

**M I N U T E S**  
**ORMOND BEACH PLANNING BOARD**  
**Regular Meeting**

September 11, 2008

7:00 PM

**City Commission Chambers**  
22 South Beach Street  
Ormond Beach, FL 32174

PURSUANT TO SECTION 286.0105, FLORIDA STATUTES, IF ANY PERSON DECIDES TO APPEAL ANY DECISION MADE BY THE PLANNING BOARD WITH RESPECT TO ANY MATTER CONSIDERED AT THIS PUBLIC MEETING, THAT PERSON WILL NEED A RECORD OF THE PROCEEDINGS AND FOR SUCH PURPOSE, SAID PERSON MAY NEED TO ENSURE THAT A VERBATIM RECORD OF THE PROCEEDING IS MADE, INCLUDING THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS TO BE BASED.

PERSONS WITH A DISABILITY, SUCH AS A VISION, HEARING OR SPEECH IMPAIRMENT, OR PERSONS NEEDING OTHER TYPES OF ASSISTANCE, AND WHO WISH TO ATTEND CITY COMMISSION MEETINGS OR ANY OTHER BOARD OR COMMITTEE MEETING MAY CONTACT THE CITY CLERK IN WRITING, OR MAY CALL 677-0311 FOR INFORMATION REGARDING AVAILABLE AIDS AND SERVICES.

**I. ROLL CALL**

Members Present

John Adams  
Pat Behnke  
Patrick Opalewski  
Rita Press  
Doug Thomas  
Doug Wigley

Staff Present

Ric Goss, AICP, Planning Director  
Steven Spraker, Senior Planner  
Randal Hayes, City Attorney  
Richard Benton, Senior Planner  
Sabrina Johnson, Planning Technician  
Shannon McLeish, Recording Technician

Members Excused

Al Jorczak

**II. INVOCATION**

Mrs. Press led the invocation.

**III. PLEDGE OF ALLEGIANCE**

#### **IV. NOTICE REGARDING ADJOURNMENT**

NEW ITEMS WILL NOT BE HEARD BY THE PLANNING BOARD AFTER 10:00 PM UNLESS AUTHORIZED BY A MAJORITY VOTE OF THE BOARD MEMBERS PRESENT. ITEMS WHICH HAVE NOT BEEN HEARD BEFORE 10:00 PM MAY BE CONTINUED TO THE FOLLOWING THURSDAY OR TO THE NEXT REGULAR MEETING, AS DETERMINED BY AFFIRMATIVE VOTE OF THE MAJORITY OF THE BOARD MEMBERS PRESENT (PER PLANNING BOARD RULES OF PROCEDURE, SECTION 2.7).

#### **V. ADMINISTRATIVE PROCEDURES**

##### **A. Election of Chair**

Mrs. Press announced that Mr. McCoy had moved from Ormond Beach, so it was necessary to elect a new chair and vice chair. She asked for nominations.

Mr. Wigley nominated Mr. Thomas as chair. Mr. Thomas agreed to accept the nomination with the understanding that if Mr. Jorzak was interested, he would gladly turn the position over to him. Ms. Behnke moved to appoint Mr. Thomas as chair. Mr. Wigley seconded her motion and it was approved by unanimous vote.

#### **VI. APPROVAL OF MINUTES**

Ms. Behnke offered a motion to approve the June 12 minutes. Mr. Opalewski seconded and all were in favor. Mrs. Press moved to approve the July 17 minutes, which were seconded by Mr. Opalewski and approved unanimously.

#### **VII. PLANNING DIRECTOR'S REPORT**

Mr. Goss said he would like to put forward an item for discussion on streamlining the LDC at some point when the board had a light agenda. He thought the October agenda looked like a possibility if the board agreed. He expected the discussion to last approximately an hour and a half. The board members agreed.

#### **VIII. PUBLIC HEARINGS**

##### **A. LUPA 08-07: 1291 West Granada Boulevard (West Granada Offices) Small Scale Land Use Map Amendment**

Mr. Spraker stated that the application was for a small-scale land use change from Suburban Low Density Residential (SLDR) to Office/Professional (O/P). Mr. Spraker recalled that the item had previously been before the board and had not been approved. He said that the applicant had improved the design and had asked staff to do further analysis.

Mr. Spraker said concerns presented at the April Planning Board meeting had to do with changing the land use. Pointing out that Office/Professional was the second least intensive use, he said staff recommended approval of the application with the following provisions in addition to those originally agreed upon in April: limiting the number of trips to no more than 905,

including additional landscape buffer for a total of 50 feet, and designating the property as Planned Business Development (PBD), which would require that the application be re-heard by the Planning Board and go through the public hearing process.

Mrs. Press asked what would happen if the Volusia Growth Management Commission (VGMC) turned the project down, to which Mr. Spraker replied that the application would go to public hearing with staff and the public to see if mitigation or settlement could be used to work out an agreement. In response to a question from Mr. Wigley regarding the size of the project, Mr. Spraker said that staff had determined that there was adequate capacity and additionally there would be full traffic analysis required as part of the project. Mr. Spraker said staff did not recommend approval of the project lightly, noting that the requirements for approval were substantial. Ms. Behnke verified the requirement of a 50 foot access road to Pearl Drive and that any multi-family use be prohibited, requiring re-appearance before the Board and public hearing in order to permit it in the future. Mr. Spraker added that due to the parcel's odd shape, the site was not conducive to multi-family or residential.

