

**OCALA PLANNING AND ZONING COMMISSION MINUTES**  
**Monday, June 8, 2009**

**Public Notice**

Public notice for this meeting was posted June 2, 2009, at 151 SE Osceola Avenue, City Hall, Second Floor, Ocala, Florida, 34471.

**Meeting Statistics**

The regularly scheduled meeting of the Ocala Planning and Zoning Commission was held on Monday, June 8, 2009, in the Council Chambers at Ocala City Hall.

**Attendance**

The following Commissioners were present:

August Greiner, Jr., Chairman  
Rus Adams, Vice Chairman  
Robert DeJohn  
Justin Albright  
Joanne Yancey  
John McLeod

The following Commissioners were absent:

Justin Albright was excused  
Chris Polak had resigned effective immediately

Planning & Development Director Tye Chighizola, Chief Planning Official Pete Lee, Planning and Zoning Manager Mike Daniels, Code Enforcement Manager Chip Rich, Senior Planner Patricia Hitchcock, Neighborhood Planner Dorothy LeBlanc, Planner Jody Cone, Assistant City Attorney Jimmy Gooding, and Administrative Specialist I Carol McKeever, and others interested in the items for presentation attended the meeting.

Chairman Greiner called the meeting to order at 5:30 p.m. and led the pledge of allegiance. Ms. Hitchcock read the agenda notes containing City Council dates, times and location and further advised the P & Z board members that there is one correction to the City Council schedule relating to PUD08-0004. This case will only go to City Council one time for approval or denial on July 7, 2009.

**Approved/ Minutes**

Commissioner Adams moved and Commissioner DeJohn seconded to approve the May 11, 2009 minutes with the following change on page 8 to case ZON09-0006: the third sentence is to read "A request to change the zoning from B-2, Community Business, to B-4, General Business, for property located at 2700 West Silver Springs Boulevard, approximately 1.1 acres." The motion carried unanimously.

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**Denied/PUD08-0004**

Petitioner: MDG Cala Hills Joint Venture, LLC  
Agent: Steve Gray

Project Planner: Michael Daniels (Contact at 352-629-8529)

A request to **approve** a Preliminary and Final PUD Plan for Tract J, located along the west side of SW 21<sup>st</sup> Circle in the Cala Hills development, south of the clubhouse, approximately 26.02 acres.

Mike Daniels presented staff comments:

The property is located in the 2500 block of SW 21<sup>st</sup> Circle and is currently undeveloped. The site is approximately 26.02 acres and is heavily wooded in some areas. It is tract J of the Cala Hills Development of Regional Impact (DRI). The uses surrounding the site are within the DRI with the exception of Scott Springs Park and the Grand Reserve apartments which are located to the west of the subject property. Surrounding uses are characterized by single family and multifamily residential developments and park/recreation areas. The property has a large retention area in the center of the property that is serving the existing residential developments. The vegetation includes a hammock of hard woods and pine trees. The site has direct access onto SW 21<sup>st</sup> Circle which connects to SW 19<sup>th</sup> Avenue Road. There is evidence of gopher tortoise burrows on the property. If this project moves forward, the applicant would need to check to see if there are any active burrows on the site. If the burrows are active burrows, the applicant would then have to follow all the requirements from the State Fish and Wildlife Department.

Mr. Daniels commented that at the February P & Z meeting there was a very exhaustive discussion of the history of this site. He said he would try to summarize that discussion and provide a brief history of the site. Tract J is located within the Cala Hills DRI. This property was annexed in the early 1980s and designated as a Development of Regional Impact (DRI). The site includes a combination of commercial and residential tracts. The commercial tracts are located in the northwestern portion of the site as you get closer to Easy Street. The remaining tracts within the DRI are all residential tracts and located within a Planned Unit Development (PUD). In 2006, the applicant reactivated the DRI and the PUD. At that time, the zoning and the Cala Hills Master Plan was approved. In September of 2008, the applicant submitted a revision to the PUD and to amend the Conceptual Master Plan. The rezoning from PUD-3 to PUD-4 was approved. However, the Conceptual Master Plan was recommended for denial on February 23, 2009 by the Planning and Zoning Commission and was denied by City Council on May 5, 2009.

The proposed conceptual plan shows 9 three-story buildings for a total of 276 multi-family units with a clubhouse and a pool on the property.

The development is proposing one access point for the property, located off of SW 21<sup>st</sup> Circle. If this project does move forward, staff would recommend an additional emergency curb cut which

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would most likely be located to the east of the site where there is an existing curb cut. The emergency access would not be required to be a full access point; it would only be for emergency situations when the main access point is blocked.

In the center of the site there are two stormwater ponds. There currently is a retention area on-site on Tract J that takes stormwater from other existing site developments within Cala Hills. The Tract J site will be required to continue taking the stormwater from those developments and will also have a retention area for the new development as required by city code. Part of the northern portion property is located within a FEMA flood plane and the applicant will have to make sure that changes are made according to FEMA requirements.

Another issue discussed at the last meeting was a traffic study. The Tract J multi-family units fall under the traffic study that was approved for this property in 1995. A signal warrant analysis was conducted for this petition at the intersection of SW 21<sup>st</sup> Circle and SW 19<sup>th</sup> Avenue Road and submitted to city staff. The findings showed that a signal was not warranted at this location. However, per the Master Traffic Study, the applicant will be required to install a signal when it is warranted.

The plan shows that there will be a pedestrian path around the proposed drainage retention areas as well as pedestrian connectivity between the proposed units, SW 21<sup>st</sup> Circle and Scott Springs Park.

The development area has been clustered to provide a large area at the southern and eastern ends of the property that will remain undisturbed thereby preserving many of the large oak and pine trees as well as other natural vegetation. As part of any site plan review, which would be the next step for this project, the applicant will be required to show that any changes made to the site would not damage those trees and they will be required to hire an arborist to ensure that the trees are not damaged.

In addition, in the southeastern corner of the site there will be extensive landscaping up against White Oak Village and extensive landscaping along SW 21<sup>st</sup> Circle. This landscaping exceeds City code requirements. However, it is important that the applicant maintains the landscaping character that already exists in Cala Hills which is very extensive.

The applicant has submitted architectural plans for this site. Several different building materials have been proposed. Floor plans have also been submitted; the apartment units range in square footage from 859 square feet for a 1 bedroom to 1,428 square feet for a 3 bedroom apartment.

Mr. Daniels pointed out that there is one major difference between staff's report for this plan and the staff report in February. Staff is now recommending denial whereas in February staff was prepared to recommend approval with conditions. The reason staff is recommending denial of this plan is that per the city code any preliminary and final PUD plan must be in substantial compliance with the conceptual master plan. The plan, as submitted, has 276 residential units, which exceeds 264, the total number of units allowed in Tract J on the conceptual master plan. It

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is also stated in the conceptual master plan that it must be developed subject to the condominium form of ownership which is not addressed on the preliminary and final PUD plan. Mr. Daniels said that in discussions with Mr. Gray that afternoon, he was told that the applicant is willing to reduce the number of units from 276 to 264 so that this issue is eliminated. However, the applicant is not willing to add anything to the plan to say that it is subject to the condominium form of ownership. At the May 5, 2009 City Council meeting the applicant proposed and was denied the amendment to the conceptual master plan to address the description of "multifamily" and "total number of 276 units". Since that was denied it reverts back to the description on the existing plan which is "multifamily condo" and "total number of units 264." Mr. Daniels wanted to make it very clear that staff is not reversing its opinion from the February meeting. However, what he is stating is that the appropriate process is for the applicant to either revise the conceptual master plan or submit a preliminary and final PUD plan which is consistent with the approved conceptual master plan.

