is adjacent to a single-family or duplex residential use or district. He stated the property in question was located at 613 North Halifax and was applicable to the Cobblestone Condominium, which was located next door. He stated the City considered the cobblestone development to be single-family and the Planning Board was the final decision maker on this request. Mr. Crowe stated the 613 North Halifax project was a proposed planned commercial development (PCD) that is a multi-story hotel and marina that has been submitted to the City's Technical Review Team (TRT) and was currently in the review process. He stated one of City staff's comments during the review was that the applicant would need a waiver from the LDC to allow for greater setbacks because the project was next to a single-family development. Mr. Crowe went through the various land uses and zoning and showed various photographs of the area. He stated there were actually two standards in the LDC linked to this request. LDC, Article 18, it reads 35-feet is the standard height limit and when you go to 45-feet the setback requirements from the property is 45-feet. As the building goes higher, the required setback becomes greater. He stated the applicant does not believe there was a need for the waiver request as he felt the requirement was incorrectly applied by staff and does not believe Cobblestone Village was a single-family development hence, the height limitation would not be applicable. He stated some of the applicant's arguments were that Cobblestone Village was in the Residential Professional zoning district, which was defined in the LDC as a transitional zoning district intended to be applied as a buffer between single-family and commercial uses, which implies areas in this zoning are not single-family. Mr. Crowe further stated the applicant had implied that Cobblestone Village was a condominium parcel on a multi-family ownership structure and they are not platted individual lots but in fact are condominium parcels. Mr. Crowe stated the applicant believes it is more in the nature of a multi-family development. He stated staff believes the single-family use was determined by the actual use regardless of the platting or zoning district and has maintained that Cobblestone Village contains attached single-family dwellings and was therefore a single-family development. He stated Cobblestone Village precedes the LDC definition of townhouse subdivisions and staff was compelled to classify the use with whatever use was closest to it and that determination was that Cobblestone Village was a single-family development. He stated staff was recommending denial of the applicants request to appeal the decision of an administrative official's interpretation of the LDC, Article 18, Section 1.

Mr. Walton stated he had one thing he wanted to correct from Mr. Crowe's presentation. He stated Mr. Crowe combined two different things in the request and he modified it during the presentation. He stated Mr. Crowe combined maximum height and minimum setback but they should be separate, one maximum and the other minimum.

Mrs. Shelley stated she needed clarification that the Future Land Use Map did not incorporate the full Retail land use and part of the zoning goes into a parcel that was RP.

Mr. Walton replied that was correct.

Applicant Presentation

Michael McQuarrie, Zahn Engineering, Inc, 240 South Palmetto Avenue, Daytona Beach stated it should be made clear their appeal was being made with respect to staff's intent. He read a lengthy written script that covered his client's plans for the sight and what their intentions for submitting the appeal were. He stated they had no plans to try to sneak around not following the LDC or build a structure without limitations on height or be injurious to the neighborhood or be in conflict with the City's Comprehensive Plan. He stated a decision to approve the appeal would not be an approval of the site plan or the request for rezoning and that they were still working through the PCD process with staff to outline exactly what portions of the project would require a waiver of the LDC. Mr. McQuarrie stated their plan was still in the design stage and there would be other public meetings where other issues could be brought forward, discussed and voted upon. He stated he had a letter from John Metaka, registered surveyor, whose firm prepared the plot plan included in the Board's packet and the letter stated that Cobblestone Village was not a subdivision per Chapter 177, Florida Statutes. He stated other deficiencies in the LDC that proved Cobblestone Village did not meet numerous requirements to be considered a single-family residency are minimum separation from any street, access driveway or property line; minimum lot area of 2,000 square feet within an average of 2,400 square feet; maximum lot coverage of 40 percent and a building separation of 15 feet. Mr. McQuarrie stated with so many of the criteria for being considered a subdivision not being met, he felt the only possible definition for the use of Cobblestone Village would be a multi-family complex, which was a cluster of buildings each containing three or more families, Section 2.99. He cautioned the Board on the ripple effects of an expanded single-family definition and his client was as not asking the Board to waive the requirements but to enforce the rules as they are written.

Jeff Brock, 444 Seabreeze Boulevard, Suite 900, Daytona Beach stated he was a board certified real property attorney and he was present tonight to try to shed some light on the condominium form of ownership versus the townhome form of ownership as well as the legal standards. He stated at the August 27th meeting he distributed a package to the Board that contained documents that set forth that Cobblestone Village was no doubt a condominium complex. He stated he had a recorded declaration of condominium, a not for profit condominium association, which runs the complex and they are registered with the Secretary of State and the Division of Condominiums as a condominium and they also had a letter from the surveyor that list the complex as a condominium form of ownership. Mr. Brock stated he

had spoken with the original developer who also stated it was a condominium development. He stated when you look at the buildings from an aerial perspective you can see they are one contiguous building and the land is owned in a common form or ownership and not separate lots under each unit. He stated the unit owners do not own the dirt under their lot as in a fee simple ownership. Mr. Brock stated based on these facts, the better definition for Cobblestone Village would be a multi-family complex.

Ty Harris, with the law firm Storch, Morris and Harris, LLC, 420 South Nova Road, Daytona Beach stated he was representing the Cobblestone Village Homeowners Association. He stated he wanted to stay focused the fact that this was an appeal of an administrative determination. He stated there was law in place that goes right to the issue and makes the Board's decision a little bit easier. He stated both arguments were well thought out but the clearly erroneous standard applies to this request, which deals with administrative interpretations of law. He stated the law reads "Great weight should be given to an administrative agency or in this case local government interpretation of their own rules and unless you find that they are clearly erroneous in their interpretation then you must find on behalf of staff because they are the ones that should know their rules better than anyone else." He further stated in fact the 5th Circuit; Federal Court went on to say "The Circuit Court of Appeals held that an agency's interpretation of a regulation is entitled to deference when the meaning of the regulation is not clear. The 5th Circuit has also concluded that if an agency's interpretation of its own regulation is merely one of several reasonable alternatives it must stand even though it may not appear as reasonable as some other alternative. " Mr. Harris stated if the Board finds that there is supporting documentation to support staff's interpretation, they must vote in staff's favor. He stated before making their interpretation, staff looked at four different articles in the LDC to determine compatibility. He asked the Board to remember that staff was a neutral player and would not gain anything one way or the other.

Citizen Comments

One citizen spoke in favor of the request: John Nicholson, 413 North Grandview Avenue.

Seven citizens spoke in opposition of the request: Barbara Nagey, 1400 North Halifax Avenue, Hannah King, 1409 North Halifax Avenue, Greg Gimbert, 255 Euclid Avenue, Joni Burman, 318 Seaview Avenue, Donald King, 1409 North Halifax Avenue, Mary Anne Jackson-Trumble, 925 North Grandview Avenue and Neal Harrington, 101 North Grandview Circle.

Mr. Brock stated it was a very narrow issue before the Board tonight but he felt there was no doubt that Cobblestone Village was a condominium. He stated the question was whether or not it fit in the LDC as a multi-family or single-family complex. He stated the key was in the City's LDC, townhomes called for buildings on individual lots and Cobblestone Village did not meet that criterion. He asked the Board to vote in favor of the request.

