M I N U T E S

ORMOND BEACH PLANNING BOARD

Regular Meeting

February 10, 2011 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	Staff Present
Doug Thomas	Randy Hayes, City Attorney
Harold Briley	Ric Goss, AICP, Planning Director
Lewis Heaster	Steven Spraker, AICP, Senior Planner
Al Jorczak	Chris Jarrell, Recording Technician
Rita Press	
Doug Wigley	

Excused
Patricia Behnke

II. INVOCATION

Chairman Thomas 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. PLANNING DIRECTOR'S REPORT

Mr. Goss said he had no report to provide to the Board.

VI. PUBLIC HEARINGS

A. LDC 11-001: Tuscany (Il Villaggio subdivision) Planned Residential Development Amendment

Mr. Spraker said that this application was a request to amend the Tuscany Planned Residential Development (PRD), also known as the Il Villaggio subdivision. He stated that the subdivision is located on Granada Boulevard, west of the Indian Springs subdivision and east and south of the Breakaway Trails subdivision and the recreation area was proposed just north of SR40 next to a wetland. The request was to delete the required clubhouse/pool recreational amenity and provide, at a minimum a pocket park, with the exact recreational amenity determined by a vote of Home Owner's Association (HOA) after the construction of the 30th home. Mr. Spraker provided the history of the subdivision as follows:

- The development was approved in 2003 as a PRD Overlay and maintains an R-3 zoning designation.
- In 2004, the applicant came to staff and requested a deferral of clubhouse/pool until the construction of the 30th home. Staff had no objection at that time.
- The Site Plan Review Committee (SPRC) approved final construction plans in 2005 and accepted the construction of subdivision improvements in 2006.
- In 2010, the Il Villaggio subdivision fell into bankruptcy. Mr. Spraker recalled staff discussed the recreation requirements in January and April 2010 with a Fifth Third bank representative.
- Staff met with Villaggio Investors LLC, the applicant, in August 2010. In November 2010, the applicant submitted a PRD Amendment to change the recreation requirement to a passive open space area with no improvements. No other amendments were proposed with the application.
- Staff required a neighborhood meeting in December 2010. Some common themes of the meeting included:
    1. Who would be responsible for building the clubhouse/pool? There was not a clear answer at the neighborhood meeting.
    2. Discussion of the maintenance and insurance for clubhouse/pool for the Home Owner's Association (HOA).
    3. The applicant was concerned that the plat Ordinance was not recorded in the Volusia County public record.
    4. Some residents stated concerns that the clubhouse/pool was located outside the subdivision fence. The proposed location could lead to security issues.

Mr. Spraker said after the neighborhood meeting, Planning staff forwarded to the City Attorney office a request for a determination if the applicant, Il Villago Investors, LLC, was the proper entity to file the PRD recreation amendment. Mr. Spraker continued that the City Attorney made a determination that Villaggio Investors, LLC was the property entity to file the application and they were the subdivision

master developer. Mr. Spraker stated that in 2010, the applicant applied for impact fee reimbursement extension for utility extensions completed by the previous developer.

Mr. Spraker explained that the Land Development Code (LDC) has certain requirements for PRD districts that are above and beyond typical zoning requirements such as open space and recreational amenities. He continued that the LDC indoor recreation requirement is 30 square feet per lot or 60 square feet per lot, if the subdivision does not provide any indoor facilities, which would total 3,180 square feet. Mr. Spraker stated that the LDC also requires 30 square feet per lot for outdoor recreation area. Mr. Spraker concluded that the total recreational area requirement for the subdivision is 4,770 square feet.

Mr. Spraker stated that the clubhouse/pool was not a City requirement, it was proposed by Mr. Viscomi of the Tuscan LLC, the original subdivision developer. He stated that the LDC only requires that amount of land required and staff does not mandate the amenities of the recreational facility. Mr. Spraker advised that a comparison in subdivision size is the 65 lot Creekside subdivision. Mr. Spraker stated that the Creekside subdivision provided a walking trail, pavilion, and BBQ grills.

In the packet staff provided, Mr. Spraker said all the documentation received for and against the request, including a letter from the Breakaway Trails HOA speaking against the request. He stated that a lot owner, John S. Olivari, contacted staff requested that the following e-mail be read to the Planning Board:

> "I apologize for the delay in getting this to you, however, up until a short time ago, I planned to attend tonight's meeting with the city commission. My wife and I have owned lots 51 and 52 in the referenced development since September, 2008. It was never disclosed to us that we could possibly lose the right to build upon these lots if recreational amenities were not completed as originally proposed. This potential encumbrance was not disclosed in our contract, title insurance, or in any other manner. I also understand that this was not clearly shown in the official recording in Volusia County records. We are in support of the proposed amendment which will be presented tonight. As you know, the original developer is bankrupt with a principal partner Mr. Vincent Viscomi now deceased. There are 41 vacant lots, two of which I own and 39 owned by another group. There are also 12 developed lots, with most of the owners of these homes and all lot owners supporting the amendment to delete or possibly delay development of the recreational amenities until a later date.
>
> This amendment will allow the remaining lots to be sold, unencumbered, and also gives owners down the road the flexibility to construct amenities at their cost in the future. None of the lot owners should have to pay more than their fair share to construct/maintain future amenities. To have the current encumbrance of tying the right to build out all 53 lots being contingent of someone building the amenities is unfair and unreasonable. I am surprised the city would have allowed this agreement without requiring a Performance Bond that could have been used to pay for the amenities construction in case the developer failed. I encourage our mayor and each commissioner to approve the amendment before them to correct this oversight. I would also appreciate this communication being read into the minutes of tonight's meeting."

Mr. Spraker stated that there are 53 lots in the subdivision with 39 vacant lots owned by the applicant, 2 vacant lots owned by Mr. Olivari, and 12 properties with homes constructed on the lots. Mr. Spraker stated that he was aware of the following:

- 4 homeowners were against the request.
- 5 homeowners supported the request.
- There were no responses for 3 existing houses.
- The vacant lot owners, 39 lots for Villaggio Investors, LLC and 2 owned by Mr. Olivari supported the request.

Mr. Spraker concluded that staff is recommending approval of the proposed PRD recreational amendment. He stated that if this application was filed today and something other than a clubhouse/pool was proposed, staff would not object.

Chairman Thomas questioned the Board members to determine if there were any questions of staff.

Mr. Wigley asked if the recreational area was inside the gated community. Mr. Spraker responded that the recreational area was outside the subdivision gates but inside the subdivision boundary. He recalled that Mr. Viscomi, the original developer, may have intended to use the clubhouse/pool as a sales area.

Mr. Wigley questioned where the access to the clubhouse/pool area is located. Mr. Spraker responded that the access is off the main access road just before the gate.

Mr. Wigley asked if it had been determined that the applicant is the master developer. Mr. Spraker stated that it was the opinion of City staff, based on a legal determination, that the applicant is the master developer.

Mr. Wigley questioned the impact fee reimbursement and its value. Mr. Spraker stated that as part of the construction for the Tuscany subdivision the original developer had to do a major sewer line extension to construct the subdivision. He stated that he did not know the value tonight and estimated the sewer impact fees to be $1,100 to $1,200 per lot within the subdivision.

Mr. Jorczak stated that on page 3 of the City Attorney's memo in the packet it states $475,000 for the impact fee reimbursement? Mr. Jorczak asked if this is the cost of the project. Mr. Spraker stated that this is the City's portion of the project and the developer had other costs.

Mr. Jorczak asked if this was an expenditure already incurred by the City. Mr. Spraker responded that was correct. He continued that the developer gets a credit based on each new sewer line connection. Mr. Spraker stated for example, that when Tymber Creek Shoppes connected to the sewer line the Tuscany subdivision developer was paid those sewer impact fees.

Mr. Jorczak stated that the master developer will be paid the sewer impact fee once a home is connected. Mr, Spraker stated that is correct and he believed that the remaining impact fee reimbursement amount is between $90,000 to $100,000.

Mr. Jorczak noted the letter of objection from the adjoining subdivision, Breakaway Trails. He questioned how Breakaway Trails is impacted by the proposed amendment and what their interest may

be. Mr. Spraker responded that they were noticed as an adjacent property owner and believed they held an HOA meeting to discuss the issue. Mr. Spraker said that he could not speak to what their concerns or objections may be.

Mrs. Press stated that she had visited the Il Villaggio subdivision. She stated that it seemed like a strange place to have a clubhouse/pool with open access so anybody can get into the facility. Ms. Press stated that normally when buying a home, people are told of the existing or planned amenities. She questioned if homeowners were told about the clubhouse/pool amenity. Ms. Press concluded that in many communities conditions can change over time such as the removal of the pool in Breakaway Trails subdivision.