Staff recommended denial of PUD08-0004 because the proposed preliminary and final PUD plan is not in substantial conformance with the conceptual master plan as required per sec. 122-866(a). It is appropriate to deny the applicant's request for approval of the submitted preliminary and final PUD plan based on the following factual support:

1. The total number of proposed residential units (276) exceeds the total number of units that are permitted on the approved conceptual master plan (264) for tract J.
2. The multifamily project must be subjected to the condominium form of ownership as stated on the approved conceptual master plan.

Mr. Jimmy Gooding, City Attorney addressed the board. He said that Mr. Gray had sent a letter asking several questions and the City Attorney's office responded. Because of the significant issues in this case regarding the PUD-3/PUD-4, the city feels somewhat responsible for the initial confusion. Mr. Gooding pointed out that one of the important things that he tried to stress in the letter and that he is going to continue to stress is that "condominium" refers not to a type of development but merely a form of ownership. That is how Florida statutes define a condominium; that's how the city code uses it; and that is how it should be focused on here. Mr. Gooding explained that the phrase "condominium" is not referring to a particular type of development; it isn't referring to a multi-family project, a single-family project or a commercial project. All three of these types of developments can be condominiums. A condominium refers to any type of property that is subjected to the condominium form of ownership, which means the condominium units are owned by unit owners and other portions are communally owned.

Mr. Gooding said that he interprets "multi-family condo," on the conceptual plan that currently exists for this project, as a multi-family project development subjected to a condominium form of ownership. The question is can the city insist that it be built in that fashion. Florida Statute, Section 718.507 very clearly states that the city has to apply all of its zoning laws with reference to the nature and use of the property as "multi-family" without regard to the form of ownership. Under that language it appears that even though the conceptual plan says "multi-family condo" the city should apply it as only "multi-family" which is a typical situation. There are a couple of arguments as to whether the "condo" language on the conceptual plan can even be enforced. The

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first point is that Florida Statute Section 718.507 was adopted to prohibit local governments from discriminating against condominiums. Mr. Gooding stated that apparently before this statute was adopted local governments did not want condominiums in their jurisdiction so they passed laws and ordinances to prohibit condominiums. The legislature stepped in and adopted Florida Statute Section 718.507 stating that local governments can only regulate the use of the property not the form of ownership. Thus, it is ironic that this statute is being applied in the exact opposite fashion. The property owner doesn't want to develop the site as a condominium. However, even though this was not the purpose of the statute, one of the rules that the courts follow is that when the language is clear, that is how it will be interpreted. Mr. Gooding stated, "Thus, it looks to me like the language is clear." However, it may be significant that it wasn't the city that came up with the language on the conceptual plan; it was the developer.

The application that includes the language was not signed by the property owner. It was signed by Jeff Gutapfel of Good Apple Development Corporation and Jerry Glassman, individually, not in the capacity of an officer or director of the development. Mr. Glassman indicated on the application that he was the owner and he has signed previous applications on this project in the same capacity.

Mr. Gooding said it is his opinion that the developer included this language in the conceptual plan; it wasn't the city that insisted on it. Thus, the question becomes having originally included the language, can the developer be held to it. The statute doesn't expressly state that the applicant can or cannot be held to the language. Mr. Gooding said that it is interesting that the language was included at the insistence of the developer. Another thing that may be significant is that the site is a Planned Unit Development. Thus, it is not a situation where the rules are hard and fast. It is a mixed-use development with different requirements that wouldn't apply in a typical straight zoning classification. Mr. Gooding stated that this is a situation where the city waves certain requirements and in return the developer agrees to do certain things. Thus, the city is permitted to do things in the context of a PUD that it would ordinarily not be permitted to do. Mr. Gooding stated that he does not know whether the city can do something that the statute says they cannot do. He merely wanted to point out that this site is a PUD and therefore the rules are different than what would ordinarily be the case. Mr. Gooding concluded that a statute exists that casts great doubt upon the city's ability to require that this project be developed as a condominium. Mr. Gooding apologized for not being able to provide a definite answer.

Mr. Gooding commented that City Council apparently thought it was very significant that the language was on the application and last month City Council refused to approve the amendment to the conceptual plan that didn't include the language. He remarked that it was City Council's position that the city can insist that the requirement be met and the City Attorney's Office is willing to defend its actions. Mr. Gooding said that although this is not what the Florida statute states, a good faith argument can be made on behalf of the city to enforce its decision. Mr. Gooding remarked that he is therefore, comfortable with staff recommending denial in light of the fact that the language, condominium form of ownership, which the developer included in the previously approved conceptual plan is not in his current plan. Mr. Gooding said he is in agreement with city staff that the plan is not in substantial compliance with the previous plan and agrees with the difference in the number of units as not being in substantial compliance as well. City staff can recommend denial and the P & Z Commission can recommend denial of the case

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based upon those grounds. The mere fact that the plan says it is an apartment does not mean that it cannot also be a condominium.

Mr. Gooding also pointed out that condominiums do not just deal with multi-family and single-family residential uses versus commercial. Condominiums can also be owner occupied or rented so if the applicant wanted to include on the plan "condominium apartments" the City Attorney's Office wouldn't have a problem with it since this would meet the language on the previous conceptual plan. Mr. Gooding commented that this was probably not what the neighboring property owners want to hear but the fact is there can be rented condominiums and condominium apartments. He noted that a lot of the courts refer to these as owner occupied apartments so the issue from the previous conceptual plan is not whether these are going to be owner occupied or rented which is what a lot of the neighbors care about but rather what is significant is whether or not it is going to be subjected to a condominium form of ownership.

Mr. DeJohn asked if a covenant was specified. Mr. Gooding replied that there may be but that is not an issue that the city typically gets involved in. Covenants are a matter of contract between the developer and the property owners. The city does not base its land use, zoning or other development issues on covenants.

Mr. Steve Gray, 125 NE 1<sup>st</sup> Avenue, Suite 1; the agent addressed the board. He noted a minor correction in Mr. Daniels comments, pointing out that the applicant in this case was not the applicant at all nor even related by ownership to the applicant in the 2006 amendment to the PUD and the rezoning case. In 2006, the applicants were a Goodapple entity and ultimately at a later time the application was signed by Jerome Glassman in his individual capacity. The applicant's company is a subsidiary of Morin Development. Mr. Gray concurred with Mr. Gooding that the question of condominium or no condominium is not a clear area. He had a letter from the applicant confirming a reduction from 276 units to 264 units. Mr. Gray stated that the only item that needs to be addressed in order to for the applicant to receive an approval is a notation on the plan that the project would be submitted as a condominium form of ownership. The applicant is not prepared to do that at this time but understands that the notation could be done at anytime before the final hearing by City Council. Mr. Gray stated that submitting to a condominium form of ownership is not just the simple act of putting a notation on the plan from a development and financial standpoint. Mr. Gray remarked that this will not resolve many of the concerns of the people who do not want this project to be located on this site. Mr. Gray stated that there are not restrictive covenants prohibiting multi-family or apartments on Tract J and that there would not be unless the successor developer agreed to do so because of the Cala Hills Master Association. The developers have a super number of votes and will retain voting control. This is not a case where there is a declaration and there will not be a declaration prohibiting the use of Tract J for multi-family.

Mr. Gray remarked that he does think that Section 718.507 of the Florida Statutes literally prohibits the city from requiring or prohibiting the site be developed as a condominium form of ownership. The issue of rather or not that provision might be enforceable because the applicant or some related person or entity requested the inclusion of the words "multi-family condo" is not pertinent to some of the real issues that are faced with this particular application. Mr. Gray

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stated both he and Mr. Gooding have looked at the multi-family condominium language extensively and concur that this is not a clear issue.

