

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

March 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

Patricia Behnke  
Harold Briley  
Lewis Heaster  
Al Jorczak  
Rita Press  
Doug Thomas  
Doug Wigley

Staff Present

Randy Hayes, City Attorney  
Ric Goss, AICP, Planning Director  
Steven Spraker, AICP, Senior Planner  
Chris Jarrell, Recording Technician

**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 there are two updates for the Planning Board. He stated the first item before the Board is the updated City Comprehensive Plan which incorporates all of the Evaluation and Appraisal Report amendments. He stated the second item is that the City has been invited by the Florida Department of Transportation (FDOT) to showcase our mobility strategy on April 20<sup>th</sup> at the FDOT Offices in Orlando. Mr. Goss invited any Planning Board member who wished to attend to let staff know.

## VI. PUBLIC HEARINGS

### A. LDC 11-023: Restaurant type "D" LDC Amendment

Mr. Spraker said that this is a request by the Highlander Corporation that has three distinctive parts. The purpose of the request is to introduce a new type of restaurant in the City under defined conditions. Mr. Spraker explained the three components are as follows:

1. **Definition:** This component establishes the restaurant type;
2. **Placing the use in a zoning district.** The applicant has selected the B-4 zoning district as a conditional use. A conditional use is a use approved by staff provided all conditions have been met; and
3. **Establishment of certain conditions:** This component defines the conditions for the use.

Mr. Spraker outlined that the City currently has three categories of restaurants:

1. Restaurant Type "A": This is a 150 or more seat restaurant such as Outback or Lulu's where there may be a bar component, but there are certain attributes that make them a restaurant. The attributes include a minimum of 150 seats and 51% or more of their gross revenue on food and non-alcoholic beverages. This category lines up with the state SRX alcohol license;
2. Restaurant Type "B": Has less than 150 seats and can still be a sit down restaurant such as Pickles and Italian Village. These restaurants are allowed to serve beer and wine with a 2COP with the state. Mr. Spraker stated that the City regulations allow only beer and wine sales which helps prevents restaurants from turning into bars;
3. Restaurant Type "C": Less than 150 seats, typically with a fast food component with or without a drive thru window, such as a McDonald's or Wendy's. These restaurants are also allowed to serve beer and wine with a 2COP with the state.

Mr. Spraker said that the current application acknowledges the proposed type of restaurant will not be able to make the 51% of food and non-alcoholic beverage sales. He stated that the intent of the application is to maintain the restaurant use and the applicant is using the conditions to accomplish the intent. as follows:

1. 100 seat minimum;
2. 4,000 square feet of floor area;
3. A full menu is required to be offered at all time;
4. Requirement that 25% of all sales be food and nonalcoholic beverage related;
5. Annual reporting requirement to the City; and
6. Located only in Downtown Community Redevelopment Area (CRA).

Mr. Spraker stated that there are not a large number of restaurants that meet these criteria. He stated that a 4COP is a broad alcohol license from the state that is limited in number for each County and have great value. He stated that from the state's perspective they do not regulate the percentage of food sales, which is why the conditions of the percentage of food sales, the seating, and the location requirement are important.

Mr. Spraker recalled that the Rose Villa was previously approved by a Special Exception with the same idea and staff believed that this was a reasonable request for a redevelopment area. Mr. Spraker stated there may be situations where people are buying dinner and because the quality of the alcohol, or a number of factors, that a restaurant cannot achieve the 51% sales percentage. Mr. Spraker stated during the application the following situation was presented: An individual has four drinks at \$7 each and a dinner for \$12. The ratio of food to alcohol sales would be 70% to 30%.

Mr. Spraker concluded that staff is recommending approval of the amendment request. He stated that both the Economic Advisory Committee and the Ormond Beach MainStreet Board of Directors recommended approval of this request.

Mr. Jorczak questioned if the Maria Bonita restaurant qualifies to have 150 seats.

Mr. Spraker stated that Maria Bonita will have 150 seats and they can obtain a SRX license.

In response to Mr. Jorczak question about the number of seats at La Crepe restaurant, Mr. Spraker responded he was unsure about the number of seats at this restaurant. Mr. Jorczak stated that La Crepe had full alcohol service.

Ms. Behnke inquired into the restaurant type "C". She stated that they are permitted wine and beer, but that she has never been to a McDonald's, Subway or Wendy's that has wine or beer service. She asked if other types of facilities would fit into that type of category.

