

**PLANNING AND LAND DEVELOPMENT REGULATION COMMISSION
PUBLIC HEARING HELD
January 8, 2008**

The Public Hearing of the Volusia County Planning and Land Development Regulation Commission was called to order by **Gary Huttman**, at 9:00 a.m. in the County Council Meeting Room of the Thomas C. Kelly Administration Center, 123 West Indiana Avenue, DeLand, Florida. On roll call, the following members answered present, to-wit:

GARY HUTTMANN, Chairman **Left at 11:50 a.m.**
DARLA LIPKE, Vice-Chairman
TAVER CORNETT, Secretary
STONY SIXMA
JIM RUSSELL
FRANK SEVERINO
JAY YOUNG

STAFF PRESENT

MICHAEL DYER, Assistant County Attorney
MARY ROBINSON, Building and Zoning Director
SCOTT ASHLEY, Planning Manager
DAVID ZECHNOWITZ, Planner III
JOHN H. STOCKHAM, Planner III
CHRISTIAN NAGLE, Planner II
YOLANDA SOMERS, Zoning Secretary
MARCY CHAFFIN, Recording Secretary

APPROVAL OF MINUTES

Approval of December 11, 2007 Minutes

PUBLIC HEARINGS ON SPECIAL EXCEPTION AND ZONING CASES

Chairman Huttman explained the procedure for forwarding the Commission's decisions to the County Council and invited the public to speak for or against any of the cases being heard.

Michael Dyer, Assistant County Attorney, explained that decisions by this body on special exception cases and cases which rezone real property from one classification to another pursuant to the Zoning Ordinance are recommendations only to the County Council and do not constitute a final hearing. New evidence may be introduced at the County Council public hearing. Decisions on variances made by this body constitute final action, subject to an appeal to the County Council. What this means is that no new evidence may be presented at the time of the County Council public hearing on appeal. An aggrieved party that appeals such a decision is confined to the record made before this body. Hearings by this body on rezonings, special exceptions and variances are quasi-judicial in nature meaning that this body is acting more like a court and must take into account all oral, written or demonstrative evidence presented. Their decisions on these cases must be based on competent, substantial evidence in the record. Competent, substantial evidence has been defined, as that evidence a reasonable mind would accept to support a conclusion.

Mr. Dyer asked for disclosure of ex parte communications. He recommended that any Member who has had communications with a member of the public or the applicant on any agenda item, state so at this time with a brief comment.

- Member Cornett: spoke with counsel and one of the principals (PUD-07-127)
- Chairman Huttman: spoke with the attorney(PUD-07-032)
declared a conflict (PUD-07-127)
- Member Severino: spoke with applicant's counsel (PUD-07-127, S-07-146)
spoke with applicant's agent (S-07-122, PUD-07-032)
- Member Lipke:
- Member Russell:
- Member Young:
- Member Sixma: spoke with Greg Duggan (PUD-07-127)

CONSENT AGENDA

Case **Z-07-131** was pulled from the Consent Agenda and was heard.

Z-07-131 – Application of **Philip Cochran, Agent for Del Lago Ventures, Inc, Owner**, requesting a **Rezoning** from the R-4 (Urban Single-Family Residential) and B-4 (General Commercial) zoning classifications to the B-4 (General Commercial) zoning classification. The property is located on the east side of North Volusia Avenue, approximately 196 feet north from its intersection with New York Avenue, north of the City of Orange City; ± 1.76 acres (Zechnowitz) 8002-00-00-0330 **Tentatively schedule for the February 21, 2008 County Council at 2:00 p.m.**

Dave Zechnowitz, Planner III, presented the Staff Report. He stated the subject parcel is currently split zoned and had a split future land use designation (Commercial and Urban medium intensity). In September 2007 the property's commercial land use line was extended by the County's Growth & Resource Management office 299 ft. to the east to match the parcel's boundaries consistent with the adjoining parcels to the north and south. He stated today's requested change is to make the zoning consistent with the property's commercial future land use designation. Because it is consistent with the Comprehensive Plan policies enumerated in the Staff Report, Staff recommends **APPROVAL**.

Tom Sullivan, (Lowndes, Drosdick, Doster, Kantor & Reed, P.A.), 215 N. Eola Dr., Orlando, FL, Attorney for the applicant, stated his client is in agreement with the Staff Report. Racetrac is planning to develop a service station and convenience store on the western portion of this parcel.

Christopher Likes, 288 E. New York Ave., Orange City, FL, stated he is not opposed to this project, but feels a Racetrac is not an appropriate use next to existing residential uses and would like appropriate modifications. He asked for residential protection concerning excessive noise, bright lights, vapor recovery, and drainage. He would like Racetrac to acknowledge his concerns and explain how they intend to address them.

Mr. Sullivan pointed out only the far eastern portion of the property is under consideration for rezoning to accommodate stormwater and septic uses for the project. The property to contain the Racetrac building is already zoned commercial and allows the use proposed.

He stated his client would be available to meet with Mr. Likes about his concerns.

Phillip Cochran, Sr. Eng. Project Mgr., Racetrac Petroleum, 3225 Cumberland Blvd., Atlanta, GA, stated he had conversations with surrounding property owners in the mobile home park and addressed their concerns. He offered to meet with Mr. Likes. All noise abatement ordinances will be met. Lighting technology upgrades are in place since the Woodland Blvd. Racetrac was built. In 2009 DEP requirements will require upgrades to all underground tank facilities. Racetrac will be complying.

Member Cornett **MOVED** to **FORWARD** case **Z-07-131** to the County Council with a recommendation of **APPROVAL** based on the Staff Report. He urged the applicant to

arrange a conference with Mr. Likes to address his issues. Member Severino **SECONDED** the motion. Motion **CARRIED** unanimously.

Z-08-001 – Application of requesting a **Kevin and Christi Ricker, Owners, Rezoning** from the A-2 (Rural Agriculture) zoning classification to the A-4 (Transitional Agriculture) zoning classification. The property is located on the north side of Mooneyham Drive, ±1800 ft. west from its intersection with Scarlett Trail, adjacent to the City of New Smyrna Beach; ± 5 acres (Nagle) 7340-02-02-0210 **Tentatively schedule for the February 21, 2008 County Council at 2:00 p.m.**

Member Sixma **MOVED** to **FORWARD** case **Z-08-001** to the County Council with a recommendation of **APPROVAL**. Member Cornett **SECONDED** the motion. Motion **CARRIED** unanimously.

Z-08-002 – Application of **Thomas and Brenda Dever, Owners**, requesting a **Rezoning** from the R-3W (Urban Single Family Residential / Indian River Lagoon Surface Water Improvements and Management Overlay Zone) and B-4W (General Commercial / Indian River Lagoon Surface Water Improvements and Management Overlay Zone) zoning classifications to the B-4W (General Commercial / Indian River Lagoon Surface Water Improvements and Management Overlay Zone) zoning classification. The property is located on the east side of U.S. Highway 1 at its intersection with Arbor Lane, adjacent to the City of Edgewater; ± 1.2 acres (Ashley) 8412-04-00-0042 **Tentatively schedule for the February 21, 2008 County Council at 2:00 p.m.**

Member Severino **MOVED** to **FORWARD** case **Z-08-002** to the County Council with a recommendation of **APPROVAL**. Member Sixma **SECONDED** the motion. Motion **CARRIED** unanimously.

CONTINUED ITEMS

Z-07-076 – Application of **Glenn Storch, Storch Morris & Harris, LLC, Attorney for Owner, Hinrough LLC, Owner**, requesting a **Rezoning** from the A-2W (Rural Agriculture / Indian River Lagoon Surface Water Improvements and Management Overlay Zone) zoning classification to the A-3W (Transitional Agriculture / Indian River Lagoon Surface Water Improvements and Management Overlay Zone) zoning classification. The property is located on the east side of South US Highway 1 at its intersection with Kennedy Parkway, south of the City of Oak Hill; ±9.36 acres (Ashley) **30-day continuance requested**

Member Sixma **MOVED** to continue case **Z-07-076** for 30 days. Member Young **SECONDED** the motion. Motion **CARRIED** unanimously.

