

MINUTES

REGULAR MEETING – PLANNING BOARD

September 23, 2010

Minutes for the Regular Planning Board for The City of Daytona Beach, Florida, held on Thursday, September 23, 2010, 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
James Neal
Kevin Fishback (6:13)
Cathy Washington

Staff members present:

Richard Walton, Planning Director
Dennis Mrozek, Planner
Marie Hartman, City Attorney
Carrie Lathan, Assistant City Attorney
Rose Williams, Planning Technician

1. **Call to Order**

Robert Hoitsma, Chair called the meeting to order at 6:00 pm.

2. **Roll Call**

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

3. **Approval of the Minutes:** August 26, 2010

Board Motion

It was moved by Mrs. Remark to approve the August 26, 2010 Planning Board Meeting Minutes. Seconded by Mrs. Shelley.

Board Action

The motion was approved 10-to-0.

4. **Land Development Code Text Amendment, Alcohol Beverage Service, DEV 2010-041**

An administrative request by the Development and Administrative Services Department, Redevelopment Division, to amend the Land Development Code (LDC), Article 12 (Redevelopment Areas and Districts), Section 4.1 (Alcoholic beverages), to remove the ability for establishments with 4-COP licenses to locate within 500 feet of each other in the RDD-1 and RDD-2 Districts. *(Continued from the August 26, 2010 Planning Board Meeting)*

Staff Presentation

Jason Jeffries, Redevelopment Project Manager gave a PowerPoint presentation. He stated the Downtown/Ballogh Road Redevelopment Area Board had been working on the amendment for several months. He stated the Board previously recommended striking language in Article 12, Section 4, regarding 500 foot spacing for 4COP's, which are basically nightclubs and bars. He stated the purpose for the recommendation was to eliminate the ability for businesses with 4COP licenses to establish within 500 feet of each other in the RDD-1 and RDD-2 zoning districts. He stated at the March 27th and August 26th Planning Board Meetings, this Board continued the request to allow the Downtown/Ballogh Road Redevelopment Area Board more time to review and make recommendations. Mr. Jeffries stated the request before the Board tonight was a recommendation from the Downtown/Ballogh Road Redevelopment Area Board for changes to alcohol beverage service in restaurants and for a new category called boutique bars. He went through the changes for the Board as follows:

Article 12, Section 4.1

- (a) In the RDB-2, RDB-3, and RDB-5 districts, serving of alcoholic beverages in an establishment within 500 feet of another establishment within the district where alcohol is served is prohibited, except as a conditional use.
- (b) ~~In the RDD-1 and RDD-2 districts, lounges with 4-COP licenses are prohibited from locating within 500 feet of each other measured from building to building.~~

Proposed Regulations

Conditions for alcohol beverage service in restaurants

- Full service kitchen.
- Food service up to one hour prior to closing.
- Restaurant seating in 75% of customer service area.
- Live entertainment permitted.
- Extended hour permits will not be issued. (Late nights on Friday and Saturday).
- Outdoor entertainment cease by 10PM on Sunday – Thursday; Midnight on Friday & Saturday.

Boutique Bars

Definition: An establishment with less than 1,000 square feet of customer service area that primarily sells, serves, or dispenses alcoholic beverages.

Conditions (Permitted in RDD-1)

- Serve wine or beer.
- Customer service area limited to 1,000 square feet.
- Live entertainment permitted.
- Outdoor entertainment cease by 10 PM on Sunday – Thursday; Midnight on Friday & Saturday.
- Associated sale of packaged liquor, which is sold by the bottle, in a retail environment, and by the glass, in the customer service area. This use usually occurs in the evenings, with entertainment.

He gave an overview of the RDD-1 and RDD-2 zoning districts and stated the text amendments presented tonight were recommendations from the Downtown/Balough Road Redevelopment Area Board.

Mr. Moore stated he had a correction. He stated on the first page, the third bullet point, which reads “the sale of alcoholic beverages are not permitted after midnight on Sunday thru Thursday or 2:00 AM on Saturday or Sunday.” He stated he was going to ask if anything was allowed on Fridays but it had been clarified.

Mr. Jeffries stated there had been some confusion about that language and he had a different version of the language from what the Downtown/Balough Road Redevelopment Area Board received. He stated the intent was 2:00 AM on Friday and Saturday nights and that the language in the Planning Board packet was what the Downtown/Balough Road Redevelopment Area Board recommended. He stated if further clarification was needed, that could be done.