Mr. Spraker stated the Land Development Code allows this type of fast food restaurant that serves alcohol and there is no prohibition against that today. In response to Ms. Behnke's question, Mr. Spraker confirmed that there was no minimum/maximum number of seats or percentage requirements for 2COP restaurants in the Land Development Code. He stated that 2COP licenses do have certain requirements from the state perspective.

Ms. Behnke said that the type “D” restaurant amendment is essentially creating a bar and calling it a restaurant. She said that she is concerned regarding the 25% food and non-alcohol beverage sale requirement. She questioned if the restaurant type “D” also falls under a separation requirement of so many feet from schools and churches?

Mr. Spraker responded that if it is licensed as a restaurant, there is no distance requirement. Ms. Behnke questioned if you can have a bar right next to a Church? Mr. Spraker stated not a bar. He stated Rose Villa would be classified as a restaurant type “D” and did not believe that anyone would classify this use as a bar. Mr. Spraker said Billy’s Tap Room is a restaurant with a bar component that is literally right next to a Church, licensed as a restaurant. He stated that in the Downtown area, it is not always possible to have the ability to get 150 seat restaurants and this amendment seeks to acknowledge that restaurants that do not have 150 seat minimums can still operate as restaurant and have a bar component.

Ms. Behnke said if restaurants are allowed to have 75% alcohol sales and 25% food sales with a 4,000 square foot area, including live entertainment or some type of music, the City will eventually have a bar called a restaurant. She stated that this is her main concern and she thinks that the 25% food sale requirement is too low.

Mr. Heaster said the situation is do more with the price point and the type of product that is sold and their prices. He stated that this is already happening and is an issue. He believed it is a price point issue rather than a bar issue.

Ms. Behnke stated she had never been to a place that had \$8 beer prices.

Mr. Spraker stated that Caffeine’s does have these types of prices and it impacts the percentage of food versus alcohol sales. He said that staff had internal discussions over bars disguised as restaurants. Ms. Behnke confirmed that was her concern.

Mr. Spraker responded that what staff attempted to do was to try to come up with criteria that would assure the use would always be a restaurant. He said whether or not the applicant and staff did a good enough job is the Board’s decision.

Ms. Behnke questioned if the amendment is for the benefit of one business. Mr. Spraker advised that Julian’s is currently operating with a 4COP and another example is the Rose Villa. He concluded that the amendment is not intended to be tailored for one business.

Ms. Press asked if there is any limitation on the number of alcohol licenses there are in an area through state licensing. Mr. Spraker responded that it depends on the type of license. He said there are a certain number of 4COP licenses in the County, but there is not a number limitation on SRX or 2 COP licenses.

Mr. Briley pointed out that it is possible to go to restaurant and order a bottle of wine and it could cost \$50 or \$70 and your dinner would be less. He said that this would skew the percentage of food versus alcohol.

Ms. Behnke questioned if this would be a common occurrence. She said that it may occur with a party or two, but the majority of tables would likely have the correct percentage of

alcohol to food sales. Mr. Briley stated he believed it would depend on the establishment itself.

Chairman Thomas said that if a group goes to dinner and orders a bottle of wine that is \$100 and the dinner is \$18.95, he can easily see the imbalance in alcohol versus food sales.

Chobee Ebbets, P.A., 210 South Beach Street, attorney for the Highlander Corporation stated that as a lawyer we use the phrase if it walks like a duck, if it quacks like a duck, then it is probably a duck. He stated that he thinks that is what the question is here with the ratio sounding like a bar. Mr. Ebbets recalled that the environment of the restaurant business has change over the last five years and there are really two categories of people eating out. He stated that people either eat out for economy, going to the quickest place for the most food at the least amount of money, such as fast food restaurant or small local places. He stated the second category is where people eat out as their primary form of entertainment, typically at higher end restaurants.

Mr. Ebbets stated that Mr. Jones, owner of the Highlander Corporation, has a vision to build the highest level of high end restaurants that you have seen in this community and no expense has been spared in these buildings to attract the highest level of clientele. He stated when Caffeine first opened, it opened with a high line of food quality with a good staff and we expected to sell a lot more food.

Mr. Ebbets said what we did not know, as part of the oil price issue, is that oil prices impact food prices and restaurant costs. He said as food costs increased, over 180% over the last two years, the cost has to be passed onto the consumer and a \$5 hamburger does not exist anymore. He said that hamburger is now \$12 to \$15.

