



A G E N D A
ORMOND BEACH PLANNING BOARD
Regular Meeting

June 11, 2015

7:00 PM

City Commission Chambers

22 South Beach Street

Ormond Beach, FL

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**
- II. INVOCATION**
- III. PLEDGE OF ALLEGIANCE**
- IV. NOTICE REGARDING ADJOURNMENT**

THE PLANNING BOARD WILL NOT HEAR NEW ITEMS 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. APPROVAL OF THE MINUTES: May 14, 2015**
- VI. PLANNING DIRECTOR'S REPORT**
- VII. PUBLIC HEARINGS**

A. SE 2015-091: 869 South Atlantic Avenue, Riptides Raw Bar and Grill, Special Exception Amendment for Outdoor Activity.

This is a request submitted by Brad Hoffman, owner and Shawn Flaherty, General Manager of Riptides Raw Bar and Grill, for a Special Exception to amend Resolution 2014-65 which allowed outside live music (outdoor activity) under certain conditions at Riptides Raw Bar and Grill. The application seeks to amend the hours of the outside live music on Sunday through Thursday from 4:00 – 8:00 PM to 4:00 – 10:00 PM. The hours of outdoor live music on Friday and Saturday (11:00 AM – 11:00 PM), and all other conditions of the previous approval are not proposed to be amended. Riptides Raw Bar and Grill is located at 869 South Atlantic Avenue. The Riptides Raw Bar and Grill

is part of the Ocean East Resort Club property at 867 South Atlantic Avenue. The subject property is zoned B-6 (Oceanfront Tourist Commercial).

B. LDC Amendment: 15-98: Land Development Code Amendments: Adding and amending definitions to Section 1-22 and amending Section 2-05 entitled, "Compliance with district regulations."

This is a city initiated amendment to amend Section 1-22 and Section 2-05 of the Land Development Code by adding a new definition of Organized or criminal gang, organized or criminal gang members , and organized or criminal gang associate; amend the existing definition of Clubs and fraternal organizations; and establish a process by which the City may ensure no land, property, building, structure or business is not being used by an organized or criminal gang, or organized or criminal gang member or gang associate.

VIII. OTHER BUSINESS

IX. MEMBER COMMENTS

X. ADJOURNMENT

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

May 14, 2015

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

Pat Behnke
Harold Briley, Vice Chair
Lewis Heaster
Al Jorczak
Rita Press
Lori Tolland
Doug Thomas, Chair

Staff Present

Ric Goss, Planning Director
Lauren Kornel, AICP, Senior Planner
Becky Weedo, AICP, Senior Planner
Randy Hayes, City Attorney
Melanie Nagel, 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. MINUTES

April 9, 2015

Mr. Jorczak moved to approve the April 9, 2015 Minutes. Mr. Heaster seconded the motion. Vote was called, and the motion unanimously approved.

VI. PLANNING DIRECTOR'S REPORT

None.

VII. PUBLIC HEARINGS

A. PBD 15-088: 1185 W. Granada Boulevard, Tuscany Shoppes PBD Amendment

Ms. Becky Weedo, Senior Planner, City of Ormond Beach, stated this is a request to amend the Tuscany Shoppes Planned Business Development. Ms. Weedo explained the location, characteristics of the property, gave some history of the zoning and PBD, and presented the staff report. The applicant is requesting several changes including adding a funeral home use, and to modify or eliminate various restrictions previously approved. Ms. Weedo entered into the record, an email from Paula Szabo, opposing the funeral home use and increased monument signage. Ms. Weedo stated staff is recommending approval of the amendment.

Ms. Press asked if the items could be discussed separately, addressing first the funeral home use, and then the signage. Chairman Thomas asked if anyone on the board had an objection to handling the items separately. Hearing none, they will be discussed as separate issues.

Mr. Briley asked Ms. Weedo if the City or the applicant see any impact as far as parking constraints for the funeral home use. Ms. Weedo stated the funeral home use will primarily be used like office retail, with customers coming in to work out arrangements and plans.

Ms. Behnke questioned if there will be funeral services held at this location. Mr. Paul Holub, 675 N. Beach St., owner of Tuscany Shoppes, stated that this particular space has never been leased in 10 years, but this particular use is a good match for this property. A medical office would have generated 10-15 employees plus customers, a restaurant would have had many more customers. The funeral home will only employ 2-3 full time employees. The funeral home does hold services for about 10% of its clients, and they would utilize the east end of the parking lot, which is never full.

Ms. Behnke asked about getting a funeral procession out into Granada traffic. Mr. Holub stated that it would be no different than a procession coming out of Lohman Funeral Home onto Granada, but there would also be access to the back entrance of the shops, to get out onto Granada.

Mr. Jorczak asked approximately how many parking spaces were available. Mr. Holub stated that there are always a minimum of 25-30 spaces in the east end of the parking lot. Mr. Heaster mentioned that since he received his board packet, he has stopped by the Tuscany Shoppes a few times, at different times of the day, and the area at the east end of the parking lot has always been open.

Mr. Heaster stated to Ms. Weedo that she referred several times to the new ROR zoning, and if this is not a PBD but is ROR, does that also apply to the monument signage. Ms. Weedo stated that the Land Use prevails over the zoning, and sets what the FAR is, and when it was Office Professional, Retail could only be in there as an auxiliary exception to the office. Mr. Heaster stated that the funeral home use is not listed in the new ROR. Ms. Weedo stated that specific uses are not typically listed in the Land Use, but are listed in the zoning and the funeral home use was not included in the PBD, but is consistent with the ROR land use.

Ms. Tolland asked about the floor plan for the funeral home, and wanted to make sure that the entrance is to the east side of the building. Ms. Weedo stated that the entrance is in the northeast side of the building.

Ms. Press asked what entrance a deceased body would be delivered to at the funeral home. Mr. Skip Knopke, president of Baldwin Brothers Funeral Homes, 35520 Cedar Lane, Leesburg, FL, stated that 9 out of 10 families don't have any service at all, they choose cremation, and a body will never be there. Of the remaining 10%, half of those have the body cremated. The remaining 5% who choose burial, those caskets would be brought in at the back of the building. Mr. Knopke further explained that customers today, especially in coastal Florida, are choosing cremation over burial in dramatic numbers. Once cremation is the choice, the impact on the type of service that occurs is dramatic, because there is no longer an urgency to attend to a burial. 9 out of 10 families who choose cremation do not have a service at all. The cremations are done at a crematory in Daytona Beach.

Mr. Knopke further explained that from time to time there will be a hearse at this location, but it will drive up, attend the funeral, and drive away. There will never be a hearse parked there on a permanent basis. Occasionally there will be a funeral procession, which will use the back entrance, and enter onto Granada using a stop street. Chairman Thomas asked if Mr. Knopke would be opposed to agreeing that a procession would go out the back entrance to the stop signs. Mr. Knopke stated that he would have no objections to that.

Ms. Press stated that the Board needs to set certain parameters when they vote on this part of the amendment. She would like it to state that a hearse and processional cannot go out the main front entrance of the shops.

Chairman Thomas questioned City Attorney Hayes, if the Board can vote separately on the different parts of the amendment. Atty. Hayes suggested that a motion be put on the floor, to approve the project as presented by Staff, and then each element can be treated as a separate amendment. Conditions can be approved for each element, and then the Board can come back and approve the underlying motion with the amendments.

Mr. Holub stated that when the funeral home use for the facility was brought to him by the real estate broker, his first response was not to even consider it. As it was investigated more, it was believed to be a good fit, and there were conditions put into the lease that will be enforced. The core of the lease states that there will be no on site cremations, or any preparation of the human body, with some of the language coming from the city's codes.

Mr. Briley moved to approve PBD 15-088: 1185 W. Granada Blvd, Tuscany Shoppes PBD Amendment. Mr. Jorczak seconded the motion. Atty. Hayes stated that the separate elements can now be discussed and treated as separate amendments.

Ms. Press asked how many funerals could be held in a day, and wondered if the Board should limit how many funerals they have a day. Mr. Heaster does not agree that the Board should regulate the business that much, since an event could come up, such as a hurricane, which could affect the number of funerals per day.

Ms. Press questioned the type of sales that are done at the funeral home. Mr. Knopke explained that they would sell urns, talk to people about the type of cremation they would like to have, and sell their services.

Mr. Heaster asked if the zoning for this area allows cremation? Ms. Weedo stated that crematories are state regulated, and the funeral home use does not allow cremations.

Ms. Behnke stated that she does not like the idea of a funeral home being in the back of a shopping center, and then taking the procession out the back entrance, so no one else is offended by it. Chairman Thomas stated that he understands how she feels, and that if people have a problem with it, they will go elsewhere for funeral home services.

Ms. Press made a motion to amend the funeral home use with the conditions that all funeral processions enter and exit the parking lot off of Old Tomoka Road, and no preparation or embalming of human remains be allowed on the premises. Mr. Briley seconded the motion. Vote was called. Mr. Briley for; Mr. Heaster for; Mr. Jorczak for; Ms. Press for; Ms. Tolland for; Ms. Behnke against; Chairman Thomas for. The motion carried (6-1).

Ms. Weedo stated that elements 2 and 3 will be consistent with the Land Use ROR designation. Ms. Weedo also stated that elements 4-6 are all wall sign issues, and are part of the updated Land Development Code. The only element left for discussion is element 7.

Ms. Press asked about the wall sign on Pet Supermarket, wondering if it was a new sign. Mr. Holub stated that the Pet Supermarket sign is based on the old code and has been there since 2005.

Mr. Briley requested that the address be put on the monument signs. Mr. Holub stated that presently the address is on the signs; it was just left off of the renderings.

Ms. Press was wondering if the monument sign could just say Tuscany Shoppes with the address, as opposed to each business having their own part of the sign. Mr. Holub stated that when he is working with a tenant on a lease, the most important thing to the tenant is their monument sign panel, where it will be located and how big it is going to be. That can usually make or break a tenant coming to a shopping center. Ms. Press stated that she doesn't feel the sign size should be increased, but the sign needs to be managed to fit the tenants names.

Chairman Thomas stated that in this day and time, a lot of people are using GPS systems, and they put the address in, to get directions to a particular location. So, it is important that the monument sign have the address predominantly displayed.

Ms. Behnke asked if Mr. Holub was adding just one more line to the monument sign. Mr. Holub explained that the sign may not be configured exactly like the rendering, but they were trying to show the difference between the 80 and 64 sq ft. and the 8' and 6' height.

Mr. Jorczak made a motion to adopt the signage as proposed in element 7. Ms. Tolland seconded the motion. Vote was called. Mr. Heaster for; Mr. Jorczak for; Ms. Press against; Ms. Tolland for; Ms. Behnke against; Mr. Briley for; Chairman Thomas for. The motion carried (5-2).

Vote was called for the underlying motion to approve PBD 15-088 as amended: 1185 W. Granada Blvd, Tuscany Shoppes PBD Amendment. Mr. Jorczak for; Ms. Press for; Ms. Tolland for; Ms. Behnke against; Mr. Briley for; Mr. Heaster for; Chairman Thomas for. The motion carried (6-1).

B. LUPA 15-046: 500 S. Nova Road (Life Mobile Home Park) – State Expedited Land Use Map Amendment

Ms. Laureen Kornel, Senior Planner, City of Ormond Beach stated that this is an amendment to the land use from County Urban Medium Density to City Medium Density Residential as the

result of annexation. This is a developed site, with a mobile home community, which is roughly 23 acres in size. Ms. Kornel explained the location, characteristics of the property, and presented the staff report.

Ms. Press wanted to know if the City has ever annexed in a property, and then that property has problems and it now becomes the liability of the City to fix those problems. Mr. Ric Goss, Planning Director, stated that the City does not annex in sub-standard residential developments, because once we annex them in, they want the City to fix everything.