PUD-07-138 – Application of **Grant Renne, P.E, EPI, Inc, Agent for Owner, Mike Amendolagine, USA Development Corp, Owner**, requesting a **Rezoning** from the B-4C(5) (General Commerical / Thoroughfare Overlay Zone / Highridge Neighborhood)

zoning classification to the USA Development Corp. BPUDC(5) (Business Planned Unit Development / Thoroughfare Overlay Zone / Highridge Neighborhood) zoning classification. The property is located on the south side of International Speedway Boulevard (U.S. Highway 92), approximately 300 feet from its intersection with Indian Lake Road. The property is near the Volusia County Branch Jail, west of the City of Daytona Beach; ±1.9 acres (Stockham) 6206-01-01-0010 **30-day continuance requested**

Member Sixma **MOVED** to continue case **PUD-07-138** for 30 days. Member Young **SECONDED** the motion. Motion **CARRIED** unanimously.

S-07-146 – Application of **James V. Alies, Agent for Owner, City of DeLand, Owner**, requesting a **Special Exception** for a Public Utility on A-2 (Rural Agriculture) zoned property. The subject property is located on the east side of Tomoka Drive North at its intersection with Loblolly Pine Drive, in the Tomoka Woods subdivision; ± 5.2 acres (Nagle) 6037-04-00-0010 **30-day continuance requested**

Member Sixma **MOVED** to continue case **S-07-146** for 30 days. Member Young **SECONDED** the motion. Motion **CARRIED** unanimously.

NEW BUSINESS

Z-08-004 – Application of requesting a **George Dahm, Agent for Owner, Maureen Dahm, Rezoning** from the A-2 (Rural Agriculture) zoning classification to the RA (Rural Agriculture Estate) zoning classification. The property is located on the west side of Wild Horse Run, approximately 350 feet south from its intersection with Doyle Road (CR 4162), south of the City of Deltona; ± 5 acres (Stockham) 9103-00-00-0207 **Tentatively schedule for the February 21, 2008 County Council at 2:00 p.m.**

John Stockham, Planner III, presented the Staff Report. He stated the subject property is developed with a single family home. The surrounding area contains scattered single family homes. There are 5-acre and 2.5-acre unrecorded subdivisions located throughout the area, with the exception of an A-1 zoned area directly to the east. Parcels directly to the south were rezoned A-2 in 2003. Parcels to the northwest were rezoned RA in 2001. The requested zoning classification RA requires a minimum lot size of 2.5 acres and mainly allows agricultural production for personal use. He stated the subject property is within the Enterprise Local Plan which has a number of policies that encourage the preservation of the existing densities. The Rural future land use category typically allows one unit per 5 acres and may allow one unit per acre if the surrounding land uses warrant it. He stated a transition from the large lots of the A-1 to the smaller lots already exists. Rezoning to allow parcels of 2.5 acres would disrupt the size transition from east to west. He also stated that no residential subdivisions consisting of lot sizes less than 5 acres existed prior to the adoption of the Comprehensive Plan in 1990, within 660 ft. of the subject property. He stated it appears that approval of the rezoning could help contribute to suburban sprawl. The prevention of this type of sprawl helps conserve resources and prevent overextension of utilities

and other infrastructure into rural and agricultural areas. Approval could further extend the amount of government services needed in a rural area. There are no noticeable changes to the circumstances in the surrounding area that would benefit this request. There also does not appear to be any mistakes in the original rezoning in 2002 to justify changing the zoning once again. Staff found this request not to be compatible with the Rural future land use element of the Comprehensive Plan and recommends **DENIAL**. He showed an aerial photo of the unrecorded subdivisions in the area, but stated that they do not warrant allowing the rezoning request.

George Dahm, 424 Stone Island Rd., Enterprise, Agent for Owner, stated the subject property is owned by his daughter. She is requesting the rezoning so another daughter can build a house next door when his home that is under construction on the adjacent property to the north is finished. They would like the family's homes to be together.

Chairman Huttman asked if there was an alternative to RA that would suit the applicant's needs.

Mr. Stockham replied according to the Comprehensive Plan the preferred density in this area for Rural is one unit per 5 acres. He suggested contacting the Comp Planning office to discuss the possibility of a future land use change to the Comprehensive Plan. He also suggested the applicant explore the possibility of a garage apartment.

Member Severino stated the current land pattern indicates RA is the predominant zoning.

Mr. Dahm added there is a benefit to having another home on the property. It will increase the tax base.

Member Severino **MOVED** to **FORWARD** case **Z-08-004** to the County Council with a recommendation of **APPROVAL**. Member Sixma **SECONDED** the motion. Motion **CARRIED** 6-1. Member Cornett opposed.

OLD BUSINESS

PUD-07-032 – Application of **Carson Good, Contract Purchaser, Michael Marder, DeLand Hwy 44 Properties, LLC, Owners**, requesting a Rezoning from R-3C (Urban Single-Family Residential / Thoroughfare Overlay Zone) zoning classification to the DeLand Good Capital Group BPUDC (Business Planned Unit Development / Thoroughfare Overlay Zone) zoning classification. The property is located on the south side of State Road 44, at its intersection with South Kepler Road, north of the City of DeLand; ± 4.1 acres (Zechnowitz) **Tentatively scheduled for the February 21, 2008 County Council at 2:00 p.m.**

Dave Zechnowitz, Planner III, presented the Staff Report. He stated the existing development pattern around this site consists primarily of single family residential east

of Kepler Rd. and commercial on the northwest corner. The southwest corner has an approved BPUD for a convenience store. The subject property presently contains a single family dwelling adjacent to 5 acres of undeveloped land to the east, also zoned residential. The applicant's Development Agreement as shown on the preliminary master plan is limited to a bank at the corner. On the eastern 2 acres of the parcel an office building is planned. The plan, as depicted, meets or exceeds the landscaping and parking requirements of the Zoning Ordinance. He described access and transportation improvements proposed. The developer is also proposing to dedicate 17 ft. of right-of-way along the SR 44 property frontage to accommodate future roadway improvements. He stated the subject property is designated Urban low intensity on the future land use map of the Comprehensive Plan. This category is primarily a residential land use designation, which may allow neighborhood convenience uses as well as individual office buildings as transitional uses that meet the Comprehensive Plan's location criteria. The commercial intensity should be limited to be comparable with the allowable residential density with more allowable intensity at the intersection of heavily used roadways. The proposed BPUD is consistent with Urban low intensity definition and the applicable Comprehensive Plan policies and land use location guidelines listed in the Staff Report. He stated according to the County's Traffic Engineer, the applicant's Traffic Impact Analysis (TIA) is acceptable with no anticipated level of service problems for the thoroughfares near this development. Staff has made changes to the Master Development Plan as noted in the Staff Report. Changes include limiting the height of the buildings to 25 ft., limiting the access point on SR 44 to one driveway, and adding language to insure development will be consistent with the Land Development Code 88-3, as amended. He stated the changes needed include Section E (Development Standards) Subsection 1. needs to be amended to read "*the minimum building setback from the property's southern and eastern boundaries shall be 30 ft.*". He also stated a new Subsection 3 (Landscaping) needs to be added to read "*as depicted and described on the preliminary plan dated 12/20/07 buffer width shall be on the north and west sides 60 ft., on the south and east sides 30 ft. Landscaping shall otherwise meet the requirements of the Land Development Code 88-3, as amended.*" Staff recommends **APPROVAL** with these changes.

