

**PLANNING AND LAND DEVELOPMENT REGULATION COMMISSION  
PUBLIC HEARING HELD  
July 10, 2007**

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  
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**

## **APPROVAL OF MINUTES**

### **Approval of the June 12, 2007 Minutes**

Member Cornett **MOVED** to **APPROVE** the minutes for June 12, 2007 with the correction. Member Sixma **SECONDED** the motion. Motion **CARRIED** unanimously.

## **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.

## **CONTINUED ITEMS**

**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) **Due Public Notice – 30 day continuance**

Member Sixma **MOVED** to continue case **PUD-07-032** for 30 days. Member Severino **SECONDED** the motion. Motion **CARRIED** unanimously.

**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**

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

**S-07-065** – Application of **Bernard Serafinowicz, Owner**, requesting a **Special Exception** for a Recreational Facility on A-1 (Prime Agriculture) zone property. The property is located on the northeast side of Pineda Road, approximately 500 feet north from its intersection with Ranch Road, north of the City of Deltona; ± 11.01 acres (Zechnowitz) **Staff Request – 30 day continuance**

Member Sixma **MOVED** to continue case **S-07-065** for 30 days. Member Russell **SECONDED** the motion. Motion **CARRIED** unanimously.

## **CONSENT AGENDA**

NONE

## **NEW BUSINESS**

**PUD-07-040** – Application of **Glenn Storch, Storch Morris & Harris, LLC, Attorney for Owner, Volusia Teachers Organization, Inc, Owner**, requesting a **Rezoning** from the B-1C(5) (General Office, Hospital-Medical / Thoroughfare Overlay Zone / Highridge Neighborhood Plan) and R-2C(5) (Urban Single-Family Residential / Thoroughfare Overlay Zone / Highridge Neighborhood Plan) zoning classifications to the Volusia Teachers Organization, Inc BPUDC(5) (Business Planned Unit Development / Thoroughfare Overlay Zone / Highridge Neighborhood Plan) zoning classification. The property is located on the east side of Educators Road at its intersection with Old DeLand Road, approximately 150 feet north from U.S. Highway 92 adjacent to the City of DeLand; ± 3.4 acres (Zechnowitz) **Tentatively scheduled for the August 23, 2007 County Council public hearing time certain 2:00 p.m.**

**Dave Zechnowitz, Planner III**, presented the staff report. He reported the subject property is the site of the Volusia Teacher's Organization one-story office building, used for administrative functions, meetings and teacher training. This request for a BPUD is to construct a two-story, 8300 sq. ft. building to replace the existing structure. Proposed expansion includes the addition of residential lots which have to be rezoned. The property is located in the Highridge Neighborhood which is a local area protected by the

Comprehensive Plan and its future land use designation is commercial. The Highridge Plan contains specific policies, including a requirement, if rezoning, to use the PUD classification and also compliance with the Gateway Corridor standards. The applicant's proposal is consistent with the Comprehensive Plan policies enumerated in the Staff Report and consistent with the property's future land use designation. It will comply with the Arterial Thoroughfare Overlay Zone requirements with regard to setbacks, landscaping and signage, and also with Daytona Beach's Gateway Corridor standards. Per Traffic Engineering, trip generation from the development of this parcel as proposed will not adversely affect the level of service of any thoroughfares in the vicinity. A total of 1.06 acres of wetlands on the site are proposed to be impacted, which will be mitigated with the conveyance of a conservation easement and also the purchase of off-site mitigation bank credits. Staff recommends **APPROVAL**, subject to the suggested changes to the Master Development Plan because it's consistent with the Zoning Ordinance and the Comprehensive Plan.

**Member Cornett** suggested the Agenda be corrected to read "adjacent to the City of Daytona Beach" and **Mr. Zechnowitz** replied it was duly noted.

**Chairman Huttman** asked if the site plan was consistent with the required parking spaces because he didn't count 87 spaces.

**Mr. Zechnowitz** replied the request for 87 is much higher than the requirement of Section 810 of the Zoning Ordinance. There's a temporary demand for a greater number of spaces during meetings. The request meets the required parking with 34 paved spaces. The balance of 54 spaces are to be packed-shell material. He stated they will not be delineated spaces and will be addressed at the technical review stage.

**Ty Harris, Storch, Morris & Harris, 420 S. Nova Rd., Daytona Beach, FL, Atty for Owner** stated the parking issue will be resolved by the time of technical review and does meet the minimum requirements established by the code.

Member Cornett **MOVED** to **FORWARD** case **PUD-07-040** to the County Council for **APPROVAL**. Member Sixma **SECONDED** the motion. Motion **CARRIED** unanimously.

**Mr. Zechnowitz** commented there is a large-scale site plan that does reflect 87 parking spaces.

**PUD-07-070** – Application of **Richard Henrickson, Agent for Henric-Mac Properties, LLC, Owner**, requesting a **Rezoning** from the B-4 (General Commercial) and A-3 (Transitional Agriculture) zoning classifications to the 4476 Hwy 17 Office Complex BPUD (Business Planned Unit Development) zoning classification. The property is located on the west side of U.S. Highway 17 at its intersection with Heavensgate Road, in the community of DeLeon Springs; ± 1.1 acres (Stockham) **Tentatively scheduled for the August 23, 2007 County Council public hearing time certain 2:00 p.m.**

**John H. Stockham, Planner III**, presented the staff report. He stated subject property is situated in a commercial corridor along US Highway 17 in the rural community of DeLeon Springs. The area development pattern consists primarily of commercial businesses along both sides of the highway, with residential development behind to the east and west. He stated there is a used-car dealer/auto repair center in the immediate area. There are residential properties to the south and a small warehouse building further to the north. The purpose of this BPUD application is to permit the development of commercial uses over the entire property. Presently the property is split between B-4 and A-3 (the western 4,050 sq. ft), which prevents full use of the property for commercial purposes. The preliminary plan for the PUD shows an 8,500 sq. ft. building that would contain seven units, as well as the associated off-street parking, storm water retention areas, landscape buffers and tree protection. The land uses planned in the PUD will be those permitted in B-4 and B-5 zoning. He further stated the subject property has a Rural future land use; however the property is within the Rural Community of DeLeon Springs. A prime provision associated with that local plan is that the zoning in place at the time of the adoption of the Comprehensive Plan was retained. He pointed out the future land use policies are addressed in the Staff Report. This proposal for small offices and small flex office/ warehouse building is in scale with the surrounding area and would be of limited intensity. Potential uses would be limited. The site will conform to the location policies found in the Comprehensive Plan for businesses in non-urban areas. He reported the subject property is located off a four-lane classified county thoroughfare. The proposed access will be a portion off Heavensgate Road that will be improved to county standards to twenty feet beyond the proposed entrance by the applicant. The site itself will contain parking, storm water management areas and tree preservation and landscape buffer requirements. Proposed buildings meet the setback requirements. He stated Staff has marked the Master Development Plan with double-underlines for the new language and strike-through's for language to be eliminated. He indicated the applicant is willing to strike "retail use" from the list of uses permitted and the applicant is agreeable to limiting the flex-office/flex-warehouse use to three units. The site plan will go through the site plan review process and must meet the requirements of the Zoning Ordinance. Staff is concerned with some items on the site plan and feels it needs to be further refined to meet the requirements. Parking will need to be adjusted. The landscape buffers must be exclusive of swales and storm water requirements. The tree preservation must be calculated out at 15% and be separate from any septic systems or utilities. The applicant will address some of those concerns today and is willing to submit a more refined plan for review by County Council on August 23. Applicant will also address the septic, well and irrigation requirements with the Health Department and tree requirements at the time of site plan submittal. Traffic Engineering has determined that the proposed 85 vehicle trips will not cause level service problems for this segment of US Highway 17 and it will continue to retain a Service "A" level. Development Engineering has expressed some concern with the current condition of Heavensgate Road in that it's a private easement and not paved to county standards. He reported the applicant has submitted language to the effect there are no restrictions, dedications or reservations on the use of the easement. Heavensgate Road is an easement to some of the parcels behind the subject parcel. The rights of use are given in deeds, not