Mr. Jim Morris, representative for the applicant, addressed the Board. He pointed out that some of the surrounding properties, owned by a family that had been in the area for a long time, were for sale for commercial development. Stating that he had previously served as a planner for the city of Ormond Beach, he said part of planning was realizing changed conditions. He offered the "for sale" signs as an illustration of the changes in the area. Predominantly, he said, the area was surrounded by office and retail uses. He noted the traffic light at Seminole Drive, which was important to the proposed project as it controlled ingress and egress for the people of Tomoka View subdivision. Stating that his client's property was contained in an isolated pocket, heavily wooded in the back, and removed from the property lines of the Tomoka View lots by 125 feet at the nearest point, he said the proposed 55-foot vegetative buffer, the interior fence around the building, and the fact that the building would be 35 feet tall, the same as a single family residence, would make the site all but invisible and quite unobtrusive. He said the vegetation and wall would extend the perceived back yards of the bordering properties, which would also be a benefit to those properties. Presenting a matrix comparing intensities, Mr. Spraker added that he did not think people took into account what happened with the PBD (Planned Business Development) process and how much control it allowed.

Remarking on a comment from the April meeting with regard to traffic intensity, Mr. Morris reiterated that there was capacity for the trips and observed that ultimately the property would be used. He asked for a larger building based on the 904 trips, stating that level of trip generation would be permitted by a 33,000 square-foot building, whereas the staff recommendation was for a 25,000 square-foot building. He added that a church or daycare would be allowable uses, which could entail large emergency generators and traffic greater than what was proposed. The hours for the property would be limited, there would be no generators, and it was a less intensive traffic proposal, he said. Also to be considered, he said, was the fact that the hospital was moving, which was driving the medical offices to move west as well. The proposed medical office building would be very near the new hospital and would be a good use of the site. Stating that he was aware that traffic on State Road 40 was a commodity, he said that the proximity of medical offices to a hospital was also a commodity. Traffic from the proposed project and from Tomoka

View did not mix until they reached the traffic light. He respectfully requested that the board follow staff's recommendation.

Ms. Behnke confirmed that Mr. Morris was discussing a larger building and not more trips and that there would be no generators for the project. She also verified that approval of the project would be conditional on the applicant reappearing before the board for the PBD. Mrs. Press made sure there would be no retail space, to which Mr. Morris replied that it was purely office/professional – specifically medical use. In answer to Mr. Wigley's questions about traffic, Mr. Spraker pointed out that no development would be permitted without a traffic study and approval of the site plans through the PBD process. Approval of the application, he said, did not give someone the go ahead to build prior to going through the traffic and concurrency processes. He reiterated the provision of 125 feet of setback and a 55-foot vegetative buffer. In response to Ms. Behnke, Mr. Spraker said there was stacking for 20 cars in the turn lane and said he had never seen anywhere near that much stacking at that intersection.

Chair Thomas invited the audience to speak, asking that people not reiterate comments offered by previous speakers. Mr. Harley Hoffman, 108 Seminole Drive, president of the Tomoka View/Tanglewood Civic Association said the western boundary of the subject property bordered twelve homes of his subdivision and that the civic association members did not feel this was an appropriate use of the land. He presented the board members with a petition against the application that included 53 signatures from city and county residents, current and previous owners. Stating that he was aware that the Planning Board had a long meeting agenda, he said that though there could be some follow-up comments from residents of the subdivision, they had compiled a statement for him to deliver to the Board. Mr. Hoffman expressed some confusion about whether staff recommended denial or approval of the project. Mr. Spraker clarified that staff recommended approval, but asked whether the board members wished to reaffirm their denial of the April meeting.

Mr. Hoffman reviewed the history of the area as rural residential and small farms. Stating that he had served as chair on the predecessor to the Planning Board, he said the original intent of the zoning was to concentrate commercial and office development along State Road 40, which would serve as the gateway to Ormond Beach, leaving the rest of the area as residential. He talked about the family farm that had been in the area since its inception, stating that the elder of the family had declared her intention to remain in her home for the rest of her life. Since the area's inception, he said, very little had changed. He observed that there had been three owners of the subject property, all of whom had been aware that it was landlocked with easement access only, including the most recent owner, who had bought at the height of the property flipping frenzy. He noted that if single family homes were proposed, no one would be present to dispute the use. He said one of residents' primary concerns was that the proposed use would allow multi-family and he was concerned that there was no way to make sure that use was not employed in the future. He said he could not see how the owner would develop in any case unless someone allowed him to go through their land and to the best of his knowledge, the owner did not have right-of-way to State Road 40. He wanted to know if the City would be responsible for maintaining any road used. He felt that if the subject property did gain access that the subdivision residents had been misled. Mr. Hoffman said the trips generated by single family use for that property would be 220 trips at the most. Mr. Hoffman asked staff to show the land use map for

the area on the overhead. After going over it, he said that residents of the surrounding areas had relied on land use to protect them from uses not in line with residential. He said this use had been consistently documented in the planning. He said the proposed use could do nothing but lower the surrounding property values. Stating that if the land use plan truly represented the long term vision for the people of the area, Mr. Hoffman said the outcome should be clear and that, as demonstrated by the 53 signers, the subject parcel should not look any different than the rest of the vacant area and the requested use should be found inappropriate and denied by the Board.