Mrs. Remark stated she realized they were looking at Cobblestone Village tonight but Article 18 in the LDC has to do with any single-family use adjacent to … not zoning, single-family use.

Mr. Walton asked if she was speaking in reference to compatibility.

Mrs. Remark replied yes.

Mr. Walton replied that was correct.

Mrs. Remark stated in Article 2, the definition of adjacent to reads "Any property contiguous with the subject property or that is located immediately across any road or right-of-way." She stated immediately across the road are two single-family homes and immediately next to that, just behind Central Parking and all of the commercial uses is another single-family home with a garage apartment in the back. She asked if Cobblestone Village were not withstanding wouldn't the applicant still have to meet the compatibility no matter what the decision was on the appeal.

Mr. Walton stated he had been with the City almost two years and this particular application request predated him. He stated ever since he had been with the City, staff had been advising the applicant to go through the PD process, provide public benefit and have flexibility in design. He stated only recently did the applicant submit a PD application, which staff has indicated to them the compatibility requirement of a more intense use next to a lower intensity use.

Mrs. Remark asked if the two single-family properties would meet that compatibility requirement.

Mr. Walton replied yes.

Mrs. Remark stated she knew how she felt about what had been said and she was willing to speak to that but she wanted to be clear that the applicant would have to meet that requirement regardless to whether the appeal gets approved or denied.

Mr. Walton stated in the PD if it was not granted, they would then have to request a waiver.

Mrs. Remark stated and they would again have to provide public benefit.

Mr. Walton stated staff agreed that Cobblestone Village was a condominium but where the disagreement came into play was in Florida Statute 718.507, which talks about the form of ownership not being the issue, but in fact the use of the land and staff's position is that the use of the land best fits the townhouse definition in the LDC. He stated Cobblestone Village was actually approved prior to the townhouse section being added in the LDC but the purpose and intent of that section talks about townhouses being attached single-family dwelling units, which staff believes fits Cobblestone Village.

Board Comments

Mr. Hurt asked if the Board was voting on whether or not Cobblestone Village was a condominium.

Mr. Walton replied the form of ownership was not the issue. He stated the issue was staff's interpretation of Article 18, Section 1, dealing with compatibility requiring the higher intensity use to be buffered from the lower intensity uses, which in this case happens to be attached single-family units.

Mr. Hurt stated he had two issues, one whether or not it was condominium and the other being the compatibility issue. He stated with his real estate background he knew it was a condominium classified as single-family, which was strange and really conflicting.

Mrs. Remark stated the confusion was because they had to look at ownership versus use and this had nothing to do with ownership. She stated she did not believe the applicant had presented a tight legal case on interpretation. She stated the applicant's argument is that had to be a subdivision with individual lots but Florida Statutes say it is a subdivision if it is three or more lots, parcels or units and this is a unit. She stated she spoke with the Volusia County Property Appraiser and was told the declaration page for Cobblestone read it was a condominium style management but they were actually townhouses. Mrs. Remark stated the applicant distributed several documents from the Volusia County Property Appraiser's office that showed land use data reflecting it as multi-family but the City was not bound by the Volusia County category system. She stated additionally in Florida Statutes there were definitions for lots that could be called units or parcels, and also definitions for land. She stated the City's LDC calls them lots. She also stated the Volusia County Property Appraiser has them listed as individual parcels with parcel numbers that are taxed as individual parcels. She stated the Clerk of the Court also has them listed as townhomes. She stated she agreed with staff's interpretation of the LDC and she felt staff did a great job interpreting it. She stated she felt staff's interpretation met the definition of townhouse, she was not in favor of approving the appeal request and the felt the appeal was moot and the applicant should have to request a waiver.

Mr. Hoitsma stated he felt three words came into play with this request and they were use, intent and compatibility and he knew the Board's objectives were to protect single-family housing against encroachment when they originally put in the language in the LDC. He stated he felt Cobblestone's use was single-family and the intent should still be to protect that and he did not see compatibility.

Mr. McQuarrie stated compatibility could be argued later and they could change their design to address citizens concerns. He stated at the suggestion of staff, they had already held one public meeting outside of City Hall and they got some good ideas from that meeting. He stated but again going back to the three definitions of use in the LDC and they were single-family, duplex and multi-family. He read all three definitions and stated he felt it was pretty cut and dry and simple that Cobblestone fit the definition of multi-family without there even being a gray area.

Mrs. Shelley stated she would make the motion but she would like to clarify what a yes vote and no vote meant.

Mr. Fishback asked hypothetically, if Cobblestone Village were destroyed could single-family detached homes be built on those lots under the Business Professional land use.

Mr. Walton replied they would have to come back and go through the process but, yes they could.

Board Motion

It was moved by Mrs. Shelley to approve Appeal of Administrative Decision, DEV 2009-078, 613 North Halifax Avenue. Seconded by Mrs. Washington.

Mrs. Shelley asked for clarification.

Ms. Lathan recommended state the motion as a motion in support staff's interpretation because the way the motion was just stated was not clear to her.

Mrs. Shelley stated that was why she asked for clarification of the Board's vote because she made the motion the same way they usually make the motion.

There was discussion among the Board members on how the motion should be worded.

Mrs. Shelley withdrew her motion. Mrs. Washington withdrew her second.

Ms. Lathan suggested the language be as follows: "Motion to support staff's interpretation in the appeal from administrative interpretation of the LDC in DEV2009-078."

Mrs. Washington and Ms. Shelley stated that would change the way the Board usually made their motions.

Mrs. Lathan stated if they started with "Motion to support staff's interpretation" then a vote yes would be supporting staff's interpretation and denying the appeal request.

Mr. McGhee stated he thought a vote of no to the appeal request would atomically be a yes vote for staff's interpretation.

Mrs. Shelley stated she agreed and that was the way they always made the motion.

Ms. Washington stated in reading the request her understanding was they were supposed to put the motion on the floor in the affirmative and if the Board voted yes it would be in favor of the appeal but if they voted no it would be against approving the appeal.

Ms. Lathan stated as long as the record was clear what the Board's intent was then they should not get stuck on the details of formation of the motion.

Mr. Harris stated he understood that the Board always tried to make the motion in the affirmative he felt the clearest way to make the motion would be to deny the appeal.

Mrs. Shelley stated that would be what they would be doing if they voted no.

Ms. Lathan stated in this case she felt the easiest thing to do for the record would be to form the motion in the negative although that was not the way it was normally done.

Mrs. Shelley stated they had not ever done that before.

Ms. Lathan stated they should not get lost in formation as long as the record was clear.

Mr. Fishback stated he felt what Ms. Lathan said was clear to him to vote yes or not in support of staff's decision.

Ms. Lathan asked Mr. Fishback is he was speaking in reference to the first recommendation she made.

Board Motion

It was moved by Mrs. Shelley to support staff's interpretation of Article 18, Compatibility Standards do apply to the property located at 613 North Halifax Avenue. Seconded by Mrs. Washington.

Mrs. Shelley asked for the record if they voted yes they were voting in support of staff.

Ms. Lathan replied yes.