in a formal easement. Applicant feels they do not have restrictions to the commercial access off Heavensgate Road. The Development Agreement states the access on Heavensgate Road will be paved to County standards. In the past they have tried to have direct access onto US 17, but it was not permitted by Traffic Engineering per the TRS meetings. With modifications to the Development Agreement, Staff feels the proposal would be consistent with the applicable policies of the Comprehensive Plan. The impact of the project upon the environment or natural resources should be minimal. He stated it is Staff's determination the proposal would have positive and good impacts on the local area by providing the flex office/warehouse space. Staff recommends **APPROVAL** of this application for the rezoning, subject to the following conditions:

1. The applicant shall amend the written Development Agreement in accordance with the Staff recommended revision changes and applicable Staff comments.
2. The applicant shall submit a more refined plan to be presented to County Council to better meet the requirements of the Land Development Code (88-3) and Zoning Ordinance (80-8), as amended.
3. The applicant shall eliminate the retail components from the plan and Development Agreement.

**Richard Henrickson, Agent for Owner, 880 W. Wisconsin Ave., Orange City, FL.** had nothing to add to the Staff Report.

**Member Cornett** asked the applicant if he was comfortable with the staff conditions added to the proposal.

**Mr. Henrickson** replied yes.

**Chairman Huttman** asked Staff to clarify bringing Heavensgate Road up to county standards.

**Mr. Stockham** answered Traffic Engineering will be involved in bringing it up to standards for a local access road, not to thoroughfare standards.

Member Cornett **MOVED** to **FORWARD** case **PUD-07-070** to the County Council for **APPROVAL** based on comments and conditions in the Staff Report. Member Sixma **SECONDED** the motion. Motion **CARRIED** unanimously.

**PUD-07-081** – Application of **Enterprise Preservation Society, Inc, Owner**, requesting a **Rezoning** from the R-4(3) (Urban Single-Family Residential / Mixed Use) zoning classification to the Enterprise Heritage Center and Town Hall BPUD(3) (Business Planned Unit Development / Mixed Use) zoning classification. The property is located on the west side of Main Street at its intersection with Lincoln Street, near the Enterprise Elementary school, in the Community of Enterprise; ± 1.53 acres (Ashley) **Tentatively scheduled for the August 23, 2007 County Council public hearing time certain 2:00 p.m.**

**Scott Ashley, Planning Manager**, presented the staff report. He stated the application is for rezoning to a BPUD to develop a community center site within the designated Enterprise community. The site is currently mostly vacant, with some small tree areas along the borderline. It is in an urban context, with single family dwellings, a daycare center, Enterprise Elementary School, a church, small commercial property and the Methodist Children's Home in the vicinity. The proposed community center will utilize an existing 2-story historic schoolhouse building, which has already been moved onto the property. In addition, there would be a proposed future community center building developed on the site. One building would serve as offices and a museum for the Enterprise Preservation Society. The other building would be used for special events unique to the Enterprise community. He stated there are specific criteria in the Comprehensive Plan for Enterprise. There is a specific local plan for maintaining the historic and cultural values of the Enterprise community. That is the background for protecting and preserving of the historic schoolhouse site and giving a sense of community with that structure and the community center. He described the location of these buildings on the site and their access, using aerial photos. Staff recommends **APPROVAL** of this request with the following changes to the Development Agreement:

1. Add more land uses (private civic center, museum) to cover all potential uses that may occur in these buildings
2. Staff also recommends a 15 ft. landscape buffer on the north side of the property, instead of the proposed 5 ft. buffer.

**Chairman Huttman** asked Staff if the landscape on the north and east side would affect anything on the site plan.

**Mr. Ashley** indicated it would require a southward shift of the driveway and probably the location of the schoolhouse site.

**John Schultheis, CPH Engineers, 101 N. Woodland Ave., DeLand, FL for Enterprise Preservation Society** is in agreement with the Staff Report but wanted to clarify some points in the Development Agreement:

1. Page 6, Item 4: applicant agrees with the 15 ft. landscape buffer but would like clarification that the plaza/sitting area is an allowable use within the buffer.

**Mr. Ashley** stated Staff has no objections.

2. Page 5: applicant would like to add Item 6 to read "gazebos and similar structures not to exceed 250 sq.ft. total".

**Mr. Ashley** replied Staff has no objections.

**Member Severino** asked the applicant to address Staff's amendments indicating a shift in the existing site plan.

**Mr. Schultheis** replied it is roughly 5 ft. from the pavement to the property line on the north. He believes they can accommodate Staff's request for 15 ft. by potentially narrowing the driveway and shifting it to the south.

Member Severino **MOVED** to **FORWARD** case **PUD-07-081** to the County Council for **APPROVAL** with the Staff approved changes. Member Cornett **SECONDED** the motion.

**Michael Dyer, Assistant County Attorney** suggested the applicant provide his suggestions in writing to Staff.

Motion **CARRIED** unanimously.