Mr. Moore stated in the beginning under boutique bars the language read wine or cigar bars, but the discussion tonight only referenced wine bars. He asked if cigar bars had been eliminated.

Mr. Jeffries replied there was quite a bit of debate by the committee for the Downtown Partnership, to specifically define it as wine bars or allow a more broad definition, but have the restrictions, so if someone were to come in with a unique bar concept with minimal impact on the area, it could possibly be allowed.

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Mrs. Remark asked if the language on page three of the attachment to the staff report was correct.

Mr. Jeffries stated that is the current proposed language, because 2:00 AM is actually Friday night and 2:00 AM Sunday is Saturday night.

Mrs. Remark stated she thought it made much more sense the way the language read before when it was "late night Fridays and Saturdays."

Mr. Jeffries stated staff had come up with alternative language that might clarify the time. He asked Ms. Lathan to read the language.

Ms. Lathan read the language as follows: "the establishment shall not sell alcoholic beverages after midnight except on Friday and Saturday nights, when sales must end at 2:00 AM the following day."

There was consensus of the Board that the alternative language clarified the times better.

Mr. Hoitsma asked if the Board was comfortable with the fact that there were not any time limits on wine bars like there were on restaurants.

Mr. Hurt stated he thought the time limits were the same.

Mrs. Remark stated no, they only had time limits on the entertainment, not the service of beer and wine.

Mr. Jeffries stated this was discussed at the Downtown Board meeting so he would try to clarify it a little. He stated part of the discussion was because the Board felt with the restrictions on the 1,000 square feet for the customer service area and the fact that they could only serve wine and beer; not having late night restrictions would not have a major impact on the downtown area. He stated he reconfirmed this with some of the residents today. Mr. Jeffries stated the major concern was to prevent the major nightclubs, which were really full liquor bars (4COP). He referenced Caffeine Bistro and Wine Bar, in Ormond Beach as an example.

Mr. Moore stated the language did read that alcohol could not be sold after midnight.

Mr. Jeffries replied in the restaurants.

Mrs. Remark asked if it could be sold in the boutique bars.

Mr. Jeffries replied yes, but they are limited to beer and wine all the time.

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Mr. Hoitsma stated the only reason he had a problem with the amendment was because the proposed rules for restaurants were different from boutique bars and he did not believe it was the noise coming from the club that the residents had a problem with. He stated he felt the problem was the people leaving the club, because the City was trying to create a downtown area where people would be living.

Mrs. Remark stated under boutique bars, without combining the bar area into the customer service area there could a 1,000 square feet of customer service area for consumption and another 1,000 square feet of bar area and still meet the requirements. She stated she had gone in Caffeine Bistro and Wine Bar several times and because of the setup, she has always thought of it as a restaurant and not a bar. She stated she feels there should be some type of regulations to limit the bar area size and asked if there had been any type of discussion with the Downtown/Balough Road Redevelopment Area Board on this possibility.

Mr. Jeffries stated the intent of the language was for the customer service area to include the bar. He stated the wine bars he had seen did not have large bars like what you see at the Oyster Pub. He stated usually it is an area with small tables and sofas where wine is sold by the glass.

Mrs. Remark stated she felt if the Board did not clarify the intent, then it would be left open to interpretation.

Mr. Jeffries recommended changing the language to read, "customer service area, including bar shall be limited to 1,000 square feet."

Mrs. Remark stated right.

Citizen Comments

John Nicholson, 413 North Grandview Avenue, Daytona Beach spoke in opposition of the request.

Hemis Ivey, 732 Orange Avenue, Daytona Beach, Florida stated he was currently serving on the Midtown Redevelopment area Board. He asked if the amendment only applied to the downtown area.

Mrs. Shelley replied yes.

Board Comments

Mrs. Shelley stated she serves on the Downtown/Balough Road Redevelopment Area Board as the Planning Board's representative and she felt Mr. Jeffries made it clear what the Downtown/Balough Road Redevelopment Area Board's intent was. She stated if the Planning Board determined the language needed to be tweaked, she did not have a problem with that, as long as the Downtown/Balough Road Redevelopment Area Board's intent was not changed.

Mr. Hoitsma asked Mrs. Shelley if she thought the Downtown/Ballough Road Redevelopment Area Board would have a problem with making the time limits for boutique bars the same as restaurants.