Board Action

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

John McGhee, II	Yea
Jeff Hurt	Nay
Tracey Remark	Yea
Edith Shelley	Yea
Bob Hoitsma	Yea
Janet LeSage	Yea
John McGuinness	Abstain
Larry Moore	Yea
Kevin Fishback	Nay
Cathy Washington	Yea

New Items:

5. **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 100± feet south of the right-of-way of Dr. Mary McLeod Bethune Boulevard. ***(Continued from the August 27, 2009 Planning Board Meeting)***

Staff Presentation

Thad Crowe, Planning Manager gave a brief PowerPoint Presentation. He stated the item had been continued from the August 27th Planning Board Meeting and that it was an administrative request to vacate a 260-foot long, 30-foot wide improved right-of-way vacation between Charles Street and approximately 1,000 feet south of the right-of-way of Dr. Mary McLeod Bethune Boulevard (MMB). He showed a series of photographs that reflected where the right-of-way was located and stated the purpose of the vacation was for the expansion of New Mount Zion Missionary Baptist Church. He stated the surrounding land uses were multi-family, retail and churches and the zoning was RA (multi-family) and BA (Business Automotive). He stated the single criterion for the vacation was LDC, Article 4, Section 13.3 that states, "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." Mr. Crowe stated the Technical Review Team and Engineering Department had reviewed and signed off on the project and the Utilities Department had also reviewed the application and concluded that the City should retain utility easements for existing water and sewer lines as a condition of the street vacation. He stated staff had received letters of no objection from TECO (gas), Bright House, and AT&T and also a letter of no objection had been received from FPL with a request for an easement for existing overhead power lines. Mr. Crowe stated the following factors supported approval of the request:

- The LDC criterion had been met.
- Properties fronting on Weaver Street also front on either Charles or Walnut Streets and would not be "landlocked."

Mr. Crowe stated the item was scheduled for the October 7, 2009 City Commission Meeting on first reading and October 21, 2009, for second reading (Public Hearing) and staff was recommending approval of the right-of-way vacation with the condition that a utility easement be dedicated to the City of Daytona Beach and also to FPL.

Mr. McGuinness asked if lot 19 was owned by the church.

Mr. Crowe replied yes.

Mr. Hoitsma asked how far the vacation would go.

Mr. Crowe replied it ended 100-feet before you get to MMB Boulevard so there would be access from MMB to the City's parking lot.

Mr. Hoitsma asked how people would access the church's parking lot.

Mr. Crowe replied there would be access from Charles Street and the church could also utilize any entrance.

Citizen Comments

Irvin White, 340 Garden Street, Daytona Beach spoke in opposition of the request. He stated the City was selling the land because of an error that had been made and now they were adding to that mistake. He stated this was not a dead end street and it belonged to the taxpayers. He stated business owners could access their business from the back during Bike Week because the Police Department had everything blocked off and asked the Board to review the history of how this request came about before they voted.

Ervin Ross, 515 Dr. Martin Luther King, Jr. (MLK) Drive, Daytona Beach, representing New Mount Zion Missionary Baptist Church spoke in favor of the request. He stated what had been said tonight was not totally true because Mr. White had access to his property from Walnut Street. He stated when the City holds large events, they use due care to make sure the business owners have access to their businesses and that Mr. White had been fighting the request ever since the church applied for, bidded and won the bid for two City owned parcels. He stated Mr. White was now accusing the church of purchasing the property illegally because the City had not done their due diligence but the City placed the notice of sale in the newspaper, held a bid process in which the church won the bid over the objection of the Second Avenue Merchants Association. He stated the City even came back to the table and tried to work out parking issues for business owners on MMB. Mr. Ross stated for several months, New Mt. Zion had been in an ongoing struggle to try to close this issue and that they had been patiently waiting to in an effort to try to work with the City and business owners to come up with an amicable solution to the problem. He stated by vacating Weaver Street, the church had agreed to release their initial bid for the paved parking lot directly behind Mr. White's place of business, which has been stated to be a very heavily used area, when in fact, it is very seldom used if at all. He stated all they were asking was to bring a close to this ongoing issue and that they had bent over backwards to try to be accommodating to the City with the recommendation that they be given the opportunity to purchase Weaver Street in exchange for the paved parking lot, which they had already put money on the table for in good faith when they won the bid several months ago. Mr. Ross stated all they were asking for was the Planning Board to move forward with staff's recommendation to vacate the property.

Board Comments

Mr. McGhee asked if the major concern was access from Walnut Street. He asked Mr. Crowe where that location was on the map.

Mr. Crowe pointed out on the map that the parking lot went from Weaver to Walnut.

Mr. McGhee asked if the City or any type of emergency vehicles would still have access if Weaver Street were vacated.

Mr. Walton replied yes.

Mr. McGuinness asked if the two buildings north of Weaver Street had driveways in the back for service.

Mr. Crowe replied yes it was a City parking lot.

Mr. McGuinness stated so there was not any private parking for the business owners.

Mr. Crowe replied that was correct, it had always been a City parking lot but it was used for public parking so it is utilized by the public.

Mr. McGuinness stated so we would not be cutting off any ones access to private parking.

Mr. Crowe replied that was correct.

Mr. Walton gave a little bit more background on the history of this request. He stated the City determined that the property with/ parking lot and the lot to the south were surplus property. They put out a Request for Proposals (RFP) and the church bid on the lots but the night the City Commission was set to consummate the contract questions were raised about keeping additional parking for the private residents and the City Commission agreed to keep the parking lot open and discuss allowing the church to use the area south of that, vacate the property and allow them to use that for their expansion plans but keep the public parking available for the private businesses.

Mr. Hoitsma stated so it would really be a U shape and cars could come all the way through.

Mr. Fishback asked who could answer the question, what the ramifications would be if the vacation was not approved.

Mr. Walton replied probably a representative from the church.

Reverend Corwin Lasenby, Sr., Pastor of New Mt. Zion Missionary Baptist Church, 515 Dr. MMB, Daytona Beach restated the history of how the request got to this point. He stated January 2010 will have been two years that the City has had the church's earnest money and still not closed on the property. He stated because the church did not want to be in opposition with the community they have done everything they could to try to be cooperative but every move they make there is opposition because there are certain people who don't want change in the area because when Bike Week comes around, they want to take the money from the City that they don't pay to the City and use it as their own property. He stated that is where the issue is right now and not about the church purchasing the property, it is about private business owners not having control of the property anymore. Reverend Lasenby stated if they don't own the property, they can't control it. He stated if the Second Avenue Merchants wanted the property that bad, when the RFP came out all they had to do was bid on it. He stated they did not do that and now this is their way of filibustering to slow down the process. He stated they had their funds in place to close on tomorrow if possible and at this point, the church was ready for closure. He stated all they were asking from the Board was the approval of the sale of parcel 10 and to vacate Weaver Street so they could move forward with their business deal.

Mrs. Remark stated she did not think he answered Mr. Fishback's question why they needed the street vacated.

Reverend Lasenby replied they did not need the street vacated, what they needed were parcels 10 and 20 but the City did not want them to have the parking lot, so what they did was agreed to …

Mrs. Remark asked if one part of the properties were on opposite sides of the street.

Reverend Lasenby replied no.

Mrs. Remark replied that was all she needed to know.

Mr. Fishback stated for the record he had been following this request and that he knew both Mr. White and Reverend Lasenby. He stated he felt both their intentions were solid and they both cared about the community. He stated what was unfortunate was there were three parties involved, the church, Second Avenue Merchants and the City and he felt the City could have done a better job before the property was put up for sale. He stated he felt the conflict between the church and Mr. White could have been avoided if the City had done the right thing in the beginning.