**Z-07-085** – Application of **Darren Elkind, Paul & Elkind, P.A, Attorney for Owner, Fabian Garcia, Owner**, requesting a **Rezoning** from the A-1 (Prime Agriculture) zoning classification to the A-2 (Rural Agriculture) and A-4 (Transitional Agriculture) zoning classifications. The property is located on the north side of Beckwith Street, approximately 500 feet west of its intersection with Courtland Boulevard, adjacent to the City of Deltona; ± 51.8 acres (Ashley) **Tentatively scheduled for the August 23, 2007 County Council public hearing time certain 2:00 p.m.**

**Scott Ashley, Planning Manager**, presented the staff report. He stated the subject property is east of Lake Helen and just immediately north of the City of Deltona. The area has rural characteristics with large acreage lots, primarily personal use agriculture such as keeping horses and cows, and estate, rural lifestyle living. The subject property is being used for single family use and has agricultural pursuits including horses and cattle. The tract is large, consisting of multiple parcels. The largest is 25 acres. The smallest is 2.2 acres. Using aerial photos on the overhead display he pointed out the total application site and discussed the characteristics. By and large it is open, cleared property. A current driveway runs from Ranch Road, through to two lots the applicant owns in Deltona. It is a paved, central access road that provides access to the various parcels north and south. From this roadway, if approved, the applicant is intending to help to split the property in the requested A-2 on the north and A-4 on the southern end. He displayed on the overhead the proposed zoning split; approximately 34 acres on the northern portion going to A-2 classification and approximately 17.82 acres on the southern end going to A-4. The current A-1 is a 10-acre minimum zoning classification and is prime agricultural, allowing for single-family dwellings and mobile home dwellings. The A-2 is a 5-acre minimum classification and the A-4 is a 2.5-acre minimum classification. Both of these allow for single family dwellings only and they do allow for personal or commercial agricultural pursuits. He stated this is a rural land use category. It is adjacent to areas of smaller lots and an urban area (City of Deltona). The Comprehensive Plan does provide for language under the rural category that if the property is within a distance of 660 feet of approved or existing property at the time of the Comprehensive Plan's adoption (1990) or is adjacent to an urban category, the applicant has the opportunity to seek a reduction in lot size to be compatible with the development pattern in the area. Although most of the surrounding area is zoned A-1, there is a primary development pattern to the south of Ranch Road of 5-acre lots and an unrecorded subdivision to the west. To the east there are various size lots from 1.5 to 5-acres, and the 10,000 sq. ft. platted lots of Deltona. Staff feels the request is

compatible with the Comprehensive Plan but does take exception to where the line should be drawn. Staff proposes more of an east-west line for the split between A-2 and A-4, to be more in tune with the corresponding 660 ft. extension for justification of the lot size reduction. Staff feels that is sufficient area to provide as a transition area. Staff recommends APPROVAL with the revised layout and description of the lots.

**Member Severino** asked Staff for the exact distance of the line separating A-2 and A-4, and what are the resulting acreages.

**Mr. Ashley** replied the exact acreage figure is not available, but the distance is approximately 660-700 feet. He estimated it would be approximately 13.5 to 14-acres for the A-4 and the balance being the A-2 area.

**Darren Elkind, Paul & Elkind, 505 Deltona Blvd., Deltona, FL, Attorney for Owner** spoke about the owner's long range plans for an exempt subdivision. The applicant is agreeable to Staff's revised split line and will have a survey re-drawn before the application goes to County Council, if approved today.

**Chairman Huttman** mentioned a letter received from David & Jean Scheidel, property owners at 2730 Ranch Road opposed to 1-acre minimum dimensions.

**Mr. Elkind** indicated the applicant has spoken with his neighbors and to his knowledge no one is opposed.

Member Young **MOVED** to **FORWARD** case **Z-07-085** to the County Council for **APPROVAL** with the change proposed by Staff. Member Sixma **SECONDED** the motion. Motion **CARRIED** unanimously.

## **OLD BUSINESS**

**PUD-07-007** – Application of **Darren Elkind, Paul & Elkind, Attorney for Owner, Glenwood Properties, LLC, Owner**, requesting a **Rezoning** from the A-1 (Prime Agriculture) and A-2 (Rural Agriculture) zoning classifications to the Glenwood Park RPUD (Residential Planned Unit Development) zoning classification. The property is located on the west side of Grand Avenue, at its intersection with Plymouth Avenue west of the City of DeLand; ± 219.6 acres (Ashley) **Tentatively scheduled for the August 23, 2007 County Council public hearing time certain 2:00 p.m.**

**Scott Ashley, Planning Manager**, presented the staff report. He stated the application is for a proposed urban residential development of up to 450 dwellings on 219 acres, consisting of approximately 325 single family dwellings and 124 townhouse units. Subject property consists of multiple parcels situated between Grand Ave. and the CSX railroad line, adjacent to an existing landfill operation and a closed landfill. Although the property is 219 acres, the actual developable portion is 129.5 acres. The breakdown proposed by the applicant is 21 estate lots of 12,000 sq. feet, 160 garden lots of 9,000 sq. feet, 144 park lots of 5,500 sq. feet and 124 townhouse lots at 2420 sq. feet. These

residential units will be spread through the upland portion of the project. He presented a proposed layout on the overhead and pointed out the estate lots on the northern portion. The garden, park and townhouse lots would be blended in the remaining area. Approximately 9 acres would not be developed and would consist of tree preservation, wetlands, a trail system and the proposed storm water system for this project. This property went through a large-scale plan amendment last year to achieve an Urban Low-Intensity land use designation for the upland portion, while the balance of the property remained Rural. He stated the proposal would accommodate both land use areas in a coordinated development pattern. Staff feels the 450 units proposed at 3.47 dwelling units per acre, which is too near the top-end of the Urban Low-Intensity land use range (.2 up to 4 units per acre). He explained the applicant is further proposing two park sites within the residential community and a proposed trail system in the tree preservation area. No specifics on infrastructure were provided but it is intended these would be community park sites for the use of the residents of this development. The area surrounding subject property is Rural at this stage. There are unrecorded subdivisions of 5-acre lots to the north, an active landfill across the street and a closed landfill site to the northeast. He further discussed the area characteristics down to State Road 44 with the various zoning classifications. Property to the west of the subject property, across the railroad lines, are owned by State agencies for wetland and wildlife protection. Staff's review focused primarily on the density proposal. He indicated the area is presently transitioning from Rural to the edge of the Greater DeLand Area, the boundary of which extends to the CSX railroad tracks. For that reason, Staff feels the density should be reduced. Staff is not opposed to the concept of the PUD, but would like to see better transitioning from the estate lots to the more urban area and the elimination of the multi-family units since they are proposed in the center of the development and are not being utilized as a transition-type use. The concept does adequately comply with buffering the perimeter, wetland protection, and providing property to facilitate the County's Spring-to-Spring Trail System. However, because of issues with stormwater, the 100-year Flood Zone and density, Staff recommends **DENIAL** as presented by the applicant.

**Chairman Huttman** abstained from discussion and vote because his firm was involved in the Comprehensive Plan on this project last year. He removed himself from Council Chambers.