Mrs. Shelley asked Mr. Jeffries how he thought the Board would feel about the change.

Mr. Jeffries replied the original draft did have time limits but the Board took them out because they really want the wine bars downtown. He stated having a lot of business owners on the Board; they were concerned that putting too many restrictions might prevent them from getting wine bars. He stated if it creates problems in the future, they could readdress the issue then.

Mrs. Remark stated she was very aware of what was happening with Main Street surrounding taking out the food requirement and asked what the reason was for taking it out downtown. She asked if the 4COP license was allowed downtown.

Mr. Jeffries replied restaurants could still have the 4COP license, as long as they met the criteria. He stated what staff was relying on was, they would be restaurants and the state would be required to enforce the 51 percent food requirement. He stated what happens is when a restaurant has a 4COP license they will get what is called a 4COP SRX, which requires them to have 51 percent food, which puts enforcement on the state.

Mrs. Remark asked if that language was written anywhere.

Mrs. Shelley replied in Article 12, under Project Analysis, it provides the additional condition relating to restaurants being required to have 51 percent food and the 4COP Licenses.

Mrs. Remark stated she did not think the Downtown/Ballough Road Redevelopment Area Board's intent was to have the bar area be 1,000 square feet with stools around it. She asked the Board if they felt the proposed language satisfied the Downtown/Ballough Road Redevelopment Area Board's intent.

Mrs. Washington stated she would leave the language as it was proposed and readdress it in the future, if problems arise.

Board Motion

It was moved by Mrs. Shelley and seconded by Mr. Hurt, to approve Land Development Code Text Amendment, Alcohol Beverage Service, DEV 2010-041, with the following conditions:

1. Adding the language, "customer service area, including bar shall be limited to 1,000 square feet."
2. Adding the language "the establishment shall not sell alcoholic beverages after midnight except on Friday and Saturday nights, when sales must end at 2:00 AM the following day."

Board Action

The motion was approved 11-to-0.

5. **Land Development Code Text Amendment, Site Plan Approval, DEV 2010-053**

A request by The City of Daytona Beach's Development and Administrative Services Department, Planning Division, to amend the Land Development Code (LDC), Article 3 (Decision-Making Bodies and Procedures), Section 5 (Redevelopment Area Boards); Article 4 (Land Development Orders and Procedures), Section 7 (Conditional Use) and Section 8 (Site Plan); Article 5 (Subdivisions and Site Plans), Section 4 (Site Plans); Article 18 (Appearance Standards), Section 5 (Redevelopment Areas); and Article 20 (Fees), Section 2 (Fee Schedule) to revise review responsibilities in the site plan review process and provide for an appeal process and fees. *(Continued from the July 22, 2010 Planning Board Meeting. City Staff is requesting an additional continuance).*

Board Comments

Mr. Hoitsma stated staff has requested a continuance of this item.

Board Motion

It was moved by Mrs. Remark to continue Land Development Code Text Amendment, Site Plan Approval, DEV 2010-053, to the October 28, 2010 Planning Board Meeting. Seconded by Mr. Hurt.

Board Action

The motion was approved 11-to-0.

6. **Land Development Code Text Amendment, Sign Code (EMC), DEV2010-066**

An administrative request by the Development and Administrative Services Department, Planning Division, to amend the Land Development Code (LDC), Article 2 (Definitions), Section 3 (Use Designations), adding a definition for Place of Assembly; Article 18 (Appearance Standards), Section 6.6 (Prohibited signs) to provide for electronic message center signs, inserting a new Section 6.20 (Electronic message center signs) to define and provide for electronic message center signs, regulations and penalties; and Article 20 (Fees), Section 2 (Fee Schedule), adding fees for electronic message center signs.

Staff Presentation

Dennis Mrozek, Planner gave a brief PowerPoint presentation. He stated this request was being brought forward by staff at the request of the City Commission. He went through the history of the request. He stated included in the Board's packet was a copy of the draft ordinance that went to the City Commission as a discussion item on the July 21, 2010 agenda. He stated the modifications being proposed tonight by staff are shown in an underline and

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strikethrough format and were generated from the July 21st draft ordinance. Mr. Mrozek stated at the July City Commission Meeting, the Commission requested a couple of changes to the draft ordinance as follows:

1. Include provision for EMC display area screen quality.

Mr. Mrozek stated staff researched the different types of quality for EMCs and it has been incorporated into the draft ordinance.