Mr. Paul Holub, 1185 W. Granada Boulevard, said he had known Dr. Landau for a long time and would probably be involved in the proposed development. He said that in over twenty years as a developer, he had never developed a project with a 55 foot buffer – the largest buffer of any development along Granada. He observed that commercial nodes of Granada had extended north; Wal-Mart abutted a subdivision on the west side much deeper than was proposed for the current application. Further, he said, the use was office/professional, not specialty retail, which was absolutely the least offensive use other than single family. Mr. Holub said he had developed shopping centers in front of this same subdivision, which had coexisted well with no issues to his knowledge. He noted the six-foot high wall and the buffer, stating that it would allow surrounding properties the illusion of an extra back yard and reiterating that the current zoning allowed churches or daycare uses, which would have far more impact than the proposed project. He said he supported the application.

Mr. Wigley asked about the easement and access to State Road 40. Mr. Spraker said that without dedicated right of way, neither this project nor 1287 Granada could be developed. He said the applicant was fully aware that there could be no site development without a roadway. Mr. Morris said that with the wall and the vegetation, the proposed building would be virtually invisible, whereas, if the site was developed as single family, homes would be right on top of each other. Development of his project should provide a selling point for bordering properties rather than serve as a hindrance. He added that there were 192 homes in the subdivision, stating that 53 signatures did not indicate total support for Mr. Hoffman's position. Mrs. Press confirmed that the wall would be a masonry wall with the vegetation between the subdivision property owners and the wall. She also thought that the buffer would actually add property value to bordering homes. Mr. Hoffman said that he could have brought 100 people to testify – and would if that was what it took to defeat the proposal.

Chair Thomas asked for comments from the Board. Mrs. Press said that she had been one of two people who had been in favor of the project when it came before the Board in April and that she still felt the same way. She said that if hers was one of the properties bordering the subject property, she would be in favor of Dr. Landau's proposal far more than having a house abutting her own sometime in the future. She said Tomoka View was not a development out somewhere in the woods, but actually had commercial at the entrance of the subdivision. She felt the project would be a good source of tax revenue for the City and a very good fit for the area and the City.

Mr. Opalewski stated that he was the other person who voted for the project in April and that he agreed with Mrs. Press. He felt the project was absolutely compatible. The project was the least invasive possible and he knew of several similar situations nearby where the subdivision and office/professional coexisted wonderfully. Ms. Behnke said she voted against it last time but she

was interested by the wall on the business side and the extensive vegetation. She said she was still concerned about the traffic and felt that scooting across two lanes would be risky at peak hours and that there could be a delay trying to get across.

Mr. Wigley observed that the subject property was 800 feet from Granada Boulevard. He said he saw no reason to do commercial rezoning in a residential area 800 feet off Granada. He felt there was plenty of developable commercial [property] along Granada, Williamson, and Hand Avenue. He felt the subject property would be better used as residential and said he had voted against the land use request before and nothing he had heard had changed his mind.

Mr. Adams first said that Mr. Hoffman had presented good arguments, but said he did not think it was realistic that the site could be developed as single family, given its dimensions. He said he agreed with Mrs. Press that office/professional abutting residential was a common usage and said he would be in favor of the proposed land use change.

In response to Chair Thomas, Mr. Spraker said there were conditions established to ensure compatibility so there could be no wall waiver associated with the application. Replying to Mr. Hayes's concerns about procedure, Mr. Spraker said staff would be willing to run land use and zoning simultaneously or nearly so in order to assure that the conditions passed as specified.

**Mr. Opalewski moved to approve the land use change. Mrs. Press seconded the motion. All were in favor with the exception of Mr. Wigley.**

**B. PBD 08-10: Granada Grande Planned Business Development, 765 West Granada Boulevard**

Mr. Spraker said the applicant had done a number of studies (an archeological study by the State, a tree study, a wetlands study, and a traffic study), which were included in members' packets. He said there were also two letters – one from Mr. Mullin of 761 W. Granada who wanted to make sure his property would not be flooded, and one from Mr. Moore regarding access. Regarding Mr. Mullin's concerns, Mr. Spraker said he felt comfortable that this project would not negatively impact Mr. Mullin's property. Commenting on the second letter, Mr. Spraker said the City had intended to extend Center Street to Granada Boulevard, but stated that the plan had fallen through due to the wetlands; he felt it was highly unlikely that the two roads would ever be connected.

Mr. Spraker said the property had considerable wetlands and a number of historic trees. Of 47 historic trees, 11 were deemed diseased or dying. The property owner proposed removal of eight (8) of the 11; the remaining damaged trees would fall into a retention pond or vegetative area. The plan called for 208 multi-use units in five buildings. The front portion would be a bank with offices above and the remaining four buildings would be multi-family senior housing. The applicant requested a waiver for parking – allowing one space instead of two per unit. Mr. Spraker said staff had provided analysis based on other studies to support the applicant's request and such a waiver had been allowed in the City previously. The plan also included an architecturally upgraded bus stop, so residents would have access to a sheltered bus stop that exceeded the City's standards. Regarding the architecture, Mr. Spraker said the design had hit

every architectural style and added a couple. He said the application was consistent with the City's codes and exceeded all of the City's standards; staff recommended approval.