Mr. Moore stated he still did not hear why the street had to be closed.

Mr. McGhee stated to his understanding it was a trade off, the street for the parking lot.

Mr. Walton stated he would allow someone from the church to answer that question but the plan the night they were talking about purchasing the property was to do uses and they needed the property to build those uses on.

Mrs. Shelley stated it would make the two parcels contiguous.

Mr. Ross stated the City presented the church with several options to try to work through the issues and the option that best worked for them was the option to vacate Weaver Street.

Mr. White stated the issue was the City made a mistake by putting the paved parking lot up for bid. He stated the news article read the bid could be withdrawn for any reason but instead of withdrawing the bit, they proceeded with the sale to the church which made the contract legal. He stated there were City documents that state the property was never supposed to be sold and when he produced those documents that reflected the parking lot was for the businesses to have access the City came up with this agreement to try to cover up the first mistake.

Mr. Hoitsma stated he did not understand Mr. White's problem with the request because he was getting use of the parking lot at no cost.

Mr. White replied the church was trying to get the property for free.

Mr. Hoitsma stated he was talking about the parking lot behind Mr. White's business. He stated he was getting to use it for free.

Mr. White stated no he was not because that was City property and that was the reason he pressure cleaned the building and rebuilt it to bring some business to the area. He stated if he would not have had access he would not have improved the building and what he was talking about was the fact that they were saying the businesses had access from Weaver and Walnut Street but when something was going on those streets were a disaster. Mr. White stated he did not feel the church had given a good reason why they needed the street for development.

Board Motion

It was moved by Mrs. Shelley to approve Right-of-Way Street Vacation, DEV 2009-066, Weaver Street. Seconded by Mrs. Remark.

Board Action

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

John McGhee, II	Yea
Jeff Hurt	Yea
Tracey Remark	Yea
Edith Shelley	Yea
Bob Hoitsma	Yea
Janet LeSage	Yea
John McGuinness	Yea
Larry Moore	Nay
Kevin Fishback	Yea
Cathy Washington	Yea

Item #6 was moved before Item #4.

7. **Land Development Code Text Amendment, DEV 2009-092, Prohibited Discharge Standards Revision**

A request by The City of Daytona Beach Utilities Department, to amend the Land Development Code (LDC), Article 7 (Environmental Requirements), Section 6 (Sanitary Sewer System), Sub-Section 6.8 (Prohibited Discharge Standards), to modify the acceptable local limits of hazardous or toxic substances.

Staff Presentation

Thad Crowe, Planning Manager stated this was a rather complex item and that staff had learned a lot during the process and Robin Cook from the Utilities Department was present to answer question. He stated the request is to amend LDC, Article 7, Section 6, Sub-Section 6.8, which modifies the acceptable local limits of hazardous or toxic substances. He stated the City's Utilities Department must re-evaluate and modify (if necessary) allowable amount of hazardous or toxic substances within wastewater for industrial uses and that measurement of

such substances takes place at the point of discharge to the City's wastewater facilities (WWF). He stated the Federal Department of Environmental Protection (FDEP) through Environmental Protection Agency (EPA) mandate to protect City's water supply and water treatment facilities from the dangers of harmful pollutants and also to protect water the quality of water bodies, particularly Halifax River. He stated this change is necessary due to research-based and EPA/FDEP-mandated changes in maximum/minimum local limits. Mr. Crowe stated lower limits help to minimize the potential effects on the treatment plant and ultimately the environment and higher limits help local industries by allowing for reduced, less expensive, but still safe filtration for wastewater. He stated the item is scheduled for the November 4, 2009 City Commission Meeting on first reading and November 18, 2009 on second reading (Public Hearing) and staff was recommending approval of the request to amend the LDC, Article 7, Section 6, Sub-Section 6.8, to modify the acceptable local limits of hazardous or toxic substances.

Mr. Hoitsma asked if this was a Federal Law that the state either accepted or made it more stringent and then passed it down to local governments.

Mr. Crowe and Ms. Cook replied yes.

Mr. McGuinness had a question on page three of the Staff Report in reference to how the information was numbered. He asked if number 21 should be 22.

Mr. Crowe replied he would double check it but he thought Mr. McGuinness was correct.

Mrs. Shelley and Mrs. Remark stated there was already a number 22.

Mr. Crowe stated he would check the LDC while Ms. Cook was answering questions.

Mr. Hoitsma asked about the lead, cadmium, nickel and other content levels being moved seven times what they was before and stated he always thought of the City as getting more environmentally conscience and this change did not seem to do that.

Ms. Cook stated there were a couple of things that were going that caused the levels to go up and the one thing she needed the Board to understand was this level was not the same level that Orlando or Chicago might have. She stated the limit was determined by the baseline ambient level, which is in the discharge anyway be it from stormwater run off, household waste and various other things but this particular limit applied only to industry. She stated because the City's ambient level is what it is, the federal data base has a level that it has established based on all of the industries that have been entered into it, so the reason the limit may be different for Daytona versus Orlando is because they took the numbers we provided them based on our research over the course of two and a half months, put it into their formula which generated these numbers.

Mrs. Remark asked if this was happening because currently the City had only one facility that was dealing with this and what would happen if there were 10 facilities.

Ms. Cook replied it would have shown up in the lift stations where the studies were performed and that are why they are re-evaluated every five years.

Mrs. Remark asked if next time we would take the lead back in.

Ms. Cook replied the lead was not going into the environment; it was going into the WWP.

Mr. Hoitsma asked what happens to the lead when it comes out of the WWP.

Ms. Cook replied it goes into the residuals and then there is an entirely different level of regulations that are mandated by the state with regards to sludge and how it can be handled. She stated most of the time it is incinerated.

Mr. Moore asked if it was treated when it came back.

Ms. Cook replied yes, essentially this was looking at untreated sewage and if they go over these limits there is a surcharge because there is an additional cost to the City to clean the sludge, wastewater or whatever else needs to be cleaned.

Mr. Moore asked who the company was that this applied too.

Ms. Cook replied Protec.

Mr. Moore stated asked if the reason we had these increases was because the City's POW plant is now better able to handle them.

Ms. Cook replied yes.

There was additional discussion between Ms. Cook and Mr. Moore regarding the increases.

Ms. Cook stated the Utilities staff had absolutely no say in the numbers presented tonight. The only say they had to tell how many industries were in the City and the number of lift stations. She stated FDEP put those numbers into their formula and the numbers presented tonight are the result.

Mr. Moore asked staff if they knew when and how the language on page 23, very last sentence that reads, "The City Manager may impose mass limitations in addition to or in place of the concentration based limitations" got into the LDC. He asked why it would be left to one individual to make that decision. He stated he did not agree with that statement at all and it made it highly susceptible for someone to meet one-on-one with someone.

Ms. Lathan stated staff would have to go back through and track the changes. She stated it was not something that could be figured out right but staff could bring that information back to the Board.

Mrs. Remark read the language referencing the City having to "re-evaluate and modify if necessary." She asked if the City had to modify.

Ms. Cook replied yes the City had to modify every five years because it was mandated as a utility by FDEP and when they give the limits, the City must be put in or face fines from FDEP.