Mr. Briley stated that he thought this particular area was hooked into the City of Daytona water system. Ms. Kornel explained that this area has Ormond Beach water, but Daytona Beach sewer.

Mr. Briley moved to approve LUPA 15-046: 500 S. Nova Road (Life Mobile Home Park) – State Expedited Land Use Map Amendment. Mr. Heaster seconded the motion. Vote was taken and the motion carried unanimously (6-0).

C. RZ 15-047: 500 S. Nova Road (Life Mobile Home Park) – Zoning Map Amendment

Ms. Laureen Kornel, Senior Planner, City of Ormond Beach stated that this is a rezoning of 500 S. Nova Road, as the result of annexation, from County MH-1 zoning to the City T-1 zoning. There will be no additional impact to the City because of the zoning. Ms. Kornel explained the location, characteristics of the property, and presented the staff report.

Mr. Briley moved to approve RZ 15-047: 500 S. Nova Road (Life Mobile Home Park) – Zoning Map Amendment. Mr. Heaster seconded the motion. Vote was taken and the motion carried unanimously (6-0).

D. LDC Amendment 15-76: Land Development Code Amendments: Adding definitions to Section 1-22 and establishing Section 2-74 entitled, “Municipal Service Area/Joint Planning Overlay District.”

Mr. Ric Goss, Planning Director, stated that this is the last step to implementing the Interlocal Service Boundary Agreement that the City has entered into with Volusia County. This is an administrative amendment to add 17 definitions to Section 1-22 of the Land Development Code, and create a new section under the Overlay Districts, titled “Municipal Service Area/Joint Planning Area for the US 1 N. Corridor.” Mr. Goss showed the location of the district from the south at the Tomoka River bridge, to the north at U.S. Foods.

Mr. Goss reviewed the 17 definitions and how they affect this area. There was a neighborhood meeting in March at Destination Daytona with all of the master vendors, and everything was explained to the vendors at that time. Mr. Goss explained that the amendment further provides the intent of the regulations, and establishes the area to which the regulations apply. The amendment also provides rationale for the amortization of Host Vendor Licensing on vacant or unimproved lands. It identifies 14 improved properties for which Host Vending will be permitted, and is based on the 2014-2015 Volusia County Host License list. Three properties are subject to a 5-year amortization, and Wild Bill’s is not eligible for amortization, since it was not on the 2014-2015 Host License List.

City Attorney Randy Hayes stated that Wild Bill’s and the Hog Pen will be on the grand-fathered list and added to the 14 identified properties. Mr. Goss stated that at the end of five years these vendors could lose their host license and outdoor activity permits. Mr. Briley asked what could change the vendors from losing their license and permits. Mr. Goss stated there is a provision in

the ordinance, that if they improve the land, they can come back to the City Commission and request a host license.

Ms. Press commented that this would be an incentive for these businesses to make improvements. Mr. Heaster stated that the others on the list, if there are no improvements made, then they will not be granted a license in five years.

Mr. Goss reviewed the Master Vendor and Outdoor Entertainment Activity Requirements for the business. An application will be required along with a scaled site plan. Information must be provided concerning security, lighting, set up and break down times, etc. This past bike week, it was found that 93 vendors were working without permits, and they were forced to come in and apply for a permit.

Ms. Press asked who in the city went out and checked on all of this. Mr. Goss replied that the City Building Inspectors went to the properties, looking for fire extinguishers, health certificates and permits.

Mr. Jorczak asked how the city handled the inspection of the food. Mr. Goss explained that the Health Department takes care of the food vendors.

Chairman Thomas asked about the bike washes, and wanted clarification that they are not going to be seen from the highway. City Attorney Hayes stated that poles are prohibited, dance platforms cannot be more than 18" in height, bike washes will have distance restrictions and screening requirements that need to be approved by Site Plan Review members, only one sandwich-type sign will be allowed, no humans carrying signs, and these will be conditions of the permits. If activities are in violation of the permits, the vendor will be subject to fines, and subject to revocation of the licenses. Should violations continue, the City could modify further and deny certain activities outright.

Mr. Heaster stated that he doesn't think the City should allow these types of activities at all. The whole reason behind this agreement is to regulate this area more, and enhance one of our main entrances into the city. What goes on during these events is not necessarily what we want to show off for our city. Attorney Hayes stated that Mr. Heaster could make a motion to amend and prohibit bike wash activities. Mr. Heaster stated that he can wait and see how everything goes with the new regulations.

Mr. Briley asked if the Board approves this, and then a Board member were to witness bike wash activities that are supposed to be restricted, can the Board come back at a later date and prohibit this altogether. Attorney Hayes stated that it would have to be looked at very carefully, since you can get into constitutional issues on expressive conduct.

Ms. Behnke asked what steps would be taken against someone who goes against the regulations. Attorney Hayes stated the permits are subject to relegation, and a chronic violator would not be issued a permit. At times, chronic violators need to be dealt with in other ways, but there is still a process that has to be followed.

Ms. Tolland wanted to know if this Board approved the signage for the Beaver Bar. Mr. Goss explained that when we took control of this area, everything is grandfathered in at this point. If they redevelop, or the sign needs to be changed, then the City can regulate it. Attorney Hayes stated that we can only regulate what we can control. What the county has already approved, we

can't change. What we can't fix today, over time the market and the economy will usually take care of these types of things.

Mr. Jorczak moved to approve LDC Amendment 15-76: Land Development Code Amendments: Adding definitions to Section 1-22 and establishing Section 2-74 entitled, "Municipal Service Area/Joint Planning Overlay District." Mr. Briley seconded the motion. Vote was taken and the motion carried unanimously (7-0).

OTHER BUSINESS

None.

VIII. MEMBER COMMENTS

Ms. Press wanted to acknowledge the legal department and the planning staff, who have worked with the county to come up with something that is a good basis for moving the US Hwy. 1 corridor forward. Ms. Press has been on this board for many, many years, and she believes this is one of the most important things they have done.

Mr. Jorczak wanted to comment that now that the city staff has had their strategic planning session, has presented it to the City Commission, and there has been a workshop session, as the information becomes public, Mr. Jorczak would like the Board to have some additional discussion concerning some of the items that are important to the Board members.

Chairman Thomas was quite impressed with the way the sessions were run, and there were many positives and a few negatives that came out of the meeting. One of the items that came up was source of revenue for the city, and Chairman Thomas thought this might be an item that board members could discuss and come up with some ideas.

Mr. Briley commented on the workshop sessions and how our recreational facilities, historical and cultural facilities, quality of life, and city government received very high marks.

Chairman Thomas stated that he has been on various committees in the city, and feels that the current City Manager is a very sharp lady, and what she has brought to this city is very impressive.

IX. ADJOURNMENT

The meeting was adjourned at 8:49 p.m.

Respectfully submitted,

Ric Goss, AICP, Planning Director

ATTEST:

Doug Thomas, Chairman

Minutes transcribed by Melanie Nagel.

STAFF REPORT

City of Ormond Beach Department of Planning

DATE: June 3, 2015

SUBJECT: 869 South Atlantic Avenue, Special Exception Amendment for Outdoor Activity

APPLICANT: Brad Hoffman, owner and Shawn Flaherty, General Manager of Riptides Raw Bar and Grill

NUMBER: SE 2015-091

PROJECT PLANNER: Steven Spraker, AICP, Senior Planner

INTRODUCTION: This is a request submitted by Brad Hoffman, owner and Shawn Flaherty, General Manager of Riptides Raw Bar and Grill, for a Special Exception to amend Resolution 2014-65 which allowed outside live music (outdoor activity) under certain conditions at Riptides Raw Bar and Grill. The application seeks to amend the hours of the outside live music on Sunday through Thursday from 4:00 – 8:00 PM to 4:00 – 10:00 PM. The hours of outdoor live music on Friday and Saturday (11:00 AM – 11:00 PM), and all other conditions of the previous approval are not proposed to be amended. Riptides Raw Bar and Grill is located at 869 South Atlantic Avenue. The Riptides Raw Bar and Grill is part of the Ocean East Resort Club property at 867 South Atlantic Avenue. The subject property is zoned B-6 (Oceanfront Tourist Commercial).

BACKGROUND: On May 6, 2014 the City Commission approved Resolution 2014-65 which authorized Riptides Raw Bar and Grill to perform outside live music, defined as outdoor activity, under the following conditions:

- Karaoke is not allowed outside the building; karaoke shall only be allowed inside the building;
- No more than two live outdoor performers shall be allowed at any one time;
- Live outdoor music is allowed only between the following hours: Sunday through Thursday, 4:00 – 8:00 PM, and Friday and Saturday, 11:00 AM – 11:00 PM; and
- In the event a Special Magistrate determines through the city's code enforcement program that two violations have occurred, within any continuous twelve month period, of the conditions in this development order allowing live outdoor music, which shall include but shall not be limited to the time limitation or maximum decibel level allowed by the Land Development Code and/or the Code of Ordinances, then in such event the right to play outside music as authorized by the Special Exception Development Order shall be automatically revoked without further action by the City Commission. Upon the issuance of a second notice of

code enforcement violation, the authority provided by this Special Exception Development Order shall be deemed to automatically suspended pending a final outcome of the Special Magistrate code enforcement hearings. If the Special Magistrate determines that a violation did not occur, the Applicant shall be permitted to resume live outdoor music in accordance with this Special Exception Development Order;

- The speakers for the outdoor music shall be directed towards the building at 869 South Atlantic Avenue. Exhibit B of the Development Order approved a specific location for the speakers.

The restaurant at 869 South Atlantic Avenue is a part of the Ocean East Resort Club transient lodging facility located at 867 South Atlantic Avenue. Below is a site aerial illustrating the surrounding area and a table summarizing the surrounding land uses.

Site Aerial: Surrounding Uses



Surrounding Uses with Land Use and Zoning Designations:

		Use	Future Land Use Designation	Zoning
East	1	Beach/Ocean	NA	NA
South	2	Multi-family	“Tourist Commercial”	B-6 (Oceanfront Tourist Commercial)
West	3	Restaurant(s)	“Tourist Commercial”	B-7 (Highway Tourist Commercial)
North	4	Andy Romano Beachfront Park	“Tourist Commercial”	B-6 (Oceanfront Tourist Commercial)

After the outdoor music approval, the applicant has updated the front façade of the building. On October 1, 2014, the property was granted a front yard variance to construct a hard roof structure over the existing deck. The applicant has made significant changes to the building as shown below:

869 South Atlantic Avenue building on September 12, 2014



869 South Atlantic Avenue building on May 27, 2015



PROJECT DESCRIPTION: The owner and general manager of Riptides Raw Bar and Grill began discussions with City staff on May 15, 2015 regarding the operation of the outdoor live music on Sunday through Thursday. The approving document, Resolution 2014-65, states that the allowed hours for outdoor live music are 4:00 – 8:00PM for Sunday through Thursday. The applicants have a desire to operate the outdoor live music from 4:00 – 10:00 PM and have applied to amend the original Special Exception.

The only issue sought for amendment is the hours of operation of the outdoor live music Sunday through Thursday and no other parts of the original Special Exception are sought for amendment or analyzed in this staff report.

During the public notice of the Special Exception application, City staff received correspondence from a condominium owner to the south of the subject property. The correspondence is provided in ATTACHMENT 4. The correspondence states:

1. Riptides is currently violating the Special Exception hours of operation from Sunday to Thursday.
2. The condominium owner is concerned that the application would create a new precedent that would allow other restaurants with outdoor live music to have longer hours of operation for outdoor music.
3. Requested that the current Special Exception be revised to revoke the allowance of Sunday to Thursday outdoor live music.