Chairman Thomas stated that he could answer the question about a pool. He said that as you enter the main entrance, there is a house at the corner with a pool, so pools are possible.

Mr. Spraker stated there are subdivision residents and the HOA president are in attendance and can answer questions regarding pools and what they were or were not promised.

Mr. Heaster stated when City Attorney came to the conclusion that the applicant was the master developer, he referenced speaking with Eric Amon with Fifth Third bank. Mr. Heaster questioned if the City Attorney got any information or discussed the issue with any other counsel?

City Attorney Hayes stated that he did not see the need for discussion. Mr. Hayes stated that when the application came over to him, the issue was one of standing. He stated that Planning staff had questions if Villaggio Investors, LLC were the proper applicant, or if it was the HOA, or some number of residents within the subdivision. He summarized the issue as who had standing to submit an application to amend the development order.

Mr. Hayes said what his analysis concluded was that Villaggio Investors, LLC had standing to submit the application. Mr. Hayes stated the reason for that conclusion is that Fifth Third bank acquired every bit of interest in the property that the Tuscan LLC had, including all development agreements, which would include the PRD Development Order and impact fee reimbursement agreement. Mr. Hayes said those agreements traveled with the bank and when the bank conveyed title to Villaggio Investors, LLC, all approvals and obligations were conveyed. Mr. Hayes explained the bank is not going to retain the underlying development rights and give up the right to receive the impact fee credits that traveled with the development. Mr. Hayes stated he confirmed that yesterday with an attorney that represented the bank in the closing who indicated that the bank in no way would have retained those rights.

Mr. Hayes said he knows one of two things occurred: either the rights of the project stayed with the bank or they went with the purchaser. He stated the original issue analyzed was that of standing and the conclusion regarding the transfer of development rights came in his assessment in the tail end of the standing analysis.

Mr. Heaster asked Mr. Hayes if he ever experienced this situation before in his tenure here. Mr. Hayes responded that this situation is a first that he is aware of.

Mr. Heaster asked if staff's position is to amend the PRD to allow a pocket park.

Mr. Spraker stated that City staff does not specify to subdivisions the amenities to be included in the development. He said what City staff uses is a formula for the land area required for recreation. Mr. Spraker stated the developer has a right to amend the PRD provided they are providing some type of recreation.

Mr. Spraker confirmed for Mr. Heaster that there are no other changes being requested, such as subdivision pavers or the modification of the architectural style of homes that help to maintain the subdivision value.

Chairman Thomas invited the applicant to address the Board.

Paul F. Holub, managing member of Villaggio Investors, LLC, 675 North Beach, stated that there were a lot of good comments made and he desired to clarify a few issues. Mr. Holub made the following points regarding the sewer forcemain:

- The sewer forcemain that was extended was oversized, much larger than what was required to serve the Tuscany subdivision in 2004.
- The original developer spent between $450,000 to $500,000 for the sewer forcemain extension.
- A portion of the sewer forcemain extension cost was allowed to be impact fee reimbursable, approximately $150,000 to $160,000.
- The original developer received approximately $40,000 over the years.
- Fifth Third bank, received a portion while the property was in bankruptcy. He believed the remaining balance to be approximately $100,000.
- The original developer was entitled to the impact fee credits based on building a larger size than what was needed so that other users can connect to the extension.
- The only way a developer would be reimbursed is if a sewer impact fee connection was made, either in the subdivision or surrounding area, such as the Tymber Creek Shoppes.
- The impact fee reimbursement agreement is an economic interest or an asset, which was a collateral asset that the bank had rights to. It is no different than if the bank had the right to stocks, bonds or trucks that the developer had. Those were collateral assets that the bank got back. The bank lost in excess of one million dollars, but they got those collateral assets back in conjunction with the fee simple lot interest in 39 lots. Without the impact fee reimbursement, Mr. Holub said the sale for the lots does not work based on a very thin margin for residential lots.
- The investment group asked the City if we can have an extension for repayment of the agreement because there was no likelihood that we would get that money back by the expiration date of 2012 or 2013.

Mr. Holub stated that the investment group that bought these lots are not developers. He continued to state it consists of a physician, paving contractor, home builder, auto mechanic, himself, retired investors, and active investors. Mr. Holub said the investment group bought these lots from Fifth Third bank with the intention of holding them until the market changes and as we all know with the current absorption rates, it is going to be many, many years before these lots are constructed. Mr. Holub said

that the investment group stepped into ownership as lot owner and have participated with the HOA as such.

Mr. Holub said the group did not participate with the HOA as a developer, did not guarantee the budget, and did not make wholesale changes to the architectural requirements. He stated that the investment group made some minor modifications, mostly clarifications were made in good spirit with the Architectural Control Committee of Il Villaggio subdivision. Mr. Holub said the subdivision is really a niche neighborhood with spectacular homes. He continued that these are not entry level homes and sold for $400,000 to $500,000 a few years ago.

Mr. Holub said for the purposes of this meeting the investment group does not disagree with the City Attorney regarding the standing issue. He stated that the investor group does not believe that they fit into the developers shoes for various reasons. Mr. Holub stated one reason was that although Mr. Viscomi had passed away, the Tuscan LLC was still a valid entity in existence.

Mr. Holub said that it is unfortunate that there was not a bond posted, it was probably an oversight of the Building Department. Mr. Holub recalled that this happened in 2004 and 2005 when development was peaking. He stated that it is typical that a bond could or should have been posted for the recreational improvements. He said even if a bond was posted, we may have been here anyway because the homeowners do not want the maintenance, obligation and liability of the clubhouse/pool.

Mr. Holub said these lots could have been bought one lot at a time because Fifth Third bank was going to perform an auction to sell the lots individually. He stated that the investor group can still sell the lots one at a time and posed the question who builds the clubhouse/pool if this occurs. He questioned if it would be the 31st person who pulls a home construction permit and said that there is no equity or rationale in that. Mr. Holub said in a perfect world, if Mr. Viscomi was still here and he was building homes and he was going to build the entire subdivision, this condition would make sense. Mr. Holub stated that did not happen and this is how we got to this amendment which seeks to correct the condition for the recreational facilities. Mr. Holub stated that we have the right to request the amendment to the recreational improvements and that is simply what we are doing.

Mr. Holub said he took the amendment a step further, as the owner of 39 lots, and committed roughly $8,000 or $200 per lot that we own, to construct a pocket park in the future. He stated that this is a guarantee that the money for a pocket park would be there in the HOA reserves. Mr. Holub said in addition, after the 31st home is built, let's have another community meeting, and have a vote to determine the recreational amenity by a majority of homeowners at that time. He said if the majority of homeowners in the community want to have a pool, let's have a pool and we will pay our fair share for all the lots that we own, less the $200 per lot that we will pay today and let's have a pool. Mr. Holub stated that we do not know when the 30th home will be built, it could be 3 years, 5 years, or later.

Mr. Holub stated the recreation area site is a postage stamp lot, where only 7 parking spaces would fit. He said the plat that is recorded only shows this parcel as parcel f, drainage and maintenance and does not show it as recreational area. Mr. Holub stated the recreational area was not the right location for a clubhouse/pool. He said it is outside the subdivision gates, adjacent to SR40, a four lane highway. He believed that there would be liability issues, even if the area was fenced and it is not in a location where any of the homeowners can really keep an eye on it.

Mr. Holub said that he was unsure of why the Breakaway Trails subdivision would oppose this amendment. He stated that Breakaway Trails themselves, several years ago, eliminated the clubhouse/pool from the phase 2 section of the Breakaway Trails subdivision. Mr. Holub continued that there are several subdivisions that are adjacent and in the vicinity of Breakaway Trails that do not have a clubhouse/pool as a recreational feature. Mr. Holub explained that Breakaway Trails is a guarded community and one cannot get in the subdivision without a bar code or a driver's license and security knows where you are going. Mr. Holub said he did not believe that Breakaway Trails opposition was based on the belief that Tuscany subdivision residents would use the Breakaway Trails clubhouse/pool.