Mrs. Remark asked if there was any way to appeal FDEP's formula. She stated she agreed with Mr. Hoitsma and that she was stunned by the level of lead and some of the other minerals in the water. She stated she realized Ms. Cook talked about wastewater and sludge but part of the project description says we are protecting the water quality of other water bodies, particularly the Halifax River, so something was ending up in or near the river.

Ms. Cook stated they currently discharge to the Halifax River from time-to-time.

Mrs. Remark asked again if there was any way to appeal FDEP's formula or is we locked in to whatever they determine.

Ms. Cook replied there was an appeals process that would take some time but in regards to this particular statute, she did not know what the appeal process would be.

Mr. Hoitsma stated it looked like the City Manager could make it tougher.

Mrs. Remark replied yes it does. She asked the Board if they wanted to ignore the appeal process because she had a problem with the numbers FDEP came up with.

Mr. Moore asked if the water would also be to water the golf course and other places once it was treated.

Ms. Cook replied not necessarily, the one thing the Board needed to remember was the limits were not limits that came from the WWPs; they were limits that could go into the plants.

Mrs. Remark asked what limits did come from the plants.

Ms. Cook replied they were mandated by the City's permit also through FDEP through the permit process. She stated they had certain levels they must meet of affluent water quality, which is what comes off of the plant and those limits were much lower than the ones presented tonight.

Mr. Moore asked once the water was treated, were the levels increased.

Ms. Cook replied no, they could not do that based on the permit. She stated the permit holds the City to those particular levels. She stated again, this is a different animal and what comes off of the WWP was a different program in the FDEP.

Mr. Moore asked if that was in the LDC.

Ms. Cook replied no it was not in the LDC and it was not mandated by the LDC. She stated what was pertinent tonight was what the LDC would allow an industrial user to put into the sanitary sewer for the purposes of treatment. She stated the City was mandated by the permit what could be discharged from the WWP and a copy of the permit was located in the City Attorney's Office. She stated they test many parameters every day for those levels but for the ones being reviewed tonight those levels are tested annually.

Mr. Hoitsma stated the only thing that surprised him was when you move the lead level up seven times what it was when it came out of the factory he couldn't help but think the City would have to spend more to get it down to the required level.

Ms. Cook stated that could potentially be the case but it has to do with an overall picture and because they were only talking about one industry, it probably was not more lead going into the plant. She stated as it goes into the plant, she was talking about millions and millions of gallons of delusion. She stated if the City had five to 10 industries that were discharging lead at this level, then it would be a problem but that is why the local limits are re-evaluated every five years.

Board Motion

It was moved by Mr. Hurt to approve Land Development Code Text Amendment, DEV 2009-092, Prohibited Discharge Standards Revision. Seconded by Mrs. Shelley.

Board Action

The motion was approved by roll-vote 7-to-3 with the breakdown as follows:

John McGhee, II	Nay
Jeff Hurt	Yea
Tracey Remark	Nay
Edith Shelley	Yea
Bob Hoitsma	Yea
Janet LeSage	Yea
John McGuinness	Yea
Larry Moore	Yea
Kevin Fishback	Nay
Cathy Washington	Yea

8. **Mitsubishi/KIA - Small Scale Comprehensive Plan Map Amendment, 2009-085**

A request by Mark Dowst, P.E., on behalf of C&N Properties, LLC for approval of a small scale comprehensive plan map amendment for .16± acres of land located at 1020 George W. Engram Boulevard, approximately 400 feet west of North Nova Road, from Level 1 Residential to Low Intensity Commercial.

Staff Presentation

Thad Crowe, Planning Manager gave a PowerPoint presentation. He stated there were actually two requests. The first one was the request was for a small scale comprehensive plan map amendment for .16± acres located at 1020 George W. Engram Boulevard, approximately 400± feet west of North Nova Road, from Level 1 Residential to Low Intensity Commercial (LIC). He stated it was for narrow strip of land, with a large retention pond to the west and a vacant trucking terminal to the east. He stated the existing Mitsubishi complex is to the north and the Future Land Use Map (FLUM) for the area reflects the site as Retail and the area to the north as Level 1 Residential. Mr. Crowe stated the LIC represents a "step-down" in intensity between Retail to east and residential land uses to west and north; the amendment was in keeping with Comprehensive Plan (efficient local of commercial uses, promotion of economic development, supply of commercial land, directing traffic away from residential areas, promoting infill); the Impact Analysis reflected available infrastructure/services (road, water, and sewer) capacity in area and did not create urban sprawl. He stated the item would be scheduled to be heard by City Commission after review by VGMC and staff was recommending approval.

Applicant Presentation

Mark Dowst, Project Engineer, on behalf of C&N Properties, LLC, 536 North Halifax Avenue, Daytona Beach stated the subject piece of property was actually acquired in a tax sale a long time ago and the owner has held on to it for a number of years. He stated since the property was located between his client's property and the retention pond it did not have any other use, so his client approached the owner and was able to purchase the parcel in order to attach it to the next item on the agenda.

Citizen Comments

Sallie Roberts, 401 Jackson Avenue, Daytona Beach stated she was present because she received a letter and she needed clarification on how this would affect her as a resident in the neighborhood.

Mr. Hoitsma asked where her house was located compared to Hampton Road.

Ms. Roberts replied she did not know he jumped to Hampton Road before she could really get at chance to look at but her house was near the retention pond.

Mr. Crowe showed Ms. Roberts a map of the area and stated the applicant was proposing to change the land use of the property to Retail so they can expand the existing Mitsubishi dealership.

Ms. Roberts asked why she was sent the letter.

Mr. Crowe replied they were required by the City's LDC to send the letter.

Board Motion

It was moved by Mrs. Shelley to approve Mitsubishi/KIA - Small Scale Comprehensive Plan Map Amendment, 2009-085. Seconded by Mr. Moore.

Board Action

The motion was approved 9-to-1.

9. **Mitsubishi/KIA – Planned Commercial Development Rezoning, 2009-086**

A request by C & N Properties, LLC, to rezone a 1.80± acre parcel of land located at 1020 and 1036 George W. Engram Boulevard and 1011 Hampton Road, from R1a to Planned Commercial Development (PCD); and to enter into the Mitsubishi/Kia Service Center PCD Agreement, establishing development standards for a PCD.

Staff Presentation

Thad Crowe, Planning Manager gave a PowerPoint presentation. He stated this was the companion amendment that goes with item number 8. He stated the request was to rezone a 1.8± acre parcel of land located at 1020 and 1036 George W. Engram Boulevard and 1011 Hampton Road, from R1a to Planned Commercial Development (PCD); and to enter into the Mitsubishi/Kia Service Center PCD Agreement. He stated there were three parcels: 1020 Geo. Engram (SSCPA), 1036 George W. Engram Boulevard (former trucking terminal), and 1101 Hampton Road; the parcels were adjacent to the existing Mitsubishi dealership on Nova Road and the current zoning was R1a (Single-family). He stated the PCD would allow the following:

- Sale & rental of light and recreational vehicles;
- Vehicular service, light & heavy;
- Sale & Rental of vehicles, heavy;
- Storage of vehicles;
- Business & Professional Services;
- Off-street parking lots;
- Retail Sales & Services

Mr. Crowe further stated the request departures from City Master Development Agreements (MDA) Template in the following ways:

- Requirement that exterior materials not be "lower grade materials such as unfinished concrete and pre-fab metal."
- Requirement for real or false windows on elevations visible from public right-of-ways.