Glenn Storch, (Storch, Morris & Harris), Attorney for applicant, spoke about the previous requests for zoning changes on this site to B-2 and B-9. He stated the BPUD process is the best way to deal with the transition from heavily trafficked roads and intersections and nearby residential subdivisions. He stated this land use is compatible and is a proper transitional use. It is more appropriate than residential use on this corner. The proposed office buildings and bank are more appropriate than other uses, such as convenience stores, because of the hours of operation, landscape buffers, and height restrictions. This project will be limited to minimal noise, light and traffic, and will be well-buffered from the neighboring residential area. He contended it will improve the neighborhood.

Jack Carter, 19 Tymber Cove, DeLand, FL, Project Architect, presented conceptual elevations of the proposed buildings and distributed them to the Commission members.

He spoke about the time and effort placed into the design of this project to make it acceptable to the surrounding neighborhood.

Allen Cole, 108 Horseshoe Bend, DeLeon Springs, Kimberly Horn & Associates, spoke about the traffic impact analysis. He stated impact will be minimal and the proposed design will improve traffic flow.

Chairman Huttman stated the County's Critical Segment Report shows both Kepler Rd. and SR 44 failing at this intersection and asked the applicant to comment on a memo in the Staff Report which states 1800 trips will affect level of service.

Mr. Cole responded analysis indicated the intersection was not as bad as originally indicated in general capacity volumes.

Member Cornett commented from personal experience the intersection is terrible now. He asked for clarification on how it will be improved.

Mr. Cole and **Mr. Storch** responded. They insisted the traffic flow will be improved with turning lanes etc.

Astrid de Parry, Lake Winnemissett Civic Assoc, asked the applicant if the adjoining parcel is under contract.

Mr. Storch replied no.

Ms. de Parry contended one adjacent property owner did not receive due public notice. Dale & Kay Miller's notice was sent to their previous address (1935 2nd Ave).

Mary Robinson, Building & Zoning Director responded notice is mailed to the mailing address as reflected on the Property Appraiser's record.

Ms. de Parry asked for this case to be continued because of the need for additional traffic analysis. She asked for the November 2006 PLDRC Minutes from the previous case be entered into the record. She distributed copies to the Board and the applicant.

Mr. Storch argued that was a different case, a different project. There is no relevance. He further stated he could not agree to a continuance on the case.

Ms. de Parry contended the previous and current projects are virtually the same. She continued to speak in opposition citing road and traffic issues, specifically relating to the Beresford Avenue Extension being "dead in the water" in her opinion. Approval of this PUD will encourage strip development. She presented aerial photos of the roadway. She reminded the Board of the recommendation for denial on the 2006 request. She submitted, for the record, a traffic study from 2006 showing unacceptable levels of service. This request is inconsistent with the character of the neighborhood. She asked

the Board to deny the application until road improvements are in place to relieve this intersection.

Member Lipke inquired how many members are represented in the Lake Winnemissett Civic Association.

Ms. de Parry replied several hundred.

Rod Black, 108 E. George St., DeLand, FL, adjacent neighbor, spoke in opposition. He had concerns about future projects along SR 44 increasing traffic problems at the Kepler intersection.

Deborah Black, 108 E. George St., DeLand, FL, adjacent neighbor, spoke in opposition. She agreed with Ms. De Parry. The project is identical to the 2006 application which was denied by County Council, based on the fact the Kepler and SR 44 were over capacity. The intersection is worse today and she cited traffic statistics. The intersection is one of the most dangerous in the County.

Carol Burton, 106 E. George St., DeLand, FL, adjacent neighbor, is opposed and agreed with previous speakers. She stated many neighbors are opposed.

Chairman Huttman handed the gavel to **Vice-Chair Lipke** at 11:50 a.m.

Brian Riley, 104 E. George St., DeLand, FL, adjacent neighbor, spoke in favor of commercial development at the intersection but was concerned about the traffic issues and the type of future commercial development.

Todd Fletcher, 2423 E. New York Ave., DeLand, FL spoke in opposition. He stated concerns with current traffic and a reduction in property values.

Mr. Dyer asked for exhibits placed on the easels to be made part of the record and transmitted to Council.

Mr. Storch reiterated the traffic issues will be resolved by the applicant's proposal. The access points have been revised. It is the correct type of development for this location.

Chris Walsh, (Kimberly Horn & Associates), 851 Dunlawton Ave., Port Orange spoke about the traffic analysis. He suggested the signal timings at the intersection could be better optimized. He contended County standards have been met with this project and it is an opportunity to improve the intersection

Mr. Cole stated the original traffic study from 2006 was only for a bank. The Kimberly Horn study is from a different perspective.

Mr. Storch suggested time limits regarding hours of operation can be built into the BPUD if desirable.

Vice-Chairman Lipke asked Staff if approval of the request would set up additional strip commercial development in the area.

Mr. Zechnowitz replied no. Approval presents no precedent for future development.

Ms. de Parry presented a revised TIA addendum for the record showing roadway segments exceed the service volume.

Member Sixma asked the applicant to address number of extra trips caused by a bank.

Mr. Storch stated the report specifically says the impacts are de minimis.

Member Young asked for clarification on how the overload can be improved upon. He also questioned the use of non-existing Beresford Road in the analysis.

Mr. Storch stated the extension of the left turn lane by 800 ft. is a major mechanism of relief. Secondary relief is the right-of-way for future expansion. He stated the Beresford Road extension is part of the County's 5-year road plan.

Jon Cheney, Volusia County Traffic Engineer, stated the Beresford Road extension is currently in the 5-year road program. So even though there is the possibility it may be removed, the traffic study was correct in considering the Beresford Road extension. Also, any future developer would have the right to make a payment towards the Beresford Road extension as a proportionate fair-share obligation since it is currently in the 5-year road program. He further stated the extension of the left turn lane would help. The DOT is working with the owner of the convenience store on the NW corner to relieve traffic issues. The widening of SR 44 is also in the DOT plans when funding becomes available.

Member Cornett **MOVED** to **FORWARD** case **PUD-07-032** to County Council with a recommendation of **DENIAL** because of traffic considerations. Member Young **SECONDED** the motion. Motion **FAILED** 2-4.

Member Severino **MOVED** to **FORWARD** case **PUD-07-032** to County Council with a recommendation of **APPROVAL**. Member Russell **SECONDED** the motion. Motion **CARRIED** 4-2. Members Cornett and Young opposed.

PUD-07-127 – Application of **Greg Duggan for Jordan Development, Contractor Purchaser, William Koch, Jr. and W. L. Kirk and J. Scott Kirk, Owners**, requesting a **Rezoning** from the A-3C(2) (Transitional Agriculture / Thoroughfare Overlay Zone / Activity Center), A-3(2) (Transitional Agriculture / Activity Center), I-1C(2) (Light Industrial / Thoroughfare Overlay Zone / Activity Center), and I-1(2) (Light Industrial / Activity Center) zoning classifications to the Victoria Pointe BPUDC(2) (Business Planned Unit Development / Thoroughfare Overlay Zone / Activity Center) and BPUD(2) (Business Planned Unit Development / Activity Center) zoning classifications. This property is located on the southeast corner of S.R. 472 and Kentucky Avenue (CR 4101) extending east to the S.R. 472 and Interstate 4 highway interchange, surrounded

by the cities of Deltona, DeLand, and Orange City; ± 71.2 acres (Ashley) 8106-00-00-0132 and 8106-04-00-0180 **Tentatively schedule for the January 17, 2008 County Council at 2:00 p.m.**