Mrs. Press verified that the project was not an assisted living facility, then voiced her concern that the project was not very attractive. The applicant, Mr. Brian Share, addressed the board, stating that he was pleased to present his project to the City. He thanked staff, stating that they had gone above and beyond in assisting him with the project over the last two and a half years. He noted that much had changed economically since he began working on the project. Stating that his only reason for requesting the PBD (Planned Business Development) was to gain flexibility on the parking requirement, as there was currently nothing in the code to distinguish family housing from senior housing, he said many other cities had a different category for each and the Parking Generation Manual only called for a half space per unit. He pointed out that this project would have double that amount of parking and listed the parking requirements for other Florida cities: Jacksonville provided a half space per unit, Altamonte Springs provided one space per unit, and Tallahassee had flexibility with its requirements, allowing parking to be determined by staff. Pointing out the benefits entailed in his project, Mr. Share said there were 36 healthy historic trees, all of which would be preserved; he was preserving 112% of the wetlands required by code – a total of 8.4 acres; the project could have had up to 500 units but only had 208, and could have gone up seven stories, but only went up four.

Ms. Behnke asked whether the apartments would be rentals and about the cost of them. She remarked that most of the seniors she knew had two cars. Mr. Share confirmed that the units were rentals and said the price range was still undetermined, but added that there could become affordable units included for those whose incomes were restricted. He pointed out that for those with two cars, there were many who did not drive at all or who only had one car. He added that the Institute of Traffic Engineers was the authority and that study stipulated half a space per unit for a successful and viable project.

Mrs. Press asked whether there would be a mixture of one and two bedroom units and questioned the clubhouse and visitor parking. She reiterated her opinion about the appearance of the proposed project. Mr. Share responded that there would be a mixture of units, as well as visitor parking available in the evening and weekend hours and at the clubhouse. In response to his request for constructive criticism, Mrs. Press recommended balconies. She expressed concern that the project looked like a standard apartment complex and said the market would seem to be overflowing with vacant units at this time. Mr. Share expressed appreciation for her comments and said he would consider them. He asked the board for flexibility on the parking requirements.

Mr. Wigley expressed concern about the parking, stating that he would feel more comfortable if there were at least two parking spaces for the two bedroom units. However, he commended Mr. Share for his preservation efforts.

Mr. Adams verified that the only thing being requested was flexibility on the parking requirement. Mr. Spraker said he wanted to highlight that results from three studies on parking for developments targeted to seniors had been provided for board members' review. He added that other studies were also available on the internet. He said staff felt very comfortable with the single space per unit proposed for this development. Further, he said, overflow parking was

available if needed. Mr. Adams asked about Mr. Mullin's letter, to which Mr. Spraker replied that a professional engineer had signed off confirming that all water from Mr. Share's property was being contained on that property. If the project did not work for water runoff the way it had been designed, the applicant had the responsibility for fixing it to make sure it did not impact other owners. Chair Thomas verified that this was the case with Mr. Hayes. Chair Thomas said he thought the project was a great idea for infill. Stating that the board saw a good deal of development, Mrs. Press said she wished some of it incorporated green elements like solar panels and such. After asking about the entrance and exit and hearing from Mr. Share that there was one onto Granada and another from Old Kings Road, Ms. Behnke said she supported the request.

Ms. Behnke moved to approve the request. The motion was seconded by Mr. Wigley and approved by unanimous vote.

**C. LDC 08-37: Wall Signage Height Land Development Code Amendment**

Mr. Benton presented LDC 08-37. Mr. C. Fred Hudson, III, of Hudson's Furniture Showroom, asked for an amendment to the LDC specifically regarding wall sign height. Currently such signs could not extend above the top of the roof or over 25 feet, whichever was less. Hospitals in the B-1 zoning district were permitted wall signs exceeding 20 feet and other sites were also allowed signs of over 20 feet, based on architectural style. Mr. Benton cited Prosperity Bank as an example.

The applicant proposed amending the section to read, "In the B-5, B-9, and B-10 zoning districts, wall signs exceeding 20' may be permitted to achieve design objectives related to coordination of sign placement with architectural style."

Ms. Behnke stated that the requested sign was already up, to which Mr. Benton replied that if the application was not approved, the sign would have to be taken down. Mr. Goss said the policy was designed for signs to tie in architecturally – if the sign was not architecturally correct, it would not meet the standard. Mr. Adams said the proposed changes seemed to be taking away the Special Exception. Mr. Goss confirmed the new policy would leave the decision to staff. Mr. Opalewski said it seemed that the proposed change was an effort to correct something. He thought it made sense and said he was in favor of the policy change.

As there were no comments from the audience, Chair Thomas asked for a motion.

Mr. Opalewski moved to approve the request. Mr. Adams seconded the motion, which was approved by unanimous vote.

**D. LDC 08-33: Accessory Dwelling Units Land Development Code Amendment**

Ms. Johnson said staff had taken the board's previous comments into consideration and had incorporated them into the policy being presented. This policy would allow rental of an accessory dwelling as long as the owner lived on the property.