2. Provide for enforcement and penalties for violators.

Mr. Mrozek stated the remaining changes to the draft ordinance are from staff. He pointed out one change that was not included in the packet; on page three of the staff report, Section 6.6 (Prohibited Signs), Section A: 1,2 and 3; 4 through 9 no changes. He stated this reflects the item as it was presented to the Commission and the only change is in item three, where it reads "*except as provided in Section 6.20.*" He stated that language would be added to the current LDC. He stated it was not included in what the Board received, because the draft that went to the City Commission had it included and therefore no modifications had to be made. Mr. Mrozek stated the amendment was currently scheduled for the November 3rd City Commission Meeting (1st Reading) and November 17th (2nd Reading) and that staff was recommending approval of the request.

Citizen Comments

Rob Merrell, 150 Magnolia Avenue, Daytona Beach stated he was speaking from a neutral position. He stated there had been quite a bit of dialogue on this request and a couple of the sign companies were present tonight and wanted to present some audiovisual materials that he felt would vital for the Board to see. He stated they had just been advised that the City had a recent policy that states any presentation disks from outside the City must be received by the City's Information Technology Department two days in advance for review. He stated he was making a procedural objection to the policy and requested a 30 day continuance.

Mr. Walton stated the City has a policy that was put in place several months ago and has been relayed to Mr. Merrell and his staff on several occasions for other projects. He stated the reason the policy was implemented because the IT Department had problems with receiving documents at the last minute and they did not have enough time to screen for viruses and content. To eliminate these problems, this policy was put in place.

Mr. Merrell stated he understood the policy but he was not aware of it until tonight and he was not sure who in his office was given this information. He stated he had been in conversations with staff for months on this request and no one ever mentioned anything to him about it. He stated he did not feel it was fair, but if the Board did not want to see the photos then so be it.

Mr. Hoitsma stated it was not that the Board did not want to see the photos; but if that is the City's policy, then they had to follow it.

Mr. Merrell stated part of his objection is this is not a published rule and he had due process issues with it.

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Mrs. Remark stated her objection to Mr. Merrell's comments were, staff was saying they called his office and relayed the policy. She stated the City cannot be held accountable for his staff not relaying messages. She stated she felt that satisfied due process. Mrs. Remark stated the City had invested a lot of money into the computer system and since there have been problems; she felt the information should be viewed by the IT Department first. She asked Mr. Merrell if he felt it was critical to the Board's vote.

Mr. Merrell replied he could not say because it was not part of his presentation, but he recognized what he felt was a procedural fault that he wanted to bring to the Board's attention.

Mrs. Remark asked staff if there was a problem with continuing the request.

Mr. Walton replied no but this has been a hot issue and there were people that were very interested in getting the standards approved so they could proceed. He stated he would like to hear from other members of the public.

Mr. Merrell stated the City already had two of his clients processing amendments that reflect EMC signs and his intention was that the process not be hindered by this request.

Mr. Walton stated this ordinance had been pending doctrine for quite some time.

Mr. Merrell stated the pending ordinance doctrine under the City's code does not stop the process of an application; it allows it to continue pending consistency with the pending ordinance. He stated he had two signs that he would like to bring before the Board at the same time the EMC request was being presented.

Board Comments

Mrs. Remark asked is there was any member of the public that had a strong desire to proceed with the request tonight.

No response from public.

Mrs. Shelley stated she believed the people wanted it done correctly and the request had been worked on for a long time and she feels the Board should wait to see what they had to present.

Board Motion

It was moved by Mrs. Remark to continue Land Development Code Text Amendment, Sign Code (EMC), DEV2010-066 to the October 28, 2010 Planning Board Meeting. Seconded by Mr. Moore.

Board Action

The motion was approved 11-to-0.

7. **Land Development Code Text Amendment - Discussion, Street Renaming Requirements, DEV 2010-074**

A request by the Planning Board, for staff to provide information and recommendations pertaining to possible changes to the criteria for renaming of City streets.

Staff Presentation

Dennis Mrozek, Planner stated this item was requested back in June when the Board approved the Henry Butts street renaming agenda item. He stated the Board requested that staff bring it back as a discussion item on a lighter agenda.