Mr. Ebbets said that when people come to a quality restaurant, they will order the cheapest item on the menu and order the most expensive wine and drinks. He continued that over the last six to eight months, the percentage curve between food and alcohol sales has been bouncing around. He stated it is not something we wanted to see happen. Mr. Ebbets reasoned it happened because of the economy and we must pass food costs on to customers to operate as a business. He stated that he believed in transparency, but there are companies that will play with their books, including food and alcohol sales to make the percentages work. Mr. Ebbets stated that Mr. Jones does not desire not modify the books and wants to be above board, so there was no other way to make this work other than this amendment. He stated based on these facts, we needed to ask the City of Ormond Beach to work with us for this amendment.

Mr. Ebbets said we want to be a restaurant. He stated that the Highlander Corporation operates the Rose Villa, which we think is one of the finest restaurants in the area with impeccable service. He stated that 31 On the Boulevard (under construction) restaurant will be a unique establishment, unlike anything else with the preservation of artwork inside the restaurant. He said that we understand the Boards' concerns and we do not want to have just 25% food sales. However; we are not reaching the 51% mark with food sales at all times. Mr. Ebbets reasoned with the 100 seat requirement, it will not be a 100 seat bar. He said keeping a full restaurant staff, full chef, full compliment of servers, and all those people who

are there 24/7 when that place is open, will ensure it remains a restaurant. Mr. Ebbets concluded it is not a duck, it truly is a high end restaurant.

Ms. Behnke questioned how the cost of fuel has impacted the cost of food. She asked if Mr. Ebbets is stating that the fuel cost has not impacted alcohol prices?

Mr. Ebbets responded that alcohol prices have been fairly stable over the last six to seven years, just like coffee prices. He continued and stated that this restaurant only uses fresh vegetables and ingredients which have raised the prices. He said all prices have gone through the ceiling. He stated that this leaves Mr. Jones with the question do I compromise the food quality and start ordering frozen food which provides less of a product and not be the restaurant I want to be? Mr. Ebbets concluded by stating that Mr. Jones would rather close his doors than comprise the food quality.

Ms. Behnke said that Highlander Corporation standards are obvious. She said that she has seen places with 100 seat bars. She stated that when you consider the bar seats and table seats, one can still come up with 100 seats and have a lot of people sitting around drinking. She said this is her concern and this amendment will be available to any business that wants to do this in the B-4 zoning district.

Mr. Ebbets responded that he understood the concern but thought because they are required to have the full menu available at all times and the people to prepare it, it will be a restaurant.

Mr. Briley asked if the amendment was proposed as a conditional use and not a conditional use permit and would only require staff approval.

Mr. Spraker responded that a Conditional Use Permit is now a Special Exception. He said that none of the restaurant uses in the B-4 zoning district are Special Exceptions. He stated that they are technical reviews as a conditional use to determine if the requirements are met or not. Mr. Briley said he wanted to make sure that every time that someone wanted to utilize this use, it would not be a public hearing. Mr. Spraker said no public hearing would be required as a conditional use and staff is generally trying to streamline approval processes.

Chairman Thomas questioned if any place in the City could sustain a 100 seat bar, just knowing the City's neighborhoods and its history? He asked if any such places existed in the City now?

Mr. Heaster stated that he does not know of any. He stated one condition of the amendment requires a full menu at all times and there are expenses associated with that. He concluded the requirement of the menu will lower the chance of a bar.

Ms. Behnke stated that having a full menu available does not mean you have to have a chef available. Chairman Thomas stated he thought it would. Mr. Spraker stated condition seven of the proposed conditions states that the kitchen shall remain open for service.

Ms. Behnke said it does not take a chef to cook menu items and other staff could perform this task. Chairman Thomas asked if the amendment stated you have to have a full time chef or

cook. Mr. Spraker responded that it states that the kitchen shall remain open, but the amendment does not get that specific.

Chairman Thomas responded that he understood the concern regarding a restaurant use operating under the guise of a bar use, but being a long term resident and knowing Ormond Beach and what it does and does not support, he could not see a bar surviving long term in Ormond Beach.

Mr. Wigley asked staff's reason for having a kitchen open and a full menu at all times. He said that is not a requirement with SRX licenses or 2 COP licenses.