**Darren Elkind, Paul & Elkind, 505 Deltona Blvd., Deltona, FL, Attorney for Owner** stated Glenwood Properties wants this project to be the poster child for "smart growth". He described the topography and natural beauty of the subject property. He stated the owner has done a complete tree survey and soil analysis. The applicant feels the concept does agree with the Comprehensive Plan and presents a nice mix of housing options. He pointed out the multi-family units will be attached townhomes, and were purposely designed to be in the area of the planned parks and open vistas. He further discussed the proximity of the proposed project to the center of DeLand, using aerial photos.

**Member Lipke** asked the applicant to address Staff's comment about reducing the density.

**Mr. Elkind** responded the developable portion of the property is roughly 130 acres, with a maximum of 4 units per acre, or 520 units. The western property would be limited to a maximum of 1 unit per acre, or a total 610 units. He would like to see the density computed on the whole site, not just the upland portion. He further discussed the advantages of the buffer planned on the northern edge.

**Mr. Ashley** explained how lower density would better blend with the rural character. Staff feels 450 homes is a large development for this urban area and very close to the top of the range.

**Mr. Dyer** cited the 8 criteria to be considered, per Code, for rezonings. He encouraged the Board to focus on Staff's comments on the Comprehensive Plan in detail, regardless of the outcome of their vote.

**Jeff Rapson, JW Rapson Real Property Advisors** spoke about plan design for Glenwood Park being mindful of policies and "smart growth" concepts in Volusia County. He presented various slides and spoke in great detail about the site plan and resource preservation of the site.

**Gino Reid, Bowyer-Singleton & Associates**, 110 W. Indiana Ave., DeLand, FL elaborated on the geotechnical research into the site. From an engineering standpoint, the high water table in the area is not a concern. He stated soils were examined. He assured the Board the storm water plan would have no net increase in Flood Plain impact.

**Mr. Elkind** pointed out the County Bike Trail route on the overhead and displayed how Glenwood Park would tie into it, in response to a question by **Member Lipke**.

**Member Russell** asked about reactions from the City of DeLand and Glenwood area residents.

**Mr. Elkind** stated he had not spoken with any officials from the City but it is public knowledge that the subject property is already designated in the DeLand utility service area. He mentioned the Glenwood Civic Association was not going to take a position on the project and he had received a favorable reaction from a neighbor to the north.

**Member Russell** asked about pricing.

**Mr. Elkind** replied a range of options.

**Member Severino** asked about setbacks with regard to the NRMA Overlay.

**Mr. Elkind** answered NRMA is only on the western portion of the property. When they went through the land use amendment, the NRMA was removed for the portion that is now ULI. All setbacks have been met however.

**Candace Martino, 3925 S. Francis Rd., St. Augustine, FL** owns 5 acres in Eagle Ridge (1551 S. Bear Paw Lane). She works for U.S. Fish & Wildlife Services, but spoke representing herself as an individual property owner. She is **opposed**; having issues with compatible land use and concerns for the black bear, gopher tortoise and sand hill crane populations.

**Mr. Elkind** asked Ms. Martino what is her job title with Wildlife Services.

**Ms. Martino** replied she is a biologist and the Eagle Coordinator.

**Ty Harris, 1678 Bear Paw Lane, DeLand, FL** spoke in **support**. He feels it meets all the criteria. He discussed the black bear travel pattern and feels it would not be an issue. He stated the benefits of having the developed portion away from the noisy railroad tracks. He is also in support of townhomes within the development.

**Mr. Dyer** commented re “urban growth boundaries” and “smart growth principles”. He reminded the Board that urban growth boundaries are not part of the Comprehensive Plan today. Smart growth principles are not law-of-the-land in Volusia County in the context of its Comprehensive Plan or its Land Development Code. They are principles which may ultimately be incorporated, but in front of the Board today is the Comprehensive Plan and the Zoning Code. He stated although Mr. Elkind has taken exception to Staff’s comments, whatever the Board decides today should not be based on what is a smart growth principle or urban growth boundaries.

**Member Sixma** raised a question about the impact on schools and roads.

**Mr. Elkind** said the owners have met with the School Board and traffic studies have been done with favorable results.

**Member Severino** asked if the applicant has looked at the Development Agreement with Staff recommended changes.

**Mr. Elkind** replied no, but feels density is the issue and townhouses are appropriate to this project.

**Member Lipke** asked if the density issue is between 2 units per acre and 3.47 units per acre. She asked if wiping out the townhomes accomplishes that.

**Mr. Elkind** reiterated the density is necessary to pay for the roads, possibly fix an intersection off-site, extend the water and sewer lines etc.

**Mr. Ashley** restated the Staff recommended changes to the Development Agreement. Eliminating the 124 townhomes leaves the project with 325 single family dwellings, at 2.5 units per acre which is more appropriate to the area. The proposed total of 450 units is at the edge of the allowable range. He also restated Staff's concern with adding storm water to the 100-Year Flood Plain and emphasized these are core issues not being met based on the concept plan.

**Mr. Elkind** contended the townhomes are important to add a wider range of options for the community, as suggested by the Comprehensive Plan.

**Member Lipke** asked if the applicant was amenable to accepting the Staff recommendations.

**Mr. Elkind** answered it would not be doable.

**Mr. Dyer** commented there is a Staff recommendation of denial and an alternative recommendation of approval with suggested changes to the Development Agreement. He suggested the Board address the Staff recommendation first or approve the applicant's proposal as presented. He stated he was uncertain how the applicant feels about all the recommended changes.

**Mr. Elkind** stated the applicant's only objection was to removal of the townhomes.

**Member Young** asked Staff to clarify if the objection was to the townhouses or the density.

**Mr. Ashley** replied the issue is adding multi-family to a mix of an area that is primarily single family, pushing up the density of the property.

**Member Young** suggested reducing some single family and some townhomes to address the density.

**Mr. Ashley** replied that would be possible.

**Member Cornett** commented on the natural beauty of the subject property, the excellent track record of the developers in the community, but stated he was uncomfortable with the density for the community development pattern of the location. He complimented the applicants on the amount of homework done on the project. He would support the project if the numbers could be worked on.

**Member Russell** commented this is not "infill". He is a proponent of townhomes, but in the right location. If subject property was a mile further east it would be more appropriate. He would like to see a compromise on the density issue. He was also concerned that market and pricing information was not available for discussion.

**Member Severino** stated the Comprehensive Plan was amended to allow a range up to 4 units per acre. No matter how you figure the aggregate land, the number is between 2 and 3.5 units per acre. In his opinion it is consistent with the ruling. Buffering is between a landfill and a preservation area, 5-acre lots and City of DeLand and is consistent with the ruling. He is in favor.

Member Russell **MOVED** to **FORWARD** case **PUD-07-007** to the County Council with a recommendation of **DENIAL**. Member Sixma **SECONDED** the motion.