Mr. Hoitsma asked Mr. Walton if he saw anything in the current requirements that he was very uncomfortable with.

Mr. Walton replied when staff read through the minutes and reviewed what happened we found quite a bit of mixed discussion. He stated some of the Board's concerns were as follows

- Only renaming part of the street.
- Changing too many addresses at one time.

Mr. Walton stated this was the revised version of the resolution and if the Board wanted to recommend changes, staff would pass them along to the City Commission.

Mr. Hoitsma stated this resolution was put in place when Volusia Avenue was renamed to International Speedway Boulevard. It was at that time the Board reviewed the criteria and made changes. Mr. Hoitsma stated he did not feel the board needed to do anything to the resolution tonight. He asked if the Board was ok with bringing it back on a later agenda.

Mrs. Remark stated she was ready to make her comments now. She stated she felt the Board needed to address how many names one street could have, length of the street, the interpretation of who is allowed to have input on the street renaming. She stated if they were not going to bear any financial burden then they should not be allowed to sign the petition. She stated with businesses there is quite a bit of cost.

Mr. Hoitsma stated he felt her points were valid. He stated he felt a street having several different names was very unfortunate in a tourist City.

Mrs. LeSage stated Dunn Avenue and Clyde Morris Boulevard have become the heart of the City's medical community and explaining to a resident on the beachside that is up in years can be quite confusing to them. She stated it is not just tourist, it also affects citizens and the Board needed to look at it from that aspect also. She stated she felt it was great that the City honored people in the City that deserved it but it is also confusing. She stated she agreed with Mrs. Remark.

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Mr. Hoitsma asked if there were any issues the Board wanted to zero in on.

Mrs. LeSage stated she would like to limit the amount of names a street could have.

Mrs. Remark stated she felt they needed to determine if they wanted to continue to allow people who did not front on the street and did not bear any of the financial cost to be able to sign the petition for the street renaming.

Mr. Hoitsma asked when that happened.

Mr. Walton replied all of the properties staff used to determine if they met the 75 percent were not actually on School Street. He stated the 75 percent was determined by the number of properties that touch the street.

Mr. Hurt asked Mrs. Remark if she was saying only people who are directly affected by the renaming should be counted.

Mrs. Remark replied yes because they are the ones that will bear the financial burden.

Mr. Hoitsma asked the Board how they felt about having staff bring the request back next month with draft language for the changes the Board is requesting.

Mrs. LeSage asked if it had to be next month.

Mrs. Shelley stated the Board had continued about five things to the October meeting so that would not be a light agenda.

Mrs. Remark asked staff to monitor when it would be a good time to bring the item back.

Mr. McGuinness asked if the only way to rename a street was by petition of residents.

Mr. Walton stated if the street already has a name the Commission would have to change it, so the answer to your question is yes.

Mr. Mrozek stated for point of clarification, there was not a fee associated with this type of request and it could be considerable staff time in processing this type of request. He asked if that was something the Board would want to consider.

Mr. Hurt stated he felt there should be a fee.

Mr. Hoitsma asked if the length of the street determined the expense involved.

There was open discussion on the possibility of adding a fee schedule to the street renaming application process.

There was consensus of the Board that there should be a fee allocated.

Addendum – Taken after Item No. 6

8. **Land Development Code Text Amendment, Tattooing and Body Piercing in M-5 Districts, DEV 2010-073**

An administrative request by the Development and Administrative Services Department, Planning Division to amend the City's Land Development Code (LDC), Article 1 (Development and Use of Land) and Article 13 (Industrial Districts), to allow for tattooing and body piercing in the M-5 zoning district.

Staff Presentation

Dennis Mrozek, Planner gave a brief PowerPoint presentation. He stated the request was to amend the LDC, to allow tattooing and body piercing as permitted uses in the M-5 zoning district. He stated the original version of this request was proposed as a text amendment to allow tattooing in the M-5 zoning district. He stated on March 25, 2010 the Planning Board recommended denial 5-to-4; May 19, 2010 the City Commission denied the request 2-to-5. He stated the M-5 zoning district was located on the west side of the City, was not located near any residential zoning or tourist districts and does not allow uses that serve alcohol. Mr. Mrozek stated currently tattooing is only allowed in the City within planned development districts. He stated it is prohibited in redevelopment districts and no changes are being made to that. He stated body piercing is allowed as a conditional use in the BA (Business Automotive) zoning districts and the proposed text amendment would allow both tattooing and body piercing as permitted uses in the M-5 zoning district. He stated staff recommends approval of the request.