Mr. Holub concluded his presentation with the following points:

- The requested amendment is to approve the pocket park with the condition that we will put up the money for the pocket park for our share, which may be enough money to build it and the rest of the HOA does not have to participate. This amendment would provide closure going forward with the recreation condition and when the 30th home is built, the HOA will reconvene and have a community meeting and provide a final vote on the recreational facility.
- If the vote is to build the clubhouse/pool, we will pay our fair share for all the lots we own. We estimate, depending on the type of clubhouse/pool, the range is $70,000 to $90,000 with all the improvements. If this is the homeowner's decision, then the 53 lot owners can pay for the facility and we will pay our fair share. We will support whatever the majority wants once that 30th home is built.
- When you go out the subdivision and you look at the location, it is not the right location for a clubhouse/pool for the reasons previously stated.
- In the West Ormond community there are numerous subdivision that have pocket parks or other recreational features that meet the code requirement that are not a clubhouse/pool.
- Right now there are 12 homes, 2 vacant lots owned by Mr. Olivari, and the 39 lots owned by our investment group and the consensus is that they do not want clubhouse/pool. Our group can not tell you the consensus is a pocket park, maybe it is a shuffle board court, tennis court or something else. The request is to allow additional homes to be built and allow additional homeowners to move in. Perhaps the character of the neighborhood changes.
- If we auction these lots tomorrow and there were 39 different lot owners, who would be building the clubhouse/pool. By virtue of accepting the collateral interest in the impact fee agreement, the investment group never acknowledged any development rights. Maybe it is implied, but that was an asset that came along with the real property. The impact reimbursement agreement closed the gap on us buying it and if that was not there, we would have been to far apart on the purchase. He stated the investment group would not have purchase the land and the lots would still be sitting there today.
- There was a community meeting and there was a majority to amend the recreational amenities. A couple property owners have changed their position, who had originally signed a letter of support, and they have the right to do that.

Mr. Holub concluded his presentation by stating we are here today to ask that you allow the recreational feature to be amended with the condition that it is again looked at down the road and we will abide what everyone votes when there are actual homes built.

Mr. Wigley asked Mr. Holub if he was under the impression that the 31st homeowner would have to pay for the clubhouse/pool. Mr. Holub responded that there are no more building permits issued after the 30th home whether or not this group or Fifth Third bank sold these lots individually.

Mr. Wigley asked Mr. Holub that investor group is not questioning the standing determination that you are the master developer. Mr. Wigley continued that the Development Order requires the master developer to be responsible for the clubhouse/pool and not the 31st homeowner that is sold a lot.

Mr. Holub responded that for the purpose of standing for this application, the investor group does not object. He said that the investor group does not feel that they fit into the developers shoes in total and there are legal reasons for that. Mr. Holub stated that what the document says, and it is not in the recorded document, after the 30th permit is issued, the 31st permit will not be issued until the clubhouse/pool is built.

Mr. Wigley stated that the spirit in which that approval was granted to the original developer was to allow him to start the subdivision. Mr. Holub affirmed that it was for the original developer. Mr. Wigley said it could have been easily stated before the 1st house built, the master developer would be required to construct the clubhouse/pool. Mr. Wigley stated he would take exception that Villaggio Investors, LLC are not developers, I think you are developers.

Mr. Holub responded that this investor group that was put together was strictly for investment. He stated the group did not have the intention of going out there and developing property.

Mr. Wigley asked if the investor group had hired a builder yet. Mr. Holub responded that they had not. Mr. Holub continued that if you look at the absorption rate of new construction in Ormond Beach it is 2012/2013 before new housing occurs.

Mr. Wigley stated that when Breakaway Trails decided not to construct the pool and clubhouse that the developer ICI Homes, Inc. was required to pay $100,000 to the HOA.

Mr. Briley asked the City Attorney how the Board should approach the application and whether the applicant was an investment group or developer.

City Attorney Hayes stated he did not believe it made a difference. He stated what we know is that Villaggio Investors, LLC acquired from the bank the interest it had in the property. Mr. Hayes continued that from the bank's perspective, that would include the impact fee reimbursement and the development agreement as well. He stated that the conveyance was by warranty deed so Villaggio Investors, LLC got what its predecessor in title had. Mr. Hayes stated the predecessor in title to Villaggio Investors, LLC was the bank, the predecessor to the bank was the Tuscan LLC and the Tuscan LLC was the original developer.

Mr. Hayes stated the question for the Board is whether or not the Board desires to recommend amending the Development Order to eliminate the clubhouse/pool condition. Mr. Hayes stated what we do know is the City is prohibited from issuing any more permits for homes beyond number 30 unless and until the clubhouse/pool is constructed. Mr. Hayes concluded, it does not matter how the Board treat the current owners of the property, whether as investors or developers, because in the end, they had what the bank had and that includes the development agreement, the site plan, and the impact fee imbursement credits.

Mr. Briley asked as investors, they are not obligated to do anything until lot 31 is constructed with respect to the clubhouse/pool.

Mr. Hayes said that the grayer question is whether they could spin off the individual lots. He stated that this would require additional research, but it is similar to the bank. He asked if the bank is going to convey its interest to only the lots and the interest in the impact fee reimbursement credits, but yet retain the underlying rights to develop and obligation to develop the clubhouse/pool. Mr. Hayes stated that the bank would not do that and that the obligation does not just disappear. He concluded that similarly here, if you had a property owner that wanted to sell off lots individually, that does not make the obligation of the development agreement disappear and it stays with the current owner.

Mr. Briley asked if Mr. Holub were to sell the lots and there were 53 different owners, who would be responsible at that point. He asked if it would it be the HOA.

Mr. Hayes stated that based on the information that he has looked at so far, he is comfortable in saying Villaggio Investors, LLC is the current owner of that and has responsibility at this point. He said that I do not believe the Villaggio Investors, LLC can spin off the individual lots and simply avoid the obligation that was conveyed to them by virtue of the warranty deed from the bank. Mr. Hayes said if there are some other documents that he has not seen, he would review it and determine if it changed his opinion.

Mr. Briley asked if the pocket park would be developed would it be in the same area as the clubhouse/pool. Mr. Holub affirmed that it was the only parcel of land that is available for recreation.

Mr. Briley stated it is the only parcel available without changing the interior of the subdivision. Mr. Holub stated if the pool/clubhouse were interior to the subdivision, it would place a community pool directly next to a homeowner and the subdivision was not designed for that.

Mr. Briley said that he agreed with Mrs. Press's comment that this is an odd location and perhaps a mistake that this was not put in the subdivision behind the gate. He stated that he lives in a subdivision where he has a clubhouse/pool and it is not a gated subdivision. Mr. Briley stated that there is a fence around the pool area, however, we still encounter problems with people from other subdivisions hopping the fence and vandalism to the clubhouse and the pool is a constant maintenance issue.

Mr. Holub stated that he is trying to be cooperative with both sides. He said the majority does not want it and there is a minority that wants it for a variety of reasons. Mr. Holub stated the application asks for approval of the pocket park, which we have the right to request, the LDC allows it, and staff supports. He continued that the investment group will put money into the HOA reserve account and it will be there for this pocket park and we will go a step further and say when that 30th home is built. Mr. Holub said let's reconvene and have a 30 homeowners and the lot owners come together and have a vote. Mr. Holub said maybe it is a basketball court, a tennis or shuffleboard court, or something that is appropriate to be outside of the gate instead of such a high liability amenity such as a pool.

Mr. Briley asked if the applicant would go along with a clubhouse/pool if the majority wishes at the time of the vote after construction of the 30th home. Mr. Holub responded that the group would pay their fair share for every lot they own if they approve a clubhouse/pool when there is 30 homes built.

Mr. Briley stated that the investor group may not own 39 lots. Mr. Holub responded that we may only own 5 or 10 lots. He said that this approval provides closure to us and to Mr. Olivari. Mr. Holub stated that if Mr. Olivari wanted to sell his lots today, no one will buy the lots because they do not know what will happen in terms of the recreational improvements. Mr. Holub said that they are trying to close the gap on what could happen and provide proper disclosure to any potential buyer and they know that you can build in here and right now it is a pocket park, but down the road it could be a clubhouse/pool or it could be a shuffleboard court.

Mr. Briley asked if there was any knowledge if Mr. Viscomi had promised a clubhouse/pool to the original buyers. Mr. Holub stated he would defer this question to Mr. Sweet.

Jeffery Sweet, 595 West Granada Boulevard, stated he did a lot of work with Vince Viscomi, but did not represent the Tuscan LLC in this subdivision development. Mr. Sweet stated that the location of the clubhouse/pool outside the gated area on a four lane highway does not make a lot of sense. He expressed concern that no bond was posted for the recreational improvements. Mr. Sweet stated he had spoken with Anthony Viscomi, the developer's son, who indicated that they were working to remove the clubhouse/pool requirement but got sidetracked as the economy worsened.