**Member Cornett** asked the applicant if a continuance would be of assistance.

**Mr. Elkind** replied yes.

Member Russell **withdrew the MOTION**. Member Sixma **withdrew the second**.

Member Sixma **MOVED** to **CONTINUE** case **PUD-07-007** for 30 days. Member Russell **SECONDED** the motion.

**Mr. Dyer** suggested the next hearing pick up from this point. The applicant agreed.

Motion **CARRIED** unanimously.

## **VARIANCE AND SPECIAL EXCEPTION APPLICATIONS**

### **NEW BUSINESS**

**Chairman Huttman** reentered the chambers. He stated a request was made by the attorney for the owners to advance cases **S-07-083** and **S-07-084** to the front of the agenda due to a scheduling conflict out of his control. The commission members agreed to the change.

**S-07-083** – Application of **James Morris, Storch Morris & Harris, LLC, Attorney for Owners, Dr. Kent and Leslie Seamonson, Owners**, requesting a **Special Exception** for a veterinary clinic on A-1 (Prime Agriculture) zoned property This property is located on the northwest side of Marsh Bend, approximately ¼ mile northeast from its intersection with Marsh Road; ± 30 acres (Zechnowitz) **Tentatively scheduled for the August 23, 2007 County Council public hearing time certain 2:30 p.m.**

**Dave Zechnowitz, Planner III**, presented the staff report. He stated that the subject property is located in a rural area. The Special Exception is requested because Dr. Seamonson has a large-animal veterinary practice. He normally travels to his clients.

However, on occasion an animal may be brought to the property for emergency treatment or for a veterinary check. Also, clients may make scheduled visits to pick up medications or remedies for their livestock. Dr. Seamonson does not keep regular office hours and any clinic activity is by appointment only. Staff recommends **APPROVAL** of this request subject to the conditions outlined in the staff report because it's consistent with the Comprehensive Plan and compatible with the surrounding neighborhood.

**James Morris, Storch Morris & Harris, Attorney for Owners Dr. Kent & Leslie Seamonson** stated the applicant agrees with the Staff recommendation. However, he asked the requirement to pave the road be waived. He stated neighbors are in agreement with the waiver request.

**Member Russell** asked for clarification on the purpose of a clinic if the applicant works off site.

**Mr. Morris** replied occasionally there are instances where a horse would be transported to the property for treatment. Horse trailers for personal use of the applicants and their family consistently use the roads. From the standpoint of strict compliance with the code requirements, if there are business-related visits the road would need to be paved. Veterinary Clinic is the closest classification for this application, per Staff, but it really isn't a typical clinic.

**Member Russell** asked if the applicant is comfortable with the Staff recommendations

**Mr. Morris** replied yes.

**Mary Robinson, Building & Zoning Director** clarified for the Commission that the requirement to pave the road would apply only if a final site plan is required. Staff has not recommended this application go through final site plan requirements.

Member Cornett **MOVED** to **FORWARD** case **S-07-083** to the County Council for **APPROVAL**. Member Sixma **SECONDED** the motion. Motion **CARRIED** unanimously.

**S-07-084** – Application of **James Morris, Storch Morris & Harris, LLC, Attorney for Owners, Dame Enterprises, Inc, Owner**, requesting a **Special Exception** for a Car wash on B-4 (General Commercial) zoned property. The property is located on the west side of Williamson Boulevard, approximately 1,300 feet north of its intersection with Hand Avenue, adjacent to the City of Ormond Beach; ±1.25 acres (Stockham) **Tentatively scheduled for the August 23, 2007 County Council public hearing time certain 2:30 p.m.**

**John H. Stockham, Planner III**, presented the staff report. He stated subject property is situated along a commercially developed segment of Williamson Blvd., including restaurants, movie theatre and U.S. Post Office. To the north is a vacant site with an

approved Special Exception for a mini-warehouse. The applicant is asking for the Special Exception for the car wash which is being proposed in conjunction with another commercial use – a custard stand. The car wash will operate as an automatic facility and the subject property is part of the 3-lot Williamson Commercial Subdivision and has a commercial future Land Use. He described the site plan on the overhead. The City of Ormond Beach Green Belt Corridor standards will apply to this project with regard to architectural design, front landscape buffer, and sign guidelines. This project complies with future land use requirements. He explained the main concern would be compatibility, however Staff feels it is not an issue. Traffic Engineering, Environmental Management, Land Development and the Health Dept. have no concerns. This request is consistent with the intent and purpose of the Zoning Ordinance and the Comprehensive Plan. Staff recommends **APPROVAL** of the Special Exception subject to the following conditions:

1. The applicant shall obtain final site plan approval and obtain all applicable building permits.
2. The applicant shall submit a review letter from the City of Ormond Beach that determines the proposed car wash facility conforms to their Green Belt Corridor design standards. This determination shall be accompanied by any site plans or architectural plans reviewed and accepted by the City. This letter shall be submitted with the final site plan application to the Volusia County Land Development Office.

**James Morris, Storch Morris & Harris, Attorney for Owners, Dame Enterprises Inc** stated the applicant agrees and accepts the Staff conditions. He did however take exception to the driveway shown on the site plan, but stated the applicant will comply with whatever is an appropriate location for the driveway.

Member Young **MOVED** to **FORWARD** case **S-07-084** to the County Council for **APPROVAL** with Staff recommendations. Member Russell **SECONDED** the motion. Motion **CARRIED** unanimously.

**S-07-047** – Application of **Ralph and Linda Seltz, Owners**, requesting a **Special Exception** for a Garage Apartment on RA (Rural Agriculture) zoned property. The property is located on the west side of Red Robin Drive, approximately 600 feet west of it intersection with Tomoka Farms Road (CR 415), near the City of Port Orange; ± 2.5 acres (Stockham) **Tentatively scheduled for the August 23, 2007 County Council public hearing time certain 2:30 p.m.**

**John H. Stockham, Planner III**, presented the staff report. He stated the surrounding area of subject property is characterized by 2.5-acre lots which meet the requirements for the RA zoning classification. Subject property has been developed with a 2-story masonry & frame single family home along with a screened pool. A concrete patio separates the pool area from the proposed location of the garage apartment. The Special Exception is requested to provide a home for an elderly parent. The living area would have less than the maximum 800 sq. feet allowed for a garage apartment. He

stated there is also a proposed 3-bay garage attached to the apartment, satisfying another requirement, and located behind the primary residence. This additional dwelling unit would be consistent with the density provisions of the Rural future land use category of the Comprehensive Plan. The proposal to add a garage apartment, as opposed to subdividing land in this area, is more consistent with the established development pattern within the Tomoka Farms area. He described the site plan in detail, using the overhead. He pointed out the Health Dept. will require a modification permit for the septic system to increase the flow. Staff feels this request is consistent with the purpose and intent of the Zoning Ordinance and Comprehensive Plan. He stated to date there has been no opposition to this proposal and other families in the area have similar set-ups for family members. Staff recommends **APPROVAL** subject to the following conditions:

1. Applicant shall obtain required building permits, inspections and pay any required Impact Fees.
2. Applicant shall obtain all necessary permits for the well and septic systems.