Below are charts that summarize each applicant's request along South Atlantic Avenue, the Planning Board recommendation, and the City Commission's final determination of allowable hours for outdoor live music. The Planning Board and City Commission minutes for each application are included in ATTACHMENT 3. The minutes of the meeting are important because the City Commission and Planning Board meetings have established a policy directive regarding the hours of outside live music. The hours of operation standard was established with the Dimitri's Bar Deck and Grill application (October 15, 2013) and has been consistently been approved with the Riptides Raw Bar and Grill and Beach Bucket applications, even though each application has requested alternative hours for outside live music.

790 South Atlantic Avenue, Dimitri's Bar Deck and Grill

Applicant's request	Planning Board recommendation September 12, 2013	City Commission Development Order October 15, 2013
Monday through Sunday, 11:00 AM -10:00 PM	Sunday through Thursday from 4:00 -10:00 PM and Friday and Saturday from 4:00 – 11:00 PM Three individuals objected to application	Sunday through Thursday from 4:00 -8:00 PM and Friday and Saturday from 11:00 AM – 11:00 PM Three individuals objected to application

869 South Atlantic Avenue, Riptides Bar and Grill

Applicant's request	Planning Board recommendation April 10, 2014	City Commission Development Order May 6, 2014
Monday through Sunday, 1:00 - 10:00 PM	Sunday through Thursday from 4:00 - 8:00 PM and Friday and Saturday from 11:00 AM – 10:00 PM One individual objected to application	Sunday through Thursday from 4:00 - 8:00 PM and Friday and Saturday from 11:00 AM – 11:00 PM One individual objected to application

867 South Atlantic Avenue, Beach Bucket

Applicant's request	Planning Board recommendation July 10, 2014	City Commission Development Order August 6, 2014
Monday through Sunday, 10:00AM – 9:00PM	Sunday through Thursday from 4:00 - 8:00 PM and Friday and Saturday from 11:00 AM – 10:00 PM One individual objected to application	Sunday through Thursday from 4:00 - 8:00 PM and Friday and Saturday from 11:00 AM – 11:00 PM One individual objected to application

ANALYSIS: There are multiple Land Development Code sections related to the outdoor music under the outdoor activity zoning category. Section 1-22 of the Land Development Code defines outdoor activity as “the display of merchandise offered for sale or any activity, such as live entertainment, outside the building walls of a completely enclosed building.” Within the B-6 zoning district outside live music is defined as an outdoor activity and is regulated as a Special Exception with review/recommendation by the Planning Board and a final decision by the City Commission. The Special Exception requires review of the criteria of the following Land Development Code Sections:

1. Section 2-57.O.1, Outdoor Activity (applies to specific use);
2. Section 2-56: General criteria and Special Exception review criteria (applies to all Special Exception requests);
3. Section 1-15.E: Planned Developments and Special Exceptions (Planning Board criteria for all Special Exceptions); and
4. Section 1-18.E: Criteria for Issuance of Development Order (City Commission criteria for all Special Exceptions).

Below is a chart of the other applications for outdoor music that have been approved and the conditions included in the approval:

Project	No more than two live performers	Code enforcement provision	Location of music	Hours	Other
River Grille	X	X	X	10:00 p.m., Monday through Thursday, and until 11:00 p.m., Friday through Sunday	
Caffeine's (now the Grind Gastropub & Kona Tiki Bar)	X	X	X	4:00 p.m. to 10 p.m. Monday through Thursday, and 4:00 p.m. to 11 p.m. Friday and Saturday	
Dimitri's Bar Deck and Grill	X	X	X	4:00 p.m. to 8:00 p.m., Sunday through Thursday and 11:00 a.m. to 11:00 p.m. Friday and Saturday	No karaoke allowed outside
Riptides	X	X	X	Sunday through Thursday from 4:00 - 8:00 PM and Friday and Saturday from 11:00 AM – 11:00 PM	No karaoke allowed outside
Beach Bucket	X	X	X	Sunday through Thursday from 4:00 - 8:00 PM and Friday and Saturday from 11:00 AM – 11:00 PM	No karaoke allowed outside

The application is required to be reviewed based on the criteria listed below:

Section 2-57.O.1, Outdoor Activity Criteria:

Section 2-57.O.1 of the Land Development Code outlines the criteria for outdoor activity:

O-

1. OUTDOOR ACTIVITY

- 1. If located adjacent to a residential use, appropriate screening and buffering shall be provided to minimize noise and glare impact to the maximum extent feasible.**

The subject property is zoned B-6 (Oceanfront Tourist Commercial) and abuts South Atlantic Avenue. There are no single-family residential uses abutting the subject property. The application seeks to expand the hours of operation for outdoor music within the decibel limits established by the Land Development Code.

In previous applications, staff has stated that outdoor music could be operated in a manner not to exceed the decibels as measured at the property line with management of the music. Also, as stated in previous applications, there also exists the potential that mis-management of the music can have a potential negative impact on the surrounding uses and additional code or police enforcement of the Development Order if approved.

In reviewing the past minutes related to outdoor live music, the 8:00pm standard to stop the music from Sunday to Thursday was established with the Dimitri's Bar Deck and Grill application that abuts single-family lots. The building configuration and direction of the outdoor live music at Riptides is different because there are no single-family lots in close proximity and the location abuts South Atlantic Avenue.

- 2. A site plan displaying the area for activity and pedestrian movement shall be required.**

The location of the music has been previously approved with Resolution 2014-65 and no amendments are proposed. The application is solely to expand the hours of live music Sunday through Thursday from 4:00 to 8:00 PM to 4:00 to 10:00 PM.

- 3. Outdoor music shall provide a sound study demonstrating compliance with the adopted maximum decibel levels.**

A sound test was conducted on March 25, 2014 in association with the original application. The music at the time of the sound test was in compliance with the adopted maximum decibel limits allowed by the Code of Ordinance. The application is solely to expand the hours of live music Sunday through Thursday

from 4:00 to 8:00 PM to 4:00 to 10:00 PM and no additional sound tests were required.

Section 2-56: Special Exception Criteria

Section 2-56 of the Land Development Code outlines the general criteria for all Special Exception approvals:

- A. *Off-street parking loading and service areas shall be provided and located such that there is no adverse impact on adjoining properties, beyond that generally experienced in the district.***

The proposed amendment of the hours of outdoor live music does not propose to impact the parking or service areas and no adverse impacts are expected based on parking.

- B. *Required yards, screening or buffering, and landscaping shall be consistent with the district in general, the specific needs of the abutting land uses, Chapter 3, Article 1, and other applicable provisions of this Code.***

The proposed amendment of the hours of outdoor live music is not impacting any landscaping or modifying the existing buffers along property boundaries.

- C. *Size, location, or number of conditional or Special Exceptions in an area shall be limited so as to maintain the overall character of the district in which said conditional or Special Exceptions are located.***

As stated earlier in the report, there are two other areas of South Atlantic Avenue that have been granted the outdoor activity of live music. The other applications are at 790 South Atlantic Avenue, Dimitri's Bar Deck and Grill and 867 South Atlantic Avenue, the Beach Bucket.

- D. *Hours of operation may be limited and the City may require additional information on structural design and site arrangement, to assure the compatibility of the development with existing and proposed uses in the surrounding area.***

The application is solely to expand the hours of live music Sunday through Thursday from 4:00 to 8:00 PM to 4:00 to 10:00 PM. The City Commission established parameters for outdoor live music with the Dimitri's Bar Deck and Grill application with a time limit of 8:00 PM from Sunday through Thursday. Each application's request for hours of operation can be reviewed independently based upon the property's location. The hours for outdoor live music has been defined through the three public hearings.

- E. *The Special Exception shall not generate hazardous waste or require use of hazardous materials in its operation without use of City-approved mitigative techniques.***

This Special Exception amendment related to the expansion of hours for outdoor live music will not generate hazardous waste.

- F. All development proposed as a Special Exception within or adjacent to a historic district shall be reviewed based on applicable criteria stated herein for residential, commercial or mixed use development and shall also comply with appearance and design guidelines for historic structures.**

The proposed amendment of the hours of outdoor live music does not propose any new construction and will not impact the appearance or design of buildings as it relates to historic structures.

- G. Outdoor lighting shall have no spillover onto adjacent property or rights-of-way beyond the building site property line and the lumens shall not exceed two (2) foot-candles at the property line.**

The site lighting plan is not proposed for amendment and the application is solely for extension of the hours of outdoor live music.

Section 1-15.E: Planning Board Criteria and Section 1-18.E: City Commission Criteria

Sections 1-15.E. and 1-18.E of the Land Development Code establish the Planning Board and City Commission Development Order criteria. The Land Development Code states that the following criteria shall be considered:

- 1. The proposed development conforms to the standards and requirements of this Code and will not create undue crowding beyond the conditions normally permitted in the zoning district, or adversely affect the public health, safety, welfare or quality of life.**

The Land Development Code does not prohibit outdoor activity. Within the B-6 zoning district, the outdoor activity use is allowed through a Special Exception with the criteria focusing on impacts to residential uses and the provision of an exhibit demonstrating the limits of the activity as previously approved. The ability to limit hours of operation of outdoor live music is expressly allowed by the Land Development Code. There has been no evidence of why the hours of operation limitations established with the Dimitri's application and applied to both the Riptides and Beach Bucket outdoor live music applications should be modified.

- 2. The proposed development is consistent with the Comprehensive Plan.**

The site has a Future Land Use designation of "Tourist Commercial", which is consistent with the proposed use. The Future Land Use Element states that the "Tourist Commercial" land use category is designed, "A multi-use land use category to provide uses along the Atlantic Ocean, SR A1A and highway interchanges, that include transit availability, retail services, tourist attractions, restaurants, multi-family and lodging to visitors to the City. The amendment request is consistent with the adopted Comprehensive Plan.

- 3. The proposed development will not adversely impact environmentally sensitive lands or natural resources, including but not limited to waterbodies, wetlands, xeric communities, wildlife habitats, endangered or threatened plants and animal species or species of special concern, wellfields, and individual wells.**

The proposed amendment of the hours of outdoor live music will not adversely impact environmentally sensitive lands or natural resources and is an existing developed site.

- 4. The proposed use will not substantially or permanently depreciate the value of surrounding property; create a nuisance; or deprive adjoining properties of adequate light and air; create excessive noise, odor, glare, or visual impacts on the neighborhood and adjoining properties.**

As stated previously in each case for outdoor music, staff can envision two scenarios with outdoor live music. The first scenario is that the outdoor live music is properly managed by a business owner that has significantly invested into their property and there are no impacts to surrounding uses. The second scenario is that the outdoor live music is not managed and music is either too loud or played too late in the night. **If properly managed** by the person in charge on site, the proposed application for outdoor activity of music should not substantially or permanently depreciate the value of surrounding property if the standards for acceptable sound decibel limits in the Code of Ordinances are not exceeded.

The City Commission, in approving previous applications for outdoor live music, has considered the potential impacts to abutting properties and established a time limit of 8:00 PM on Sunday through Thursday. Staff does understand that the project faces South Atlantic Avenue and has different characteristics than Dimitri's Bar Deck and Grill which abuts single-family lots. To date, there has been no evidence or testimony of why Riptides Raw Bar and Grill should have the time limits modified.

- 5. There are adequate public facilities to serve the development, including but not limited to roads, sidewalks, bike paths, potable water, wastewater treatment, drainage, fire and police safety, parks and recreation facilities, schools, and playgrounds.**

Public facilities currently serve the site and there would be no impact to the existing infrastructure as the result of this amendment application.

- 6. Ingress and egress to the property and traffic patterns are designed to protect and promote motorized vehicle and pedestrian/bicycle safety and convenience, allow for desirable traffic flow and control, and provide adequate access in case of fire or catastrophe. This finding shall be based on a traffic report where available, prepared by a qualified traffic consultant, engineer or planner which details the anticipated or projected effect of the project on adjacent roads and the impact on public safety.**

The proposed amendment of the hours of outdoor live music will not impact ingress or egress or any aspect of site access.