Mr. McGuinness asked when and why did the City determine that tattooing was no longer detrimental to the community.

Mr. Hurt replied because of all the lawsuits.

Mr. McGuinness stated that was not the reason given last time.

Mr. Walton replied the ruling was not in place last time.

Marie Hartman, City Attorney stated she made the request for this item to come back to the Board for reconsideration, based on a decision from an appellate court, in early September. She stated the case before the court was a city that prohibited tattoo parlors just as Daytona Beach does. She stated the court determined that the tattoo parlor was entitled to 1st Amendment protection, which changes the landscape when looking at a prohibition. She stated with the 1st Amendment protection the court found that the city's prohibition of the use was a constitutional violation of the 1st Amendment and struck the ban. She stated the fact that the City would consider a tattoo parlor in a PD does not satisfy the constitution when the 1st Amendment comes into play. She stated the City would have to provide a zoning district by right. Mrs. Hartman stated she asked the Planning Division to review the request again to determine what would be the most suitable place to allow tattooing in the City. She gave a brief history on how body piercing became a permitted use and the problems that came along with it. She stated when body piercing was approved for the BA district it was before the M-5 zoning district was created.

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As a reply to Mr. McGuinness' question on whether tattooing was detrimental to the community, she stated the request was being brought back because the federal appellate court recognized this as a 1st Amendment activity and staff feels it is within the City's best interest to provide a zoning district for it. She stated it was her recommendation that the City approve the request for the M-5 zoning district because it was not in a residential or tourist zoning district and alcohol uses were not permitted.

Mr. McGuinness asked if the city that the ruling was made against had filed an appeal.

Mrs. Hartman replied no, they have thirty days to request a rehearing and those thirty days will be up on October 8th or 9th. She stated they could petition with the United States Supreme Court, but she feels it is unlikely the Supreme Court would entertain it. She stated the case law that was applied in this district court opinion was straight United States Supreme Court Case Law, which she is very familiar with.

Mr. McGuinness asked why body piercing was being permitted in the M-5 district when it was already permitted in the BA district.

Mrs. Remark stated because BA was all up and down Mason Avenue and some of the City's major areas.

Mr. Walton stated the rationale behind including body piercing was it's a similar use. He stated some of the same people that get tattoos also get body piercings and so staff did not have a problem with it being located in the same district.

Mrs. Hartman stated when you look at the reasonableness of a zoning ordinance you want to group uses that are like together and body piercing and tattooing are very similar.

Mr. McGuinness stated but it is already in the BA district.

Mrs. Hartman replied yes it is.

Mrs. Remark asked if it would remain in the BA district.

Mrs. Hartman replied yes but it has some conditions in the BA district.

Mrs. Remark asked what impact the 9th Circuit Court in California has on Florida.

Mrs. Hartman replied it is a federal appellate court. She stated there are 11 federal appellate courts that are assigned by regions. She stated Florida is in the 11th circuit, which does not have a case involving a tattoo parlor ban. She stated the 9th circuit case is president, and all 9th circuit courts must follow that ruling. She stated Florida is not bound to follow the 9th circuit's ruling; however the case law applied in the 9th circuit ruling applies to existing United States Supreme Court case law. She stated Florida is bound to follow United States Supreme Court case law, and if Florida were to get a similar case, in her opinion, the 11th circuit court would make a similar ruling.

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Mrs. Remark asked how a PD was not considered zoning by right when PDs can go anywhere.

Mrs. Hartman replied when she stated by right she meant, someone could come in and say to the City's zoning officer, they wanted to start a new business, and needed to get a certificate of occupancy. The zoning officer would look in the LDC, and tell the customer where the requested use was permitted. PDs are discretionary reviews, which must come to a board. In 1st Amendment terms that is called a prior restraint; cities cannot have a prior restraints.

Mrs. Shelley stated she agreed with Mrs. Remark that the ruling was an out of state precedent.

Mrs. Hartman stated it is federal law not state law.

Mrs. Shelley stated she understood that but Florida was not bound by it like the 9th district was. She stated it is influential to Florida but it is not binding. She stated she had a list of courts that upheld the prohibition on tattoo parlors.