**Member Cornett** asked for clarification on the well. He stated the site plan appears to show it being paved over.

**Mr. Stockham** indicated yes, it shows a vehicle-rated cover over the well. The well will be accessible for maintenance, but not impacted by any vehicle traffic.

**Linda Seltz, Owner** stated the existing well will need to be abandoned. A well must be 25 feet from a pesticide-treated structure. They will be drilling a new well. She added this request is solely to accommodate her parent with some level of independence and dignity and proximity to his only child.

**Chairman Huttman** asked Staff if the site plan will have to be redone because of the well.

**Mr. Stockham** replied yes or simply with a notation that the well and septic will comply with Health Department standards.

**Ms. Seltz** stated she is currently working with the Health Department on the septic system and has no problem with moving the well.

Member Sixma **MOVED** to **FORWARD** case **S-07-047** to the County Council for **APPROVAL** with Staff recommendations. Member Lipke **SECONDED** the motion. Motion **CARRIED** unanimously.

**S-07-079** – Application of **Derward Revels, Agent for Owner, Helen Davis, Owner**, requesting a **Special Exception** for a Farm Worker Living Facility on A-1 (Prime Agriculture) zoned property. The property is located on the southwest side of McBride Road at its intersection with Peters Road, in the community of Seville; ± 13 acres

(Nagle) Tentatively scheduled for the August 23, 2007 County Council public hearing time certain 2:30 p.m.

**Christian Nagle, Planner II**, presented the staff report. He stated subject lakefront property is developed with a farm, greenhouses, single-family dwelling and accessory structures. There are farms, single-family dwellings and mobile homes in the surrounding area. This family farm has been in operation for approximately 20 years. The Special Exception is requested to purchase and install a new mobile home residence for family members to assist the owner with running the farm. Current farm operations include cattle, citrus, peat, rabbits, and 14 greenhouses with limited use due to damages from the 2004 hurricanes. He described the Special Exception plan, using the overhead. If the plan is approved, the applicant desires to repair the greenhouses to raise foliage and ornamental plants along with maintaining and operating the existing family farm. If approved, the living facility will also improve site security. He stated the requested Farm Worker Living Facility is consistent with Policy 1.3.3.7 of the Comprehensive Plan. The property already has an Agricultural Tax Exemption, maintained since 1987. He indicated the proposed location of the mobile home on the site plan. The proposed mobile home will sit partially on the 100-year flood plain line. There is an existing slab which held a mobile home back in the 1980's. He stated this request meets the requirements of Section 817.00(k) of the Zoning Ordinance pertaining to Farm Worker Living Facilities. It also meets all 9 criteria of Section 1104.00(h), the Special Exception requirements. Staff recommends **APPROVAL** with the following conditions:

1. The applicant shall operate and maintain the proposed use in accordance with the requirements of Section 817.00(k).
2. The living facility is limited to one mobile home dwelling not to exceed 1700 sq. ft.
3. The mobile home shall be installed outside the 100-year flood plain area.

**Derward Revels, 1725 Stone Rd., Pierson FL, Agent for Owner** stated he agrees with the Staff report.

**Member Cornett** asked the applicant if the property presently has an Agricultural Exemption.

**Mr. Revels** replied yes.

Member Lipke **MOVED** to **FORWARD** case **S-07-079** to the County Council for **APPROVAL** with Staff recommended conditions. Member Severino **SECONDED** the motion.

**Member Cornett** suggested the Special Exception, if approved, might apply only as long as the property is used for a bona-fide agricultural purpose.

**Mr. Dyer** suggested a 4<sup>th</sup> condition be added to the motion.

Member Lipke **AMENDED** the **MOTION** to **FORWARD** case **S-07-079** to the County Council for **APPROVAL** with Staff recommended conditions and a 4<sup>th</sup> condition:

4. The Special Exception will be in effect only as long as the property maintains the approved Agricultural Exemption.

Member Severino **AMENDED** the **SECOND**. Motion **CARRIED** unanimously.

**V-07-080** – Application of **Kevin Morrissey, Agent for Owner, Fritz Bogausch, Owner**, requesting a **Variance** for a west side yard setback (49.03 ft. in lieu of the required 50 ft.) for an addition to a single-family dwelling and a west side yard setback (23 ft. in lieu of the required 50 ft.) for a 11 ft. by 10 ft. metal shed on A-1 (Prime Agriculture) zoned property. The property is located on the north side of Whispering Meadow Lane, approximately 600 feet north from its intersection with Oak Ridge Farms Road, in the community of Osteen; ± 10 acres (Stockham)

**John H. Stockham, Planner III**, presented the staff report. He stated the subject property has recently been cited with building code violations for undergoing construction of an addition without obtaining building permits. Subsequent to the receipt of this complaint, the applicant applied for a building permit. The need for the setback variance came up at the time of permit application. During the review process the need for a setback variance for the 10x11 storage shed came up. He stated the applicants are requesting these variances located in the area next to a screened swimming pool. The home addition is actually a cabana that contains an outdoor kitchen (counter and grilling facility). If the request is denied, the corner of this addition would have to be structurally modified or demolished. He referred to a memo from the Environmental Management Office with no objections to the cabana. He stated the need for the variance is a direct result of the actions of the applicant however, if denied, the applicant would be required to make structural modifications to the cabana. This could create an undue hardship on the applicant. The setback dimension only varies by less than 1 ft. The surrounding area is typically 10-acre or larger lots all requiring 50' setback requirements. If granted the variance would not adversely affect the surrounding community. He stated there is also a 6' screen wall running the length of the property on that side. He described the site plan on the overhead. The 110 sq. ft. metal storage shed is much closer to the side yard setback at 23 ft. Staff feels this structure should be moved to meet the proper setbacks. Staff recommends:

1. **APPROVAL** of the variance for a west side yard setback of the addition (49.03 ft. in lieu of the required 50 ft.)
2. **DENIAL** of the variance for a west side yard setback for the 110 sq. ft. metal shed (23 ft. in lieu of the required 50 ft.)

**Ty Harris, Storch Morris & Harris , 420 S. Nova Rd., Daytona Beach, FL, Attorney for the Owner** stated the applicant agrees with the staff report and wishes to withdraw the variance request for the shed. He stated the shed is in the process of being moved to comply with the setbacks.