Mr. Sweet stated a developer is a bag of traits and what this group has done is come in and said OK if we were the master developer, the first thing we would do is guarantee the budget. Mr. Sweet continued they would not pay the maintenance assessment fee per lot, because the developer does not have to pay this. He said they are not doing this and they are paying the maintenance assessment fee per lot, just as if they were the lot owner. Mr. Sweet said that the developer has the right to appoint and run the Board of Directors, and from doing condominium work for 30 years, he stated most developers want to run the Board until they sell and get out because it just makes life easier. Mr. Sweet stated that there was no effort to do this. Mr. Sweet continued that most developers take control of the Architectural Review Committee (ARC), which they have a right to do. Mr. Sweet stated that they did not do this. He said that they are investors that bought lots and they have adhered to the ARC standards. Mr. Sweet concluded that the above are incidences of this grouping of identities that says to someone are you a developer or an investor that bought lots.

Mr. Sweet said there has been some discussion of the impact fee reimbursement agreement and this was pledged as collateral for the loan, because it was a source of cash. He stated this is what banks do and when they made the development loan, they looked at every available source of cash and had that pledged as collateral. Mr. Sweet stated the bank foreclosed that interest and the income from the lots is what they were out trying to sell on the open market place which was part of the packet that this investor group purchased.

Mr. Briley asked would the investor group would develop the concept of the pocket park or would it be a fair share cost among the lot owners. Mr. Holub responded that the group has agreed to put up approximately $8,000 today for the pocket park and suggest that it is not built today until the homeowners evolve and then they can decide what they want.

Mr. Briley asked what if the park concept costs more than $8,000. Mr. Holub stated if it is a pocket park and the $8,000 is there, then we would build it. He continued if it is a $15,000 tennis court, we would pay our fair share of the total cost, less the money put up front, this way the City will know there are

funds to construct the park improvement and something will come of this vacant parcel at some time in the future.

Mrs. Press said the homes are very attractive and it has been stated that they went for between $400,000 to $500,000. She asked what guarantee, if any, that these lots will not be sold and a home that may go for $150,000 will be built. She said she understood that there are architectural standards, but where is it written that the people who live there that have previously spent $400,000 to $500,000 that the value of their property will be protected.

Mr. Sweet said he thought the question related to size, quality and appearance of the homes. He stated that it is hard to equate in today's market the value of the homes purchased six years ago. Mr. Sweet said the ARC standards that existed when the original developer started are 99% in tact, with only a few minor changes that were inconsistent that have been corrected. Mr. Sweet continued that there has been no change in what the houses have to look like, what the architectural style has to be. Mr. Sweet said one of the commitments that this investor group made to the homeowners group when they came in was that they were coming in as an investor group who live in this community and who are not going to try to be the successor developer and come in and change the architectural standards. He said the size of the home, how they are located on the lot, what they are made out of, and all the architectural components are going to be identical. Mr. Sweet stated today you can duplicate the homes that are there for two thirds the cost and there will be some time before the actual value returns. He said whatever they paid for them, they will look the same.

Mrs. Press asked if this is an oral agreement or a written one. Mr. Sweet responded that the architectural standards are recorded and are in the declaration of restrictive covenants.

Mr. Wigley questioned if the covenants can be amended. Mr. Sweet stated it can be done, but it is a significant process. Mr. Wigley questioned if it is similar to what is being done tonight. Mr. Sweet stated that the only person that had the ability to unilaterally amend the covenants was the original developer, which we are not. He stated we are a lot owner, we just happen to own 39 lots. Mr. Sweet stated it would take a vote of the homeowners to do that. Mr. Wigley stated that the investor group has 39 lots, with 39 votes. Mr. Sweet stated if we were going to spin it that way, we would already have done it.

Mr. Wigley questioned who is responsible for repairing the buffering between Il Villaggio and Breakaway Trails subdivisions which has been deteriorating. Mr. Sweet responded that was the HOA. He indicated that Fifth Third bank turned control of the common areas to the HOA. Mr. Sweet stated that a lot of what the investment group has was put into place by the bank.

Mr. Hayes asked if the bank actually transferred the interest in the common areas to the HOA. Mr. Sweet responded that they did and when he became involved in the subdivision, Cobb/Cole law firm had been hired to address a profound water management district issue. He stated that the issue required all the conservation easements to be recorded and property transferred to the HOA.

Michael Pyle, 43 Apian Way stated he is the vice president of the association and they are in favor of the application. He stated he was one of the original buyers from Vince Viscomi and had meetings with him. Mr. Pyle said that Mr. Viscomi did state that there was going to be a clubhouse/pool in the initial discussions. Mr. Pyle said he read all the documents before we closed and I knew what was in the public

records. Mr. Pyle stated he was unable to find any recorded documents regarding the clubhouse and pool and except one little statement in a City document about it.

Mr. Pyle stated that before Fifth Third bank started foreclosing, the existing homeowners realized we were in trouble. He stated that Mr. Viscomi came and talked to us a few times and wanted to know if we wanted to buy the lots. Mr. Pyle stated as soon as we realized that the developer was falling apart and spent all the reserve, all of our capital contributions, and had not put in any money for anything, the homeowners decided that they needed to do something. He said that a few homeowners decided to create an association that worked with Bill Hansard, Vince Viscomi, Ann Viscomi and Anthony Viscomi to try to fix inconsistencies in the Declaration of Covenants. Mr. Pyle stated that these efforts failed due to a lack of a majority. He stated an Architectural Control Committee was appointed and they created the guidelines, that were approved by the Board, and then recorded.

Mr. Pyle stated once the Villaggio Investors, LLC investors took over, we had very good communication before and after they bought the 39 lots. He stated that Fifth Third bank representatives came to subdivision meetings and the bank actually gave back the money that Mr. Viscomi had blown, so we were able to get that into the association.

Mr. Pyle said that we did get a deed out of the developer for the common areas because it had not been done and the bank did hire Cobb/Cole law firm to resolve an environmental issue that had not been resolved yet. He stated from our viewpoint, as the subdivision, we realized that they were not going to come in as developers in that sense and take over the Board. Mr. Pyle stated they could have been able to control the ARC and we were picturing completely different houses, so we met with them and we agreed to some small amendments to our ARC.

Mr. Pyle stated he desired to make some points regarding the application:

- We as the original buyers are the only ones that can say things that the original developer would have told us. Anybody that bought after the original developer did not have anybody to tell them that they were going to build a clubhouse/pool.
- The plat does not show a clubhouse and pool. It was in the original site plan, which is not public record, it is not anything we would see. In the Ordinance that was approved in 2004, when the plat was approved, there is some discussion of the 30 lot rule, but it is not in the public record. Even the proposed plat that is attached to the Ordinance shows it the way it is now as tract "F", drainage and maintenance. It does not say anything about a clubhouse/pool. There is no reason that we would have thought that the City was requiring that. No mention in Declaration & Covenants or Articles of Incorporation or the bylaws. No reference to maintenance of clubhouse/pool. Nothing at all about a clubhouse/pool.
- We as homeowners or the people who bought the lots should not be in effect forced to build the clubhouse/pool for any reason. The original development agreement was between the City and a developer who is not here. The agreement was superseded by a plat that did not show a clubhouse/pool. No buyer can say that they were on constructive notice, because the only notice in the public records was one phrase that the developer would show the architectural plans for their clubhouse to the City for approval.
- The majority of homeowners, some are wavering, do not want the liability, and the expense of building the pool and clubhouse. We do not think the 39 people who bought these lots are

responsible and we do not think we are responsible and we are pleased with the proposed amendment.

Mr. Jorczak asked of the original purchasers, were any representations made that they would have a clubhouse/pool. Mr. Pyle responded that he could not say that he did not say it, he probably did say it. He said Mr. Viscomi probably had it on a depiction on something, but no big deal was made of it.

Mr. Briley asked if Exhibit D of the staff report was what Mr. Pyle was referring to as was never filed in the public records. Mr. Pyle stated it was never recorded.

Mr. Wigley asked Mr. Pyle if he had a pool. Mr. Pyle responded that he did along with the HOA President, Mr. Roppolo. He stated that there were two pools and they were not wide.

Mr. Wigley stated to Mr. Pyle that you are a real estate attorney and based on what you heard tonight why do you as a homeowner believe that you would have to pay for the construction clubhouse/pool. Mr. Pyle responded that he does not think that these guys are developers and someone is saying that it is a City requirement.

Mr. Wigley stated the applicant has accepted the standing determination and they are more than happy to take the impact fee reimbursement, but everyone feels like they do not have to build the clubhouse/pool. Mr. Wigley said that he was confused by that.

Mr. Pyle responded that he is glad that they took the stance and have the standing because we would like to see the whole place get built out eventually. He said it is no money out of my pocket one way or the other, but that he does not feel that they are the kind of developer that is interpreted by regarding statutes on HOA law.

The Board took a five minute break at 8:21 p.m. and reconvened at 8:26 p.m.

Chairman Thomas asked if anyone else that would like to address the Board.