The site plan for Tract J has as good or better buffering and spacing between a multi-family use and an adjacent single-family use as seen anywhere in the city. The distance between the rear property line in White Oak Village and the closest building is a 257 foot parcel of heavily wooded land. The next distance is 310 feet from a building; there is 293 feet of buffering throughout the site. These are particularly unusual buffering zones for an urban area in the city. Located on the western boundary is a PUD-8, the Grand Reserve Apartments and also adjacent is a city park. The site has interconnectivity with pedestrian paths to the City Park and the Scott Springs Park. Tract J is in the right location within Cala Hills for a multi-family project. Mr. Gray stated that the property owner is requesting to develop the site as a multi-family use because it is the only use allowed by the current zoning (PUD) and DRI development order. Mr. Gray reiterated that the property owner is not asking for a change, but the approval of a site plan that meets all the city requirements. He remarked that another point that has not been considered is that the property owner did not pick this spot out of the blue and then suddenly decide to build multi-family housing. This site has been designated in the DRI order since 1982 for a multi-family use and it has never been designated for anything else. The project was designed ahead of its time as a mixed-use project. Mixed-use projects such as this are very much the preferred form of development within the state of Florida and by other local governments.

Mr. Gray stated that if everyone who purchased property within the Cala Hills subdivision had reviewed the DRI order and the existing zoning code it would have put them on notice that this site was designated for multi-family development. Only 24 of the 196 property owners in Cala Hills took title to their property after the 2006 amendment which added the word "condo." Multi-family was never deleted.

Mr. Gray said that mixed use development is better for development purposes and is preferred by the state. This form of development is so preferred by the state that developers receive enhancements for DRI projects. He remarked that there is no doubt that from a planning view point, the multi-family element makes sense, Tract J is compatible, and the buffering is extremely intensive.

Mr. Gray stated that the applicant has agreed to widen the buffer along the southern boundary of the project by 50 feet to provide more buffering space.

Mr. Gray said the issue is compatibility within a project designated for multi-family use since 1982. He said that, although Mr. Gooding may disagree, he proposes that if a DRI order and city zoning for a parcel have been designated as multi-family and detached single-family residential uses for 25 years, then the single-family residents cannot argue that the multi-family units are incompatible.

Mr. Gray stated that the multi-family designation was there when the Cala Hills property owners purchased the property. He remarked that if a potential buyer purchases a site next to a multi-family site, then he cannot later object to the mixed-use site. Mr. Gray remarked that the argument of incompatibility would be difficult to prove.

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Mr. Gray said the property owner should be taken under consideration. No one is offering to purchase Tract J and everyone would like for the site to remain green space. Mr. Gray reiterated that the property owner has a site that has been approved for multi-family use and that by not allowing the property owner to build multi-family units, the property is effectively being down zoned. The property owner is entitled under law to reasonably rely upon the DRI development order, the PUD zoning, and the revised PUD zoning in 2006, to be able to develop Tract J in the manner designated by these documents. The applicant has presented a multi-family project with units compressed along the western boundary and with maximized buffering to the adjoining property owners in an attempt to resolve concerns. The applicant believes the project should be approved.

Mr. Gray commented that at some of the previous hearings some of the concerns seemed to relate to social status or stigma. There is not a definition for multi-family in the city, but there is a definition for an apartment house which is found in Section 122-3 of the city code. The city code defines an apartment house as a multi-family dwelling which has 3 or more residential units. Mr. Gray proposed that the closest definition of multi-family is the definition in Section 122-3 of the city code which indicates that multi-family is the equivalent of an apartment house which is defined as rental with 3 or more units. Mr. Gray said that there are questions that may be decided at a later date, but wanted to emphasize that the applicant is not asking for something that he should not expect to obtain. The applicant is not asking for new zoning and the parcel was not randomly chosen for an apartment building, but rather the parcel has had this particular land use since 1982. Mr. Gray stated that the property owner is entitled to make use of the property in accordance with reasonable expectations based upon the land use and zoning.

Mr. Gray noted that the applicant believes the compatibility issues are resolved by this particular site plan. He pointed out that this is not the best site plan for the developer; it is not like most layouts that are traditionally used for this number of units. In the more typical layouts, such as Carlton Arms, the apartments are spread out around the outer boundaries with all the amenities in the center. Mr. Gray stated that there are many concessions in this site plan in an attempt to work with the property owners.

Mr. Gray stated that the applicant was requested to obtain an engineering analysis to determine the need for a traffic signal at the intersection of SW 21<sup>st</sup> Circle and Easy Street (SW 19<sup>th</sup> Avenue Road). A very detailed analysis was completed by Kimley-Horn and Associates and the conclusion was that with the development of Tract J there is still not sufficient traffic to justify a traffic signal at this time but it will be required in the future. The property owner is obligated to build that traffic signal when it is warranted under the development order. There is still substantial undeveloped property in Cala Hills so the obligation will remain. The report also indicated that there may be operational issues that could be resolved with dedicated right turn lanes.

In conclusion, Mr. Gray stated that the number of units has been reduced to 264 units on the application. The plan is not receiving a recommendation of approval from the Planning and Development Department because the applicant has not put a notation on the plan that the project will be developed as a condominium form of ownership. Mr. Gray stated he believes that it is

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not legal for the city to impose this stipulation, but the item is being considered in discussions with the lender and other advisors on the project; the applicant may or may not agree with it. Mr. Gray stated that the applicant believes the site plan has satisfied compatibility requirements and that it is a material point that the applicant is only asking to do what the zoning and land use has allowed since March of 1982 which is to build a multi-family project on Tract J.

Mr. Greiner asked if the site plan would be changed to reflect the reduction in the number of units. Mr. Gray responded that the site plan would not change; one building might be reduced to a two-story building.

Mr. Gray pointed out that the property has had the current zoning for a long time and the applicant has worked with the city on a lot of developments over the years. The applicant is simply asking to build what has been approved. There seems to be a predisposition against this project. Mr. Gray stated that the very fact that Mr. Gooding had to go into a pretty detailed analysis to attempt to answer some of the questions that have been raised signifies that this is not a normal case. Tract J is an expensive piece of property that is of high interest to the city.

Mr. Greiner asked if Mr. Gooding stated earlier that the P & Z Commission's role was not to determine whether or not the applicant could have a condominium or single-family ownership, but that the board is only allowed to vote on usage. Mr. Gooding responded that if he made that comment that was not what he meant to say; he did not say what the P & Z Commission's role was, or was not. Mr. Gooding stated that the statute says that local governments are merely supposed to focus on usage not on the form of ownership. However, because the word "condo" is on the previous conceptual master plan the P & Z Commission is free to consider it or not. Mr. Gooding said the he does not want to tell the P & Z Commission how to do its job. He said that if the P & Z Commission interprets the statute as it is written and doesn't take it into consideration, the Commission is free to do that. If however, the P & Z Commission believes that since the developer included "condo" in the previous conceptual master plan and the city approved it based on the developer's statement then the Commission is free to do that also. Mr. Gooding stated the he is not going to tell the P & Z Commission to base its decision on the fact that the word "condo" is included; the choice is up to the Commission. Mr. Gooding stated that just because City Council apparently thought the inclusion of the word "condo" was significant doesn't mean that the P & Z Commission has to consider it. Mr. Gooding stated that the P & Z Commission is free to base its decision on the general criteria that is normally uses to make decisions.

Mr. Greiner asked whether or not a unit is going to be owned or rented determines usage. Mr. Gooding responded that this is a "murky subject." He said that Mr. Gray asked a similar question and his answer can be summarized in this statement: Decisions in other jurisdictions appear to be split but the prevailing view is that, unless the prohibition on rentals serves a legitimate purpose directly related to the land use being regulated by the land use or zoning classification, a requirement that buildings be owner-occupied, and a corresponding prohibition on rentals, would not be valid. Mr. Gooding said that the only counter argument for why it might be legitimate for the city to circumvent this viewpoint is the potential significance of this project being a PUD and the particular nature of the zoning associated with that classification. Mr. Gooding stated that Section 122-864 (c) of the City code states that the city is permitted to

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attach suitable conditions, safeguards and stipulations where such actions are in accord with the public purpose and the standards set out in the city's LDRs, and where they're not viewed as conditional zoning. Mr. Gooding noted that the last sentence from a Mississippi case states that there can be particular conditions, not otherwise applicable to similarly zoned property, under the principle that a PUD zoning classification is subject to restrictions calculated to achieve compatible and efficient use of the land.