Mr. Spraker responded that the intent of the amendment is to ensure that this type of use operates as a restaurant and staff believes that this is one more condition that will help to ensure that.

Mr. Wigley said that staff has this amendment wrapped pretty tight already, and questioned if having a kitchen open and a full menu at all times was overkill. Mr. Wigley commented that the idea here is to ensure that the restaurant has an opportunity for success.

Mr. Spraker responded that the Board can amend the proposed amendment if it desires. Mr. Spraker said as far as staff understands the applicant is satisfied with the proposed conditions. He continued to say that if the Board wishes to modify the amendment, he does not think the applicant will object. Mr. Spraker concluded that ultimately this is the Highlander Corporation's amendment. He stated that staff made some recommended changes to reach a point that we feel comfortable that there are enough conditions to where the use will be a restaurant.

Mr. Wigley asked if the applicant wanted to address this or if they were comfortable with the regulation for an open kitchen and a full menu at all times?

Mr. Ebbets stated that they were satisfied with the amendment as written.

**Ms. Press made a motion to approve LDC 11-23 to add a type "D" restaurant. Mr. Wigley seconded the motion, which was approved by a unanimous vote (7-0).**

Chairman Thomas stated congratulations to the applicant. Mr. Thomas said that he cannot speak for the City or the Planning Board, but as someone who has lived here a long time, he felt like we have our own redevelopment guy and appreciated the Highlander Corporation's efforts.

**B. Internet Café and Automatic Amusement Center/Game Room, Moratorium Ordinance:**

Mr. Goss stated that the item before the Board is an Ordinance for a moratorium on internet sweepstakes and cafes. He said that this Ordinance was presented to the City Commission last week and it needed to be also presented to Planning Board because it affects the Land Development Code uses. He said that internet cafes are regulated under the amusement center use. Mr. Goss said gambling is an activity that is regulated by the City Code of Ordinances.

Mr. Goss said that the City has treated internet sweepstakes as gambling because they provide prizes and are games of chance. He stated, over time the machines that simulate gambling devices have not been regulated and they can be set to be deceptive to the users. Mr. Goss stated that there are proposed laws coming forward in the Legislature with regards to gambling that may clarify internet sweepstakes and that a moratorium will allow time to find out what happens with the Legislature. Mr. Goss said that there is a loophole that exists for the internet sweepstake machines and whether they are slot machines which are illegal or they are some other type of activity that is legal. Mr. Goss concluded that staff is recommending that the moratorium be put into place and the Ordinance will go back to the City Commission for second reading. He stated that it is possible that the moratorium could be extended and that staff recommended approval of the Ordinance.

Mr. Jorczak said that the Ordinance appeared to be a reasonable request to provide more time to study the issue and properly regulate the use.

**Mr. Jorczak made a motion to approve the Ordinance for the moratorium. Mr. Briley seconded the motion, which was approved by a unanimous vote (7-0).**

**C. LDC 09-09: Land Development Amendment, Chapter 3, Article II, Section 3-18, Surface Water Runoff Control**

**Ms. Press made a motion to continue LDC 09-09 to a date uncertain. Mr. Jorczak seconded the motion, which was approved by a unanimous vote (7-0).**

**VII. OTHER BUSINESS**

Mr. Jorczak asked if there would be any advantage to incorporate, under the Transportation Element, a subsection that deals with the Airport. He stated that he understood that this may be a sensitive issue but it may be beneficial to provide direction where the Airport is going.

Mr. Goss responded that there is a provision in Chapter 163 of the Florida Statutes that allows airport planning, not of the facility, but the land use around it and compatibility. He continued that staff will be working on this to bring it back to the Board.

Ms. Press inquired about an open house invitation from Amber's Jewels Celebration Place and where this business is located.

Mr. Goss responded that he did not know where this specific business was located.

**VIII. MEMBER COMMENTS**

Chairman Thomas invited members of the Planning Board to drive out to the Dale Buttlens's softball complex and take a look at the boundless playground that is under construction that is for challenged children, it is absolutely phenomenal. He stated it is the money that was received from the Racing and Recreation District. Chairman Thomas stated it is scheduled to be completed in about two weeks and invited Board members to visit the playground.



**IX. ADJOURNMENT**

The meeting was adjourned at 7:42 p.m.

Respectfully submitted,

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Ric Goss, AICP, Planning Director

ATTEST:

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Doug Thomas, Chair