Louis Roppolo, 52 Apian Way, said that he is the President of the Il Villaggio subdivision Home Owner's Association and he believes that the pool was ill conceived. He stated that he did not buy his property directly from the builder but instead his son, Anthony Viscomi. Mr. Roppolo confirmed that his property did have a pool.

Mr, Roppolo said that the location of the clubhouse and pool was ill conceived because in one year there were three automobiles that went through the subdivision walls. He stated that this helped in getting the speed limit reduced along this portion of SR40 which took about six months and Congressman Mica.

Mr. Roppolo said when he looked at the lots it was only implied the clubhouse/pool would be constructed and there was never anything printed, written or, given to him. Mr. Roppolo stated that he was against the clubhouse/pool because it is ill conceived, in a poor location and is open to vandalism.

Mr. Hayes asked the Chairman if he could clarify a point on the bond issue. Mr. Hayes stated the bond, in his view, would have served no purpose for the reason that this is a private amenity and it is not a public City infrastructure so had there been a bond there is no legal right that the City would have to enforce the bond for purposes of following through with the construction.

Darren Elkind, Esquire, 142 East New York Avenue in Deland, stated that was his pleasure to be here before you. Mr. Elkind said he was wondering why they put recreational area at the proposed location and believes that he may have figured it out and asked Mr. Spraker a question. He stated that the City has a stacking requirement off of SR40 to allow for a few cars sitting at the gate. Mr. Elkind said where the gate is could not have been much closer to SR40 and to get everything, the maximum yield of the

property, the pool or something had to go outside the gate. Mr. Elkind stated on the one side we have the yard with the gate around it and that was the obvious place to put a clubhouse/pool. He continued that the residents will tell you if a pool or any amenity goes in there, whether it's a pool or a park or a dog park or whatever it is, it needs to be secured and gated to where only the homeowners have keys. Mr. Elkind recalled when he grew up, we had condominiums and we had pools and they had gates and you had to have keys – both for safety and so that people that did not live there could not get in.

Mr. Elkind stated that he represents Mr. Oakwood, a homeowner in the Il Villaggio subdivision. Mr. Elkind stated that he believed that the homeowners, those people who live in the subdivision, are split about half and half on the amendment request. Mr. Elkind stated that he does not necessarily disagree with Mr. Holub that it may make sense to wait until we are at lot 30, or a few lots earlier, to decide the exact recreational amenity. He said by this point you have half of the community there and can determine what they want and what they would like to see. Mr. Elkind stated that he did not understand, if that is the idea, the need to perform this amendment now. Mr. Elkind said the applicant has told you, and I do not disagree with it, that it is going to take several years at best, before we are worrying about the construction on lot 30.

Mr. Elkind said there is nothing in the law, nothing in the Code, that would preclude them, whether they are a developer, investor, or the HOA, from coming back at any point in the future or perhaps when there is 26, 27 homes constructed from asking the City to change something and asking you to do what it is they want to do. He said at that point when they have a solidified plan and there may be some other changes that they need to make to the PRD in order to accommodate whatever their plans they may be. Mr. Elkind stated that he did not see the need, the rush, to do this now.

Mr. Wigley asked Mr. Elkind if he considered it is the marketing of the lots in order to proceed with the sale of the lots. Mr. Elkind stated that there was no question in my mind that is what it is.

Mr. Wigley said that would be the need to do it now, rather than three years from now. Mr. Elkind stated that if they are selling lots, they have said that they could sell 39 lots and whomever happens to be 30th home built is good and the next guy is in trouble. Mr. Elkind stated that he did not know the applicants, but he assumed that they are a responsible group and does not believe that they would go out and sell lots without telling people about the requirement to build the pool. Mr. Elkind agreed the amendment involved the marketing of the vacant lots. He said the amendment only benefits the group of investors and Mr. Olivari, who owns two lots. Mr. Elkind concluded that it is a direct economic benefit to the applicant in terms of marketing the lots.

Mr. Wigley said he thought it is to everyone's benefit that the project move forward and keep developing and builds out the houses. Mr. Wigley asked if Mr. Elkind would agree with that statement. Mr. Elkind agreed with the statement and added it benefits the developer in selling those lots without the requirement to pay for the clubhouse/pool. Mr. Elkind stated that the subdivision lots would now be less expensive. Mr. Elkind stated that they bought the property knowing that the recreational requirement was there and they talked to staff from what he understood in the staff presentation, prior to the time that they closed on the purchase of the lots. Mr. Elkind concluded that the applicants bought the lots knowing of the recreational requirements.

Mr. Elkind recalled that Mr. Briley asked the City Attorney had he ever seen this situation before. Mr. Elkind said that in his own experiences that this is a new phenomenon of whole subdivisions being taken back by banks. Mr. Elkind stated that hopefully it is not a common thing and this will be the last one that you see in the City of Ormond Beach, but it may not be, there maybe more.

Mr. Elkind questioned the message sent to folks if they come in and say we were just an investment group and we do not want to bear the responsibility of that which we have purchased. Mr. Elkind stated with all do respect, he believed that this not a good policy for government to establish. Mr. Elkind continued that if everyone in the HOA was here and said this pool makes no sense, we do not want it, just get rid of this requirement, maybe I can see it, but this in large part a private issue amongst the homeowners association.

Mr. Elkind said that the City has a set of regulations, notwithstanding what the applicant has said are mistakes made by staff. Mr. Elkind stated that he believed that this was a normal project and normal accommodations were made to a developer. He stated the City should stick by what was approved and allow people to rely upon it and when the applicant gets down the road and they have 20 to 30 homes, maybe that is the time they need to come back with an amendment or maybe at that point it will be water under the bridge because they elect to do it.

Mr. Elkind recalled that Ms. Press asked the question, what guarantee is there that the architectural controls will not change. Mr. Elkind said that he thought the only architectural control that was changed was something about a roof pitch that the HOA agreed to change. Mr. Elkind said if, and he clarified that he is not suggesting that you should grant this request or recommend that the City Commission make this amendment, but if the Board is going to do it, it is suggested that architectural regulations be made a part of the zoning requirements as part of the PRD. Mr. Elkind concluded that individuals that already have homes will not object and if the investment group has no plans to make any changes, then they will not mind putting it into the agreement.

Michael Powell, 75 Apian Way, said the question was brought up about whether any of the people were told about having a pool. Mr. Powell recalled that he visited Tuscany subdivision in 2007 and they had a representative on-site in the model home selling lots. Mr. Powell said that when he inquired of the sales representative regarding future recreation area that they responded that there was to be a pool and clubhouse. Mr. Powell said that he purchased his home in February 2010. Mr. Powell confirmed that he was told by a representative that at some time that there would be a pool and clubhouse.

Mr. Powell questioned why the amendment needed to be amended now. He asked if we have to wait to the 30th lot to start the recreational amenity, why not wait until the subdivision has 30 homes and homeowners in there and see what the demographics of the neighborhood looks like and let the homeowners make a decision of what they want at that time.

Greg Oakwood, 79 Apian Way, said like Mr. Powell when Mr. Viscomi owned the subdivision, one of his bragging points was the subdivision was going to have a beautiful pool. Mr. Oakwood stated he put a deposit on a lot in the subdivision and when the economy started going bad, he chose not to purchase and Mr. Viscomi was nice enough to refund his deposit because he said I was making too much money on the property and the lots. Mr. Oakwood stated he disagreed with Mr. Viscomi for the amount of money he was charging to build the housing square footage. Mr. Oakwood recalled that Mr. Viscomi directly stated that the pool was going to be constructed.

Mr. Oakwood said that when he purchased his home, just prior to Mr. Holub's group purchasing the 39 lots, he went to his very first meeting and Mr. Holub said at the meeting, that if you do not sign this paper to change the recreational requirement, we are not going to buy this project. Mr. Oakwood stated that Mr. Holub's group went ahead and purchased the lots. Mr. Oakwood said he bought his home with the belief that eventually there was going to be a pool. He stated that he has two children that attend Hinson Middle School and he desired for them to have the recreational area. Mr. Oakwood said that he

would like for the recreational requirement not to be changed and wait for the rest of the people as others have stated and make the developer responsible for paying for the pool and clubhouse.

Mr. Holub stated that he wanted to respond to Mr. Oakwood's statement. Mr. Holub stated the letter of support that we requested from the HOA members was secured after we purchased the property. Mr. Holub continued that we made no such request or demand at the HOA meeting. He said that the HOA meeting that Mr. Oakwood is referring to is the first meeting he attended with the bank. Mr. Holub restated we made no such request. Mr. Holub concluded that the request we made to bring this application to you tonight was done through a majority vote of the HOA and subsequent to our purchase and was not a condition of our purchase with the bank.