Scott Ashley, Planning Manager, presented the Staff Report. He stated the existing area development is limited to one industrial developed site, west of the 472 and Kentucky Ave. intersection. Approximately 800 ft. to the south is a small mobile home park and commercial retail center located within the City of Orange City. Remaining land area within the vicinity is presently undeveloped woodlands. More extensive development is situated much further north on Martin Luther King Blvd. and further south within the City of Orange City. The subject site is part of the County's I-4/SR 472 Activity Center area wide DRI. He stated this area is planned, through the DRI, for development of commercial, office, industrial and residential uses. The Cities of DeLand and Deltona are also parties to the County's DRI for this area. All three surrounding cities have been cooperative and active participants in the review and evaluation of this request. He stated the proposed rezoning involves the West Center and Commerce Districts of the DRI. The West Center District allows primarily retail/commercial land uses. The Commerce Center is apportioned more toward industrial and office uses. To accommodate the proposed development of retail and office orientation, the applicant is seeking to adjust the boundaries within the DRI to increase the West Center District area by approximately 17 acres to incorporate more retail uses. He stated those provisions are within the DRI. The intent of this BPUD is to develop a mixed retail/office/commercial development on approximately 71 acres, with 525,000 sq. ft. of retail, 200,000 sq. ft. of office space, and a 73-room hotel. Using the overhead monitor, he described in more detail the proposed concept for the "downtown" design. He stated it is designed to encourage pedestrian traffic between the various use areas. In conjunction with this development, the applicant will be involved in road improvements per a Road Agreement attached to the PUD. The City of Orange City is also working on improvements to Veteran's Memorial Parkway to realign with Kentucky Ave. and the applicant's proposed improvements. He stated if this project is approved by County Council, the property will be annexed into Orange City for site plan review and construction. Orange City has been very involved in crafting the design standards, etc. on this project. He stated Staff finds the proposal consistent with the DRI plan and recommends **APPROVAL**, subject to the Development Agreement and the preliminary Road Agreement to be finalized by County Council.

Darren Elkind, 505 Deltona Blvd., Deltona, Agent for Jordan Development, introduced the Jordan Development team present at the hearing. He thanked County and Orange City staff for the cooperation on this project.

Joel Ivey, Ivey Planning Group, 1349 S. International Parkway, Lake Mary, FL, spoke about the history of this project since he was hired in 2001 to develop an area wide DRI. The original goal was a mixed use project, built out over time. He mentioned all agencies, departments and municipalities involved in the review. All concerns have been met. He stated the proposed project is consistent with the Master Plan, the DRI and the Comprehensive Plan and pointed out how the approved access points on SR

472 and Kentucky Ave. and the internal roadway network will address the development of the out-parcels. He stated the applicant will deliver exactly what the County and the two partner cities wanted when the DRI was first done.

James Vireen, 980 Wood St., Cassadaga, FL, spoke in opposition. He had concerns about the adverse effects of this development on the Florida Aquifer. Data collected from Volusia County Environmental Management Staff and St. Johns Water Management supports his opinion. He stated his extensive background as a U.S. Merchant Marine Chief Engineer, providing potable water aboard ships, has proven that turning sea water into fresh water (reverse osmosis) is complex, expensive and produces a toxic by-product. Water withdrawal from the St. John's River is not an acceptable solution. The best use for the subject property is its current use; an aquifer recharge area.

Scott Baker, Landis, Graham, & French, 444 Seabreeze Blvd., Daytona Beach, FL, Attorney for Ford Properties, stated his clients own most of the land to the west of Kentucky Ave. also located within the DRI. There is a fixed amount of commercial development allowed in each Development Order. Each local government has been allocated a certain amount of retail, office, multi-family etc. The DRI addresses the percentages. His client's concern is the distribution of the mixed uses. The subject proposal is a good plan because of the mixture of uses, but it distributes the lion's share of retail on one corner of the 4-corner project. The proposal represents 16% of the County's portion of the DRI. Most of the remaining percentage is owned by Ford Properties. The subject proposal is asking for 61% of commercial property on 16% of the land. He stated his client is not opposed, but is asking for Commission support in amending the DRI to bring back the NOPC process with the intent of keeping a retail component on the remaining properties. He also stated concerns with traffic modeling issues, the lack of language obligating the County to start the roadwork, right-of-way widths in the Road Agreement cutting into Ford Properties land, and the Development Agreement reverter provision. He also requested covenant language in the Development Agreement to prevent future objection when his clients ask for a change to retail.

Ms. Jamie Seaman, Deputy County Attorney, stated there is no question this DRI will have to go through an NOPC process, partly to bring Orange City in. She stated the original DRI had the concept of an industrial type development. Local governments have agreed that industrial use is not best placed at this Interchange. Allocations will be changed. She confirmed that monitoring and modeling will also be required and should be started soon. She stated Mr. Baker is looking for PLDRC to recommend Council direct Staff to address land use allocations in the NOPC and to begin the monitoring/modeling process. She mentioned the Road Agreement is provided in the Staff Report as a courtesy to provide an overview of the completion of the Beltway and explained this is a complex project.

Mr. Elkind stated the Agreement has been amended to read that no Certificate of Occupancy can be received until the road project is 100% completed or 50% completed

with a bond in place for the remainder. There will be covenant language in the BPUD along with clearer language regarding right-of-way on the Jordan side of Kentucky Ave. Regarding the Development Agreement reverter provision, he stated some reservation about the ability to administratively change the rezoning without going through the public hearing process, but it is part of the DRI which would regulate changes.

Greg Lee, CEO, Jordan Development, stated the applicant is in full support of the NOPC and will continue to work with Ford Properties.

Vice-Chairman Lipke asked for clarification on the environmental issues raised by the speaker in opposition.

Ms. Seaman stated the use of the land has already been determined by the DRI and approved for high intensity development PLDRC is only addressing the zoning change on this land. Environmental issues have been addressed by various agencies and protections are already written into the BPUD.

Mr. Elkind confirmed that storm water will be retained on-site, not off-site and **Mr. Ivey** restated all the agencies' approvals on this project.

Alex Ford, Ford Properties, 145 E. Rich Ave., DeLand, FL, stated he is neither for or against the rezoning request, just presenting his concerns, as stated through Mr. Baker.

Member Cornett **MOVED** to **FORWARD** case **PUD-07-127** to County Council recommending **APPROVAL**, with the comments in the Staff Report, the amended road construction issue and the amended covenant language. In addition PLDRC recommends County Council direct Staff to begin the NOPC process to deal with the allocation of uses, modeling and monitoring. Member Severino **SECONDED** the motion. Motion **CARRIED** 6-0. Chairman Huttman not present for vote.

VARIANCE AND SPECIAL EXCEPTION APPLICATIONS

NEW BUSINESS

V-07-132 – Application of **McKinley Coffin, Owner**, requesting a **Variance** to Section 801.01(d) to allow the cumulative area of all accessory structures to exceed 50% of the sq. ft. area of the principal structure (1,600 sq. ft. in lieu of the 1,274.50 sq. ft. maximum allowed) on R-3 (Urban Single Family Residential zoned property. The property is located on the west side of River Ridge Road ± 500 feet southeast of its intersection with Hontoon Road, in the community of Hontoon Island; ± 33,900 sq. ft. (Nagle) 7936-01-00-1220

Christian Nagle, Planner II, presented Staff Report. This is a request for a proposed garage and carport totaling 1600 square feet to be located to the rear of the subject property. The storage building will be for vehicles, a utility trailer and personal property. The applicant proposes to build in such a way as to save two large trees. The proposed

structure exceeds the 50% limitation for accessory structures for the zoning classification. If the variance is approved, the owner will be responsible for other needed permits to complete an accessory building. The applicant has agreed to restore the canal bank by replanting the vegetation near the canal. In review, the staff found no special conditions or circumstances which are peculiar to the land or structures involved which are not applicable to other lands in the same zoning classification. Not granting the variance request will not stop reasonable use of the property and other options are available to the applicant. Staff recommends **DENIAL** of the request.

Mike Coffin, 2218 River Ridge Road Deland, Owner, stated he is trying to save the two large trees on his property. Granting of the variance would allow him to build a 1600 ft. structure on the rear of his property allowing the trees to remain. The existing detached garage is in ill repair and it will be taken down. He stated the number of vehicles including a small open trailer can not be reduced. He stated he is unable to build on either side of property. The only place to build the proposed detached garage to meet his needs is on the back left of property. That will allow him to keep the trees in place. He has agreed to replant the back half of the property. He is requesting a variance to build a detached accessory storage building that is 325 square feet larger than the current zoning allowance.