Mr. Crowe stated the Technical Review Team (TRT) supported these deviations as they would enable the proposed (and required) architectural style of the new building's Current land use: Level 1 Residential. He stated per TRT comments the applicant had limited signage to ground signs, but the limitation did not provide size limitation; the applicant had transferred the required landscape area and plant materials from non-residential buffers and building perimeters to George W. Engram Boulevard frontage as allowed and encouraged by the LDC; no variances from LDC were required; there was vehicular access from the existing dealership via Nova Road and tractor trailers would unload on the George W. Engram Boulevard part of

site, removing incompatible activities from residential Hampton Street. He stated 33 percent of the site had landscaping, which exceeded the required 25 percent; the residences to north were properly buffered with a fence; there were 13 large trees preserved on site and accent plantings required per LDC, could be transferred around the site. Mr. Crowe stated the proposed uses were compatible with the commercial uses in the vicinity; the site plan and zoning amendment criteria had been satisfied (with staff recommendations); there was available road, water and sewer capacity and staff was recommending approval of the rezoning and the request to enter into the Mitsubishi/Kia Service Center PCD Agreement, with following conditions:

1. Signs are limited to walls signs as allowed under BA zoning, directory signs, and one ground sign no larger than 80 SF along George W. Engram Blvd.
2. Landscape/irrigation plans must be signed and sealed by Florida registered landscape architect.
3. Accent plantings of shrubs, ground covers, vines and/or flowers shall be provided in property perimeter landscape areas, spaced no more than 40 feet apart, placed along the outside of any permitted or required fences, walls, hedges, and berms, and adjacent to driveway entrances, placed at building corners and along pedestrian entrance walks. Each group shall be a minimum of 20 square feet in area. Such plantings shall be provided as noted or transferred to other part of site.
4. Show on plans the fire line details (pipe size, location of connections to main) for proposed fire hydrant.

Mr. Moore asked if he was saying that under the MDA there would be sign limitations that result in smaller and shorter signs that allowed under the BA zoning.

Mr. Crowe replied yes.

Mr. Moore stated if you go back to the agreement under signage it reads, "signage would be in accordance with sign requirements for Business Automotive zoning.

Mr. Crowe stated staff was recommending conditions to amend that language to only allow ground signs no larger than 80 square feet.

Mrs. Remark stated so you are saying staff is recommending the request be passed with staff's recommendations.

Mr. Crowe replied yes and that would then change the agreement.

Mrs. Remark asked if it was a wall or fence.

Mr. Crowe replied it should be a 6-foot masonry wall.

Mrs. Remark asked if the plantings would be placed on the inside or outside of the wall.

Mr. Crowe replied the wall typically goes along the property line and the plantings are on the inside for maintenance purposes.

Mrs. Remark stated so the neighbors would see a blank wall.

Mr. Crowe replied that was correct.

Mrs. LeSage stated right across the street to the east was an automobile dealership with a street directly behind it and they have planting on the outside of the wall because they had enough property. She stated her other concern was the loud speaker noise. She stated she was glad there was a wall but it would be nice if there could be some landscaping.

Mr. Crowe stated the Board could deviate from the wall. He stated one of the problems was it would be difficult to maintain because the plantings would be on the outside of the wall and they could not physically get to them.

Mrs. Remark asked if Mr. Crowe was saying they could not walk around the wall.

Mr. Crowe replied he would allow the applicant to address that question but legally that could be problematic.

Mr. McGuinness stated he just wanted to make sure he understood what was being said. He asked if the Future Land Use was Retail all the way back to the 30-foot strip the Board just voted on.

Mr. Crowe replied yes.

Mr. McGuinness stated and also Retail on 1017 and 1011 Hampton Road.

Mr. Crowe replied correct.

Mr. McGuinness stated so the applicant currently owns 1011 Hampton Road but 1017 is still privately owned.

Mr. Crowe replied that was correct.

Mr. McGuinness stated but the current zoning for everything was still R-1a.

Mr. Crowe replied that was correct.

Mr. McGuinness stated so there is still single-family residential at 1012 and 1217 Hampton Road and all around.

Mr. Crowe replied that was correct.

Applicant Presentation

Mark Dowst, P.E., on behalf of the applicant, 536 North Halifax Drive, Daytona Beach introduced Stan Holly, architect for the project. He gave a brief history of the property and showed a series drawings that reflected where the current dealership was located, where the new buildings would be located and what they would look like. He stated the new buildings were not designed for the public to go into and that was one of the reasons why the elevations look the way they do.

Ms. LeSage asked if car sales would be done where the houses are abutting the property.

Mr. Dowst replied he would say never but the design was done to limit the public from the area and use it for service of vehicles only. He stated the design of the sight had several constraints. The land was zoned R1a, which was not consistent the future land use. He stated the existing trucking facility that was currently there had been a nonconforming use that had existed for years. He stated additional parts were being added to the building, which would give it a nicer appearance on the side and in the front the concrete steps were being removed to create a 20-foot buffer. Mr. Dowst stated they had also shifted some of the landscaping to the front in an effort to improve the curb appeal of the site.

Ms. LeSage asked if the service would be pretty much enclosed and the neighbors would not be subjected to noise from power tools and other noises.

Mr. Dowst replied that was correct and one of things they did was put the bays on the sides of the building.

Ms. LeSage asked if there would be a PA system.

Mr. Dowst replied there will only be employees in the service shop and they will only have an internal PA system.

Mrs. Remark asked about evening lighting.

Mr. Dowst replied the lighting would be shielded and cast down away from the neighborhood.

Mrs. Remark stated adopting this with the recommended changes would obviously change the PCD agreement. She asked if they decided to have sales, would they have to come back to Board to do that.

Mr. Dowst replied sales were already a listing of a use under the current agreement.

Mrs. Remark asked how long the applicant had owned 1011 Hampton Road.

Mr. Dowst replied approximately six months.

Mrs. Remark stated so it was bought with the intention of it being part of this project.

Mr. Dowst replied that was correct. He stated he wanted to go back and address the signage question because he did not think he fully and answered the question. He stated when they initially submitted the agreement, they had very little signage on the building, which was intention because they did not want people invited into the building. He stated but in the future things could change so they put in an allocation for signage and linked it to the BA use because it was a typical BA type use, which has signage type limitations that go along with it. He stated staff asked that they go to a ground sign which they complied with and also to limit the sign to 80-feet and they were ok with that request.

Mr. Walton asked if they wanted the BA standard signage.

Mr. Dowst replied yes they did want the standard BA signage for the building itself.

Mrs. Remark asked if they sent notice letters to the neighbors.

Mr. Dowst replied yes.

Mrs. Remark asked if any neighbors called upset about the project.

Mr. Dowst replied no, but he did receive two calls from neighbors that were curious about the project and he answered their questions.

Richard Nisbit, 332 John Anderson Drive, Daytona Beach stated that the house he purchased was intended to become parking for employees. He stated he and his partner also own two more houses.

Mr. McGuinness asked if Mr. Nisbit if he also owned the house at 1212 and 1017 Hampton Drive.

Mr. Nisbit replied he owns 1011 Hampton Drive.