Michael Zaharias, 25 Apian Way, said that he was told in the beginning, as stated by others, that this community was going to have a clubhouse and a pool. Mr. Zaharias said he agreed with some of the homeowners that we should leave it the way it is. Mr. Zaharias stated that the home lots are small and it was presented that a pool and clubhouse would be constructed. Mr. Zaharias said as a speaker stated earlier, the pools are not wide, and does not make a pool of any value to the house, in his view. Mr. Zaharias stated a clubhouse and a pool can be enjoyed by people as a community, not homes that have small pools that are independent away from a community. Mr. Zaharias stated a pool and clubhouse helps to build a true community where people can be happy together.

Mr. Wigley asked if Mr. Zaharias given the lot size and architectural requirements for the square footage of the homes, are you stating that it is almost impossible to build a decent size pool.

Mr. Zaharias said he would agree with Mr. Wigley's statement. Mr. Zaharias continued that the lot sizes are small, the homes are close together, and there are pool setback requirements. Mr. Zaharias said he would not have bought in that development and then say, that a pool can be placed back here, the lots are way too small.

Mr. Zaharias said the subdivision is a lovely gated community and there are walls along SR 40. He said as you drive up into the subdivision, the pool and clubhouse would be there and if it were gated properly within the community and a wall made there instead of the entrance being outside we could somehow move the entrance inside the gate. Mr. Zaharias stated that would need some future planning. He stated his position is the pool/clubhouse and the homes themselves, which are beautiful, is brought me to Mr. Viscomi and the clubhouse/pool were part of the package. Mr. Zaharias said he understood that it was not going to happen right away, but it was going to be in this development. Mr. Zaharias though it would be a good marketing tool for the poor economy that we are in to try to develop the rest of the subdivision using the pool and clubhouse as what future homeowners are buying into.

Scott Vanacore, 1293 North Highway US1, said he disagreed with the last speaker's comments about no room for pools. Mr. Vanacore said the minimum lot size is 55' in width which leaves you 35' in width for a pool and the lots are 120' to 140' in depth. Mr. Vanacore stated, as a builder, the average design for a lot of those houses will not exceed 50 to 60 feet in depth and there is adequate room for a 30' wide by 20' deep pool.

Mr. Vanacore said that Mr. Wigley's comment regarding the marketability of the lots is important. Mr. Vanacore indicated that he owns four subdivisions in that general area and none have pools. He continued that in super communities or master communities, pools may make sense, but in these smaller subdivisions, with 50 or 60 lots, pocket and passive parks are really more the option that we have found our residents like.

Mr. Wigley asked Mr. Vanacore if he is an investor in the subdivision. Mr. Vanacore answered that he was an investor.

Mr. Wigley asked Mr. Vanacore if he was not a developer. Mr. Vanacore stated he was not a developer. He continued a developer is a guy who buys that land and who develops the land and goes through that process. Mr. Vanacore stated he bought as an investor. He stated just because we happen to be a group combined, we should not be penalized for buying 39 lots.

Ms. Press said these are tough times to sell a house so what are you, as an investor, going to be offering that is different to make people want to buy in your development. Mrs. Press asked if you had some kind of designs of what could possibly be there in the recreational area, that would be helpful.

Mr. Vanacore responded that he liked the effort the applicant has made about the choice of the people to vote to see what they really want as the subdivision develops. He stated by allowing the vote after the 30th home constructed, the will of the homeowners will be represented.

Ms. Press commented that when she visited the site, it did not look like there was a tremendous amount of room for recreational improvements. Mr. Vanacore said it would be a small pool based on parking and setback.

Mr. Heaster stated that he thought we all are getting bogged down with who is a developer and who is an investor. He said this investment group could have bought 3 lots or they could have bought 39 lots and what they are trying to do here tonight is to clarify the recreation requirements of the subdivision so they can move forward with their planning and they know to tell future homeowners. Mr. Heaster stated the recreational improvement could be a pool at the 30th/31st lot or it could be something else, with the homeowners making that decision at that time. Mr. Heaster concluded that the Board has heard from the HOA President, the HOA Vice-president and we have heard from the majority of the owners tonight and what they want is this amendment to allow them in the future to plan accordingly to make a decision at that time.

Mr. Vanacore said that the impact fees keep getting tied into the investors. He said that we are a sharp bunch of investors he believed and we should not be penalized because we recognize an asset that is attached to those lots being the impact fees.

Chairman Thomas said he has been involved in the planning of Ormond Beach for an long time and he always thought a developer was a person who went in and constructed the sewer and water lines, the roads, and took a piece of raw land and developed it into a prepared area for housing. He stated he was having trouble tonight seeing where this group is a developer as opposed to investors. Chairman Thomas asked how many lots out of the 53 lots are owned by other people outside of your group.

Mr. Wigley responded that there are 14 lots outside the applicant's ownership with Mr. Olivari owning 2 vacant lots.

Chairman Thomas asked if the project developed out, if the 31st lot owner/buyer would be responsible for the amenities. He asked would that 31st lot buyer would have to be told that it would be his responsibility.

Mr. Hayes stated that was not correct. He said for purposes of this discussion, it does not really matter what you call them. Mr. Hayes said the Land Development Code provides specifically that Development Agreements/Orders run with the land so it is a covenant and they do not disappear, they are there forever.

Mr. Hayes stated the question becomes, along the chain of title, where does that Development Order travel from and to whom? He said it is kind of a semantical argument that we have been having tonight and he did not want to say it is a red herring, it could be important at some point in the future, but he thought for purposes of this Board the question is: Do you want to amend the Development Order as is proposed or not.

Chairman Thomas thanked Mr. Hayes for keeping the Board on task.

Mr. Hayes said from reading the bylaws, it contemplates that an HOA will be responsible for the maintenance of the common areas and maintenance is not the same as development and construction. He continued that the underlying development rights still are there and so the question then becomes if we know one of two entities holds the development rights, it is either the bank or it is Il Villaggio Investors LLC. Fifth Third bank does not have the development rights. Mr. Hayes concluded that the issue that you need to resolve tonight is whether or not you want to recommend approval of this amendment to the Development Order.

Mr. Wigley stated he was unclear about comments from some of the homeowners who stated that they were asked to sign a document and asked Mr. Sweet to address this issue. Mr. Sweet responded, after the closing we approached the homeowners and one issue was the investor group that bought the lots but they do not own the recreation area, it is owned by the HOA. Mr. Sweet stated the investors bought a series of lots that were foreclosed by the bank, they did not buy any common areas. Mr. Wigley asked who is making this amendment request.

Mr. Sweet said that they went to the HOA and said we are going to the City to ask for this amendment to eliminate the clubhouse and pool for the reasons we discussed tonight. He said we wanted to know if the HOA agrees with us and the form was also designed to strengthen our standing position.

Mr. Wigley asked if the form presented with concept that the homeowners would ultimately have to pay for the clubhouse. He continued what homeowner would not sign a document if they believed that they would be stuck with the cost of the clubhouse/pool. Mr. Sweet stated that there was no threat to the homeowners. Mr. Wigley asked if there was an implication. Mr. Sweet stated that was not the intent at all.

Chairman Thomas asked if we were getting to bogged down in this?

Mr. Hayes commented that the standing issue is important and it is my understanding that the HOA and a majority of property owners granted approval to the Villaggio to process the application and that is the question that came to me. He said when he looked at the standing issue, he concluded that they did not need the approval of the HOA because Il Villago Investors, LLC has the right to amend the Development Order.

Mr. Wigley said this is a confusing amendment with investors versus developers. He continued that this is a very visible subdivision, unlike a lot of other subdivisions in the Ormond Beach area and it is on SR40. Mr. Wigley said this subdivision has the ability to economically impact surrounding subdivisions, most notably Breakaway Trails and his concern is once we do amendments eliminating amenities that we could be going down a slippery slope where the next amendment could be one that reduces the architectural integrity and concept of the subdivision.

Ms. Press said that we have had other applications that modified recreation requirements and it is not an uncommon action. She said that she does not think that is a good location for a swimming pool and it just does not make any sense with no supervision of access. Ms. Press stated that the amendment should provide some type of recreation in place of the pool and clubhouse. She said what she desired to see was whatever dollar figure the clubhouse and pool would be that the proposed recreational improvement have an equivalent dollar figure with homeowners deciding what recreation improvement is selected. Ms. Press concluded by stating that she would like to see some time certain date for the recreation improvements.