Mr. Gooding further stated that he is more concerned about the potential rental/ownership issue than the condominium issue because the issue can become one that the City of Ocala has never considered before which is stipulating that property can't be rented. He pointed out that the rental/ownership issue is different from staff's recommendation because city staff is not recommending against this case because it is proposed to be a rental property. In fact, as Mr. Gray pointed out, the DRI and the previous conceptual plan all have multi-family listed and the city's ordinance does allow rentals. Mr. Gooding noted that it is also not a condominium issue because condominiums can be rented or owned. Mr. Gooding stated that if the P & Z Commission wants to impose requirements or recommend denial based on the potential of units being rented, it's the P & Z Commission's right to do so. Mr. Gooding stated that the P & Z Commission can do whatever it wants and the City Attorney's Office will defend the decision based on the fact that the site is a PUD and that the city can have different requirements with a PUD that it would not ordinarily be able to have.

Mr. Daniels reiterated that City staff is not making a recommendation based on whether or not the property is developed as a condominium or whether the city can enforce the condominium requirement. City staff's recommendation is based on whether or not this plan is in substantial compliance with the conceptual master plan.

**Discussion:**

Mr. Kris Vanderlaan, 1725 SW 27<sup>th</sup> Street; the attorney for Cala Hill's homeowners association, addressed the board. Mr. Vanderlaan said that he did not agree with Mr. Gray's statement that the applicant is only trying to have approved what has already been allowed as multi-family. As it stands right now, multi-family is restricted to a condominium form of ownership. He said Mr. Gooding's letter stated that the word condominium is not an alternative use for the property but a restrictive use of the multi-family designation, so for the plan to be in substantial compliance the applicant would have to agree at this point to push it through as a condominium form of ownership which Mr. Gray stated the applicant has absolutely refused to do. The plans that were submitted indicate that there were going to be 276, reduced to 264 apartment units. Apartment units do not designate condominiums nor do they state that it's going to be a condominium form of ownership. Mr. Vanderlaan stated that there are issues with condominiums that relate to financing, and the issuing of the declarations. An apartment complex and condominiums are different animals. City Council has already heard this argument it upheld the inclusion of the word "condo." The plans presented today ignore that fact and therefore are not in substantial compliance. Mr. Daniels said that staff was initially recommending approval if the conceptual master plan was amended and as it stands today the city cannot approve the plans because this site plan does not conform.

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Mr. Vanderlaan noted that earlier tonight, Mr. Gray stated that the Cala Hills homeowners would have been put on notice they were buying into a multi-family development if they had looked at the development order for Cala Hills and that only 24 of the 196 property owners purchased their property after 2006. He said that more than 15% of the Cala Hills population is affected by this site plan; the numbers don't take into account how many people chose to stay in Cala Hills after 2006 because they believed only condominiums could be built on Tract J; and the numbers don't take into account how many people gave up the right to sell their property and stayed in Cala Hills when the market was peaking under the zoning that was pushed through by Jeff Goodapple and Jerome Glassman in 2006. Mr. Vanderlaan stated that Mr. Gray can't have it both ways. He can't say that the public should have relied on the public information to find out about the multi-family development but then say that they should not have relied upon the public records for the "condo" information that included by Mr. Goodapple and Mr. Glassman in 2006. The public has the right to rely upon the last recorded document or the last zoning regulation that was applicable. Mr. Vanderlaan stated that at least 24 people who bought after 2006 relied on that public information and many other Cala Hills property owners may have decided to stay in the subdivision because of that information.

Mr. Vanderlaan stated that he believed that the argument today is to determine if the site plan is in substantial compliance. He remarked that the Cala Hills property owners believe that the plan is not in compliance and that city council has already upheld the inclusion of the word "condo" in the conceptual master plan. Mr. Vanderlaan stated that earlier Mr. Gooding said that the City Attorney's Office would be willing to defend the "condo" form of ownership because although the statute may say that the city can't do this of its own accord but because Tract J is a PUD, it may be able to enforce this option if necessary.

Mr. Vanderlaan stated that when a property owner agrees to give up rights in exchange for an approval, it is not just for that property owner to come back two years later and rescind the agreement it made and that's what is happening here. Under a PUD there is give and take by the property owner and the city. Mr Vanderlaan concluded that with all due respect, the Cala Hills property owners request that the recommendation from city staff be upheld and that the current application as set forth be denied.

Ms. Yancey stated that she is very reluctant to say that property owners cannot rent their property but on the other hand she agreed with city staff that the P & Z Commission should uphold the original plan.

Commissioner Yancey moved; Commissioner Adams seconded denying PUD08-0004; and without further discussion, the motion carried unanimously upon roll call vote.

**Approved/ZON09-0008**

Petitioner: BAYI, LLC

Project Planner: Jody Cone (Contact at 352-629-8529)

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A request to **change the zoning** from B-4, Regional Business (County), to B-4, General Business (City), for property located on the south side of North US Hwy 27 approximately 350 feet West of NW 44<sup>th</sup> Avenue, approximately 21.1 acres.

Jody Cone presented staff comments:

This site is located on the south side of NW Blitchton Rd., in the 4000 block. The site is currently heavily wooded with a variety of shade and ornamental trees. Site elevations slope from the south (50') to the north (70'). The site currently has access by means of  $\pm 700$  feet along Blitchton Rd. There is a paved access road, as well as an accompanying easement, that runs the length of the site and services the Foxwood Farms subdivision to both the west and the south of the site. According to the access agreement that accompanies this property the applicant must keep the easement intact and maintain it. However, the applicant does reserve the right to move the easement while still continuing to provide access for the Foxwood Farms subdivision. There is a vacant modular office on the western portion of the site.

Commercial and residential uses, as well as undeveloped properties characterize the surrounding area. The adjacent properties include the Foxwoods Farms subdivision which is located to the south and the west; Ocala Palms and Sun Trust Bank are located to the west and zoned B-4; a farm and shopping center are located to the north and zoned B-2; and Barbizon's Bar and Grill is zoned B-4.

This parcel was a part of six other parcels that were annexed into the City in 2006. Also in 2006, this site's land use designation was changed from the Marion County Commercial designation to the City of Ocala Retail Services designation. A Comprehensive Plan Policy was adopted for this site on December 19, 2006, requiring that development on the site meet certain development criteria.

The maximum development potential of this site given a Retail Services land use designation is  $\pm 6,892,737$  square feet. However, this site's development is limited by a future land use text amendment to a maximum of 591,239 square feet of building space for retail/commercial uses. Trip generation based on the most intensive possible use of this site,  $\pm 6,892,737$  square feet of retail use, would generate an estimated 106,380 ADTs, with 10,231 peak hour trips. This site's development is limited by a future land use text amendment to a maximum of 591,239 square feet of building space for retail/commercial uses which would generate an estimated 21,557 ADTs, with 2,023 peak trips.

This site is not adjacent to the future NW 44<sup>th</sup> Ave. However, the applicant is currently exploring possible access to NW 44<sup>th</sup> Avenue. The applicant will also be required, per the Comprehensive Plan Policy attached to the site, to submit a traffic study prior to the development of the site and mitigate for any needed improvements.

The applicant will need to explore various access options to the site, as the current access point on U.S. 27 does not meet the Florida Department of Transportation's spacing requirements for a traffic signal. The current signal located at NW 44<sup>th</sup> Ave and U.S. 27 is less than  $\pm 700$  feet from the only current access point to this site. The applicant will also need to continue to ensure that

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the residents of Foxwood Farms Mobile Home Park have access to their homes either by way of U.S 27 or the proposed NW 44<sup>th</sup> Ave.