7. The proposed development is functional in the use of space and aesthetically acceptable.

There is no development proposed with the outdoor activity of music amendment.

8. The proposed development provides for the safety of occupants and visitors.

The proposed amendment of the hours of outdoor live music will not impact the safety of occupants and visitors.

9. The proposed use of materials and architectural features will not adversely impact the neighborhood and aesthetics of the area.

There is no new building development for the outdoor activity and this criterion is not applicable.

10. The testimony provided at public hearings.

This application has not been reviewed in a public forum and no testimony has been provided.

RECOMMENDATION: It is expected that the application will be reviewed by the City Commission on June 23, 2015. In reviewing the three applications for outdoor live music, the City Commission established hours of operation parameters which have been applied equally to all three applicants along South Atlantic Avenue. There is not any evidence or testimony from the applicant of why the parameters established by the City Commission should be revised. It is recommended that the Planning Board **DENY** the application to amend the hours of outdoor live music for Sunday through Thursday from 4:00 to 8:00 PM to 4:00 to 10:00 PM at Riptides Raw Bar & Grill located at 869 South Atlantic Avenue.

If there is a desire to amend that hours of operation Sunday through Thursday from 4:00 to 8:00 PM to 4:00 to 10:00 PM at Riptides Raw Bar & Grill, Section A, Item 5 of the Development Order (ATTACHMENT 3) would need to be amended as follows:

Live outdoor music is allowed only between the following hours: Sunday through Thursday, 4:00 – 8:10:00 PM, and Friday and Saturday, 11:00 AM – 11:00 PM.

Attachments:

1. Maps/Pictures.
2. Planning Board and City Commission meeting minutes for South Atlantic Avenue outdoor live music.
3. Resolution 2014-65, Riptides outdoor activity Special Exception.
4. Objection e-mail received regarding application

ATTACHMENT 1

Map and Pictures

869 South Atlantic Avenue Location Map



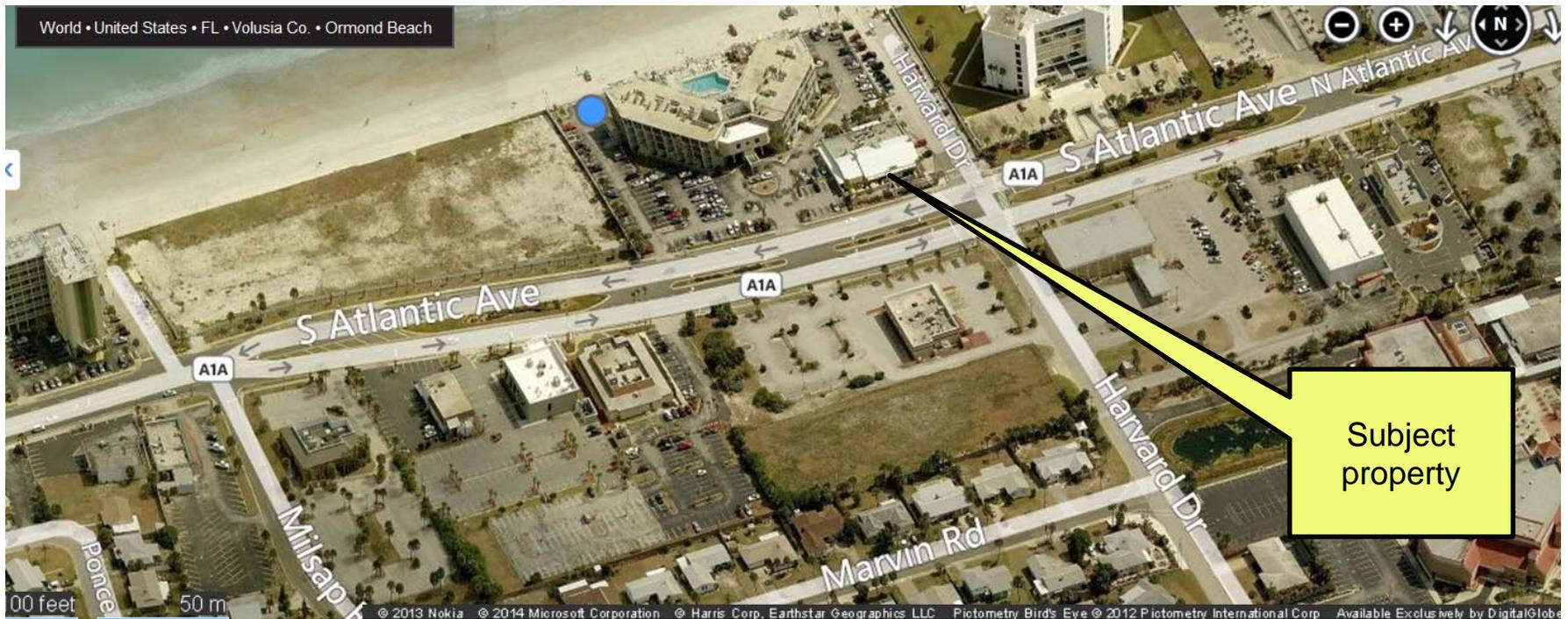
183 ft



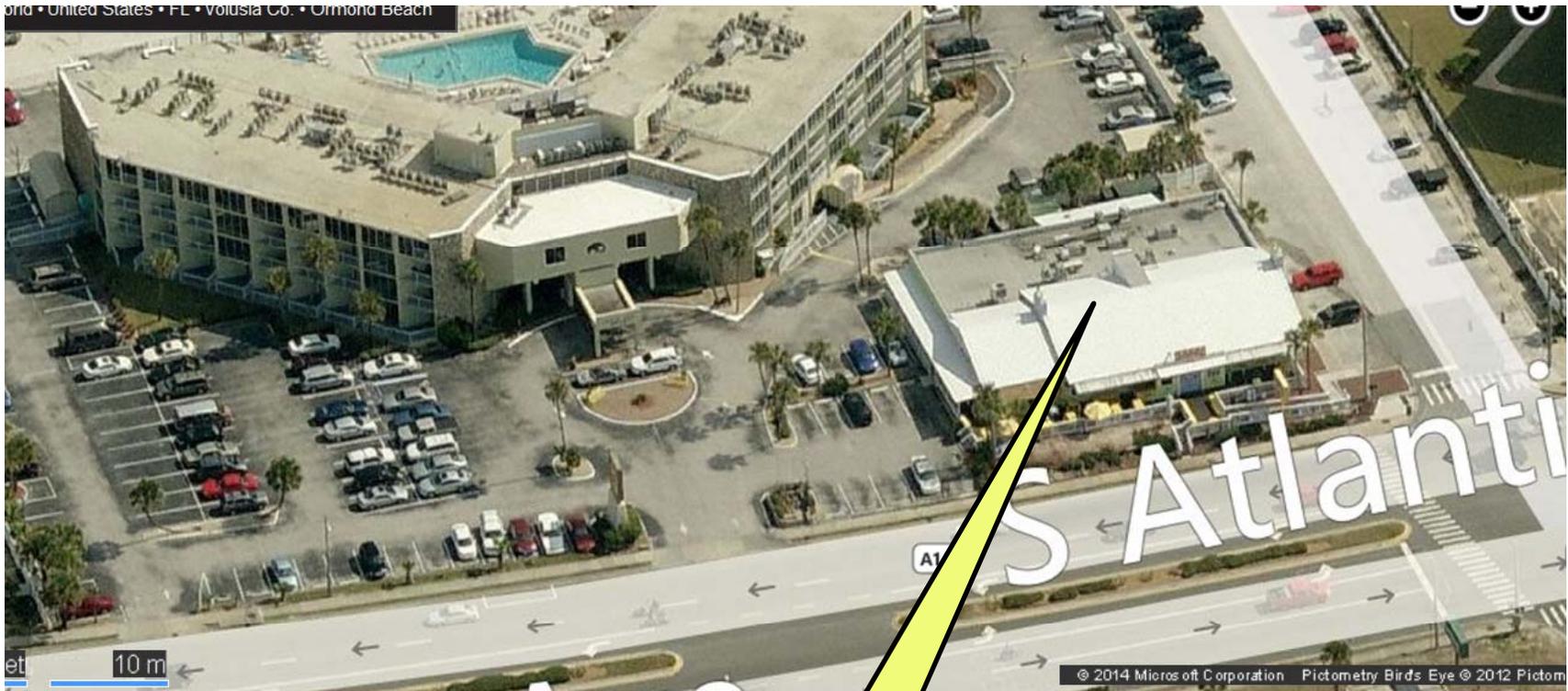
GIS data is provided on an "as is" basis. The accuracy or reliability of the data is not guaranteed or warranted in any way. The City of Ormond Beach specifically disclaims any warranty either expressed or implied, including, but not limited to, the implied warranties of merchantability and fitness for a particular use. The entire risk as to quality and performance of the data is with the end user. In no event will the City, its staff or it's representatives be liable for any direct, indirect, incidental, special, consequential, or other damages, including loss of profit, arising out of the use of this data even if the City has been advised of the possibility of such damages.

Powered by
VANTAGEPOINTS

Aerial view of the property at 869 South Atlantic Avenue



Aerial view of the property at 869 South Atlantic Avenue



Subject
property

Riptides with new front façade – picture date: May 27, 2015



Riptides with new front façade – picture date: May 27, 2015



ATTACHMENT 2

**Planning Board and City
Commission meeting minutes for
South Atlantic Avenue outdoor live
music**

790 South Atlantic Avenue, Dimitri's Bar Deck and Grill

Planning Board Minutes

September 12, 2013

VI. PLANNING DIRECTOR'S REPORT

Ric Goss, Planning Director, stated he received some comments on the wireless primer, and staff finalized the document, which was provided to the Board in the packet. Mr. Goss explained one of the comments was to hire a consultant as an expert, and that has been done. Mr. Goss continued that he felt the Board would be interested in the article provided regarding misconceptions on wireless facilities.

Mr. Thomas asked if the expert is in-house.

Mr. Goss answered that he is a consultant. Mr. Goss explained that the City has put out an RFP and he was one of 3 responses.

Ms. Press commended staff and the City for hiring the expert.

Mr. Briley stated he concurred with Ms. Press' sentiment.

Mr. Heaster asked for the consultant's name and background.

Mr. Goss replied Pallans Associates, and he would forward the Board their resume.

VII. PUBLIC HEARINGS

A. SE 13-108: Special Exception for Outdoor Music, 790 S. Atlantic Avenue, Dimitri's Bar and Grill

Mr. Steven Spraker, Senior Planner stated this is an application for a special exception for outdoor music at 790 South Atlantic Avenue. Mr. Spraker explained the location, orientation, and characteristics of the subject property and presented the staff report. Mr. Spraker explained staff's recommendations contained in the staff report. Mr. Spraker stated that staff has received 3 letters of objections which will be included as part of the Planning Board minutes. Mr. Spraker stated staff is recommending approval of the application with conditions. Mr. Spraker explained that this application could be voted either way, and that the true nature of this application is how it is managed by restaurant owner and manager.

Mr. Briley asked if karaoke is permitted inside any building currently.

Mr. Spraker responded that it is permitted inside.

Mr. Briley stated his desire is to not have the karaoke outside.

Ms. Press asked who determined the location and orientation of the speakers.

Mr. Spraker answered that the applicant set up the speakers. Mr. Spraker explained that they had a previous sound test and the speakers were oriented differently and based on experience they found that this was the best location and orientation to keep it from the residential neighborhood. Mr. Spraker stated the Board can mandate the location of the speakers so that they are not directed at the residential neighborhood.

Mr. Heaster asked if Mr. Spraker is aware of any violations at Caffeine or Rivergrille.

Mr. Spraker responded that Caffeine was cited for exceeding the hours allowed for outdoor music, but he was not aware of the status of the code enforcement case. Mr. Spraker continued that he is not aware of any code violations against Rivergrille.