Mrs. Hartman stated she had read all of those cases, and was very familiar with them, but they were all lower court decisions; primarily trial courts. She stated some of them were state courts but they are not courts where you get the most important constitutional decisions.

Mrs. Shelley stated she did not believe the 9th circuit district was where Florida would get its most important constitutional decisions. She stated she was not happy with the way the request was brought forward, and the way the Board was being pushed in a corner about it.

Mr. McGuinness asked if it would automatically trigger a Supreme Court review if there were a dissenting opinion in the 11th circuit court.

Mrs. Hartman replied yes, if there two conflicting opinions, but it was not automatic. She stated it would still be discretionary on the part of the Supreme Court whether or not to accept review. Mrs. Hartman stated by allowing a zoning district, the City would insure control of where the business would be allowed. She stated if we wait to get sued, we lose that control.

Mr. Hurt stated he sympathized with the City's position, because as soon as someone comes in and asked for a tattoo parlor, and are told it is prohibited, the law suit will start; the City will have to defend it. He stated he does not want tattoo parlors here, but if the City had to have them, a zoning district that was not in a residential or tourist district would be the best place for them. He stated he believes eventually the City would get sued and would have to spend millions of dollars in court costs.

Mr. Hoitsma asked, in the absence of having a zoning district that allowed tattoo parlors, as a permitted use, what the normal ramifications would be, if someone sued the City, because they were denied their right to open one. He asked what kind of expenses the City could expect to incur.

Mrs. Hartman referenced the adult business case the City eventually won. She stated the City lost at the trial court, but the 11th circuit court reversed the ruling. She stated their attorney's fees were approximately \$250,000, and their claim was because they applied before the City had a constitutional ordinance they were allowed to put their business wherever they wanted as opposed to where the City would have allowed it.

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There was additional discussion on the City's adult business court case and the 9th circuit ruling after which, Mrs. Hartman stated this request was a way to solve the issue of the City possibly being sued in the future.

Mr. Walton stated there was language in the LDC that prohibited tattooing in redevelopment district and that language would not be changed.

Mr. Fishback stated he did not see any continuity or similarities in the zoning allowed in the M-5 district. He stated it looked like it is a place where the City just dumps zoning uses it does not really want. He stated he was concerned because he could not rationalize putting tattooing and body piercing next to a concrete plant. He asked what the justification was for placing the use in the M-5 zoning district, and if there could be any legal issues with doing this.

Mrs. Hartman replied M-5 is labeled heavy industry but the uses permitted there are ones that are problematic in an urban setting.

Mr. Fishback asked what was problematic about tattooing. He stated from what he read in the case, the problem was associated from the potential spread of disease through tattooing and stated the problem arose from people using unsafe practices. He asked if he was misunderstanding the case.

Mrs. Hartman replied the City was trying to change its image and promote a more upscale, family friendly tourist industry. She stated the City was trying to move away from special events like Bike Week and to do this, it was important to keep businesses like tattooing out of business districts. She stated the M-5 district was the best available district for this type of business. Mrs. Hartman stated when the City Commission reviewed this request in May of this year, one of the tattoo industry speakers stated the use should be kept away from alcohol establishments, because there was a high risk of people pulling off the bandages to show off their tattoo after they had a few drinks. She stated, the speaker stated, this could cause a high risk for infection.

Mr. Fishback stated the Board just approved a text amendment to revise the conditional uses for alcohol beverage service in restaurant uses, in the redevelopment district. He stated everyone on the Board probably knew that alcohol was one of the worse drugs there was, and he did not see any consistency in saying, based on the image the City was trying to promote, tattooing would cause major issues. Mr. Fishback stated this request just did not set well with him because when you look at history prior to integration in education, separate but equal was accepted to settle legal issues.

Mrs. Hartman stated what the City has now is a prohibition and staff was proposing to place it in the M-5 zoning district.

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Mrs. Shelley stated the Board members that have been here for a while know the prohibition came from what the community wanted, and they were just trying to uphold what the community wanted.

Mr. Fishback stated he could support a blanket prohibition before he would support throwing it in the M-5 district.

Mr. Hoitsma stated then the City would run into the problem of a law suit, which is exactly what they were trying to get around.