In response to a question from Chair Thomas, City Attorney Hayes said the language outlining who was allowed to live in a dwelling had to do with making sure non-traditional families were not excluded. The language recognized that people could live together who were not related, but put a cap on how many. Mrs. Press said that the bottom line was that what was being proposed was unenforceable. Stating that there was a problem, she said she did not think the proposed policy solved it. She felt there should be more restrictions rather than less. Ms. Johnson agreed and said that was the reason the policy was being put forth in order to allow complaints to be better monitored to allow better resolution of them.

Responding to comments from Chair Thomas and Ms. Behnke concurring with Mrs. Press, City Attorney Hayes stated that while the solution was not perfect, there was an issue, and this was the solution recommended by staff. He said if it did not work, staff could come back before the Board with something else. Mr. Wigley said he could understand wanting an accessory unit for an elderly family member or caregiver, but he did not see the reason to permit use of accessory units for rental income in residential neighborhoods. Ms. Johnson stressed that this was already being done and had been permitted previously in the City, which was the reason staff suggested the policy in order to better monitor such properties and to require that owners live on site if renting out part of the property.

**Mrs. Press moved to approve the policy. Mr. Adams seconded the motion and it was approved by unanimous vote.**

**E. LDC 08-34: Sexually Oriented Business Locational Standards  
Land Development Code Amendment**

Mr. Goss said he needed to read the pre-enactment evidence into the record, detailing the list of Exhibits 1 through 6, which contained case law citations from state and federal court cases. He said the City was not required to conduct studies other than those done by other cities, so long as they could reasonably be applied to Ormond Beach.

Mr. Goss offered into the record as Exhibit 1 a CD disc containing four legal cases, one national, two state, ten local community secondary effect studies, and legal research on open booths and lap dancing, which are characteristics of sexually oriented businesses.

**“1) Case Law Citations:**

- a. **City of Renton v Paytime Theaters** – A city need not conduct new studies or produce evidence independent of that already generated by other cities, so long as whatever evidence the city relies upon is reasonably believed to be relevant to the problem that the city addresses.
- b. **City of Los Angeles v Alameda Books** – A city may rely on any evidence that is reasonably believed to be relevant for demonstrating a connection between speech and a substantial, independent government interest.

- c. **City of Erie v Pap’s AM** – Establishes that evidence can consist of “a municipality’s own findings, evidence gathered by other localities, or evidence described in a judicial opinion.”
- d. **New York State Liquor Authority v Bellanca AND California vs. LaRue** – Upheld prohibitions on nude dancing in establishments that serve alcohol because “common sense” indicates that any form of nudity coupled with alcohol in a public place begets undesirable behavior.”

Ormond Beach has no sexually oriented businesses at this time, consequently no local experience exists. By introducing these cases, Ormond Beach is attempting to rely upon “common sense” (Bellanca and LaRue); “other gathered local government’s evidence” (Pap’s AM); “the experiences of other cities” (Renton); “other city officials’ local knowledge” (Alameda Books) in addressing the secondary effects that result from sexually oriented businesses by building a foundation that supports the LDC (location) and City Code Ordinance amendments (licensing and permitting).

## **2) Secondary Effect Studies:**

- \* **Report of the Attorney General’s Working Group on the Regulation of sexually oriented businesses (June 6, 1989, State of Minnesota)** – Findings:
  - Adopt distance requirements between sexually oriented businesses and sensitive uses;
  - Adopt regulations which reduce the likelihood of criminal activity, including but not limited to open booth ordinances and ordinances containing denial/revocation of licenses when the licensee has committed offenses relevant to the operation of the business; and
  - Adopt regulations which reduce exposure of the community and minors to the blighting appearances of sexually oriented businesses by incorporating interior and exterior design standards.
- \* **The Survey of Texas Appraisers on Secondary Effects of sexually oriented businesses on Market Values (June, 2008)** - Findings:
  - A survey of 600 Texas MAI and SRA appraisers who are members of the Appraisal Institute was conducted, of which 195 responded for a response rate of 25.5 percent. The overall margin of error was 6.06 percent.
  - The survey clearly documented that retail-only sexually oriented businesses had an impact on the market value of single family homes and community shopping centers.
  - The survey also measured the opinions of appraisers as to the separation distances required before such retail-only businesses had no measurable impact on the market value of single-family homes and community shopping centers. In each case, a large percentage of surveyed appraisers responded that a separation distance of more than a half mile (72 percent for single family homes and 45 percent for a community shopping centers) was required before there was no measurable impact on market values created by retail-only sexually-oriented businesses.
  - Appraisers also responded that a concentration (two or more) of such sexually-oriented

businesses also increased their negative impact, as did late hours, and obtrusive signage and lighting.