Mr. Heaster asked what the regulations were for Caffeine and Rivergrille for timing and days of the week the music was permitted.

Mr. Spraker responded that his general recollection is that they were both given to 11 PM on Friday and Saturday and 10 PM the remainder of the week and begin at 4 PM.

Mr. Heaster stated to eliminate some of the concerns, he would recommend to keep those same hours.

Ms. Behnke stated this was tested with 1 musician, and what difference would there be if there were 2 as is requested in the application.

Mr. Spraker responded that the sound test is an indication of what happened that night, a different night could have different conditions. Mr. Spraker explained that it is up to the owner and the manager of the restaurant to regulate the sound of the music. Mr. Spraker continued that if the wind is blowing to the east they may have to turn it down; they may not have the same volume at the source every evening.

Mr. Wigley asked if the enforcement is complaint driven.

Mr. Spraker responded yes.

Mr. Dimitri Bourtzakis, 790 South Atlantic Avenue, Ormond Beach, stated that he has owned the property for 10 years, and had to reestablish a business after the hurricanes with wonderful food. Mr. Bourtzakis thanked the City for putting the park across the street, which is why he built the deck and has spent all the money he could since the hurricanes which almost put him out of business. Mr. Bourtzakis explained that he saved to put every penny back into his business because he believes in this area and the community. Mr. Bourtzakis explained the reason he wants to put the music upstairs is to give his business the bump it needs. Mr. Bourtzakis stated that even if there is more than one performer, everything will go through one amplifier and come out evenly on the speakers. Mr. Bourtzakis stated he wants to simply allow music on the deck, not a hard rock café. Mr. Bourtzakis explained his ideas are: Thursday jazz night; Friday salsa night; Saturday Caribbean night, somewhere you can enjoy your dinner and still be able to talk to the people next to you. Mr. Bourtzakis stated he has karaoke downstairs, and no one goes down there because everyone wants to be upstairs. Mr. Bourtzakis explained that if there is an amplifier the volume would be controlled.

Ms. Behnke stated that Mr. Bourtzakis had still not told the Board how he is going to decide what the decibels are on any given night.

Mr. Bourtzakis answered the decibels can be monitored on their cell phones via various applications.

Ms. Behnke responded that she has done that, but it will not hold up if there is a complaint. The recording would have to be by a legitimate sound meter that has been certified in order to prove that the music is being maintained within the range. Ms.

Behnke stated her concern is that there is no buffering because is the outdoor deck up high.

Mr. Bourtzakis stated that he is in a mostly commercial area, and the 3 houses behind him have provided letters stating that they actually like the music. Mr. Bourtzakis explained that right now he only has a radio playing and no one has complained.

Ms. Behnke stated she has a problem with subjecting anyone to the torture of karaoke that does not choose to listen to it. Ms. Behnke asked if the application restricts the number of entertainers to only 2.

Mr. Spraker stated it is staff's recommendation that there be only 2 entertainers which was the condition placed on the other 2 special exceptions for outdoor music.

Mr. Bourtzakis stated the reason he wanted the music to start at 11 AM is because he wants to open to do a jazz brunch on the weekends.

Ms. Behnke stated she is for only 4 PM to 11 PM.

Mr. Briley asked if the properties for which he has a letter of support along Ponce DeLeon Drive are owner occupied homes.

Mr. Bourtzakis answered that they are rentals, and the renters of those homes do not have issues with the music.

Ms. Behnke asked how the Board is to consider the people that do have issues.

Mr. Briley responded that the Board should take that into consideration.

Mr. Wigley asked if the City currently allows outdoor music via radios or other digital means.

Mr. Spraker responded yes with a special exception and the Land Development Code does not allow any outdoor music without a special exception.

Mr. Wigley stated the application is already in violation of the code.

Mr. Spraker responded that he is in violation once he is proven to be in violation through the code enforcement process. Mr. Spraker continued that code enforcement is a complaint driven activity, and he is not aware of any active violations.

Mr. Wigley asked what happens when multiple businesses in the same area as far as the decibel level.

Mr. Spraker responded that is something for the Board to consider when/if other restaurants apply for a Special Exception and the cumulative impact. Mr. Spraker explained that the new applicants will have to do a sound test, notice property owners within 600', and perform decibel readings. Mr. Spraker continued that just because there are multiple locations with outdoor music, there is no right to exceed the decibel limit at the property line. Mr. Spraker stated it may become difficult for code enforcement or police to determine who is in violation, but the City has had outdoor activity for the last 4-5 years in the code, and there have only been 3 applications. Mr. Spraker explained that

in the Board's deliberations, it needs to be considered how this is being enforced and the additional pressure on code enforcement and the police department.

Mr. Heaster asked how the police department or code enforcement would pull up this new regulation.

Mr. Spraker responded that they have the ability to pull up this information and they have done it for Caffeine and Rivergrille.

Ms. Press asked if the special exception stayed with the restaurant.

Mr. Spraker replied yes, it runs with the property not the owner.

Ms. Press stated the Board could address the brunch music by stating 11 AM to 1 PM and 4 PM to 10 or 11 PM to limit the hours of music instead of 11 AM to 10 or 11 PM. Ms. Press stated her vote is to allow the outdoor music with no karaoke. Ms. Press continued that the onus is on Mr. Bourtzakis to follow the rules or 2 strikes and there will be no more special exception. Ms. Press explained this is a protection for the people that live in the area.

Mr. Heaster stated he takes issue with the different hours because of the logistics for the police department and code enforcement, and feels it is important to stay consistent. Mr. Heaster stated he also does not want to see the karaoke.

Mr. Wigley stated there are 3 letters against this, and if you take the time to read the letters they make a strong argument against this special exception. Mr. Wigley stated their main concern is the height that the music is going to be played at. Mr. Wigley explained that the wind will predominantly be out of the northeast and will carry into the residential area and the subject property borders residential property. Mr. Wigley stated enforcement is based on manpower and the Board knows what the City is facing budget, and there is not the manpower to regulate with decibel meters.

Mr. Wigley stated enforcement will be complaint driven and will be unenforceable and the applicant is already in violation of an ordinance that does not allow for outdoor music without a special exception. Mr. Wigley concluded in his opinion that he has no confidence that the applicant will be any different with live music and when there are customers singing along and consuming alcohol it will be a loud deck. Mr. Wigley finished by stating he will not be endorsing this application.

Ms. Behnke stated she has a concern because of the lack of buffering. Ms. Behnke asked if a backdrop could be installed to provide some buffering to that area.

Mr. Bourtzakis responded that he built bathrooms upstairs, which has reduced the sound carrying to the back towards the residential, but he could also raise some tarps.

Ms. Behnke stated she does not mind the idea of music on the deck, but the hours should be consistent with the other special exceptions, and without karaoke.

Mr. Jorczak stated that this has been permitted in other instances with a set of limits, and it should stay consistent with those special exceptions with regards to time frames and subject to the same set of rules. Mr. Jorczak continued that this business should not be discriminated against because there are regulations for enforcement and a penalty should they fail to comply.

Mr. Briley asked how many performers were allowed for Caffeine and Rivergrille.

Mr. Spraker responded 2 with no base.

Mr. Briley stated that he feels the time frames should be consistent with the other special exceptions that have been approved so there isn't confusion. Mr. Briley continued that he feels it will police itself, and will vote to approve this application with restrictions.

Mr. Bourtzakis stated on his behalf he would like to state that ignorance is not an excuse, but he was not aware that there was rule that prohibited outdoor music or he would never have done it without approval.

Mr. Thomas stated that A1A is a different environment than at Caffeine or Rivergrille and that is that it is more tourist oriented. Mr. Thomas stated he liked Ms. Press' idea about allowing the 11 AM to 1 PM because there are different zoning districts. Mr. Thomas added that a condition should be that the speakers must face east.

Mr. Heaster stated the Board should be consistent with what has been approved previously.

Mr. Hayes stated that the police department does not have the ability to pull up development orders and the like, and consistency goes a long way. Mr. Hayes added that the decibel standard in the code is a sufficient barometer and the onus is on the business owner to ensure compliance with the code. Mr. Hayes continued consistency to the maximum extent possible would be the desirable approach, and any complaints generated at the hours of 4 PM to 10 PM would probably be handled by police officers followed up with by code enforcement.

Mr. Briley moved to approve SE 13-108 with the conditions:

- 1. Karaoke is prohibited outside;**
- 2. The speakers must face eastward;**
- 3. The hours are Sunday through Thursday from 4-10PM and 4-11 PM on Friday and Saturday; music without base; and**
- 4. Only two performers are allowed**

Mr. Jorczak seconded the motion. Vote was called: Mr. Heaster for; Mr. Jorczak for; Ms. Press for; Mr. Wigley against; Ms. Behnke for; Mr. Briley for; Mr. Thomas for. The motion carried.

B. LDC 13-111: Land Development Code Amendment, Section 1-20 Codes and Standards adopted by reference

Mr. Spraker stated this is a request to adopt 3 documents by reference. Mr. Spraker presented the staff report and stated staff is recommending approval.

Mr. Briley moved to approve LDC 13-111 as submitted. Ms. Press seconded the motion. Vote was called, and the motion unanimously approved.

**790 South Atlantic Avenue,
Dimitri's Bar Deck and Grill**

City Commission Minutes

October 15, 2013

DEVELOPMENT MANUAL FOR THE CITY OF ORMOND BEACH”, THE “ORMOND BEACH DOWNTOWN DESIGN GUIDELINES”, AND THE “ORMOND BEACH MULTI-MODAL STRATEGY”; REPEALING ALL INCONSISTENT ORDINANCES OR PARTS THEREOF; PROVIDING FOR SEVERABILITY; AND SETTING FORTH AN EFFECTIVE DATE.

Commissioner Partington moved, seconded by Commissioner Stowers, for approval of Ordinance No. 2013-62, on second reading, as read by title only.

Call Vote:	Commissioner Partington	Yes
	Commissioner Stowers	Yes
	Commissioner Kent	Yes
Carried.	Mayor Kelley	Yes

Item #9C – 790 South Atlantic Avenue, Outdoor Music

City Clerk Scott McKee read by title only:

RESOLUTION NO. 2013-193

A RESOLUTION AUTHORIZING THE EXECUTION AND ISSUANCE OF A DEVELOPMENT ORDER FOR A SPECIAL EXCEPTION REGARDING “DIMITRI’S BAR DECK & GRILL” RESTAURANT LOCATED AT 790 SOUTH ATLANTIC AVENUE, WITHIN THE B-7 (HIGHWAY TOURIST COMMERCIAL) ZONING DISTRICT, TO ALLOW OUTDOOR ACTIVITIES TO INCLUDE LIVE MUSIC; ESTABLISHING CONDITIONS AND EXPIRATION DATE OF APPROVAL; AND SETTING FORTH AN EFFECTIVE DATE.

Mr. Goss stated that the application before the City Commission was for an outdoor activity special exception, noting that music was treated as such. He stated that Mr. Dimitri Bourtzakis had filed an application for outdoor music on the third deck of his restaurant (Dimitri’s), requesting permitted hours of 11:00 a.m. to 10:00 p.m. Monday through Sunday. He explained that the city went to the location on August 26, 2013, to perform a noise assessment test and took two readings, one which was a baseline reading without music to determine common noise and a second reading with music. He stated that noise was regulated by the city’s *Code of Ordinances*. He explained that the restaurant was classified as commercial use/tourist use so the permitted decibel level between 7:00 a.m. and 10:00 p.m. was 65 decibels and between 10:00 p.m. and 7:00 a.m. was 60 decibels.