Mr. McGhee asked if the expansion would also increase volume in traffic.

Mr. Dowst stated traffic was at the level reflected in the Board's packet and he was hoping they would have an increase in customers.

Mrs. Shelley stated she was very pleased they did not move to the Automall and that they stayed on Nova Road. She stated she travels in that area quite a bit and she was glad to the dement ions on the side of the buildings and the landscaping.

Mr. Hoitsma asked Mr. Dowst if they were in agreement with all of the conditions.

Mr. Dowst replies yes.

Citizen Comments

John Nicholson, 413 North Grandview Avenue stated he was not speaking either in favor or against the project. He stated he had three concerns, the first concern was pertaining to a very large tree on the property that would like to see saved; whether or not there would be an entrance off of Hampton Road and if they could enhance the brick wall.

Mr. Hoitsma asked Mr. Dowst what the wall would look like.

Mr. Dowst stated it was just a block wall painted in an earth color.

Mrs. Remark asked if it could be stucco because she stares at two walls in her neighborhood and they are not very attractive.

Mr. Hoitsma stated in his experience he has found cinderblock walls do not look very good and when you paint them it shows every mark on them. He asked if there were a cost effective way the wall could be stucco.

Mr. Dowst replied the reaction he got from the residents was that they were happy to have the wall because before most of them had a dilapidated fence there.

Stan Holley, Architect for the project stated currently there is a chain link fence with no buffering. He stated the stucco would add cost and maintenance to the project and they would actually pay more for the stucco than the block.

Mrs. Remark asked if the tree Mr. Nicholson referenced was being saved.

Mr. Dowst replied that tree would have to come down.

Board Motion

It was moved by Mr. Hurt to approve Mitsubishi/KIA – Planned Commercial Development Rezoning, 2009-086. Seconded by Mrs. Shelley

Board Action

The motion was approved 9-to-1.

Break taken at 8:45 PM

Reconvened at 8:54 PM

Discussion Items

10. **Land Development Code Text Amendment, DEV 2009-080, Use of Submerged Lands in Density/Intensity Calculations**

A request by the Planning Board, to provide information and recommendations pertaining to the use of submerged lands in calculating residential density and commercial intensity.

Staff Presentation

Mr. Hoitsma stated the Board had three issues on the agenda for discussion tonight and due to the lengthiness of the meeting he would like if anyone had questions or comments to make them during and maybe at the next meeting the Board could have the full discussion. He asked the Board if they had any comments they wanted considered.

Mr. Hurt stated submerged lands that have a title were actually taxed and they have a taxable value. He stated in his opinion was if you have to pay taxes on a piece of land you should be able to use it.

Mrs. Remark stated she was in favor of prohibiting them because she feels they will lead us into problems with density. She referenced the language from the Staff Report about "clearly establishing ownership" and stated if people were not careful every time to convey the land, they could very easily loose the title. She stated in fact there were a lot of State statutes that reflect submerged lands were owned by the State and are not covered under title insurance. She stated there is a huge problem down in South Florida.

Mr. McGuinness stated he assumed all submerged lands were part of the taxable parcel. He stated he felt they should vote yes or no because if they were to go with some of the other recommendations the City would be stuck with PCD submerged land projects and that would add an entirely new list of things for the Board to have to review.

Mrs. Shelley stated she had highlighted the part about the applicants having to clearly establish ownership of submerged lands and the extent of such lands. She stated when you talk about submerged lands you were also dealing with the wetlands issue and not just ocean or riverfront property. She stated it is a very deep issue and feels it is something that should be addressed during the LDC update. She complemented staff on the level of detail the report went into and getting it to the Board quickly. She asked if they were going to direct staff to do anything.

Mr. Hoitsma stated he thought they agreed to bring the items back one more time for discussion and then have it put on the agenda action.

11. **Land Development Code Text Amendment, DEV 2008-081, Inclusion of Enclosed Parking Areas in Floor Area Ratio**

A request by the Planning Board, to provide information and recommendations pertaining to the use of enclosed parking in calculating Floor Area Ratio (FAR).

Mrs. Remark stated this was one of the issues she struggled with because she understood both of the issues. She stated on one hand she did not want to just see parking lots and on the other she did not want to push a building so high for land that it overshadowed the surrounding buildings. She referenced Halifax Landing as an example and stated she would have rather seen the buildings go higher to get the parking underneath them. She stated it had more to do with lot size for her and what will end up there.

Mr. Hurt stated he agreed with some of what Mrs. Remark said. He stated for him it had to do with the size of the lot because it should be the taller the building the larger the setback. He stated with parking under the building it would help eliminate the clutter. He stated residents have expressed that they like the taller slim buildings with unobstructed sides.

12. **Land Development Code Text Amendment, DEV 2009-082, Planned Development Time Limits**

A request by the Planning Board, to provide information and recommendations pertaining to project time limits for planned developments.

Mr. Hoitsma stated the Board had discussed this issue previously but felt it needed additional discussion.

Mr. Hurt stated he liked the way staff presented the information and he was always against deadlines that do not allow for extenuating circumstances because sometimes applicants have trouble getting permits or have delays due to the economy. He stated on the other hand if the applicants do not move any dirt or notify the City what is going on they should be held to the time requirements.

Mr. Hoitsma stated he felt it was wise to make the deadline a little shorter and work it out from there versus making it longer.

Mrs. Remark stated she was in agreement with the template staff was using but does not feel it should be put in the LDC. She stated she wished there was a way to sunset the development rights when the developer sold the property.

Mr. Hurt stated things could happen where a developer gets his permits, start building and all of his businesses go down the drain and the developer decides to sale the building, he stated that could look like the developer were flipping the building bur actually it was not.

Mrs. Remark stated she agreed with Mr. Hurt but she was referencing when developers do not even get a permit.

Mr. Fishback asked Mrs. Remark what she wanted to sunset.

Mrs. Remark replied the development rights. She stated when the Board and City Commission approve projects that increase the value of the land through the PCD process and the developer then turns around and flips the property she would like for the developments to be sunset with the sale.

Mr. Hurt stated he honestly thought most developers had the intention to build but if someone came in and offered $10 million for a project that they had $2 million invested, he would sale the property because the only they were building was to make money.

Mrs. Remark asked if all of the Board members agreed with staff's recommendation to add the five year phased language to the template.

Mrs. Remark stated the State allowed 20 years.

Mr. Hurt stated he did not have a problem with it as long as it was not the drop dead date.

13. **Board Appointments**

Discussion on the Planning Board representative serving on the Main Street/South Atlantic Redevelopment Area Board whose term expired on December 31, 2008 and needs to be re-appointed or filled.

Mrs. LeSage submitted her letter of resignation for the Main Street/South Atlantic Redevelopment Area Board. She stated one of the reasons was scheduling and the other was due to some recent changes in her life she would like to pursue some things with her family and would not be able to devote the time the position required.

Mr. Hoitsma asked if any of the Board members would be interested in serving on the Main Street/South Atlantic Redevelopment Board.

Mrs. Shelley asked what were the Board's meeting dates and times.

Ms. LeSage replied the second Wednesday every month at 6:30 PM. She recommended Mrs. Remark for the position. She stated her recommendation was based on the fact that Mrs. Remark was very well versed in all of the issues happening on the beachside.