Member Sixma asked the applicant what he currently has in the existing detached building.

Mr. Coffin stated the building is not big enough to store one vehicle and is in ill repair.

Member Lipke asked if the current existing detached building could be restored.

Mr. Coffin stated the building could be enlarged but he would have to remove the Live Oak trees so he could have access to it. He added he has agreed to mitigate the environmental impact by planting various trees on the back of the lot.

Member Young inquired if Mr. Coffin would keep the old detached garage.

Mr. Coffin replied it will be removed and it will be open space.

Mr. Nagle stated the issue is the square footage of the proposed garage and he does not have to save the trees.

Member Severino inquired if a garage of 1274.5 square feet could be built in a location that preserves the oak trees.

Mr. Nagle confirmed and added you could consider Mr. Coffin's storage needs as an unusual circumstance.

Member Russell asks if two different structures could be done.

Mr. Nagle answered the 50% limitation is for total detached accessory structures and explained other options that would overcome the 50% limitation including the storage area being attached to the house.

Mr. Coffin added he wants to save the Live Oak trees but will build the footage needed and meet storage requirements even if he has to remove the trees.

Member Cornett recommends **APPROVAL of Case V-07-132** because it will not affect the neighborhood, will allow the trees to be saved and the unusual circumstances being that the applicant has a larger number of vehicles than normal. Member Sixma **SECONDED** the motion.

Discussion continued briefly. **Motion** to approve **FAILED** by a vote of 3 to 3.

Members Young, Russell and Severino were opposed.

Members Cornett, Sixma and Lipke voted for approval.

V-08-003 – Application of **George Payne, Owner**, requesting a **Variance** to Section 600.01 *Nonconforming Lots* to separate parcel 6940-03-12-0030 from parcel 6940-03-12-0010 on R-3 (Urban Single Family Residential) zoned property. The property is located on the west side of Quebec Avenue, approximately 150 feet north from its intersection with Audubon Avenue in the community of DeLeon Springs; ± 7,500 sq. ft. (Nagle) 6940-03-12-0030

Christian Nagle, Planner II, presented the Staff Report. The subject area is made up of single family dwellings and vacant lots. The subject parcel does not meet lot width or minimum lot area of 10,000 sq. ft. for the zoning classification. In November 1997 the subject property and adjoining property were both owned together but were subsequently sold separately. The applicant bought the subject property by tax deed on August 8, 2006. The applicant does not own nor has he owned the adjoining piece of property. Staff found special circumstances and conditions that the subject property does not conform to the R-3 minimum dimensional requirements. The applicant did not create the situation. Former owners conveyed the adjoining parcel to other person(s). The applicant created his own hardship by purchasing the subject property without also purchasing the adjoining property. Based on the conceptual layout the applicant has indicated how a residence could be placed on the property without the need for additional variances. However, Staff can't support the creation of a nonconforming lot. Staff asks for **DENIAL** of the requested variance.

George Payne, 1034 June Terrace, South Daytona Beach, Owner, stated he feels that granting the variance would not be injurious to surrounding area. He stated there are other lots on the same road with the same lot size that were permitted in the 1980's and does not need any additional variances to build on the lot.

Member Severino asked if the applicants hardship is buying the nonconforming lot and it is the only lot he has owned.

Mr. Nagle explained the applicant should have bought both lots. He stated Mr. Payne told him he was not aware of the Section 600 requirement. The Zoning Ordinance considers both lots to be an undivided parcel. The previous owners sold the corner adjoining parcel separately prior to Mr. Payne acquiring the subject property. This is a peculiar situation where no one should have bought the vacant parcel without also purchasing the adjoining corner parcel.

Mr. Payne stated the adjoining lot was not for sale. He was one among several bidders for the property.

Member Young asked Staff if there is a way to build a house on the lot.

Mr. Nagle answered based on the information the applicant gave to staff, he could build without further variances.

Member Cornett stated the applicant purchased a nonconforming lot and never did have sufficient property to build on.

Member Russell added research should have been done by the applicant before purchase as to why it was up to bid as a tax deed.

Mr. Nagle stated the applicant did not create the single conforming lot, but that the previous owner did.

Member Young **MOVED** to **Deny** case **V-08-003**. Member Russell **SECONDED** the motion. Motion for **DENIAL** carried 4-2.

Members Lipke, Cornett, Young and Russell voted in favor of the motion to deny the variance.

Members Sixma and Severino voted against the motion to deny the variance.

V-08-007 – Application of **Rachel Sieg, Sieg Consulting Services, Agent for Owner, JoAnn Morgan, Owner**, requesting a **Variance** to Section 801.01(d) to allow the cumulative area of all accessory structures to exceed 50% of the sq. ft. area of the principal structure (940 sq. ft. in lieu of the 384 sq. ft. maximum allowed) and a **Variance** to Section 801.01(e) to allow an accessory structure height (23.9 ft. in lieu of the maximum allowed 15 ft.) on R-9W (Indian River Lagoon Surface Water Improvements and Management Overlay Zone) zoned property. The property is located on west side of Atlantic Avenue, approximately 400 feet south from its intersection with Pompano Avenue; ± 7,955 sq. ft. (Zechnowitz) 8505-01-37-0170

Dave Zechnowitz, Planner III, presented the Staff Report. The applicant's engineer previously had inquired of the zoning department if an addition could be attached to the residence with a covered walkway and was told he could. He submitted plans that included an 1880 sq. ft. two-story garage with a guest house above it that is 24 feet in height. During staff's review of the plans it was found that the addition does not meet the requirements of a dwelling because it does not meet the 2004 definition of a

dwelling that all rooms shall have complete internal access. Since the covered walkway is not completely enclosed it can not be considered part of the dwelling and is therefore accessory to the principle building. Accessory buildings cannot exceed 50% of the square foot area of the principle dwelling. The maximum height of an accessory structure can not exceed 15 feet. There are no special conditions that are peculiar to the land involved that are not applicable to other lands in the same zoning classification. Literal interpretation of the ordinance will not deprive the applicant of rights commonly enjoyed by other properties in the same zoning classification. The variance request is not the minimum necessary that will make possible, reasonable use of the land because the proposed structure can be built as an addition to the existing dwelling by enclosing the walkway between the two buildings. The applicant is creating their own hardship. Staff recommends **DENIAL** of the request.

Member Cornett asked what is needed to enclose the walkway.

Mr. Zechnowitz answered that to have complete internal access, the walkway needs to be completely enclosed, weatherproof and there are a variety of ways to do that.

Rachel Sieg, Sieg Consulting Services, 1731 Langley Avenue, DeLand, Agent for Owner, JoAnn Morgan, Owner, stated the property is 50 ft wide and over 100 ft deep and fronts on both Atlantic Avenue and Turtle Mound Avenue. The special circumstances to the existing structure is there is no garage and the rear yard has native vegetation. The home was acquired by the current owner in 1979 and was used as a vacation home. The special condition is that prior to 2004 the covered walk way would have been permitted. In February of 2007 the plans engineer contacted the county and discussed the plan and whether it could be permitted and then in July of 2007 the submitted plans that included the open walkway were approved by a zoning technician. In August comments from zoning indicated the plans would be denied because the walkway was not attached by a completely enclosed structure. Literal interpretation will not allow Mrs. Morgan to have a garage and living quarters for her mother to live in. She stated they are requesting to allow a two car garage and a living space for Mrs. Morgan's elder mother. The walkway being enclosed would destroy the harmony the applicant has had since 1979. The garage addition has been designed to match the existing dwelling. The two story structure is consistent with the majority of the structures in the area. Photos were shown with explanation.

Member Cornett inquired if they had considered the flipping of the structures.

Ms Sieg stated the garage is not living area.

Mr. Dyer asked if the walkway was enclosed then the variance would not be needed.