Potable water service is available within one-quarter of a mile. Sanitary sewer service is available within one-eighth of a mile. For stormwater, additional runoff must be retained on-site to match pre-development conditions. Facilities must be designed to provide flood protection for a 100 year, 24-hour storm event. A contribution may be required during the development process in order for the site to receive adequate solid waste services. In order to maintain adequate fire protection services in the City, an impact fee and a fire services fee will be required during the development review process in accordance with a recently adopted ordinance. Residential development is not expected given the site's future land use designation and proposed zoning designation; therefore, this site is not expected to have an affect on the schools in the surrounding area.

The land use and development potential of the property is limited by the following conditions:

1. The aggregate development shall not exceed what was allowed under the previously adopted county future land use designation. The total development shall not exceed 1,363 residential dwelling units, 591,239 square feet of commercial/retail space, and 2,656,071 square feet of industrial space;
2. At the time of development the property owner/developer must submit a developer's agreement consistent with the City's Land Development Regulations regarding buffers, landscaping, site design, access, uses, architectural characteristics and other requirements specified in the land development regulations;
3. All new signage to be located on the Amendment Parcels with frontage on US 27 or the proposed NW 44th Avenue shall be limited to ground mounted signage structures;
4. Prior to final development approval, the property owner/developer will be required to submit a traffic analysis that is consistent with the City's Traffic Study Guidelines and Concurrency Management System requirements; and
5. The property owner/developer will be required to provide all necessary traffic improvements as determined by the traffic analysis, or provide (as to required improvements for which proportional share payments would be applicable by the City's Code of Ordinances) required proportionate share contribution payments.

The site's current City of Ocala, Retail Services land use designation is intended for highway-oriented retail and business establishments such as lodging facilities, restaurants and auto services. All new retail services land uses shall be clustered at signalized intersections, instead of strip type development. The Retail Services designation may be implemented by any of the following zoning districts: Community Business (B-2), Limited Community Business (B-2A), General Business (B-4) and Shopping Center (SC). New Retail Services land uses at locations other than signalized intersections will be permitted on arterial roadways or service roads associated with those arterial roadways in Activity Centers designated on Future Land Use Map #7 to promote infill development. The maximum Floor Area Ratio for areas with more than five (5) acres is .75.

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The site's current Marion County Regional Business (B-4) zoning district is intended for the development of regional shopping centers; to establish and maintain intensive commercial activities and specialized service establishments that require centralized locations within a large service area; to provide a full range of merchandise and services usually obtainable in major department stores and their complimentary specialty shops; and to permit the development of major financial and administrative complexes that may serve a region and require a conspicuous and accessible location convenient for motorists.

The requested General Business (B-4) zoning district is intended for retail establishments and businesses catering to highway trade, motorists' needs, and businesses that receive a large number of delivery trucks. Uses allowed in the B-4 zoning district include auto supply stores, automobile sales and rentals, playground equipment sales, roadside fruit and vegetable sales, department stores, drugstores, furniture stores, garden and nursery sales, grocery stores, hardware stores, liquor stores, fast food restaurants, minor auto repair, indoor commercial recreation, single-family dwellings, and two-family dwellings. The minimum lot width for a nonresidential use is 100 feet. The minimum lot area is 7,000 square feet for single family residential and 10,000 square feet for other residential dwelling units. Building heights may not exceed 60 feet. The maximum FAR is 0.35 for residential uses and is not applicable for non-residential uses.

Staff recommended approval of ZON09-0008 based on the following factual support:

1. This request is consistent with the Ocala Comprehensive Plan's Future Land Use Element Policy 2.5 which requires all development to have adequate services and facilities including water, roads, sewage collection and treatment, stormwater drainage, recreation and solid waste disposal.
2. The request furthers Future Land Use Element Objective 4 in that the newly developed parcels are compatible with the neighboring development, services and facilities that are available, and the topography and soil conditions.
3. Development potential is limited by the conditions contained in Future Land Use Element Policy 12.9. (see page 4)
4. The requested B-4 zoning district is eligible to implement the existing Retail Services land use designations.
5. Uses permitted in the requested B-4 zoning district are compatible with uses allowed in the surrounding zoning districts.
6. A Comprehensive Plan Policy (12.9) was adopted on December 19, 2006, requiring development limitations on this site as well as all of the parcels associated with LUC06-0031.
7. Per Comprehensive Plan Policy 12.9, it should be noted that the proposed development densities and intensities will need to be restricted on this parcel, as well as all of the parcels associated with LUC06-0031, in order to fall under the Development of Regional Impact (DRI) thresholds. The Florida Department of Community Affairs (DCA) presumes an office

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park is a DRI if it occupies more than thirty (30) acres of land or encompasses more than 300,000 square feet of gross floor area. A shopping center is a DRI if it occupies more than forty (40) acres of land or encompasses more than 400,000 square feet of gross floor area. A residential development is a DRI if it has 2,000 or more dwelling units. An industrial park is presumed to be a DRI if it is greater than 320 acres.

Ms. Yancey asked if the applicant owned all the property up to NW 44<sup>th</sup> Avenue. Mr. Cone replied no. Ms. Yancey stated that the property is not on a corner. Mr. Cone replied that the criteria Ms. Yancey is referring to is more associated with the retail services land use and that the applicant's property needs to be clustered at a signalized intersection. However, the land use is already in place and the shopping center ordinance requires a shopping center to be within 300 feet of a signalized intersection which would be difficult for this site to do if it was a shopping center. Mr. Adams asked if the city knew how long the site had been zoned B-4 in Marion County. Mr. Cone replied no.

Mr. Doug Iannarelli, 300 SE 1<sup>st</sup> Avenue; the agent addressed the board. The applicant's purpose is to rezone the property from B-4, County to B-4, City. The applicant is not trying to develop or receive a site plan approval for the site. The applicant has no specific use for the site at this time. The applicant recognizes and has no objections to all the various technical requirements, i.e. traffic study, utilities, and everything else that needs to be completed including maintaining access for the Foxwood Farms Mobile Home Park. The property adjacent to this site is owned by an individual who lives in Miami. The applicant has made offers to purchase the property but the owner is not interested in selling. The tract next door runs from the south boundary all the way down to where the property intersects with US Highway 27 and it is zoned B-5. The city actually had to acquire the right-of-way for 44<sup>th</sup> Avenue through that property. Basically, the applicant just wants to rezone the site now so that when the economy changes the site can be developed. The applicant agrees with staff's recommendation that the B-4 zoning is compatible and requests that you approve the zoning.

Mr. Adams asked if the city knew how long the site had been zoned B-4 in Marion County. Mr. Iannarelli replied that he believes the B-4 zoning has been in place for many years but did not know the exact date the zoning was applied to the site.

**Discussion:**

Mr. Bob Schrepferman, 1863 NW 45<sup>th</sup> Terrace; addressed the board. The B-4 zoning has been in place at least 12 years because I have lived at my address that long and the B-4 zoning has been in place for all those years. Mr. Schrepferman asked who is responsible for maintaining the road. He commented that the road is a "living nightmare;" it has numerous pot holes and it's getting worse and worse. Mr. Schrepferman stated that he understood that the applicant wants to connect to NW 44<sup>th</sup> Avenue when it is completed but the connection would probably take place about four or five years from now. Mr. Cone referred to the easement agreement which is not very specific but it does state that the road has to be maintained to a certain standard.

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Commissioner DeJohn moved; Commissioner McLeod seconded to approve ZON09-0008, subject to staff comments; without further discussion, the motion carried unanimously upon roll call vote.