Mrs. Remark agreed to accept the position.

Board Motion

It was moved by Ms. LeSage to appoint Mrs. Remark as the Planning Board's representative on the Main Street/South Atlantic Redevelopment Area Board. Seconded by Mr. Moore.

Board Action

The motion was approved 10-to-0.

14. **2010 Planning Board Meeting Schedule**

Mr. Walton stated the Board would need to approve the 2010 schedule and noted that the meeting dates for November and December were on the third Thursday due to the holidays.

Board Motion

It was moved by Mr. Hurt to approve the 2010 Planning Board Meeting Schedule. Seconded by Mrs. Shelley.

Board Action

The motion was approved 10-to-0.

15. ***Other Business***

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

Mrs. Shelley gave a brief report on the August 18th meeting. She stated the Board reviewed the Redevelopment Incentive Program that the Board was working on for the Downtown area; discussed the Riverfront Park Master Plan and heard project updates from the Redevelopment Department's staff. She stated the Board met again on yesterday, September 23rd at 4:00 p.m. She stated the Board approved a variance request from Good Samaritan to put a fence on Ridgewood, which is a scenic thoroughfare. She stated staff recommended denial and requested that the Board not waive the required landscaping. She stated she and Mr. White voted against the request. Mrs. Shelley stated the Board also voted on the Prohibition of Signs LDC Text Amendment and stated there appeared to be some confusion when the Planning Board made their recommendation. She stated when she received the Downtown/Ballough Road Redevelopment Area Board Staff Report recommending denial of the amendment; she called Mr. Walton to explain that the Board was recommending denial because the amendment would take away signs in the Downtown area that they had worked hard to get put in. She stated in speaking with Mr. Walton, she became aware that there was a second page to the prohibited uses that would take out sandwich board signs and a lot of other things if the amendment were approved. She stated Ms. Lathan did mention that but the Planning Board did not grasp that she was referencing the LDC and that they were only addressing lighted signs. Mrs. Shelley stated based on the miscommunication, the Downtown/Ballough Redevelopment Area Board denied the amendment request with the recommendation that it be sent back to the Planning Board.

Mrs. Remark asked if those were covered in Section 6.18.

Mr. Hoitsma replied there were three on that page and additional ones on the next page.

Mrs. Remark stated but the next page had the inflatable sings.

Ms. Lathan stated that was correct, but Mrs. Shelley did not know there was a second page.

Mrs. Remark stated she thought the language read "except as provided in Section 6.18." She asked if sandwich board signs were in Section 6.18.

Mr. Crowe replied Section 6.18 was TPA's.

Mrs. Remark stated she was aware there was a second page but she thought all language about signs was included in that section.

Mrs. Shelley stated since the Board was only addressing lighted signs, when the language was drafted she thought it only addressed lighted signs. She stated the Main Street/South Atlantic Redevelopment Area Board also denied the amendment request for the same reason and it will probably be denied by the Midtown Redevelopment Area Board.

Mrs. Remark asked if they could request the item to come back or did it have to move forward to the City Commission.

Ms. Lathan replied the request was already on the City Commission Agenda so it would be up to the City Commission to send the request back to the Planning Board. She stated the Midtown Board did recommend denial.

Mrs. Shelley stated if possible the she would like to have the item returned so they could look at it in greater detail because of the circumstances that arose.

Mrs. Remark asked if there were some way staff could communicate that request to the City Commission because she agreed with Mrs. Shelley.

Mr. Walton replied staff could relay that message.

Mrs. Shelley stated this end result was not the Board's intention and in speaking with a couple of City Commissioners, she got the impression they would be more than happy for the Board to revisit the request. She stated the Board also approved the request for Prohibition of New or Expanded Social Service Issues in Redevelopment Areas; discussed the Riverfront Master Plan; staff reported that economic incentives pertaining to fasod grants and historic preservation were approved by the City Commission.

Mrs. Remark asked if the consultants for the Riverfront Master Plan had worked with anyone on deed restrictions.

Mr. Walton stated he knew they were aware of them but he couldn't say whether or not they had discussed them with anyone.

B. **Midtown Redevelopment Area Board Report**

Mr. McGhee reported the Board met on September 8th and it was a very interesting meeting. He stated Police Chief Chitwood gave a report on several different topics. He stated Chief Chitwood reported that there wasn't any juvenile justice services in Volusia County and what that meant was when a juvenile gets picked up anywhere in the county, they are released in approximately three days to a week to do the same thing over again. He stated Chief Chitwood also reported on a $3 million grant they were applying for to cover the salaries of four police officers; domestic violence being the number one crime in the Midtown Area and drugs were the second; markers being put up at Dickerson Center; police and mercury site; update from Next Level on Jazz in the Park (Daisy Stocking Park).

Mrs. Remark asked for the dates for the event.

Mr. McGhee replied every first Sunday.

Mr. Hoitsma thanked Mr. McGhee for accepting the position on the Midtown Board.

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

No Report.

D. **Public Comments**

John Nicholson, 413 North Grandview Avenue, Daytona Beach thanked the Board for the discussion on submerged lands, PD time extensions and FAR. He asked to add landscaping to the list of discussion items. He stated the Main Street Redevelopment Area Board denied the lighting request because the Ezone was coming and they were worried about the lights not being compatible with the new technology.

Jim Cameron, Sr. Vice-President, Chamber of Commerce invited the Board to attend a discussion forum being held at the News-Journal Center on October 28th regarding economic development. He stated the Chamber was teaming up with Save Our Neighborhoods Group to address different issues.

Mr. Hoitsma stated it was a good time for the City to acquire some of the vacant land along the ocean where projects had been approved but never materialized. He stated the City could use the land for parks. He asked Mr. Cameron to see if there were any assistance they could give through their contacts it would be appreciated.

Mr. Hurt asked what Board members should do when they are called at home on to discuss happenings in the City.

Mrs. Lathan stated earlier the Board was given a document that clarified what board members could discuss. She stated Board members could discuss land issues without there being a negative connotation. She stated they would need to make sure the decision made is based on the record at the public hearing.

E. **Staff Comments**

Mr. Walton stated the consultants for the LDC update were going to be here on October fifth and sixth to meet with the International Speedway Boulevard (ISB) Coalition Group, Vision Implementation Steering Committee and anyone else that wanted to meet. He stated these meetings would complete Phase I of the project and then they will start Phase II.

F. **Board Member Comments**

Mr. McGhee asked to amend his Midtown Redevelopment Area Board report to include the Bethune-Cookman University sign that was denied. He stated they used the same sign company that Daytona State University (DSU) used and got approved.

Mr. Hoitsma asked what brought that on.

Mr. Crowe stated private versus public.

Mr. Walton stated DSU did not go through the City's process before they had their sign erected. He stated they have submitted an application that is not complete and have been told they are not allowed to have anything without going through the City's review process. He stated the only thing they are exempt from was building permits in the building code but they thought the sign was covered under that exemption.

Mr. Hoitsma complemented staff on the information provided to the Board. He also complemented the Board members on their civility.

Adjournment

There being no further actions to come before the board, the meeting was adjourned at 9:37 pm.

Edith Shelley

EDITH SHELLEY
Acting Chair

ATTEST:

Cathy D Washington

CATHY WASHINGTON
Secretary