Mr. Zechnowitz stated the definition of a dwelling requires that all rooms have complete internal access. If not connected by a completely enclosed structure it would be considered two separate structures.

Member Russell asked why they would not enclose the walkway.

Ms. Seig stated because it would destroy the ascetics.

Member Young asked how long is the walkway.

Ms. Seig answered 25 feet long.

Ms. Robinson asked for clarification of when the permit was submitted.

Mr. Zechnowitz stated it was tentatively permitted and then reviewed again as it required a DEP permit.

Ms. Robinson continued by explaining that what was shown on the sketch plan of the survey revealed that it was actually an accessory structure.

Member Cornett asked if you could re title the buildings on the plan to make it work.

Ms. Seig expanded on the building arrangements and discussion ensued.

Member Russell suggested that the applicant adjust the building site that conforms to the requirements yet meets most of their needs.

Ms. Robinson stated this is a self imposed hardship.

Member Young **MOVED** for **DENIAL** of case **V-08-007** per Staff's recommendation. Member Russell **SECONDED** the motion. Motion **CARRIED** unanimously.

S-08-009 – Application of **Glenn Storch, Storch Morris & Harris, LLC, Attorney for Owner, Hart Land & Cattle Company, Inc, Owner**, requesting a **Special Exception** for a temporary campsite for three (3) days before, during, and three (3) days after any regularly scheduled racing events at the Daytona International Speedway for Speedweeks, Bikeweek, the Pepsi "400", and Biketoberfest events on the A-1 (Prime Agriculture) portion of the A-1 (Prime Agriculture) and B-5 (Heavy Commercial) zoned property. The property is located on the east side of Tomoka Farms Road approximately 150 feet north from its intersection with State Road 44, across from the New Smyrna Speedway, in the community of Samsula; ± 11.3 acres (Ashley) Part of 7223-02-16-0010 **Tentatively scheduled for the February 21, 2008 County Council at 2:00 p.m.**

Dave Zechnowitz, Planner III, presented the Staff Report for Scott Ashley. He stated this request is to reestablish a campground on the subject property. The request is for a 5-year Special Exception for 100 campsites. Staff recommends **APPROVAL** subject to the 16 conditions in the Staff Report.

Glenn Storch, Storch, Morris & Harris LLC, attorney for owner, stated his client agrees with all conditions except he would like Condition #10 modified to require the applicant to perform a traffic count during Speed Week and Bike Week to determine what traffic improvements are needed. Based on that report, a left- or right-turn lane will be constructed if necessary. If the necessary improvement is not under construction by the time of the next event, the Special Exception will be revoked.

Mr. Dyer commented that Jon Cheny, County Traffic Engineer was nodding in the affirmative.

Mr. Storch stated the application is to make small adjustments to a long-time temporary campground without a history of problems.

Member Cornett **MOVED** to **FORWARD** case **S-08-009** to County Council recommending **APPROVAL**, with the conditions as modified by Staff and the applicant. Member Sixma **SECONDED** the motion. Motion **CARRIED** 6-0.

OLD BUSINESS

V-07-121 – Application of **Bo Hawryluk, Agent for Owners, Corrado and Dominica DiPietro, Owners**, requesting a **Variance** to Section 801.01(a) for a swimming pool enclosure (2.5 ft. in lieu of the required 5 ft.) on R-4 (Urban Single-Family Residential) and R-6 (Urban Two-Family Residential) zoned property. The property located on the south side of North Ocean Aire Terrace, approximately 200 ft. west of its intersection with Ocean Shore Boulevard (State Road A-1-A), in the Ormond-by-the-Sea area; ± 6,750 sq. ft. (Zechnowitz) 3216-02-00-0340

Dave Zechnowitz, Planner III, presented Staff Report. He stated there was confirmed public notice and the applicant was advised of the hearing.

Member Lipke asked if the applicant was available. The applicant was not available.

Member Severino asked if the applicant could appeal the decision.

Mr. Dyer replied the applicant can appeal the decision and there is no request for continuance from the applicant.

Mr. Zechnowitz continued stating the subject property was developed with a swimming pool in 2003 and it was legal at that time. The pool tank is six feet from the property line. The applicants are requesting to screen the pool which would place the pool enclosure 2.5 ft from the property line. The placement of the pool has created the applicant's own hardship. Staff recommends **DENIAL**.

Member Severino asked if there have been any provisions that have changed since 2003 where the applicant could have anticipated when they built it could be done at a later date.

Mr. Zechnowitz answered the regulations have not changed for setbacks for screen enclosures. The edge of the pool water is 6 feet from the property line. The applicant could build a screen enclosure but there would be only one foot of decking and the enclosure would be five feet from the property line which is the code requirement.

Member Cornett **MOVED** for **DENIAL** of case **V-07-121** based on the Staff Report with the condition Staff is to notify the applicant by the most expedient means of this decision and explain the options to the applicant. Member Severino **SECONDED** the motion. The motion **CARRIED** unanimously.

S-07-122 – Application of **Michael Whaley and Sully Ferritto, Owners**, requesting a **Special Exception** for a Temporary Campsites for 3 days before, during, and 3 days after any regularly scheduled racing event at the Daytona International Speedway for Speedweeks, Bikttoberfest, the Pepsi 400, and Bike Week on A-2 (Rural Agriculture) zoned property. The property is located on the north side of U. S. Highway 1, ± 3,200 feet west of its intersection with the Interstate Highway 95, near the City of Ormond Beach; ± 2.6 acres (Nagle) 3126-00-00-0150 **30-day continuance requested**

Christian Nagle, Planner II, presented the Staff Report. He stated this request was continued from last month's PLDRC meeting. Although the applicant is working on the Traffic Impact Analysis, they had not yet provided it to Staff. He stated the primary use of the request is retail sales and Staff continues to recommend **DENIAL** for that and other reasons stated in the Staff Report.

Jim Morris, Storch, Morris & Harris LLC, Attorney for Owner, stated he requested a traffic study immediately after the December meeting, presented a letter from his traffic engineer for the record, and asked for PLDRC action so the case can go to Council Council.

Member Cornett **MOVED** to **FORWARD** case **S-07-122** to County Council with a recommendation of **DENIAL** based on the Staff Report and the lack of additional traffic study information. Member Young **SECONDED** the motion.

Member Severino spoke in favor of the Special Exception since it's only a temporary situation.

Ms. Robinson reviewed last month's hearing and pointed out Staff's main concern with the request is the large percentage of vendors and small percentage of campsites.

Motion **CARRIED** 4-2. Members Severino and Sixma opposed.

V-07-142 – Application of **Rebecca Singleton, Agent for Owners, Eli and Bernie Fishpaw, Owners**, requesting a **Variance** to Section 600.01 *Nonconforming Lots* to separate parcel 7010-11-00-0110 from parcel 7010-11-00-0120 on R-3 (Urban Single Family Residential) zoned property. The property is located on the east side of Ewing

Lane, approximately 133 feet south from its intersection with University Avenue, near the City of DeLand; ± 11,400 sq. ft. (Nagle) 7010-11-00-0110 and 7010-11-00-0120

Christian Nagle, Planner II, presented the Staff Report. The area consists of single family dwellings and vacant lots which were platted in 1963. The subject property does not meet the lot size for R-3 zoning classification due to the width of the property. The parcel became nonconforming due to the Zoning Ordinance and the rezoning to R-3. The property owners are responsible for the creation of the nonconforming lot by the separate conveyance of the adjoining parcel to other persons. Staff can not support the creation of nonconforming parcels. Staff recommended **DENIAL** for the requested variance because the applicant has not met all the variance approval criteria of Section 1003.01.

Tom Brooks, County of Volusia, stated that in his research the existing R-3 zoning was grandfathered in the area. Single family property does not violate the Comprehensive Plan. The Comprehensive Plan includes density requirements but splitting the lot may violate the overall permitted density of the rural land use designation.