**\* The American Law Center for Law and Justice on the Secondary Impacts of sexually oriented businesses (March, 1996) - Findings:**

- Sexually oriented businesses provide a potential focus for illicit and undesirable activities by providing a place of contact for prostitution, pandering, and other activities.
- Sexually oriented businesses combined with on-site or nearby alcoholic beverage consumption increases the quantity of undesirable activities.
- There are undesirable results from the facilitation effect that sexually oriented businesses have upon illicit behavior. When exposed to inappropriate behavior, children are unprepared to digest or respond effectively because they lack the maturity to decide appropriate behavior on their own.
- Sexually oriented businesses, by their very presence, set a context for interpreting pedestrian presence in the area as potentially related to the sexually oriented business.
- There is a strong tendency for inappropriate activities to seek nearby venues. Prostitution and other illicit activities find lightly used and under used nearby parks, parking lots, and other public places for their activities. While the sexually oriented business does not create these activities, it does provide: 1) a facilitative setting that supports these activities; and 2) a legitimizing reason for the presence of individuals who have illicit intent.
- Sexually oriented businesses have a negative impact upon both residential and commercial property values. The preponderance of research suggests that the presence of sexually oriented businesses is considered by real estate appraisers and lenders to be evidence of community decline and decay. Other research indicates that areas with sexually oriented businesses experience lower rates of property appreciation and/or higher turnover in properties in comparison to comparable areas without sexually oriented businesses.

Staff also analyzed the following community studies including, but not limited to: Garden Grove and Whittier, California; Kansas City, Missouri; New Hanover County, North Carolina; Newport News, Virginia; Manatee County, Florida; El Paso and Houston, Texas; Phoenix, Arizona; and Des Moines, Washington. The results of those reviews are indicated in the table below.

The following conclusions have been derived from analysis of the studies and factual testimony from the above sources:

- a. Crime rates are higher in areas of adult uses.
- b. Sex crimes are higher in areas near adult uses.
- c. Residential and commercial property values decrease when in close proximity to adult uses.
- d. Physical blight appears in and around adult uses.
- e. Noise and traffic becomes worse in and around adult uses.

- f. Adult uses and alcohol in combination are frequent scenes of prostitution and sale/use of narcotics.

Secondary Effect Studies	Crime	Property Values	Blight	Sex Offenses	Noise/Traffic	Comments
Phoenix, AZ	increased			increased		
Garden City, CA	increased				increased noise	Prohibit bars w/i 1,000 feet of SOB
Whittier, CA	increased				increased noise	
Indianapolis, IN	increased	decreased		increased		
Oklahoma City, OK		decreased	increased			
Beaumont, TX	increased					Separated alcohol from SOB
El Paso, TX	increased	decreased	increased	increased		
Houston, TX	increased	decreased	increased			
Newport News, VA	increased	decreased	increased		increased noise	
Des Moines, WA	increased	decreased	increased		increased traffic	
10	9	6	5	2	4	2

**3) Daytona Beach Experience:**

A secondary effect study cannot be prepared for OB since there are no sexually oriented businesses in the City to study. However, the Daytona experience offers a localized link to the adverse secondary effects from sexually oriented businesses identified in National, State, and other community studies. As such, the following documents are offered into the record:

- a) Daytona Beach secondary affect findings and enactment of Ordinance 81-334, which regulated sexually oriented businesses and prohibited the selling, serving, or consumption of alcohol on premises. Contains a report authored by Douglas Mann on the effects topless dancing in bars has on crime in Daytona Beach (Exhibit 2).

- b) Daytona Beach Legislative Record on Ordinance 02-496, which prohibited public nudity and the separation from alcohol and nudity (Exhibit 3).
- c) Daytona Beach Legislative Record on Ordinance 03-375, which amended 02-496 as a result of Peek-a-Boo Lounge of Bradenton, Inc. v. Manatee County. The Court suggested that a public nudity ordinance requiring the wearing of more than “pasties” and “G-string” might be unconstitutional as applied to expressive conduct. DB permitted an exception in adult theaters for an employee to appear wearing only “pasties” and “G-string” provided the adult theater was not located in close proximity to an alcoholic beverage establishment (Exhibit 4).
- d) Testimony from Gerald Langston, Director of Planning and Redevelopment, who testified to the fact that live nude and seminude entertainment businesses "promote and perpetuate urban decay" and that "adult businesses have impact on crime in the area surrounding Daytona Beach" (Exhibit 4).
- e) Testimony from David Smith, an assistant state attorney who prosecuted drug and prostitution offenses in DB, testified that "most definitely" there were more drug and prostitution offenses in topless bars than in other bars (Exhibit 4).
- f) Trial testimony from Dr. William H. George, noted clinical psychologist and Associate Professor of Psychology at the University of Washington, who testified that based upon his research and studies, alcohol and erotized nudity work together in a synergistic manner to create adverse effects of the nature recognized by the courts under the “secondary effects” doctrine (Exhibit 5).
- g) Police reports of criminal activity, including prostitution and assaults on police officers, in and around adult theaters (Exhibits 2, 3, and 5).
- h) Undercover police investigations that revealed numerous violations of city ordinances by adult theaters (Exhibits 2, 3, and 5).
- i) Police chiefs’ (Willets in 1981 and Small in 2002) documentation of criminal activity in and around adult theaters (Exhibits 2 and 3).
- j) CAD Operations data depicting calls-for-service to police dispatchers from areas near adult theaters (Exhibit 5).
- k) A 1999 article published in the New Statesman magazine. The author relates his experiences visiting a bar with nude dancers, and how these experiences “helped me overcome my inhibitions about paying for sex.” The author confesses that he paid for sex with a prostitute after visiting the nude dance club (Exhibit 4).
- l) Summary Judgment Documents filed by Daytona Beach (Exhibit 6).”