Mr. Goss stated that the readings taken during that test were generally within the decibel level allowed by the code. He noted that both readings were based upon what the conditions on the test day only. He explained that during the test there was a performer with an instrument, the speakers were pointed eastward, and the music was at a relatively low volume. He reiterated that the noise test indicated that during the assessment the noise levels were well within the permitted limits. He stated that the Planning Board reviewed the application the previous month and approved it by a 6-1 vote. He stated that the board considered the objections from some of neighbors and concluded that while there may be impacts on residential districts, they could be properly managed by the applicant. He stated that the board reasoned that Mr. Bourtzakis would manage the music.

Mr. Goss stated that the Planning Board and city staff made some recommendations for approval of the application which included limiting the musicians to no more than two instruments at a time, the speakers would have to face eastward, there could be no bass, and that no karaoke be allowed. He stated that staff made another recommendation which was not included by the Planning Board; which was that if there were two demonstrated violations Mr. Bourtzakis would lose his outdoor music special exception. He noted that the violations would then have to go through the Special Magistrate process. He stated that he could answer any questions from the Commission regarding the noise assessment, Planning Board’s review, and staff’s recommendations.

Mayor Kelley clarified that if there were two violations that the applicant would go through code enforcement and thr Special Magistrate proceedings.

Mr. Goss stated that the music would stop at the time of the second violation. He explained that the applicant would then go through the Special Magistrate process, and if he was found to be in violation, he would lose the permit for the outdoor music.

Mayor Kelley noted that even if the second violation was not ultimately upheld, at the time of the second violation the music would have to stop until it could go to the Special Magistrate.

Commissioner Kent stated that he was looking at the map regarding the decibel test and asked Mr. Goss to clarify his statement that the results were well within the allowed limits.

Mr. Goss stated that the readings generally were within the limit. He noted that there were points where they were over the limit.

Commissioner Kent stated that what he read from the staff report was that in the residential district the decibels could not be more than 60 and in the tourist/commercial area they could not be more than 65. He asked Mr. Goss if that was correct.

Mr. Goss replied that Mr. Bourtzakis was treated as a commercial/tourist use and could have a decibel reading of up to 65 under the ordinance between 7:00 a.m. and 10:00 p.m. He explained that after 10:00 p.m. and before 7:00 a.m. the limit was 60 decibels.

Commissioner Kent stated that in table one, on page 450 of 584 in the agenda packet, it said that the residential sound limit between 7:00 a.m. and 10:00 p.m. was 60 decibels. He noted that the commercial or tourist limit for those hours was 65 decibels. He stated that on the map he saw a range of readings from 64 to 66, 71 to 74, and 64 to 67. He stated that he was not sure why there was a range as he believed that decibel meters provided a number.

Mr. Goss stated that the first test was performed without music at all. He explained that there were air-conditioning units, cars, and other things that contributed to the noise. He stated that when the music was added, the readings went up a couple of decibels.

Commissioner Kent stated that he wished that the staff report would have reflected that the limit had been reached.

Mr. Goss stated that the test was based upon a snapshot of what was observed the evening of the testing. He noted that it was very possible that if there was a full band playing it would be over the decibel limit. He stated that during the test there had been one musician and the recommendation was to limit that it to no more than two musicians.

Commissioner Kent stated that he did not understand that logic. He noted that one musician was registering at the allowed limit and stated that he did not understand why two would then be allowed especially when the decibel levels with two musicians were not tested. He explained that he was not trying to be critical of Mr. Goss or how the test was performed, but he wished it had been more exact. He noted that he personally loved the restaurant and thought that the deck being added when Andy Romano Beachfront Park was approved was a smart move by the owner. He explained that there were residents who lived next to the restaurant that would have to deal with it every day. He expressed his displeasure with the test that was performed and stated that he felt it was now useless since the proposal was to allow for two musicians when only one had been at the sound test. He explained that he had requested clarification on the decibel limits because he noted that there were levels present above those which were allowed and that staff was still recommending approval.

Mr. Goss explained that a range was given because the meter was going back and forth with its readings.

Commissioner Kent stated that he understood that.

Commissioner Partington moved, seconded by Commissioner Stowers, for approval of Resolution No. 2013-193, as read by title only.

Mr. David Lanham, 792 Marvin Road, stated that projects were judged by their merits and suitability. He asked if it met Ormond Beach's suitability standards to have an open air bar and deck three stories high playing music with the ocean wind pushing the sound back. He noted that there were a row of neighboring restaurants that were probably zoned the same as Dimitri's and he asked if it would be suitable for them to have similar situations as houses were also close to them. He stated that the proximity of the applicant restaurant to residential homes was significant. He agreed with Commissioner

Kent that testing with one musician when the applicant wanted two was not in the framework of suitability. He noted that allowing the applicant to proceed could set a precedent for future applications.

Mayor Kelley stated that he personally did not worry about setting precedence as each action the Commission took depended on the merits of that situation. He stated that he did not think because one exception was granted that they would have to do it for everyone.

Ms. Joan Fox, 180 Marvin Road, stated that she enjoyed going to Dimitri's and that she thought the rooftop deck was a great addition, but she expressed her concern over the noise. She explained that she was present when the decibel level was first being checked in August. She stated that the level ranged from 63 to 69 at which point it started to rain and the test stopped. She noted that the test was performed with one musician playing a slow, quiet song. She stated that the restaurant advertised a happy hour and she was concerned that the addition of music would make more of a party atmosphere. She stated that if the Commission approved the application she hoped that the nights would be limited because she thought that seven nights a week was asking a lot of the residents. She explained that the citizens chose to live in Ormond Beach and did not want to be in Daytona Beach and that she thought that was what they would become if the city started to be known as a party place. She hoped that the Commissioners would all consider whether they would want the music near their homes.

Mayor Kelley stated that two musicians would not necessarily increase the decibel level if they were both playing at the same level. He stated that scientifically it could not increase unless one increased the volume at which they were playing.

Ms. Theone Wilkenson, 242-246 Benjamin Drive, passed some photographs among the Commission showing how close homes were to the restaurant. She objected to the music being allowed. She noted that she had already experienced issues with the restaurant regarding noise. She stated that when the deck was built it was originally built as an observation deck and there was no music allowed. She explained that the restaurant had been in violation approximately four times in 2012. She stated that the tenant of the property she owned called the police the night of July 12 as the music and a crowd of people on the deck were so loud that she could not even hear her television with the air-conditioning on and the windows closed. She stated that the police arrived at 9:20 p.m. and shut the music off. She stated that there had been three calls that night about the restaurant. She noted that the restaurant already had music inside the restaurant. She stated that having music on an open rooftop where the wind would blow the sound in the direction of homes, regardless of the direction of the speakers, would negatively impact those homes.

Ms. Wilkenson explained that her tenants did not want to come home from work every day and have to listen to someone else's music seven nights a week. She opined that the decibel testing that was done was limited and did not even cover the area where her property was located. She stated that the owner had demonstrated that he could not control the music and would not be able to control large crowds of people on the rooftop drinking, singing, and getting rowdy. She noted that Mr. Bourtzakis could not legally monitor the decibel levels with his cell phone as he had stated to the Planning Board that he would do. She noted that Mr. Wigley with the Planning Board had stated that there was not the manpower to regulate the music with decibel meters and that it would be unenforceable. She explained that the applicant was currently in violation and had music on the deck a couple months prior. She stated that she purchased her property in Ormond Beach because of the zoning laws and because it was a family-oriented area. She strongly urged the Commission to vote against the variance as she felt it would adversely impact the residents and the downgrade the neighborhood.

Mayor Kelley stated that he had the mobile app on his cell phone which read decibels. He stated that it was very accurate when compared to the machines that were used for testing. He stated that he used the app when Ms. Wilkenson was speaking and it registered between 62 and 71 decibels.

Mr. Dimitri Bourtzakis, 790 S. Atlantic Avenue, owner of Dimitri's restaurant, thanked his neighbors for coming in and giving their input. He stated that he respected all the noise ordinances and did not want to violate them. He explained that he did not want to do live band music on the deck and that he just wanted to do light jazz and small steel drums island type music which would be barely amplified. He stated that he had done some research on his own, which was not documented, and he found that when trucks came

by A1A there was a tunnel effect between his restaurant and the Peppers restaurant next door where the truck noises were amplified into the back of the neighborhood. He explained that the noise on top from his deck would disperse around and not come back down into the neighborhood. He noted that when his stereo was on, you normally could not hear it past his parking lot.

Mr. Bourtzakis stated that he understood that there were houses next door to him on the north side so that was why he tried to keep the music mostly in the front of the building with the speakers facing away from those properties. He stated that he wanted to have a respectable restaurant and noted that he had put a lot of money into it and wanted to continue to put money into it and into Ormond Beach. He addressed Ms. Wilkenson's assertion that he had been in violation four times. He stated that he believed the time Ms. Wilkenson was referring to was when a woman upstairs brought her own stereo and sang "Happy Birthday" to her daughter with a microphone. He stated that he could not control what people did at that level but if he had known about it he would have told her that she could not do so. He apologized for not saying anything to that patron.

Commissioner Partington stated that right before the meeting he had driven by Dimitri's restaurant to take another look at the situation. He noted that a few months prior he had been to dinner there with his wife for his 20th wedding anniversary and enjoyed the dinner and view from the deck. He stated that he had spoken to Mr. Lanham by phone and read an email from Ms. Wilkenson and that he could see the issue from both sides. He expressed his disappointment that the item came before the Commission on a night where only four members of the Commission were present, noting that the applicant had spent thousands of dollars to get the application before them and was not receiving the benefit of a full Commission. He noted that was not anyone's fault and was just the way things happened sometimes. He stated that he mentioned that because he was thinking about continuing the item and would explain why he wanted the item continued.

Commissioner Partington explained that there had been two previous exceptions for outdoor music that were permitted: RiverGrille and the Tiki Bar at the restaurant that was formerly Caffeine. He noted that this application could not be treated the same as they were all different locations with different circumstances. He explained that RiverGrille had a greater barrier between it and residential areas and Caffeine had a barrier but also had the support from the neighborhood, which made it easier to approve. He stated that he was thinking about possibly continuing the item to not only allow for the full Commission to be present but also for another sound test to be performed which would be similar to the test done for the RiverGrille. He explained for that test the entire Commission had gone to different locations and listened to different levels of music. He stated which was very helpful as they heard the actual impact.

Commissioner Partington stated that he grew up in Ormond Beach in the Forest Hills neighborhood off of Nova Road. He explained that across the street from that area was now a bank but used to be the YMCA Swimming Pool, which had a tower where they announced the swim meets on the weekends. He stated that in Forest Hills, a half mile away across the street, they could hear the tower all day on Saturdays. He noted that while the noise was not terrible, it was an annoyance and interrupted the quiet enjoyment of their property. He stated that when he drove by Dimitri's before the meeting, it refreshed for him how close the homes were located to the restaurant with no buffering. He stated that he might be willing to consider different, more limited times for the music to be allowed, such as 4:00 p.m. to 8:00 p.m. on Sunday through Thursday and 11:00 a.m. to 10:00 p.m. on Friday and Saturday. He noted that he was unsure if the applicant or residents would be interested in those hours instead of the ones offered in the application.

Commissioner Stowers stated that the biggest issue he saw in comparing the previously permitted locations and this one was the proximity of residential homes. He stated that looking at the decibel measurements from the test, he was concerned about the lack of existing noise in the previously approved locations. He explained that if he made a 60 decibel sound as sustained background noise and someone else starting singing at 60 decibels those sounds would just cancel out. He explained that for a crowd to hear the other singer over his sustained background noise, they would have to elevate their sound higher. He stated that seemed like a recipe for failure to him, because some of the decibel readings without music playing were already in the peak range. He stated that in order to play audible music it would have to be played at a level that at least met that threshold if not exceeded it, just to be heard.