Ms. Yancey asked if the P & Z Commission always has to approve the same zoning for a site when it is being rezoned from county zoning to city zoning. Mr. Lee replied no. Mr. Greiner asked if a different zoning was better for a particular site would city staff recommend it. Mr. Lee replied that city staff based its recommendation for this site on the request for B-4 zoning and the characteristics of the surrounding area. City staff didn't feel that the difference in intensity between the B-4 and B-2 zones warranted dropping to a B-2 zone. Mr. Chighizola stated that in the past city staff has recommended a lower zone when it deemed it was necessary. Mr. Adams asked if the zoning change should be addressed when the property is annexed into the city. Mr. Lee stated that when property is annexed into the city it isn't required that the land-use be immediately determined. Mr. Chighizola stated that the city cannot make the zoning a condition when an applicant applies for annexation. City staff does discuss land use and zoning changes with the applicant and if there is a problem with the zoning or land use changes, city staff tries to work with the applicant if possible. If the zoning and land use changes cannot be worked out the applicant can chose to remain in the county. The annexation, land use and zoning are decided in separate hearings. Mr. Daniels stated that when an applicant applies for annexation the current and requested land use and zoning are listed on the application.

**Approved/LUC09-0004 and ZON09-0004**

Petitioner: New Way Land, LLC

Project Planner: Dorothy LeBlanc (Contact at 352-629-8529)

A request to **change the land use** from MDR, Medium Density Residential, to NB, Neighborhood Business and **change the zoning** from R-2, Two-Family Residential, to B-1, Neighborhood Business, for property located at 1502 West Silver Springs Boulevard, approximately 0.18 acres.

Dorothy LeBlanc presented staff comments:

This site is located in the 1000 block of West SR40. The northern boundary of the property provides approximately 60 ft of frontage along SR40 with access to the site through an existing curb. The surrounding area is characterized by institutional, retail uses, residential and a city park. The subject property is located within the Westside and Urban Infill-Redevelopment Area (Activity Center) and the TCEA.

This site is currently covered with rocks and has been used for parking and access to the adjacent retail space. Site elevations are relatively level at 74 ft. The site consists mainly of Arrendondo/Urban Land Complex which is classified as being more than 70% covered with parking lots, buildings, streets, sidewalks, and other structures.

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This site was originally designated as having a business land use in 1980. This was changed to medium density residential in 1991 and has remained as such since that time. The property has been vacant for a number of years.

The existing Medium Density Residential (MDR) future land use designation allows a maximum of 12 dwelling units per acre. Allowed development types include all manners of residential development as well as conversion to, and new construction of, office uses. Any office development must be compatible with the surrounding area in terms of square footage and floor area ratios. Zoning districts intended to implement the MDR future land use designation include single-family (R-1), two-family (R-2), multi-family (R-3), mobile home (MH), residential-zero lot line (RZL), residential-office (RO) and planned unit development (PUD). Under the constraints of the Ocala Historic District, a re-zoning would be limited to either Office Historic (OH) or Residential Business Historic (RBH).

The requested Neighborhood Business land use designation is intended to allow a limited size retail use that is compatible with residential areas. Location of these businesses will be limited to arterials and major collectors, except in commercial Activity Centers designated on Future Land Use Map #7 where neighborhood business land uses may also be appropriate on non-residential local streets. The maximum FAR is 0.35.

The existing R-2, Two-family Residential zoning district is intended to be of similar residential character to the single-family districts, but also permits two-family dwellings and two dwellings on one lot. Lots must have a minimum area of 7,000 square feet and a minimum width of 70 feet when developed with single family dwellings, or a minimum area of 10,000 square feet and a minimum width of 100 feet when developed for uses other than single family dwellings.

The requested B-1, Neighborhood Business zoning district is intended for neighborhood convenience goods and services involving basic, regular household purchases. Building scale and intensity are to be compatible with surrounding residential development with multi-family development being no greater than 12 dwelling units per acre. Limited retail and service uses are permitted which are defined in section 122-583. Lot restrictions include a minimum of 7,500 square feet for single-family residents and 10,000 square feet for other residential and permitted non-residential uses. The maximum lot coverage for all buildings is 35 percent. A 0.18± acres neighborhood business could result in a maximum of 2,744 square feet of building area.

The Westside and Urban Infill-Redevelopment Area (UIRA) is a neighborhood Activity Center to discourage urban sprawl and promote clustered urban development so as to provide opportunities for more efficient use of existing services and facilities. Such infill development will encourage more intensive growth within the activity center. The Transportation Concurrency Exception Area (TCEA) supports urban infill and urban redevelopment through the maximization of existing public facilities and services.

The frontage of the subject parcel is ± 60-ft. which is less than the required 100-ft lot width for a B-2 zoning designation. The lot can therefore not be developed on its own and therefore must be developed with the two adjacent commercial lots to the west which are also owned by the applicant and are currently under site plan review for a 2-unit retail development. The subject

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parcel is to be developed as phase 2 of the proposed redevelopment plan and provide access to both phases of the development from SR40. The applicant has plans to develop the property in the near future for retail development. The development on the subject parcel will be phase 2 of the original redevelopment project located on the adjacent properties. The adjacent parcels have frontage on both SR40 and Martin Luther King Avenue. Due to FDOT regulations, the existing access points to the adjacent properties along SR40 must be closed off leaving a sole access point from Martin Luther King, Jr. Avenue. Access to SR40 from the adjacent parcels will be moved to the subject parcel if the future land use and zoning designations are changed to commercial.

Due to an increase in requests for rezoning of multiple properties along and near the SR40 corridor, the Governor's West Ocala Neighborhood Revitalization Council (Governor's West) requested help from the City of Ocala to develop a comprehensive plan for revitalizing the SR40 corridor between 27<sup>th</sup> Ave and Pine Ave. As a result, the SR40 Corridor Steering Committee was established in July 2008. The committee which meets bi-monthly is composed of community leaders, community organization representatives, property owners, business owners and residents with a vested interest in the SR40 corridor and West Ocala. The committee is currently working on a corridor plan that will provide a comprehensive view of redevelopment along the corridor including mixed-use development, which will address the issues and constraints of infill development on small lots. An associated overlay district is also under review to address such issues as joint parking, centralized stormwater drainage, and architectural design guidelines. The intersection of SR40 and Martin Luther King, Jr. Avenue has been identified by the committee as a catalytic site for redevelopment of the corridor. The subject property lies immediately adjacent to the east of this area.

Governor's West and the SR40 Corridor Steering Committee recommended that the cases be denied because the SR40 corridor plan and overlay district are not in place yet and both committees felt that the overlay district should be in place before any redevelopment takes place.

The present maximum development potential of 2 dwelling units would generate approximately 13 Average Daily Trips (ADTs). The maximum development potential of the requested future land use and zoning as a retail development (122 ADTs) would show a potential increase of 109 ADTs.

Potable water, sanitary sewer, and solid waste services are available on the site. Stormwater must meet city and water management district requirements. Electric service is available from Ocala Electric. Adequate fire protection services are available in this area. The schools affected by the proposed change in future land use and zoning are: Eighth Street Elementary; Osceola Middle School; and Forest High School. The maximum potential reduction to each of the affected schools would statistically be zero.

Staff recommended approval of LUC09-0004 and ZON09-0004 based on the following factual support:

1. The request is consistent with Future Land Use Element Objective 2 in that infill development is encouraged by concentrating more intensive growth in activity centers.

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2. The requested B-1 zoning district is compatible with the residential character of the adjacent area, and the B-1, Neighborhood Business and B-2, Community Business in the surrounding area.

Mr. Lee stated that city staff has been working closely with the petitioner and in conjunction with the SR40 Corridor Plan/Overlay Steering Committee to redevelop the intersection at Martin Luther King Avenue and SR40 which is probably why the applicant is not at the meeting.

**Discussion:**

There was no public comment.