Mr. Dyer clarified that the use as a single family residence is consistent with the Comprehensive Plan but the one acre requirement has not been satisfied and is inconsistent with the Comprehensive Plan.

Bernice Virginia R. Newton Fishpaw, 113 West Chipola Avenue, DeLand Co-Owner and Applicant, stated that the house on University Avenue was bought in 1962. In 1971 they purchased the adjacent lot on Ewing Avenue and for the next 37 years they received tax notices for two different parcels. In 2007, when they were no longer physically capable of maintaining a house and two lots, they moved to an assistant living facility and placed the complete parcel on the market. There were no buyers for the property and they did not want the house to stand vacant so it was decided to sell the house separate from the vacant lot. They have an offer to sell the vacant lot contingent on being able to build a residence on it. It was then they discovered it would need a variance. She stated they received a staff report stating it is not in the public interest to grant the variance. All the other lots of this size in area have residences on them. No evidence has been presented to support the conclusion of not in the public interest. She stated it is not in the public welfare to allow the lot to remain vacant because of it's proximity to DeLand High School and students use the space for parking and smoking. The City of DeLand, the County Forester, and Environmental Staff have had no objection to the variance as long as appropriate permits are obtained. Granting the variance does not establish a precedence since all the other lots in the neighborhood have homes on them. A lot that conforms to the use of surrounding lots should not be considered a prohibiting nonconforming lot. Therefore we request the approval of the variance.

Mr. Nagle stated the owner's sale of property, separate from the adjoining property has created the hardship.

Member Severino asked how property owners are notified of administrative rezoning actions.

Mr. Dyer replied that public notice is done. He added in the Comprehensive Plan this property has a rural future land use classification. There is a range of densities provided for each future land use in the plan. The rural category requires the minimum of one unit per acre. If the variance is granted, the remaining parcel is less than an acre therefore it would be inconsistent with the Comprehensive Plan.

Member Young asked if at the time of a sale was the seller notified of a size problem.

Mr. Dyer replied each individual property transaction is not notified.

Member Lipke asked how long were the parcels sent separate tax notices.

Mrs. Fishpaw answered 2007.

Mr. Ashley explained that the property could still receive separate tax notices if there has been no action on it. If they were to seek a building permit for one of the lots, if they owned both lots, it then would be required that the lots be combined into one parcel based on the zoning regulations.

Member Cornett asked if this was an area where the administrative zonings took place.

Mr. Ashley replied the same zoning has been in effect since 1980 before the Comprehensive Plan designation was applied.

Member Severino stated his concern that staff cites denial for public welfare in reference to density yet if you consider the original plat and lots sizes, the aerial view, and drive thru the neighborhood, it has homes on the majority of the lots that appear to be nonconforming. He stated it does not seem it would be injurious to add another house that would be similar to the neighborhood. Discussion continued.

Becky Singleton, of Remax Leading Edge Realty of Deland, stated she tried to sell the property to adjoining property owners. If the variance is not granted, the vacant lot is worthless, it will be a hardship. It is a short one block street and all other homes have similar size lots.

Glenn Storch, Storch, Morris & Harris, stated the purpose of a Section 600 variance is to deal with unusual situations. He stated the owner does have a hardship. The neighborhood has been developed consistent with what is being asked for. Additional weight can be given to some of the other variance criteria. He stated the variance should be granted.

Member Lipke asked if the variance is approved will they be able to meet the restrictions for R-3.

Mr. Ashley answered if they are unable to meet those requirements they could request another variance.

Discussion continued concerning the possible need for another variance to build on the property.

Member Severino commented if the build out of the neighborhood was done before the code change it would be allowing the use of the property in the way it was intended when it was plated.

Member Lipke asked is there a reasonable building plan given the restrictions of single family home that will fit on the lot or will there be another variance needed.

Discussion continued between members and staff concerning building plans that would fit on the subject parcel in regard to size and zoning restrictions.

Member Russell asked if any neighbors object to the building of another home and who would be hurt if the variance is granted.

Mrs. Fishpaw answered none of the neighbors object that she knows of.

Member Lipke stated it would be difficult to create a decision that could make property possibly worthless.

Member Lipke **MOVED** to **APPROVE** the request based on special conditions and circumstances that existed that prevented the property owner from being able to meet the Zoning Ordinance requirements. Member Russell **SECONDED** the motion. Motion **CARRIED** with a vote of 5-2. Members Young and Cornett opposed.

PUBLIC ITEMS

PH-07-136 - **Application of Scott Baker, Attorney for Owner, Ronald Luznar, Owner**, requesting a **public hearing** on whether or not to allow, pursuant to the Cabbage Patch BPUD (Resolution No. 2000-54), the following:

Temporary campsites for 3 days before, during, and 3 days after any regularly scheduled racing event at the Daytona International Speedway for Speedweeks, Biketoberfest, the Pepsi 400, and Bikeweek, and related special events and itinerant merchant sales.

The property is located on the northeast corner of Tomoka Farms Road and Pioneer Trail, near the Silver Sands Bridle Club, in the Rural Community of Samsula; ± 4.2 acres (Zechnowitz)

Dave Zechnowitz, Planner III, presented the Staff Report. The purpose of this request is to extend the temporary camping and related special events for 2008-2009. The application is the same as it has been since 2000. Last year Staff recommended and PLDRC approved the applicant's request for 2007 because one year was deemed appropriate in order to monitor the events since it had not been applied for, for several years. Staff recommends **APPROVAL** for 2 years, with modification to Condition 15 and the 16 conditions in the Staff Report.

Scott Baker, Attorney for Owner, stated he objects to Condition 15 which is the Traffic Impact Analysis. He explained he can not locate where in the codes there is concurrency for temporary uses. The Sheriff's Department is there preventing turns onto Pioneer Trail except for local residents. He asked for a two year approval and to not limit the future use for 2008 and still get the comment from DCA. All requirements have been met and contracts are in place.

Jon Cheney, Volusia County Traffic Engineer, stated they were taking the conservative approach to see if hard concurrency applies to these temporary sites. Planning Staff contacted the Center for Urban Transportation Research, Hillsborough County area, USF and they stated it could go either way so we are waiting for further information. If a study is required it could cost \$5000 to \$6000. The critical nature in regard to Pioneer Trail is that it is west of Tomoka Farms Road and it is a Hurricane Evacuation Route which means due to DCA requirements for such designated routes you can not include any deminimis traffic. He stated it is prudent to check with appropriate state authorities.

Mr. Dyer suggested a continuance to the next PLDRC meeting.

Ms. Robinson stated final approval is in the text of the BPUD and does not go to County Council.

Member Russell stated the language is in question as it states the applicant shall address the issue to the satisfaction of the Traffic Engineer. Addressing the issue and solving the issue are two different items.

Mr. Dyer discussed further that the specific language is about Traffic Impact Analysis to determine the level of service of the surrounding roads which is based on the Volusia County TIA guide lines. It is proposed to make requirement # 15 more specific. He proposed a temporary approval for two months to allow time for the traffic information. Discussion continued concerning event time tables.

Mr. Baker requested approval through Bike Week and Speed Week and then to return if Mr. Cheney finds that the study needs to be completed so there can be a decision made by the Commission.

Mr. Dyer explained the applicant is requesting approval for temporary camp sites as stated in the Staff Report for special events that would occur in the months of February

and March of 2008 with conditions 1-16 except for number 15 which is the Traffic Analysis. At the April PLDRC meeting the request would resume for approval for the remaining special events identified for the rest of 2008 and 2009 and the Traffic Engineer will present a report at that time.

Member Cornett makes a Motion to **APPROVE** PH-07-136 and Member Sixma **SECONDED** the motion.

Member Lipke elaborated the approval is to accept the recommendation of the Staff which includes the 16 provisions with the elimination of provision 15.

Mr. Dyer added at the April PLDRC hearing, Staff will present recommendations for the remaining events from April 2008 to the end of 2009.