Commissioner Stowers noted that he loved Dimitri's and actually ate there quite often. He stated that he liked Commissioner Partington's idea of continuing the item for the reasons he had mentioned including having another test performed. He expressed his belief that this item presented a different set of circumstances than previous approvals because of the background noise issue. He stated that he felt that they could be setting up a scenario where the code would clearly be violated and it would be a painful descent into that process. He explained that if they could come up with a solution that anticipated that, he would rather do so than force everyone to go through that exercise.

Commissioner Kent noted that some residents had called him about the issue and that he had spoken with them. He stated that he did not speak to the applicant but would have been happy to. He stated that he had been to Dimitri's and really enjoyed the restaurant. He noted that he was also a lover of music and liked to hear music while he ate. He referenced the experience that Commissioner Partington had as a child with the tower. He stated that the height of the music was concerning to him. He noted that the restaurant could have existed when many of the homes were built behind it, but he was not sure if that was the case. He explained that when something was requested that was outside of the code it had to go before the City Commission. He noted that the restaurant in question was in the zone he represented and that he lived less than a mile from the restaurant. He stated that he did not understand the applicant's assertion that he wanted to do relaxing dinner music but also was requesting karaoke to be allowed. He stated a point of emphasis for him was that when the nearby homes were purchased there was not a deck with music located there. He stated that was important to him.

Commissioner Kent stated that when people complained about the Airport he had no sympathy for them because they purchased homes next to the already existing Airport. He noted that he felt the same about the railroad tracks. He stated that with respect to continuing the item, he would be in favor of doing so if the restaurant was located in Commissioner Boehm's district, which it was not. He stated that the Commission had good information in front of them now. He stated he was not sure if it was the Commission's desire to continue the item because they feared how the results might turn out. He explained that there were rules in place regarding a Commissioner being absent, noting that two Commissioners could actually be absent as long as three were in attendance to make a legal quorum. He noted that some people in attendance did not live in the city and rented their properties out and had to drive in for the meeting.

Commissioner Kent stated that he personally would not be agreeable to listening to any type of music seven nights a week. He stated that the Mayor's app was reading the decibels of him speaking and was registering between 73 and 74. He noted that was fairly loud and he would not want to hear it even two days a week, the reason being that it was not there before. He explained that he was not against Dimitri's and wanted the restaurant to be successful but did not want to make residents suffer for it. He stated that he loved that Mr. Bourtzakis thanked the residents when he spoke and said that he wanted to be a good neighbor to them. He explained that he did not want to live next to the music and listen to it every day, and because he did not want to he was not going to make any of his constituents either.

Mayor Kelley stated that he thought Commissioner Kent made good points with respect to whether the item should be continued. He noted that he thought they could go through more testing, but he believed that regardless of what that testing showed those who opposed it would continue to do so. He stated that if the item was continued more money would be spent to do more testing. He asked Mr. Goss if the city had performed the testing themselves; whereby, Mr. Goss stated that they had.

Commissioner Partington expressed the feeling that he did not have all the information that he would like to have before he voted. He noted that he was not afraid of anything except not having enough information. He stated that from a fairness and due process perspective when an applicant brought an application to a board, he thought it was fair for them to presume that the entire board would be present and hear from all sides before they made their decision. He stated that he may not be in total agreement with Dimitri's, but as an individual who tried to be fair to both sides it made sense that they would pay their thousands of dollars and expect to have a full and fair hearing. He explained that he would be inclined to continue the item and have a sound test with the actual conditions of the music the applicant was requesting. He stated that after he was able to stand at the edge of the property during the sound test, he could say that he either did not want to live next to it or that it would not be so bad for limited time periods. He stated that he could not currently say either way since he had not heard it.

Mayor Kelley stated that the testing only included one musician, but he thought they could all assume or agree that two singers at the same level would be registering the same.

Commissioner Kent stated that Mayor Kelley needed to help him understand that logic. He explained that he did something with his fifth graders every year where he had them do something with their hands, and when one did it you could not hear it, but when they all started doing it you could.

Mayor Kelley stated that a noise was made at a certain level until something louder than that noise was created. He explained that if a band was playing and all the instruments were playing at the same level it would stay the same and if something else was added that was louder than that level you would then hear that. He stated that when a motorcycle went by it was louder than the current background noise and would raise the level that was registering.

Commissioner Kent noted that he looked at it differently. He stated that he and Mayor Kelley talking at the same time at the same level seemed louder than just one of them speaking. He explained that he thought about how bands would have one instrument playing, then add in a second one and how the sound got louder.

Mayor Kelley stated that when the testing was done for RiverGrille, he was in the neighborhood behind the railroad tracks and a motorcycle going by or a lawnmower operating was a lot louder and would drown out any of the sounds at a different decibel level coming from the RiverGrille. He asked what the range was for the sounds from traffic and other ambient surroundings.

Mr. Goss stated that it was loud and went up to 72 and 76 decibels at times without music. He noted that was because of the normal traffic. He referenced that one of the audience members had said that the test was not performed in their neighborhood. He explained that the code stated that measurements needed to be taken at the property line from the commercial property to the residential area and that was where it was done. He stated that they were not required to go into the neighborhood and noted that perhaps they should have done so, but the code was followed as to how the measurement was to be made.

Mayor Kelley noted that there was a motion on the floor for discussion. He asked City Attorney Randy Hayes if that motion would need to be withdrawn if a motion were to be made to continue the item.

City Attorney Randy Hayes stated that the motion for continuance would take precedence.

Commissioner Partington asked if there would be any additional costs to the applicant if another test was performed; whereby, Mayor Kelley stated that there would not.

Mr. Bourtzakis stated that he had been listening to the conversation the Commission had been having. He addressed Commissioner Kent bringing up the karaoke requested in his application and stated that the karaoke was in there to see if it could be allowed, but he was comfortable with it not being permitted and was no longer seeking it. He stated that the level rising with two musicians at the same level instead of one only happened in a closed environment where it echoed. He explained that the only building off which the sound could echo was the Georgian Inn, which was significantly far away. He noted that most of the traffic on A1A would be a lot louder than the music that he would be playing upstairs. He stated that the patrons on the deck would be listening to the speakers that were close by them and noted that if a motorcycle went by on A1A, it would be louder than the music but people on the deck could still hear the music and it would not have to be turned up.

Mr. Bourtzakis stated that he did not want to have three or more musicians performing on the deck at a time. He stated that he wanted to only have one or two at a time. He noted that an act with two vocalists recently appeared on the X-Factor television show competition and that the artists were from the Daytona Beach area. He explained that he had met them, and they expressed a desire to come play at his restaurant. He stated that he was not interested in playing hard rock and roll music and preferred jazz or other softer styles. He stated that his intention was not to make his neighbors angry and that doing so would result in him losing his license after two violations. He noted that he had spent three thousand dollars to obtain the permit. He asked the Commission to trust him

as they had trusted other restaurants and provide him with the permit. He stated that the worst case scenario would be that it would get revoked after two violations.

Commissioner Partington stated that he could vote on the ordinance that evening if the hours were amended to 4:00 p.m. to 8:00 p.m. Sunday through Thursday and 11:00 a.m. to 10:00 p.m. Friday and Saturday. He noted that he felt like they would almost be setting Mr. Bourtzakis up for failure as two demonstrated code violations revoked the special exception.

Commissioner Kent stated hearing Mr. Bourtzakis speak did not change his mind. He explained that he understood why Commissioner Partington wanted to change the hours to 4:00 p.m. to 8:00 p.m. He stated that to him those hours were the time that people got home from work and sat down with their families to have dinner. He noted that unfortunately that would also be the time that was most advantageous for the restaurant. He stated that if he lived next to the restaurant himself he would be in the audience and be very upset that the approval of the music was even being considered. He again noted that the situation was different from the RiverGrille and Caffeine. He noted that the Commission did not have anyone come before them to object when they approved Caffeine's exception. He stated that he felt some members of the Commission may want to let Mr. Bourtzakis try it out since he paid his fees. He stated that he did not want the residents in that neighborhood to have to deal with the music even for one night.

Commissioner Stowers noted that there had been some comments regarding what kind of music would be played. He stated that he wanted to bring the discussion back to the objective measurement of the city's noise ordinance. He noted that regardless of the type of music the limit was 65 decibels until 10:00 p.m. He stated that he thought part of the reason these types of requests were controversial was because of the unknown factor. He stated that he believed that the applicant was comfortable with going through the process while knowing that two violations would result in the permit being pulled. He stated that the Commission could not say how loud it would be the first night there was a musician performing and whether or not it would exceed the existing noise around the area. He stated that the only way they could know that for sure would be if it was approved tonight and a complaint was filed reporting a violation. He explained that he did not think that the Commission should try to anticipate what would happen and deny it on the basis that they believed it would fail without knowing for certain. He stated that having two violations resulting in the music stopping was a high standard which gave the permit more enforcement than others he could recall.

Commissioner Kent clarified that he was not insinuating that Mr. Bourtzakis would fail and was the reason to not approve the exception. He stated that he was insinuating that he personally did not want to live next to the music for one day and did not want to listen to any type of music in or around his home that he did not turn on himself.

Commissioner Partington moved, seconded by Commissioner Stowers, to amend the hours allowed in the development order in Resolution No. 2013-193 to Sunday through Thursday from 4:00 p.m. to 8:00 p.m., and Friday and Saturday from 11:00 a.m. to 10:00 p.m. only.

Mayor Kelley asked for the vote to be called on the amendment to the resolution.

Call Vote:	Commissioner Partington	Yes
	Commissioner Stowers	Yes
	Commissioner Kent	No
Carried.	Mayor Kelley	Yes

Mayor Kelley asked for the vote to be called on the underlying motion to approve the resolution.

Call Vote:	Commissioner Stowers	Yes
	Commissioner Kent	No
	Commissioner Partington	Yes
Carried.	Mayor Kelley	Yes

**869 South Atlantic Avenue,
Riptides Bar and Grill**

Planning Board Minutes

April 10, 2014

VI. PLANNING DIRECTOR'S REPORT

None.

VII. PUBLIC HEARINGS

A. SE 14-070: 869 South Atlantic Avenue – Riptides Raw Bar and Grill, Special Exception for Outdoor Activity

Mr. Spraker stated this is a request for a Special Exception to allow outdoor activity to be used at 869 South Atlantic Avenue. Mr. Spraker explained the location, orientation, and characteristics of the property, and presented the staff report. Mr. Spraker stated staff is recommending approval of the application.

Vice Chairman Briley asked if there were any questions from the board members. The Board had none.

Mr. Walter Kraszlowky, 901 S. Atlantic Avenue, lives in the neighboring condominium, and is exposed to music every night from the Beach Bucket until 9:00 PM, and is concerned about music going until 10:00 PM at Riptides and is opposed to the request.

Ms. Press stated that several other locations have outdoor music and they have to abide by the restrictions on how loud they can be, and if they have two reports to code enforcement, that would be it. It is difficult to tell one restaurant they can't have outdoor music when others are allowed to. The way the rules are written, it does give protection to the residents.

Mr. Heaster questioned the establishment behind Riptides having outdoor music, and are they currently in violation of the codes?

Mr. Spraker replied that if they are doing outdoor music and have no Special Exceptions, then yes they are in violation. Each application has to stand on its own and get a sound check, and have to go to Planning Board and City Commission.

Mr. Heaster asked if Riptides has ever had any other outdoor music.

Mr. Spraker understands that they have been doing outdoor music for awhile, and were not aware of the restrictions in the City's Land Development Code. Once Dimitri's went through the process, Riptides was made aware of it, and immediately came in for an application to allow it under conditions.

Mr. Heaster was concerned about the consistency of code enforcement for different establishments. He would like to mirror what Dimitri's has, and keep the same restrictions for other places in that corridor on beachside that may request the same.

Mr. Briley would like to take it one step further and see uniformity throughout the city.

Ms. Press thinks it is a good idea to stay consistent in that one corridor. She asked to hear from the applicant about the hours.