**Member Russell** asked if there is a building permit for the addition.

**Mr. Harris** replied yes, there is a permit now.

**Member Severino** asked if there is a contractor.

**Mr. Harris** replied no, the owner is the contractor.

**Chairman Huttman** asked for clarification on handling the withdrawal of the one variance.

**Mr. Dyer** stated it is his understanding the applicant agrees with Staff's recommendation.

**Member Cornett** suggested the applicant was unaware of the need for permits even though his property is Agricultural, and expressed the hope he is now duly educated.

Member Cornett **MOVED** to **APPROVE** case **V-07-080** for the variance on the addition to the single family residence and acknowledge the applicant's request to **WITHDRAW** the variance request for the metal storage shed. Member Sixma **SECONDED** the motion.

**Member Severino** asked if this motion sets a precedent.

**Mr. Dyer** stated each variance case is treated separately and any action taken today would not set a precedent. He also restated the criteria regarding determining hardship.

**Member Cornett** mentioned the memo from Environmental Management regarding NRMA issues this applicant may be facing in the future.

Motion **CARRIED** unanimously.

**S-07-082** – Application of **Elaine and Donald White, Sr, Owners**, requesting a **Special Exception** for Processing, packaging, storage and sale of agricultural products not raised on the premises on A-2 (Rural Agriculture) zoned property. The property is located on the east side of Fern Park Drive, approximately 800 feet south from it intersection with Taylor Road, adjacent to the City of Port Orange; ± 7.93 acres (Stockham) **Tentatively scheduled for the August 23, 2007 County Council public hearing time certain 2:30 p.m.**

**John H. Stockham, Planner III**, presented the staff report. He stated the development pattern surrounding the subject parcel includes a mixture of residential, commercial and agricultural uses. The residential parcels in the area range from 2-acres to 5-acres. On the west side of Taylor Rd. there are two urban residential developments. North of subject property along Taylor Rd. are three houses of worship. The applicants are

planning to sell trees, woody ornamentals, wood mulch, sand, rock and other similar products. The request area is 9 acres in size, with greenhouses located on the northwest portion of the site and barns located in the central portion. They anticipate 5 or 6 customers a day between 8:00 am and 5:00 pm, Mon. through Fri, and then from 8:00 am to 2:00 pm on Saturday. Pending approval by County Council, the applicants are planning to sell these accessory landscape items through direct retail and then wholesale delivery as needed. Since this site has had an operating nursery since 1994, staff feels the best approach to keep this use compatible with the area is to examine the landscape buffers. The applicants have operated a nursery business since the 1950's. There are complaints on file with Code Enforcement indicating mulch, stone and other materials are being sold from this site without this approved Special Exception. He stated Traffic Engineering does not feel level of service problems would be created along Taylor Rd. Environmental Management has noted there are possible wetlands on the site that would require 25 ft. upland buffers if the site plan comes through for review. City of Port Orange encourages the owners to voluntarily annex these two parcels into the city at a future date. Staff will require the two subject parcels be combined into one through the Volusia County Land Development office, because one of the parcels does not meet the size requirement of the A-2 zoning classification (5 acres). With the exception of reinforcing the landscape buffers to this site, the proposed use appears to be largely consistent with the elements of the Comprehensive Plan. Also, this site is across from the Full Moon Natives property that had a similar request approved by Council in June 2006. He stated the current site plan meets the expressed requirements of the Special Exception and should not create any traffic congestion problems. Granting this request would not cause a significant change to the character of the surrounding area or create a public nuisance. Staff recommends **APPROVAL** subject to the following conditions:

1. Products shall be limited to the trees, woody ornamentals, wood mulch and rock as listed in the application. All other agricultural products that are raised on the premises may be sold retail or wholesale regardless of this Special Exception.
2. The application for combination of the lots is required.
3. A plan showing the landscape buffers and irrigation shall be submitted for review and approval through the Land Development office.

He displayed photos on the overhead showing the various materials being sold off the Fern Park Dr. site. He commented the description of Fern Park Dr. as a 25 ft. access easement on the survey may be an error. Traffic Engineering lists it as a city road, not-maintained by the City of Daytona Beach (that should probably read City of Port Orange).

**Member Cornett** asked for clarification on the letter from the City of Port Orange, asking for a city occupational permit.

**Mr. Dyer** stated the City's suggested conditions are not a part of today's hearing.

**Elaine White, 1110 Madrid Ave., Daytona Beach, FL, Owner** stated they do not live in the home at the parcel that faces Taylor Rd. She elaborated on the history of the parcels under their ownership. They have issues with the required landscape buffer because Fern Park Dr. is part of their property.

**Mr. Stockham** corrected his understanding that the applicants lived in the home on Parcel 1. In dealing with Parcels 2 and 3, the intent of the landscape buffers is to screen surrounding parcels to the north and east. He stated, because of existing plantings, it may not involve much to reinforce that area.

**Ms. White** stated they are going to address the issue of Fern Park Dr. at a future date, but saw no point in buffering on a road that was on their property.

**Mr. Stockham** suggested the requirement for buffering along Fern Park Dr. could be waived.

**Chairman Huttman** asked Staff if the requirements of Section 808 required landscaping along Fern Park Dr.

**Mr. Stockham** replied there is a conflict between the survey and Traffic Engineering having it described as a local road, non-maintained vs. an easement.

**Ms. Robinson** commented there could be an error in County records. The Commission can strike that requirement if they so choose.

**Mr. Dyer** stated the requirements within Section 808 do not apply to this property but landscape buffers are being suggested as a condition that you impose on the Special Exception. As part of the Board's consideration, if inclined to grant it, it would not have to be imposed. Nothing is being waived, the Board would be imposing something.

**Member Cornett** asked for verification Staff is specifically referring to the north and east boundaries. He also asked for clarification on the wetland issue.

**Mr. Stockham** replied the screening from the house of worship to the north is the main issue. He restated Environmental Management indicated there are potential wetlands north of the greenhouses. Wax myrtles are there, but on his site visit he saw no standing water. Perhaps there are hydric soils.

**Member Severino** inquired about the requirements for Section 808 if the status of Fern Park Road changes in the future.

**Mr. Stockham** replied if the survey is correct and Fern Park is an easement there are no requirements for screening. If Fern Park is a road, not-maintained by the City of Port Orange typically there are planting requirements. He stated a standard 10 ft. buffer along Fern Park could be suggested, with a similar buffer along the northern boundary.

After further discussion, **Member Cornett** explained to applicant staff is recommending a buffer on north side, between applicant and the church along the combined Parcels 1 and 2, and only recommending a buffer along Fern Park Dr. if it ever becomes a public right-of-way.

**Ms. White** stated she understood.

Member Cornett **MOVED** to **FORWARD** case **S-07-082** to the County Council for **APPROVAL** with conditions recommended by Staff and modified to require a 10 ft. buffer on the north side of the open portion of Parcel 2. Should Fern Park Road become a public right-of-way, a 10 ft. buffer would also be required along that segment. Member Severino **SECONDED** the motion. Motion **CARRIED** unanimously.