The motion **CARRIED** unanimously.

STAFF ITEMS

1. Presentation on upcoming Zoning Ordinance Amendment for Animal Care Facilities.
Note: The report will be emailed under separate cover.

Mr. Dyer presented an overview to the Commission in anticipation of a presentation of a proposed amendment to the Zoning Code dealing with maintaining of animals at the February 2008 PLDRC meeting. This is in regards to the consistency of the conceptual language with the Comprehensive Plan.

There are 3 primary uses in the zoning code that allow for the harboring of animals in unincorporated Volusia County.

- 1) Kennels
 - a) The definition of a Kennel is defined to be 5 or more domesticated pets over 6 months of age, or 5 or more Class II wildlife (exotic animals) over 6 months of age which can be for profit or personal use operations.
 - b) Domesticated Pet is defined as ordinary and customary house pets such as dogs, cats & birds.
 - c) Kennels are a permitted principle use in the zoning code A-1. In the other 9 zoning classifications they are special exceptions which are largely in rural areas of unincorporated Volusia County.
- 2) Hobby Breeders
 - a) Hobby Breeder is defined as a use allowing for the shelter, breeding or training of dogs or cats. The animals must belong to the resident of premises and they must obtain a Hobby Breeders License from Animal Control Division. License requirements are found in the Code of Ordinances not the Zoning Ordinances.
 - b) Hobby Breeders are a permitted use in eleven Zoning Classifications which are largely in the rural areas of unincorporated Volusia County.

Member Cornett asked if this is the classification that could refer to “puppy mills”.

Mr. Dyer responded it is a use that allows for breeding and sales but are limited in number which is 15 miniature breed dogs or 10 standard size dogs on the premises.

3) Humane Society/Animal Shelter which is a special exception only in 2 zoning classification which are FR and A-1.

Mr. Dyer stated that County Council in November, directed Staff to take a proposed ordinance to the Animal Control Board which addressed the Hobby Breeder provision. The result of the discussion was the Animal Control Board had two work shops in December which addressed how to license the Hobby Breeders operations, which is not a zoning issue. It was agreed to bring proposed language to the PLDRC to consider. Animal licensing and animal control provisions will be handled by the Animal Control Advisory Board and PLDRC deals with the zoning perspective.

- a) The definition of Kennel currently states if you have 5 or more domesticated animals over 6 months of age it qualifies as a Kennel. The new proposal raises that to 6 or more animals. The Animal Control Board has proposed that the term “kennel” be renamed to “animal care facility”. As it is a more accurate description of the use. If you are in a Zoning Classification that allows an Animal Care Facility, if you have 5 or less you do not need approval from the County. The larger the lot size the more animals you are allowed. It is capped out at 30. The Animal Control Staff has stated that 30 animals are the most any one person could care for full time. You may exceed the 30 animals if you have more than 20 acres. The current kennels operating in the current A-1 Zoning Classification will be allowed to transition by allowing those properties to apply for a nonconforming status. All future Animal Care Facilities will be by Special Exception in the categories where Kennels are currently allowed.
- b) The second change would be the elimination of the Hobby Breeder as a use in the unincorporated Volusia County. The result is that the 11 licensed Hobby Breeder’s presently in the County would be part of a County initiated application for Special Exception to be approved as an Animal Care Facility. If there are structures that are nonconforming that do not meet the proposed setbacks, they would be treated as nonconforming so they could continue to operate. It would be proposed to waive any application or notice fees. The Hobby Breeder as a use would end.
- c) The third change would be to create a use called an “Animal Shelter”. The use would be identical to the Animal Care Facility. They could be consolidated into the same use but are currently separate because they are proposed for separate locations and zoning categories. Animal Shelter would replace the existing term of “Humane Society/Animal Shelter.” Animal Shelter is defined as a facility that allows for training,

shelter, boarding, or breeding of a number of animals. These properties would be exempt from the number limits that are for Animal Care Facilities. They are being limited to the commercial and industrial zoning classifications. The proposed areas for the Animal Shelters as a permitted use are B-4, B-5, I-1, and I-2 with a minimum of one acre. Animal Shelter would be allowed by Special Exception in B-3 with a minimum of lot size of 10 acres and in FR, A-1, A-2 with a minimum area of 20 acres. If these changes are adopted there is discussion concerning changing the licensing program that Animal Control administers for the uses. All licensing and inspections of Animal Care Facilities, or of present day Kennels would be administered by Animal Control. Facility standards would be adopted which would specify what type of facilities needed to be in place for application and operation.

Member Cornett asked if the facilities allowed will be required to have permits and build to code.

Mr. Dyer answered anything that would qualify would be subject to the Florida Building Code. We would have no authority to exempt any structure that would be subject to the uniform building code. He stated he will obtain further information on structures for the next meeting. He continued the role of the PLDRC is to review proposed zoning amendments for consistency for the Volusia County Comprehensive Plan. Then the consistency determination is forwarded to County Council for final approval. First reading of the ordinance will go before the County Council on February 7, 2008. In between the first and second reading it will be brought to the Commission for a consistency review at the regular PLDRC meeting of February 12, 2008 with the full text. The final reading by County Council will be February 21, 2008.

Mr. Ashley explained that Staff is asking PLDRC to consider the animal number limits for the new Animal Care Facility and Animal Shelter by using a graduated scale based on the amount of property owned and its' zoning classification. The matrix handout indicates the animal numbers you may have through the Special Exception process based on the size of the property. He requested input from the PLDRC Commission including comments on the size of the property, the number of animals allowed and the zoning classifications that allow an Animal Care Facility and zoning classifications that already have Kennels that are Special Exceptions. Zoning classifications for Animal Shelters that are being considered are standard and heavy commercial, and a few industrial zonings because they allow veterinary clinics, indoor/outdoor facilities and appropriate zonings that can handle potential nuisance issues. The B-3, which is a shopping center classification, could be considered as a special exception used as an out parcel if it is conducted as a possible boarding/kennel facility. FR, A-1 and A-2 Agriculture zonings do address the nuisance issues by special exception, often with greater acreage requirements as 20 acres. These larger acreages allow for buffering, retaining of vegetation, sound barriers and would accommodate more animals requiring more help. He requested any input at this time and any input at the time of the reading of the ordinance.

Mr. Dyer stated that the County Council has been notified that proposed amendments will be coming to them in February. The zoning staff has taken comments from the Animal Control Board into consideration and included items as nuisance, lot sizes, residential uses, and Zoning Classifications. This ordinance is the concept by the Zoning Staff of what they want to present in a proposed full text ordinance at the next PLDRC and County Council meetings.

Member Young asked if a residence only will be allowed up to 5 dogs.

Mr. Dyer answered currently a single residence is allowed up to 4 domesticated pets without applying for approval as a Kennel by Special Exception if it is allowed in the Zoning Classification. The amendment would allow up to 5 domesticated pets 6 months of age or older.

Member Severino thanked Staff for the time to prepare with a preview.

Mr. Dyer distributed the Amendment to the School Impact Fee Ordinance that provides for a delegation by the County of the establishment of the impact fee and the methodology used to the Volusia County School Board which is a change in the process only. This is for information only.


COMMISSION COMMENTS

PRESS AND CITIZEN COMMENTS

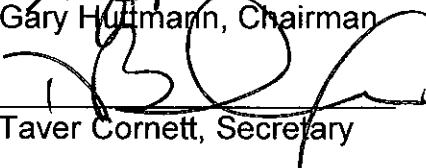
NONE

ADJOURNMENT

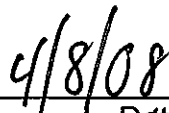
Having no further comments from the public, staff or Commissioners, Chairman Huttman thanked everyone and adjourned the meeting at 4:03 p.m.



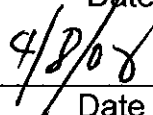
Gary Huttman, Chairman



Taver Cornett, Secretary



Date



Date