Commissioner Adams moved; Commissioner McLeod seconded to approve LUC09-0004 and ZON09-0004, subject to staff comments; without further discussion, the motion carried unanimously upon roll call vote.

**Approved/ PHR09-0004**

Petitioner: Algernon Cunningham

Project Planner: Mike Daniels (Contact at 352-629-8529)

A request to **approve** a tree restoration plan, for property located in 3000 Block NW Blitchton Road, approximately 1.89 acres.

Michael Daniels presented staff comments:

In December of 2008, it was observed by the Code Enforcement Department that trees were removed from the site without a tree removal permit.

Planning Staff determined that 21 shade trees were removed. The property is undeveloped and is zoned B-2.

The case was taken to the Municipal Code Enforcement Board on March 12, 2009, which rendered the following finding of fact:

1. The Respondent is guilty of tree removal without a permit.
2. The Respondent is ordered to submit a tree restoration plan to the Planning and Zoning Commission within twenty one (21) days to replace the twenty one (21) shade trees that were removed.
3. The replacement shade trees as defined by Section 118-32 of the City's Land Development Regulations must meet the following specifications: (a) The trees must be Florida Grade #1 or better as determined by Florida Department of Agriculture and Consumer Services (FDACS); (b) The trees must be a minimum size of 2½ to 3" dbh

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(diameter breast height) at time of planting; and (c) The trees must be irrigated through establishment period.

4. The respondent must pay the administrative costs of one hundred twenty five dollars (\$125.00) within fourteen (14) days.
5. In lieu of submitting a tree restoration plan, the property owner has the option of paying a fine for tree removal in the amount of ten thousand five hundred dollars (\$10,500).

The case was subsequently taken back to the Municipal Code Enforcement Board on May 14, 2009 where the applicant was granted a 60-day extension to submit the tree restoration plan to the Planning and Zoning Commission.

Staff recommended approval of PHR09-0004; the tree restoration plan with the following conditions:

1. The shade trees must meet the number and specifications as required in the approved order by the Municipal Code Enforcement Board; and
2. The trees must be planted and inspected by city staff within 30 days of approval of the tree restoration plan per section 118-131(d). If the trees are not planted the case shall be remanded back to the Municipal Code Enforcement Board.

Mr. Howard Gunn, 2801 SW 15<sup>th</sup> Street; the agent, addressed the board. There have been some changes with the plant material. The applicant is asking the P & Z Commission to consider allowing live oak and laurel oak trees as the two choices of trees used for replacements instead of wing elm and magnolia trees. The reason for the change is that magnolia trees would be very messy in a cemetery. The location of all the trees would remain the same.

Mr. Daniels commented that the city is not typically in favor of laurel oak trees being planted even though they are on the shade tree list, but in this particular case the city would not have a problem. Mr. Adams asked if there would be any problem if the P & Z Commission requested that 50% of the trees be live oaks. Mr. Gunn replied that it would not be a problem; the laurel oak tree is preferred because of the price. Mr. Greiner asked the applicant what species of trees were being proposed. Mr. Gunn replied the proposal is for all laurel oaks but the applicant is willing to make considerations as necessary.

**Discussion:**

There was no public comment.

Mr. McLeod asked whether city staff recommends laurel oak or live oak trees. Mr. Daniels replied that during the hurricane events of 2004, laurel oak and water oak trees performed poorly and the live oak tree performed admirably. A 50 percent mix would be reasonable. Laurel oak trees are listed and approved as shade trees per city code. Mr. Adams asked if the mix of 6, 5 and 10 trees on the proposed plan was recommended by the city. Mr. Daniels replied that the

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applicant submitted the proposal to the city. Mr. Adams asked if the applicant had submitted a plan for 21 laurel oak trees would the city have approved the plan. Mr. Daniels responded that he probably would have requested that some of the trees be switched with either live oak trees or another variety because of the laurel oak tree's performance. This site is not heavily developed and there is not a lot of construction or vehicular traffic because it's a cemetery. Mr. Daniels stated that all the trees do not have to be live oak trees.

Commissioner Adams moved; Commissioner DeJohn seconded to approve PHR09-0004 with the condition that the applicant works with city staff to develop the proper mix of trees to be used within the applicant's budget and also meet city requirements. Without further discussion, the motion carried unanimously upon roll call vote.

**Approved/ COD09-0013**

Petitioner: City of Ocala

Project Planner: Patricia Hitchcock (Contact at 352-629-8529)

An ordinance of the City of Ocala, Florida, concerning zoning; amending section 122-921 providing for special promotions and outdoor events by permitting a limited number of outdoor special events to be held each year on property zoned SC (shopping center) and which meet other prescribed requirements; providing for severability, providing for repeal of conflicting ordinances, and providing for an effective date.

Patricia Hitchcock presented staff comments:

The City occasionally receives requests from shopping center owners and local groups seeking to hold special events on commercial properties. Many of the requested events may not be permitted as the events do not involve a carnival company or are not sponsored by a non-profit organization as outlined in Section 122-282(b)(1) of the City of Ocala Code of Ordinances. Carnivals, circuses, and other public exhibitions may be permitted by Special Exception in the A-1, GU, B-4, B-5 and INST zoning districts when a carnival company is providing rides. Non-profit organizations may sponsor carnivals, bazaars, cookouts and other fundraising events in the GU, B-2, B-2A, SC, B-4, B-5, M-1, and M-2 zoning districts, and on church or school grounds.

Outdoor special events can benefit the business and resident population of the community by providing entertainment, reasons to gather, and venues to share diverse interests. However, such activities should be properly located and regulated to avoid negatively impacting surrounding property owners and visitors to the specific area.

An amendment to the Shopping Center zoning district is proposed to permit outdoor special events, including antique or custom vehicle shows, arts and crafts shows, festivals, outdoor entertainment, concerts or recitals, and other similar events, on large commercial properties which meet prescribed requirements:

- Shopping center must have access to a minimum of one signalized intersection;

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- Shopping center must have a minimum of 2000 parking spaces;
- Special events are limited to no more than one each month unless the shopping center contains an amphitheater or commons area specifically designed and approved to accommodate outdoor events; and
- An application for a special event must be submitted and comply with all the conditions outlined in the proposed ordinance.

Carnivals, circuses, vehicle sales, boat sales, recreational vehicle sales, sidewalk sales and the outdoor display and sale of merchandise by vendors located inside the shopping center would not be permitted.

Staff recommended approval of COD09-0013 subject to prescribed requirements.

**Discussion:**

Ms. Valerie Beaubrun, 5101 SW 60<sup>th</sup> Street Road, Apt B206, addressed the board. Ms. Beaubrun stated that she is the manager for Paddock Mall. The mall underwent a major renovation to attract more businesses to the area right before the slump in the economy. She remarked that a lot of the local businesses are hurting. Several people have approached her to ask permission for a 2 or 3 day festival which could help draw people to the mall. Ms. Beaubrun said that as the mall manager she wants people to come inside and spend money because local retailers who have been at the mall since it opened are not doing well.

Commissioner DeJohn moved and Commissioner McLeod seconded to approve COD09-0013, subject to staff comments; without further discussion, the motion carried unanimously upon roll call vote.

**Approved/ COD09-0011**

Petitioner: City of Ocala

Project Planner: Patricia Hitchcock (Contact at 352-629-8529)

An ordinance of the City of Ocala, Florida, concerning zoning; amending Section 122-981 by increasing the boundaries of the parking exempt zone in the downtown area; providing for severability; providing for the repeal of conflicting ordinances; and providing an effective date.

Patricia Hitchcock presented staff comments:

The intent of Parking Exempt Zone I is to encourage denser infill development than what is typically found in a suburban area by removing the requirement to provide on-site parking for businesses. The City of Ocala Code of Ordinances has provided for a parking exempt area in the downtown for many years. No boundary changes are incorporated in the proposed ordinance.