Mr. Goss presented a box containing the exhibits entered into the record. He noted that the City currently prohibited sexually oriented businesses, but that this ordinance opened the City to the possibility of litigation, in which, judging by previous cases, the City would most likely lose. Thus, staff had developed policies to protect Ormond Beach so that if such businesses were to come to Ormond Beach, they would have to do so under the City’s rules. In order to avoid potential litigation and a defensive stance rather than a proactive one, the City’s position needed to be defensible according to previously established legal precedents.

Mr. Wigley asked why this issue should be addressed now rather than waiting until challenged. City Attorney Hayes replied that it was not a question of *if*, but of *when* such a challenge would occur and how much the City would have to pay to deal with it. He said the City would lose in litigation based on its current ordinance. He observed that staff's job was not to tell the board members what they wanted to hear, so much as what they needed to know. He said the timing was right to address the topic of sexually oriented businesses, since Daytona Beach had just completed litigation, which would allow Ormond Beach to build off of its neighbor's experience.

Mr. Goss said the zoning amendment before the board was to introduce a zoning district for such businesses. Staff had identified all the sensitive areas that would be important to protect in the City, then used buffers on GIS to see what areas would be open. In staff's estimation, not enough sites were available using a buffer of greater than 500 feet; with a 500-foot buffer, about twenty sites were eligible. Mr. Goss emphasized that "eligible" did not mean the property owner would be willing to sell or rent a given parcel to a sexually oriented business, or that such property would be considered affordable for a sexually oriented business, only that there was road frontage, sewer, water, and utilities and the site would qualify for that use under the zoning.

Mr. Goss explained that staff had looked at zoning district B-8, which typically was along North US 1 and along Granada Boulevard, around Williamson Boulevard and South US 1. Sexually oriented businesses must be allowed by right or the courts would look at it as suspect; the City could not use discretionary review. He said that Staff had put together nine definitions of conditional use more inclusive of sexual oriented businesses than the current ordinance that would lay out how such a potential business might become eligible to open in the City. Specifically, once a site had been found with the appropriate zoning, no other sexually oriented business could operate within 500 feet; there could not be a residential district within 500 feet of the main entrance to the proposed business; no garish signs; nothing inside could be seen from outside; no business serving alcohol could be within 250 feet from main entrance to main entrance; and the business must obtain a permit or license to operate. These requirements were only for adult related businesses, not bookstores, as it was possible to find material in bookstores such as Barnes and Noble that might be considered risqué by some, which made "adult bookstore" difficult to distinguish possibly from other bookstores. Mr. Goss said it would be difficult to define acceptable versus unacceptable content.

In response to a comment from the Board, City Attorney Hayes said that the City was not protected by the existing ordinance and reiterated that by the time the City was challenged on that ordinance, it would be too late to put in whatever protections were possible. Mr. Opalewski and Mr. Adams asked why the City could not establish a larger buffer that would prevent such businesses from coming into the City. Mr. Hayes replied that the City could not be overly restrictive; there must be some sites that could be available – though that would not mean said sites necessarily were available, just that they were permissible according to the zoning. Mr. Goss added that according to what he had read in the court cases, he had estimated that about twenty potential sites should exist in order for the courts not to consider the ordinance overly restrictive. The industrial zoning district had also been considered; however, as there was a section downtown which was industrial, that idea had been discarded. The B-5 (Service Commercial) district, another option, had not offered any potential sites. In response to Mr. Adams's comment about percentage of total land area, Mr. Goss said that according to his research, either 1% of all

total land area or 5% of land area within a zoning district had to permit that type of use. Ormond Beach did not meet either, so staff had looked at the ruling for Daytona Beach, with about 25 sites, which the Court had agreed was appropriate under the First Amendment. Mrs. Press noted that Blockbuster now offered pornography. Mr. Goss said a film rental business had to offer a certain percentage of its films as pornography, perhaps 35 or 45 percent, before it was considered a sexually oriented business.

Ms. Behnke wanted to know what other businesses were guaranteed to have space available, asking if the City designated a specific percentage that would be available for grocery stores or novelty stores. Mr. Goss replied that a grocery store owner could come into the City, find land within the correct zoning district, and just go through the site plan and get approval if the land was available. Currently, a sexually oriented business was not allowed in the City, but according to the Court, such a business should be allowed the same rights as any other business. Ms. Behnke thought ten (10) spaces should be adequate. Mr. Goss said he respected her opinion, but staff had based the recommendation on previous court decisions for other cities. In response to Mr. Wigley's question about how the County treated the issue (unincorporated areas existing throughout the City), Mr. Goss said that the county did permit such businesses. He said he understood board members' concerns; however, the staff recommendations had been well researched and developed in concert with the City Attorney's Office. If such a business challenged the City's existing ordinance or had ordinances that could be considered inequitable, and the City did not have regulations in existence backed by previous court decisions, the City could end up with sexually oriented businesses in an area that could be particularly damaging to Ormond Beach.

Chair Thomas asked about the timeframe for putting these policies in place. City Attorney Hayes responded that the clock had been ticking urgently for a long time. Daytona Beach had concluded litigation recently, and as a consequence, at least one place had closed. Mr. Hayes said Ormond residents should be concerned about where the sexually oriented business owners being moved out of Daytona Beach would look to relocate, given that these businesses had been able to stay in Daytona Beach for a number of years by filing court case after court case.