Mr. Jorczak said the location of pool and clubhouse was poor. He stated his concern is that somewhere originally there were some representations made to owners that are out there that they feel that they were promised a clubhouse and pool at some point. Mr. Jorczak said he did not know if any consideration was given to the homeowners who felt they were promised a clubhouse and pool. Mr. Jorczak said Villaggio Investors, LLC acquired the lots from the bank and in my mind, you also acquired the responsibilities. He questioned if there is some way to make accommodation to the homeowners who were promised the clubhouse and pool that could offset that they may not get the amenity. He stated that he understood that the investors saw an asset that made the project more economical for them to make the acquisition of the property and being smart investors, they went and sought, but they also got the obligation that came with the land. Mr. Jorczak concluded if there was a way to do that, you would get rid of that issue completely and proceed with something else that meets the LDC for future homeowners.

Mr. Heaster said this amendment will help clarify what will be built, who will pay for it, and what the homeowners want for this site, it is a win-win for everyone. He said we have heard from staff who said that this amendment would meet the recreation requirement of the LDC. Mr. Heaster recalled a question was asked of why now. He said time is of the essence and this is an excellent time to do this, because they are clarifying and making changes for what is best for the community in the future. He concluded that they are re-vitalizing this community, that is down and out and this is a way to make positive changes for the community.

Mr. Briley agreed with the other Board members that the site for the clubhouse and pool is a poor location and it should be inside the gated subdivision.

Chairman Thomas stated he raised his family in the Village on Nova Road and the pool and clubhouse was up by Nova Road and every time he was there he was looking over his shoulder and felt it was a horrible location. Chairman Thomas stated he would entertain a motion.

Mr. Briley moved to recommend approval of LDC 11-01 which was seconded by Mr. Heaster.

Mrs. Press said when the item goes to City Commission they should consider a time constraint to build the recreation improvement.

Mr. Hayes stated that this can be done either as an either or condition, such as 30th home or a certain date.

Mr. Wigley asked if Mrs. Press desired a time frame for when the recreation improvements are constructed.

Mr. Hayes said let me clarify, the condition in the Development Order that is causing so much grief is in Ordinance 2004-30, Section 1, paragraph a, 4.b. and states:

> "The applicant and staff have agreed to defer the construction of the clubhouse and entry pavers until the 30th building permit. The purpose of allowing the clubhouse to be

deferred is so that construction traffic does not impact the pavers and to allow the subdivision to be partially built to utilize the clubhouse facilities. No building permits will be issued after the 30th unless the clubhouse is under construction."

Mr. Hayes said the last sentence is the sticking point. He said what he understood of the motion made, the proposal is to eliminate that entire paragraph and do away the requirement to construct the clubhouse and pool. Mr. Hayes continued that what the motion needs to include is what the recreation amendment is to be changed to and what you might want to consider is what is the value, what is the timeline for construction, or is the proposal of a deposit of money to the HOA, and at time certain that the HOA would select the amenity by majority vote.

Mr. Holub stated the timeline is fine, whether it is a certain date or home constructed. He said we would the pocket park today if desired, but the investor group thought it was a waste of funds until the actual homeowners live there and let them chose. Mr. Holub stated they would prefer not to be penalized with a value of the recreational improvement and whatever it cost is a private matter. Mr. Holub said that the amendment sought to allow flexibility to allow actual homeowners to decide the final recreational amenity.

Ms. Jarrell called the vote:

Mr. Wigley:	No
Mr. Jorczak:	Yes
Mr. Heaster:	Yes
Mr. Briley:	Yes
Mrs. Press:	Yes
Chairman Thomas:	Yes

B. LDC 11-012: Land Development Code Amendment –- Mobility Fees

Mr. Goss recalled that the city's Mobility Strategy, approved by the City in December, had subsequently been approved by the Department of Community Affairs (DCA) and had been advertised in the newspaper in January. He explained for the new members that the process had been initiated in 2008, as a part of the Evaluation and Appraisal Report (E.A.R.); the City Commission had directed staff to do something other than continue to widen roads, since they were interested in transportation demand management strategies, i.e. multi-modal type options. He said that during the E.A.R., Senate Bill 360 declared the city of Ormond Beach to be a dense urban land area (DULA) and as such, required to do a financially feasible mobility plan. He said that in 2009, city planners coordinated the mobility plan and strategy with Votran, with the TPO (Transportation Planning Organization) and with Volusia County Traffic Engineering. He added that staff had an upcoming meeting in March with Volusia County administrators to work on an interlocal agreement designed to craft an exemption for the city's mobility fees.

Mr. Goss explained that the mobility fee was already in effect. He said that DCA, as part of the stipulated settlement agreement, required that the fee take effect at the time the plan was found to be in compliance (as advertised on January 18, 2011). He stated that the lengthy document had been adopted by ordinance and that DCA had wanted the fees in the comprehensive plan although such fees are typically found in the land development regulations.

The purpose of the mobility strategy, Mr. Goss said, was to enhance transit, provide better connectivity and to provide some type of increased attention to better form and land use. He said that the city had three (3) Transportation Concurrency Exception Areas (TCEAs): SR 40 (west to Williamson Boulevard), US1 (Wilmette Avenue south to the city limits) and SR A1A, i.e., areas in which concurrency no longer applies. (The corridors include the land approximately ¼ mile from the center line of the respective road.) He added that the routes reflected the Votran Routes 18, 19, 1 and 3, spine routes that would never go away and which, according to Votran's East Side Transportation Plan, handled about 63% of the traffic on the east side of Volusia County.

Mr. Goss said that in addition to enhancing service, the strategy was intended to improve connectivity for non-motorized modes of traffic (sidewalks and trails). He said that Ormond was one of the few communities in Florida that had adopted levels of service for sidewalk coverage and already had funding through the Hunter's Ridge DRI to do so. He said that the strategy was also aimed at increasing ridership and frequency of service and had, as recommended by Votran, increased the densities to15 units/acre in the Land Use Plan, as well as the intensities in the Downtown in order to support premium transit. He said that adherence to the transit-oriented design guidelines, along with Votran's transit guidelines, needed to be implemented in the development standards for the three TCEA routes (US1, SR40 and SR A1A). He recalled that the recently adopted Downtown form-based code requires mixed-use, horizontal development in the Downtown; also, he said, the city was pursuing two redevelopment plans in concert with other jurisdictions, which the city intended to make multi-modal and in which TIF (tax increment financing) funds could be used to support transit operations. He noted that Volusia County Economic Development personnel had already expressed interest in doing that in concert with other communities, as well.

Concurrency will continue to apply in all areas outside of the three TCEAs, Mr. Goss stated. He explained that development in those other areas would have to meet the Volusia County traffic assessment guidelines, provide necessary traffic studies, pay Volusia County transportation impact fees and mitigate impacts by means of proportionate fair share. The mobility strategy and fee replaced the need for those concurrency requirements. (The impact fees, he noted, were based upon *trip generation rates*, whereas the city's mobility fee was based upon *person trips* (with a person trip equaling one traffic trip, 1.5).

Mr. Goss said that staff had documented nearly $12 million in transit needs and $9 million of sidewalk needs in order to connect 75% of the population within the corridor to the transit stops and elsewhere; therefore, the mobility fee had been comprised of three sub-components based upon person trips. He said that a road fee only applied outside the TCEAs (within the TCEAs, only the transit and the non-motorized fee component apply).

Mr. Goss stated that they would be pointing out to County personnel in March that the mobility fee is designed to encourage redevelopment and infill development. He said that the Plan estimated that 12% of the total fee would go towards roads ($9.40 per person trip) and 58% would go to transit ($45.40 per person trip), i.e., for Votran to do capital and transit improvements within the city's three TCEAs, Thirty percent (30%) of the allocation, or $23.02, would be used to match XU (TPO) funds for non-motorized improvements for trails or sidewalk connections from residential areas to transit stops or destination areas such as shopping centers.

Mr. Goss clarified that the mobility fee was not in addition to the impact fee, but was instead in lieu of the impact fee. He referenced the strategy detail and pointed out that since the road fee portion of the fee was not charged with the TCEAs, the mobility fee resulted in savings for retail uses of about 52%, for office uses, nearly 50% and for industrial uses, about 66%. He explained that the result was incentive for infill development/redevelopment/development in the Downtown (with the TCEAs); he added that it should be less expensive to develop where infrastructure was already in place. There was not internal capture for residential uses, Mr. Goss advised, because all trips would already be on the roadway. He said that it resulted in a savings of about 50%. He summarized that all types of development in the TCEAs would realize a savings, ranging from 40% to 66%.

Mr. Goss said that it made sense because the city would not be doing road improvements for improved road capacity. He reminded the board that the City Commission had indicated that they wanted improvements for efficiency (access management, traffic operations, interconnection of signals) instead of widening SR40, US1 or SR A1A, which would result in substantial business damages. He said that the mobility fee was based upon the mobility strategy, but that it was different than what the Board had previously seen the year before; DCA had found the City in non-compliance because it had not been shown to be financially feasible. He said that staff had to demonstrate feasibility by changing the fee.