A secondary exemption area is proposed and identified as Parking Exempt Zone II. Its boundaries are adjacent to the first zone. Businesses in the secondary zone would not be exempted from meeting the off-street parking and loading requirements but may provide a

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parking analysis to justify a reduction in the requirements. The parking analysis would allow the site plan review committee to determine if:

- multiple property owners can share parking resources, thereby reducing the number of parking spaces that each would otherwise be required to provide for their individual property;
- there exists a high density of multiple uses (offices, residential, lodging, retail shops and restaurants) where customers will typically park in one spot and then walk from one destination to another;
- there are adjacent but variable land uses that have differing hours of peak parking demand and therefore can share a certain amount of the same parking spaces without having any negative impact on one another's ability to conduct business; and
- the trend of parking and loading demands for the proposed use differ from the City code requirement.

Staff recommended approval of COD09-0011.

**Discussion:**

Mr. Chighizola noted that this ordinance was discussed at a previous P & Z Commission meeting. The city may decide to implement this ordinance in certain targeted areas throughout the city or possibly city-wide. Having a parking exempt zone ordinance in place would give certain uses such as industrial uses, which are becoming more automated, more flexibility with the parking requirements.

Mr. Greiner asked if parking problems are keeping businesses from developing downtown. Mr. Chighizola replied that the proposed ordinance will help new businesses coming into the downtown area, but the biggest issue downtown is not having enough public parking. This ordinance would give businesses more flexibility; businesses could share parking or off-site parking which is something that can be easily done in the downtown area. Mr. Chighizola stated that this ordinance would help city-wide because the city's code usually requires too much parking.

Ms. Yancey asked how the parking exempt zone affects existing businesses. Mr. Chighizola stated that if a business is in the parking exempt zone and the business needs to share spaces the city would allow it to go outside the parking exempt zone. Mr. Lee pointed out that if the city required businesses within 300 feet to share parking spaces even if the 300 feet was out of the parking exempt zone a business would still be able to share parking spaces.

There was no public comment.

Commissioner McLeod moved, and Commissioner Adams seconded to approve COD09-0011, subject to staff comments; without further discussion, the motion carried unanimously upon roll call vote.

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**Approved/ COD09-0012**

Petitioner: City of Ocala

Project Planner: Patricia Hitchcock (Contact at 352-629-8529)

An ordinance of the City of Ocala, Florida, concerning zoning; amending Section 122-1213 by revising the minimum lot size for a day care facility; amending Section 122-1314 by revising the play area size requirement for a day care facility; providing for severability; providing for the repeal of conflicting ordinances; and providing an effective date.

Patricia Hitchcock presented staff comments:

Day care facilities operated as businesses are required to obtain occupational licenses from the City of Ocala. Prior to issuance of an occupational license, the City confirms that the location is properly zoned and an on-site inspection confirms that all zoning, building and fire code requirements are satisfied. The applicant must also provide proof of licensure by the State of Florida Department of Children and Families (DCF). DCF has very detailed licensing requirements for the operation of day care facilities including, but not limited to, staffing levels and credentials, sanitation and safety, nutritional practices, recordkeeping, child discipline, activity plans, physical facilities and square footage per child. Section 122-1312 of the City of Ocala Code of Ordinances requires day care facilities to meet all applicable state and local health and safety regulations.

Section 122-1314. Fenced play area states that outdoor play areas must contain a minimum of 4000 square feet for the first 20 children with an additional 200 square feet for each additional child. Facilities with more than 20 children may provide the minimum play area as long as no more than 20 children occupy the play area at one time. The City's requirement for outdoor play area far exceeds DCF's requirement of 45 square feet per child with a minimum play area for 50 percent of the licensed capacity. The play area size requirement in the City of Ocala Code of Ordinances predates the creation of the Department of Children and Families in 1993. It is not known if the predecessor agency, Department of Health and Rehabilitative Services, had detailed requirements for day care facilities.

This conflict has caused difficulties for some day care operators who have obtained a DCF license only to be denied a City occupational license based on the play area requirements. It has also caused a problem in the instance of a day care facility operated by a state agency, which does not require a City license, being converted to a privately operated facility. Conflicting requirements between licensing agencies is a good reason to evaluate the validity of one requirement over another. Regulations from Alachua County, Marion County, and the cities of Daytona Beach, Tampa, Gainesville, Ormond Beach, Coral Springs, and Coconut Creek were reviewed. None contained play area size requirements, although a few referred to compliance with state requirements. The reviewed regulations address the location of play areas and fencing and buffering requirements, similar to the City of Ocala regulations.

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Staff recommended revising the outdoor play area size requirements to be consistent with state regulations. All other fencing, setback and buffer requirements remain in effect.

Section 122-1313 requires day care facilities to locate on a lot that is a minimum of 15,000 square feet with a minimum width of 100 feet. Lot area and width should be dictated by the zoning district requirements for the specific location and the ability of the proposed facility to satisfy play area and parking requirements.

Staff recommended deletion of the lot area and width requirement.

Staff recommended creation of Section 122-1313 to require minimum usable indoor floor space. State regulations require a minimum of 35 square feet of usable indoor floor space for each child. Usable indoor floor space is that space available for indoor play, classroom, work area, or nap space.

Staff recommended approval of COD09-0012.

**Discussion:**

There was no public comment.

Ms. Yancey stated that she agrees with amending the fenced play area and creating the usable indoor floor space but she does not agree with deleting the lot area and width requirement. There should never be a childcare facility jammed onto a small lot no matter what neighborhood it is in. Ms. Yancey remarked that she could not imagine putting a daycare in her neighborhood on a 100 foot lot. Mr. Greiner commented that the lot is approximately a third of an acre, which is not that small. Ms. Yancey replied that it is small for a big daycare facility if it has more than 20 kids.

Ms. Hitchcock pointed out that daycare facilities are permitted in commercial zoning districts and all the commercial zoning districts actually require a 100 foot lot width so that's why the city is going to let the zoning district size requirement dictate rather than the supplemental regulations for daycare facilities. Ms. Yancey asked if Ms. Hitchcock was sure about this because the P & Z Commission addressed this issue last year with the state requiring the city to allow daycare facilities in residential zoning districts. Mr. Chighizola responded that the city does allow a daycare facility as a special exception in R-2 and R-3 zoning districts, but what Ms. Yancey is referring to is a person having a home occupation license for a small day care with 4 or 5 children. There are two different types of daycares, small and large. The ordinance applies to large daycare facilities. The city cannot stop small daycare facilities in residential areas as long as they meet the requirements. Ms. Yancey reiterated that she still stands by her comment because she has two family members that own large daycare facilities in Tallahassee and she cannot imagine them being on a third of an acre lot. Mr. Chighizola said that his first instinct was to not include this amendment. Ms. Yancey stated that she could not vote in favor of this amendment. Mr. Chighizola pointed out that it is a safety issue and he thinks that most people won't have trouble meeting the requirement. Ms. Hitchcock agreed with Mr. Chighizola that most people won't have trouble because if they're wanting to open a daycare in a commercial district where it is a permitted use, they'll be required to have a 100-foot lot width to begin with.

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Mr. Lee asked if this requirement would be an issue with commercial lots of record. Ms. Hitchcock replied that she would have to research the issue. Mr. Chighizola stated that staff would delete number 2, deleting Section 122-1313, lot area and width requirement.

Commissioner Adams moved, and Commissioner DeJohn seconded to approve COD09-0012, with the deletion of number 2, deleting Section 122-1313; without further discussion, the motion carried unanimously upon roll call vote.

**Reports**

Ms. McKeever reminded the board members that financial disclosure forms are due to the Supervisor of Elections by July 1, 2009 and Ms. Hitchcock passed out the financial disclosure forms to the board members who did not get one from the Supervisor of Elections.

**Meeting Adjourned**

The meeting was adjourned at 7:51 pm.