Mrs. Remark stated she was on the City Commission when there were huge problems with body piercing. She stated like it or not, this City has a tourism economy, and there were major problems with the City's image as a tourist destination because of body piercing being done by underage people that did not have parental approval. She stated she was present when news reporters from all around were at the City's Commission meetings following the story because it was a big problem in the City. Mrs. Remark stated the City was trying to change its image and the direction it has been going in for the last 40 to 50 years. She stated as popular as tattoos have become they still appear to be certain groups like bikers or young adults and the City does not want to have the image that those are the only types of tourist that come here.

There was additional discussion on the City's image and why tattooing was prohibited.

Mrs. Remark stated putting aside her prejudices; she had to say she agreed with the 9th circuit court's ruling. She stated she sees branding coming right behind tattooing and recommended adding it as a permitted use in the M-5 zoning district. She stated she feels the Board should be proactive about things that affect the City's economy and therefore would support the request.

Citizen Comments

John Nicholson, 413 North Grandview Avenue spoke in support of the amendment request.

Board Motion

It was moved by Mr. Hurt to approve Land Development Code Text Amendment, Tattooing and Body Piercing in M-5 Districts, DEV 2010-073. Seconded by Mrs. Remark.

Board Action

The motion was approved by roll-call-vote, 7-to-4, with the breakdown as follows:

Mr. McGhee, II	Yes
Mr. Hurt	Yes
Mrs. Remark	Yes
Mrs. Shelley	No
Mr. Hoitsma	Yes
Mrs. LeSage	Yes
Mr. McGuinness	No
Mr. Moore	Yes
Mr. Neal	Yes
Mr. Fishback	No
Ms. Washington	No

9. **Other Business**

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

Mrs. Shelley stated the Board met Tuesday, September 14th and heard the following requests: LDC Text Amendment, Site Plan Approval Review Process. She stated the Board approved the request 7-to-0; discussed the possibility of a Downtown Public Market; Downtown parking enforcement being taken over by the same agency that does parking throughout the City. She stated they also discussed the Redevelopment Plan. Mrs. Remark stated she wanted to compliment staff on the information distributed to the Boards on available sites in redevelopment areas.

Mr. Hurt asked about a French Market.

Mrs. Shelley stated that did not come through the Downtown Board, but it was being put on once a month and was sponsored by the Downtown Development Authority (DDA). She stated the public market the Downtown Board is looking at will be kind of like the Downtown grocery store and the French Market had more to do with vendors, relating to crafts, jewelry and art things.

B. **Midtown Redevelopment Area Board Report**

Mr. McGhee stated the Board met on Tuesday, September 14th. He stated the Board continued the LDC Text Amendment, Site Plan Review Process for further review and they denied a request by Tobacco Exotica for a new sign.

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

Mrs. Remark stated, the Board met on Wednesday, September 15th and discussed the following items: Site Plan for 123 Coates Street; approved the LDC Text Amendment, Site Plan Approval Process with one minor change. She stated the Board had a presentation on a new race event called beachpalooza.com. She stated it is put on by Red Frog Events, out of Chicago; E-zone Master Plan update which included a historic survey update on the portion of the Surfside National Historic District. She gave a summary of the report.

D. **Public Comments**

John Nicholson, 413 North Grandview Avenue, Daytona Beach stated when the EMC request comes back to the Board it would be advantageous for the people in the audience to be able to see a diagram of what the square footage is because sometimes just saying numbers is not clear.

E. **Staff Comments**

Mr. Walton stated the Board should have received in their folder tonight, a draft of Module 1 of the LDC Re-write. He stated there was cover memo that came along with the draft and he would get a copy of it to them. He stated he would be in touch with the sub-committee members to let them know when meetings would be held to review the document.

F. **Board Member Comments**

Mr. Moore asked if it was appropriate for him to ask a question about the EMC signs. He stated when Mr. Nicholson was talking about the eight feet including the base.

Mr. Walton replied the area does not include the base. He stated applicants are allowed 22 square feet for the base and then the area goes on top of that. He stated if the base is larger than 22 square feet then it would eat into your square footage for the sign. He asked if the eight feet was inclusive of the eight feet.

Mr. Walton replied yes, and if you don't design it that way it would be harmful in terms of sign size.

Adjournment

There being no further actions to come before the board, the meeting was adjourned at 7:43pm.

Edith Shelley

EDITH SHELLEY
Acting Chair

ATTEST:

Cathy Washington

CATHY WASHINGTON
Secretary