**V-07-087** – Application of **Darren Elkind, Paul & Elkind, Attorney for Owners, Mark and Stacia Hollman, Owners**, requesting a **Variance** to the south side yard setback (41.7 ft. in lieu of the required 50 ft.) for an accessory structure on A-1 (Prime Agriculture) and RC (Resource Corridor) zoned property. The property is located on the east side of Bird Dog Lane ±1500 ft. northeast of its intersection with Dove Hunter Road, on the western shoreline of Lake Daugharty, north of the City of DeLand; ± 11.6 acres (Zechnowitz)

**Dave Zechnowitz, Planner III**, presented the staff report. He stated the subject property is developed with a single family dwelling. In March 2007 the applicants were granted a variance for a pool, pool house and porch, with the condition that an existing 10'x18' shed be properly permitted or removed from the site. During the permit application process, it was discovered the shed did not meet the setback requirement. Special conditions and circumstances exist in that the applicants hired a contractor to install a generator which was then covered by the shed, neither being done with a building permit. Staff recommends **APPROVAL**: of the request because it is the minimum variance necessary to allow reasonable use of the structure and literal interpretation of the ordinance will create an unnecessary and undue hardship on the applicants.

**Mr. Zechnowitz** stated the applicant had to leave the hearing, but told him he agreed with the staff report and the conditions.

Member Sixma **MOVED** to **APPROVE** case **V-07-087**. Member Cornett **SECONDED** the motion. Motion **CARRIED** unanimously.

## **OLD BUSINESS**

**V-07-072** – Application of **Robert Riggio, Attorney for Owners, Kelly & Julie Caudill, Owners**, requesting a **Variance** to Section 801.01 for an accessory structure on an atypical lot to be located in a westerly side yard between the rear lot line and the rear most point of the principal structure and a **Variance** to Section 801.01(e) for an accessory structure (exceeding 500 sq.ft.) rear yard setback (10 ft. in lieu of the required 40 ft.) and a westerly side yard setback (5 ft. in lieu of the required 25 ft.) on Whispering Creek RPUD (Residential Planned Unit Development) zoned property. The property is located at the west end of Country Farms Road, approximately 1,900 ft. west from its intersection with Tomoka Farms Road in the Whispering Creek Residential Planned Unit Development; ± 1.43 acres (Nagle)

**Christian Nagle, Planner II**, presented the staff report. He stated the applicants are requesting three variances for an existing 20'x30' accessory structure. The immediate area consists of single-family dwellings and scattered vacant lots. Subject property includes a single family dwelling. He described the location of the accessory structure using the applicant's survey viewed on the overhead screen. Subject property is oddly-shaped and irregular. The parcel is atypical because it is adjacent to a common, open space associated with a subdivision. The structure was approved for a building permit in 2006 in its current location. In July 2006 Zoning staff discovered the setbacks shown on the previously-approved plot plan were not in compliance with the Whispering Creek RPUD development agreement or Section 801 of the zoning ordinance. He stated according to the variance application the concrete slab for the accessory structure was poured, materials ordered and in-transit when the County staff discovered the setback error. Staff finds there are special circumstances and conditions that are not the result of the actions of the property owners. Staff finds a literal interpretation of the zoning ordinance would create an undue hardship on the property owners. Without the requested variances being granted the subject structure would need to be moved or demolished. The subject property also includes numerous features that help justify the requested variances; atypical lot with sloping side property lines, irregular rear property line and numerous trees. Requested variance is also the minimum variance necessary to make reasonable use of the subject accessory structure. He stated granting the variances with the staff recommended conditions should be in harmony with the general intent and purpose of the zoning ordinance. Staff recommends **APPROVAL** of the requested variances subject to the conditions included in the staff report.

**Robert Riggio, 400 S. Palmetto Ave., Daytona Beach, FL** pointed out the applicants applied in good faith for a building permit and proceeded through the proper channels with Zoning approval. Had they been advised of the code provision at the time of application, they would have reduced the structure to 499 sq. feet. Unfortunately, the error with zoning review was caught after everything had been set in motion for construction. He stated the owners are in complete agreement with staff report and conditions. He also pointed out the wooded conservation area directly behind the shed location and the wooded buffer occurring on the side of the property make the best available location. He stated the applicants agree with the staff report.

**Leslie Black, 2050 Country Farms Rd., Port Orange, FL** lives on Lot 11. He is opposed because there is no hardship and the house is listed for sale. He contended the slab was poured before the permit. He reported carports were also installed and the applicant defies HOA and deed restrictions.

**Chairman Huttman** asked staff if the HOA issue has been before the board in the past.

**Mr. Dyer** replied this Board does not enforce HOA restrictions.

**Mr. Riggio** supplied an aerial photo for the overhead projector and addressed location of shed. He contended the applicant has complied with the permitting requirements.

**Chairman Huttman** asked when the Zoning Ordinance change occurred with accessory structures over 500 sq. feet.

**Mr. Nagle** replied December 2004.

**Mr. Riggio** stated the applicant has received a Code Violation and it reinforces his opinion that the code books have not been updated with the change regarding structures over 500 sq. feet. They received a copy of the section of the Zoning code with the violation. After a long discussion with Mr. Zechnowitz for whatever reason someone has not updated the code sections. That appears to be part of the reason why all this occurred. The change to the code had not found its way into the books.

**Mr. Dyer** asked the applicant if he was contesting the need for the variance.

**Mr. Riggio** answered no.

**Chairman Huttman** asked for clarification.

**Ms. Robinson** stated the requirement was overlooked during zoning review.

**Mr. Black** read items from a telephone log backing up his claim that the work was done before the permit was issued.

**Jean Black, 2050 Country Farms Road, Port Orange, FL** stated the structure was erected before the permit was issued. Telephone log was submitted for the record.

**Mr. Riggio** restated his contention that the building was not erected in advance of the building permit.

**Member Severino** stated the owner was not negligent in his opinion. It appears to be staff error.

Member Severino **MOVED** to **APPROVE** case **V-07-072** with the conditions set forth by staff. Member Sixma **SECONDED** the motion. Motion **CARRIED** unanimously.

**PUBLIC ITEMS**

NONE

**STAFF ITEMS**

NONE

**COMMISSION COMMENTS**

NONE

**PRESS AND CITIZEN COMMENTS**


NONE

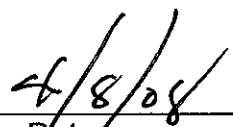
**ADJOURNMENT**

Having no further comments from the public, staff or Commissioners, Chairman Huttman thanked everyone and adjourned the meeting at 12:56 p.m.

  
\_\_\_\_\_  
Gary Huttman, Chairman

  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Taver Cornett, Secretary

  
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Date