Chair Thomas asked the board members to vote on whether business could continue after 10:00 p.m. Mr. Opalewski so moved with a second from Mr. Wigley. The board members were all in favor of continuing to hear business.

Mr. Hayes recommended recessing and moving on to the discussion item then returning to the public hearing. Mrs. Press offered the motion to recess with a second by Mr. Opalewski and all members voting in favor.

## **IX. DISCUSSION ITEM/ACTION ITEM**

Mr. Goss reviewed the proposed ordinance amendments related to sexually oriented businesses. Staff recommended deleting the existing ordinance and replacing it with licensing procedures that included five classifications: adult bookstore, theatre, studio, physical culture, and cabaret. Under these procedures, Planning would have 30 days to act on a completed application. The Police Department would be responsible for investigating the completed application; Planning

would be responsible for application processing and inspections; and the Volusia County Health Department would be responsible for enforcement of health statutes. Applications could be denied if they:

- contained false material
- included individuals who had previously had a license revoked
- included an individual convicted of a misdemeanor within two years, a felony within five years, or who had received two or more misdemeanor charges within a 24-month period within the last five years, or who was appealing a conviction or convicted of a specified criminal act.

Applicants previously denied could not reapply within six months of the denial. The license was not transferable without each licensee going through the same process and could not be transferred, if notified of suspension or revocation. The license could not be transferred to another location. Improper transfer would cause the license to be suspended automatically.

Mr. Goss discussed the violations and resulting lengths of suspension and revocation with regard to posting of the license, prohibited activities, false information, and record maintenance. Once revoked, a licensee could not obtain another license in Ormond Beach for ten years. Special requirements unique to adult theatres included open booth requirements along with general requirements; special requirements unique to cabarets included the three-foot rule, no alcohol, a raised stage, and the general requirements for sexually oriented businesses. Prohibited activities included operating without a license, failure to meet general or special requirements, locking or blocking an entrance, allowing employees to engage in prohibited acts, advertising prohibited activity, allowing minors on the site, working at a sexually oriented business without a valid license, not maintaining employee records, engaging in prohibited sexual activity, touching of employees by patrons, exceeding occupancy limit of adult booth, improper use of restrooms/dressing rooms, violating hours of operation, solicitation or personal advertising, alteration of license or permit, uttering or filing a false statement or information on a license. Appeals would appear before the Planning Board as the final authority before a court of law.

Mr. Wigley, Chair Thomas, and Mrs. Press expressed confidence in the research done and decisions made by City staff. Ms. Behnke said she thought a 750-foot buffer should be established rather than 500 feet. City Attorney Hayes responded that staff had done as much research and study as they could and narrowed parameters to what they thought was legally defensible. Twenty sites fit with the research and were consistent with the decisions made for Daytona Beach. Reducing the allowable area could create more opportunities for challenges, which was the rationale behind the recommendation of a 500-foot buffer. Mr. Goss and Mr. Hayes affirmed that it was important to create a record of the discussion and to include board members' comments and suggestions.

As no other comments were forthcoming, Chair Thomas asked if the discussion item should be closed and the public hearing reconvened. The board members unanimously agreed to do so.

**E. LDC 08-34: Sexually Oriented Business Locational Standards Land Development Code Amendment, cont'd.**

Ms. Behnke observed that the ordinance had references excepting touching by another employee that would not be allowable for patrons. Mr. Goss responded that it had to do with freedom of artistic expression from the perspective of the businesses. Artistic interpretation through dance was protected by the First Amendment. The patron was protected, but the entertainer's expression was not restricted. Mr. Goss added that total nudity was prohibited; at minimum, pasties and a g-string must be worn.

Ms. Behnke said she thought the requirements overall were very stringent, but could not agree to a 500-foot buffer. Mr. Goss said he could only tell her that staff's recommendation was based on the review of court cases in Daytona Beach in an attempt to avoid leaving the loopholes faced by Daytona Beach in 1981. He said that if he felt comfortable that a larger buffer would be defensible in court, he would certainly have recommended it.

City Attorney Hayes concurred with Mr. Goss's statements.

Ms. Behnke reiterated that she could not support the 500-foot buffer, stating that she had lived near Baltimore and had seen what could happen.

**Mrs. Press motioned to accept all the recommendations made by staff. Ms. Behnke and Mr. Wigley both voted against the motion, strictly due to the buffer distance.**

**IX. DISCUSSION ITEM: Action Item – Sexually Oriented Business Operation Standards (Code of Ordinances)**

Mr. Goss asked for a vote on the action item. **Mr. Opalewski offered the motion to approve. The motion was seconded by Mrs. Press and approved by unanimous vote.**

**X. MEMBER COMMENTS**

The Board members thanked Mr. Goss and staff for the work done on the ordinances and welcomed Mr. Adams to the Planning Board.

**XI. ADJOURNMENT**

The meeting was adjourned at 10:40 p.m.

Respectfully submitted,

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Ric Goss, AICP, Planning Director

ATTEST:

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Doug Thomas, Chair

*Minutes transcribed by Shannon McLeish.*