Mr. Goss further explained that the proposed amendment would not be presented to the city commission until some issues were resolved with the County regarding the crafting of an exemption within the Volusia County Traffic Impact Fee Ordinance for mobility plans, and pointed out that several other cities in the County (Daytona Beach, Holly Hill, Port Orange, Deltona, Orange City and DeBary - all DULAs) were also preparing mobility plans. Ormond Beach, he said, was simply the first to have their Plan adopted under SB 360 and had written their plan before DCA had developed regulatory guidelines. He noted that planning staff had been very fortunate in having the city attorney's office hire Linda Shelley to help in getting the city through the process.

Mr. Wigley said that the mobility fee was already in place and asked if the Board was only being asked to approve the Code change.

Mr. Goss replied that the adopted mobility strategy contained the financial analysis and the fee in an ordinance, which had been dictated by the stipulated settlement agreement, but reiterated that such fees were not typically found in the comprehensive plan. And, he said, staff would typically work out any interlocal agreements prior to bringing such changes to public hearings. Since DCA had mandated the change, however, the city had already begun assessing the fee and collecting money in lieu of the road impact fees. He said that in the unlikely scenario that the County refused to work with the cities, it would be more expensive to redevelop in the Downtown than in outlying areas.

Mr. Wigley questioned why the city would bring the LDC amendment forward prior to the County's agreeing to waive the impact fees.

Mr. Goss answered that the city was required to do so by law, by SB 360, and by what had been approved in the stipulated settlement agreement. He explained to Mr. Heaster that the city was

already collecting transit fees in lieu of the County's impact fee and pointed out that the County personnel had been aware for the last 2.5 years, through meetings and workshops, what was being done. He said that if for some reason Volusia County did not concur, the city would then continue with concurrency requirements. Noting that not much had been collected to date, he advised that any money collected would simply sit in escrow.

In response to Mr. Heaster, Mr. Goss said that the reasoning was two-fold: the fee was designed for 1) Smart Growth, i.e. to cause in-fill development/redevelopment to occur rather than the creation of urban sprawl, and to 2) allow local governments to invest in other modes of travel (transit, bike trails, sidewalks) in lieu of widening roads and altering the character of their communities. He restated that the transit fee was not an additional fee. He said that the interlocal agreement would allow the fee for all DULAs and would allow for an exemption to the County's road impact fee, the same as already had been done in the 1990s for economic development. He stated that it was not a new concept.

Mr. Heaster expressed concern that the County would then collect less revenue.

Mr. Goss thought that the County already recognized the issue and said that the only challenge the city had received during the comp plan-mobility fee-mobility strategy process had been from Daytona Beach. He added that it would not make sense to double up the fees; rather, the alternative was to simply stop growth by not allowing development to occur if the roadways could not meet acceptable levels of service. He said that transit included more than just roads and pointed out that Votran was a Volusia County function, not a county-wide function; 58% of the money would go to the County for transit, not road improvements.

Mr. Briley pointed out that the money was just allocated differently and although it would be less. He was unsure whether Votran received any of the road impact fee money at present.

Mr. Goss said that Votran currently got nothing, since there was no multi-modal allocation under the impact fee. He also pointed out that TCEAs in Ormond Beach were State roads and said that the County, although they collected road impact fees, did not spend impact fee money on State roads. He also pointed out that the city was responsible for concurrency, not the County. He said that was the reason why the city had proceeded with the mobility plan.

Mr. Heaster expressed concern that it would result in litigation.

Mr. Goss assured the Board that the amendment would not be taken to the City Commission until the issues had been resolved at the County level.

Mrs. Press said that she had full confidence in the Plan.

Mr. Wigley continued to worry that it would result in a double fee.

Mr. Goss went on record that it would not be a double fee. He stated that no one would want to redevelop along the DULA corridors and that the city would be better off with concurrency if that were true. In response to Mr. Briley, he said that a politically constrained roadway might better be called a policy-constrained roadway; e.g., a situation where something is politically approved for a road with a failing or marginal level of service. Another example, he said would be in cases

such as along John Anderson, where the decision was made not to widen a failing or marginal road, because it would then become an urban street.

Mr. Briley thanked Mr. Goss for the PowerPoint presentation and asked if there would be short-term monies available from the TIF (tax increment financing) district to help the downtown area.

Mr. Goss confirmed that transit improvements, as recommended by the Department of Transportation, were planned as a part of integrating the Downtown Redevelopment Plan in the next five years. He said also that multi-modal corridors along US1 and SR A1A could be funded with TIF monies as the city established redevelopment plans in those TCEAs. He responded to Mr. Briley that the TPO had done four elementary school bike improvement studies which had been included as part of the city's sidewalk plan, also a part of the mobility strategy. He said that approximately $500,000 was available for transitioning from 5-foot to 8-foot sidewalks, which everyone now seemed to want.

Mr. Briley said that the amendment had his full support.

Mr. Goss agreed to provide the Board with an update after staff met with Volusia County personnel. He replied to Mr. Jorczak that any properties located along the corridors not under city jurisdiction would not be eligible to take advantage of the mobility strategy and fees, since they would not be located within the Ormond Beach DULA. He also advised that within those areas, the goal was to connect the 75% of the residents of the neighborhoods along the corridor, ¼ mile from the center line of the road, to the actual road corridor. Therefore, he advised, 5-foot sidewalks within the TCEA would eventually be replaced with 8-foot sidewalks and developments inside the TCEAs would receive credit against their fees for 8-foot sidewalks.

In answer to Mr. Jorczak, Mr. Goss explained that Votran was able to secure a lot of money for capital, but that the issue was the labor in trying to expand frequency of service and headways. He said that the idea was to go to ½ hour service on the same routes instead of the one-hour headways, because increased frequency of service would reduce the vehicle miles traveled (VMT); he said that they projected reducing 20% of all VMT (16,000 trips) by 2025. He noted that the plan had not considered the use of golf carts as a mode of local urban transport. He also stated that the fee schedule had been determined by need and based upon what they had thought to be the most logical approach. He acknowledged that although most were not traffic engineers, the planners had enough expertise to develop a plan that satisfied DCA and DOT requirements. He said staff felt comfortable with the way the fee schedule was structured because it was logical.

Mr. Goss replied to Mr. Wigley that Votran was not funded by road impact fees, but was instead funded by whatever allocation they received through the County budget.

Mr. Wigley expressed concern with 58% of the mobility fee monies going to Votran.

Mr. Goss stated that the alternative was to find another way of widening roads and to do only efficiency improvements, since the City Commission did not want the corridors widened. He explained that the money would benefit the TCEAs in Ormond Beach, not the other cities, by adding buses or perhaps increasing routes. Outside the TCEAs, he reminded the Board, impact fees and prop share would fund road improvements, such as the Hand Avenue extension.

Mr. Briley commented that some of the previously conceived relief corridors were not ideal because they were residential in nature, with low speed limits. He agreed that public transit was the only alternative way to move more people efficiently, with any positive effect on levels of service.

Mr. Goss informed the Board that staff had reviewed nine years of traffic studies for trip distribution and that 66% of all trips were distributed to three corridors: SR40, US1 and SR A1A; of that, 54% was distributed to SR 40, because it was the only east-west road.

Mr. Briley made a motion to recommend approval of M 11-012 with the understanding that the mobility fee would be a replacement to the impact fee and not an additional fee.

Mrs. Press seconded the motion.

Mr. Goss assured Mr. Wigley that the mobility fee would be eliminated if Volusia County did not approve it; the city would then revert back to concurrency.

Ms. Jarrell called the vote:

Lewis Heaster	Yes
Harold Briley	Yes
Doug Wigley	Yes
Rita Press	Yes
Al Jorczak	Yes

The motion was unanimously approved

VII. OTHER BUSINESS

Ms. Press asked for an update regarding the Maria Bonita project. Mr. Goss responded that the project had commenced construction and was in process of grading the site. Ms. Press inquired into the landscaping for the Maria Bonita project. Mr. Spraker responded that there landscaping planned throughout the site.

Mr. Jorczak inquired to several projects in the monthly development report including Ormond Grande and the Tomoka Golf Village project.

Mr. Briley inquired to when La Fiesta in the Trails Shopping Center was set to open. Mr. Goss said he thought it would be in early May.

VIII. MEMBER COMMENTS

Mr. Jorczak thanked Mr. Goss for his presentation on the mobility fees and stated that the presentation assisted him in understanding the issue.

IX. ADJOURNMENT

The meeting was adjourned at 10:14 p.m.

Respectfully submitted,

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Ric Goss, AICP, Planning Director

ATTEST:

_____

Doug Thomas, Chair