Mr. Brad Hoffman, owner of Riptides, stated they have done live music for almost a year, from mid-February through October. They are a family business and usually don't have music after 10:00 PM. Occasionally on the weekend they will bring in an artist for the

afternoon, starting at 1:00 PM, and then possibly a second artist at 6:00 PM. That is why he requested 1:00 – 10:00 PM.

Mr. Heaster moved to approve SE 14-070 with the hours of Sunday through Thursday, 4:00 – 8:00 PM, and Friday and Saturday, 11:00 AM – 11:00 PM. Ms. Press seconded the motion. The motion carried unanimously (4-0).

B. LUPA 14-041 and LUPA 14-043: 275 and 395 Williamson Boulevard, Scale Comprehensive Plan Amendment.

Ms. Kornel stated this is a request to change the existing Future Land Use designation at 275 and 395 Williamson Boulevard from County Commercial to Low Intensity Commercial. The total acreage is 5.15 acres. Ms. Kornel explained the location, orientation, and characteristics of the property, and presented the staff report. Ms. Kornel stated staff is recommending approval of the amendment.

Ms. Press asked if the Low Intensity Commercial allows for a drive-thru on that property.

Rob Merrill, of Cobb Cole at 149 S. Ridgewood, Daytona Beach, on behalf of the owner, explained that the approved zoning that will be discussed for approval in the next item, does allow for a pharmacy drive-thru.

Mr. Goss explained that the characteristics are much different between a drive-thru restaurant and pharmacy. The pharmacy drive-thru would be just dropping off and picking up, whereas the restaurant drive-thru people wait in line to order and then pick up.

Vice Chair Briley asked if there were any more comments.

Mr. Heaster moved to approve LUPA-14-041 and LUPA 14-043 as submitted. Ms. Press seconded the motion. Vote was called, and the motion unanimously approved (4-0).

C. RZ 14-042 and RZ 14-044: 275 and 395 Williamson Boulevard, Amendment to Official Zoning Map.

Ms. Kornel stated this is a request to amend the Official Zoning Map for 5.15 acres located at 275 and 395 Williamson Boulevard from County Business Planned Unit Development to City of Ormond Beach Planned Business Development. Ms. Kornel explained the location, orientation, and characteristics of the property, and presented the staff report. Ms. Kornel stated staff is recommending approval of the amendment.

Rob Merrill, of Cobb Cole at 149 S. Ridgewood, Daytona Beach, on behalf of the owner, wanted to point out that the zoning would also include banks with drive-thru, not just pharmacy.

Vice Chair Briley asked if there were any more comments.

Mr. Jorczak moved to approve RZ-14-042 and RZ 14-044 as submitted. Ms. Press seconded the motion. Vote was called, and the motion unanimously approved (4-0).

D. LUPA 14-033 1287 and 1301 West Granada Boulevard, Small Scale Land Use Map Amendment.

**869 South Atlantic Avenue,
Riptides Bar and Grill**

City Commission Minutes

May 6, 2014

as well. He stated that he agreed with Ms. Tolland that a location in Central Park would be ideal.

Item #6A – Approval of Minutes

Mayor Kelley advised that the minutes of the April 16, 2014, regular meeting had been sent to the Commission for review, and were on the city's website for public viewing. He asked for any corrections, additions, or omissions. He stated that hearing no corrections, the minutes would stand approved as presented.

Item #7 – Consent Agenda

Mayor Kelley advised that the actions proposed for the items on the Consent Agenda were so stated on the agenda. He asked if any member of the Commission had questions or wished to discuss any items separately.

Commissioner Boehm moved, seconded by Commissioner Partington, for approval of the Consent Agenda.

Call Vote:	Commissioner Stowers	Yes
	Commissioner Kent	Yes
	Commissioner Boehm	Yes
	Commissioner Partington	Yes
Carried.	Mayor Kelley	Yes

Item #8 – Public Hearings

Mayor Kelley opened the public hearings.

Item #8A – 869 South Atlantic Avenue (Riptides) Outdoor Music Special Exception

City Clerk Scott McKee read by title only:

RESOLUTION NO. 2014-65

A RESOLUTION AUTHORIZING THE EXECUTION AND ISSUANCE OF A DEVELOPMENT ORDER FOR A SPECIAL EXCEPTION TO ALLOW OUTDOOR LIVE MUSIC AT "RIPTIDES RAW BAR AND GRILL" RESTAURANT LOCATED AT 869 SOUTH ATLANTIC AVENUE, WHICH IS WITHIN THE B-6 (OCEANFRONT TOURIST COMMERCIAL) ZONING DISTRICT; ESTABLISHING CONDITIONS AND EXPIRATION DATE OF APPROVAL; AND SETTING FORTH AN EFFECTIVE DATE.

Mr. Ric Goss, Planning Director, stated that Riptides was requesting outdoor music. He stated that a noise assessment test had been performed on March 25, 2014, which was attended by both the Neighborhood Improvement Division, as well as the Planning Department. He stated that the noise assessment readings were taken from the north and south boundary lines in front of where the band played and also taken from across the street. He noted that they also established a baseline for the road noise when there was no music. He explained that there had been no issues with regard to the decibel level of the music coming from a two person group. He stated that they also went into the residential areas nearby and could not hear the music at all; noting that the direction of the winds may affect that.

Mr. Goss stated that the Planning Board recommended approval but were concerned about making sure that all of the approved outdoor music venues had the same hours. He explained that the Planning Board recommended the hours permitted for the outdoor music should be from 4:00 p.m. to 8:00 p.m. Monday through Thursday, 11:00 a.m. to 11:00 p.m. Friday and Saturday, and Sunday from 1:00 p.m. to 10:00 p.m., with no more than two musicians at a time, no outdoor karaoke, and the speakers facing the building as opposed to the road. He noted that there was also a special magistrate provision added, which stated that two verifiable occurrences of violating those conditions would result in loss of the outdoor activity permit. He stated that staff recommended approval and believed that the special exception met all necessary requirements.

Mayor Kelley asked whether the traffic would diffuse some of the noise, with or without the wind.

Mr. Goss stated that he believed it would but did not know for certain. He explained that they established the road noise level so that they could then test the sound with the music to see the difference, noting that it was very low. He explained that the music being played was one person on a guitar and another person singing.

Commissioner Boehm confirmed that the special exception was consistent with the one granted to Dimitri's, which was located across the street.

Ms. Shanahan explained that there had been a question about The Beach Bucket in relation to this item. She noted that The Beach Bucket had not been through a special exception approval process and she believed they had been cited by code enforcement.

Mayor Kelley noted that citation would not go against the two allowed under a special exception, should The Beach Bucket choose to pursue one.

Mr. Goss stated that one individual from one of the neighboring condominiums came to the noise assessment at Riptides. He stated that the individual's concerns had been with The Beach Bucket and not with Riptides. He stated that another individual had been at the Planning Board hearing on this item; and they, too, had an issue with The Beach Bucket and not with Riptides.

Commissioner Boehm moved, seconded by Commissioner Kent, for approval of Resolution No. 2014-65, as read by title only.

Call Vote:	Commissioner Kent	Yes
	Commissioner Boehm	Yes
	Commissioner Partington	Yes
	Commissioner Stowers	Yes
Carried.	Mayor Kelley	Yes

Mayor Kelley closed the public hearing without objection.

Item #9A – Calling Regular Election

City Clerk Scott McKee read by title only:

ORDINANCE NO. 2014-20
 AN ORDINANCE CALLING AND PROVIDING FOR A REGULAR MUNICIPAL ELECTION OF THE REGISTERED ELECTORS OF THE CITY OF ORMOND BEACH, FLORIDA, TO BE HELD ON NOVEMBER 4, 2014, FOR THE PURPOSE OF ELECTING OFFICERS TO THE OFFICES OF MAYOR AND CITY COMMISSIONER; PROVIDING FOR QUALIFYING AND ELECTION PROCEDURES; ESTABLISHING A DATE FOR TAKING OFFICE; AUTHORIZING THE EXECUTION OF A MEMORANDUM OF UNDERSTANDING FOR SERVICES AND MATERIALS WITH THE COUNTY OF VOLUSIA; PROVIDING FOR SEVERABILITY; AND SETTING FORTH AN EFFECTIVE DATE.

Commissioner Partington moved, seconded by Commissioner Kent, for approval of Ordinance No. 2014-20, on second reading, as read by title only.

Call Vote:	Commissioner Boehm	Yes
	Commissioner Partington	Yes
	Commissioner Stowers	Yes
	Commissioner Kent	Yes
Carried.	Mayor Kelley	Yes

Item #10A – City Manager Evaluation

Ms. Shanahan explained that as a part of the city's charter and her contract, she was required to provide the City Commission with a summary of her evaluation. She thanked the Commission for their generous and kind remarks. She stated that it was a privilege to work for the Commission, who had a singular vision for the community and had set forth direction to accomplish an amazing amount in a short period of time. She stated that over the last four years the city completed a major flood mitigation project while enhancing the lakes at Central Park, rejuvenated the downtown area with underground utilities, new medians and street-scaping, and added the wonderful Andy Romano Beachfront Park. She stated that she was privileged to work for the Commission and

**867 South Atlantic Avenue,
Beach Bucket**

Planning Board Minutes

July 10, 2014

V. MINUTES

June 12, 2014

Ms. Press moved to approve the June 12, 2014 Minutes. Mr. Wigley seconded the motion. Vote was called, and the motion unanimously approved.

VI. PLANNING DIRECTOR'S REPORT

Mr. Goss reported that a 1st reading was done on the Interlocal Boundary Agreement at the City Commissioner's meeting on June 17. It was decided to amend the map to add more area, so the 1st reading will be repeated on July 29, with the 2nd reading on August 19. Mr. Goss explained that there were a couple of areas that were covered in the agreement, but they had not been added to the maps.

VII. PUBLIC HEARINGS

A. SE #14-093: 867 South Atlantic Avenue, Outdoor Activity, Special Exception

Mr. Spraker stated this is a Special Exception to allow outdoor music at the Beach Bucket, 867 South Atlantic Avenue. Mr. Spraker explained the location, orientation, and characteristics of the property, and presented the staff report, two letters of objection from the Aliko Atrium, and played two video clips supplied by Mr. Kraslawsky, who lives in the Aliko Atrium. Mr. Spraker stated staff is recommending approval of the application.

Ms. Behnke asked if the sound test was done at street level or higher up. Mr. Spraker replied at street level and there was no access to the adjoining properties. Mr. Spraker also stated that it is the responsibility of the property owner and business owner, how they operate the outdoor music.

Mr. Heaster questioned if this Special Exception would mirror the requirements for Riptides. Mr. Spraker reiterated the hours allowed for Riptides live music, and said that the Beach Bucket has requested different hours for live music.

Mr. Jorczak asked if there were any comments from the public. Charles Wilkes, 67 Hernandez Ave, stated that he has been surfing at the Harvard beach approach for 50 years, and recently it has become a real mess at the approach. Mr. Wilkes stated that there are cigarette butts and beer bottles, and he doesn't feel it is right for the county to have to clean up after a business.

Ms. Press stated that she feels this is a legitimate request as far as the cleanup of the approach, and no matter what the Board decides about the music, this cleanup information needs to be passed on to the City Manager. Ms. Press then questioned Mr. Scott Studner, owner of the Beach Bucket, if breakfast is served at the restaurant. Mr. Studner replied that the Beach Bucket opens at 7:00 a.m. and starts playing recorded music at 9:00 a.m.

Ms. Behnke commented that the sound test was done with only one performer, but should have been done with two performers. Mr. Studner stated that he will normally only use one performer.

Mr. Clark Rohmer, 843 Marvin Road, stated that he hears the music and the loud speaker announcements, but he is also very concerned about the beach approach. Mr. Rohmer was at the beach that afternoon, and there were maybe two dozen people on the beach and about half a dozen available parking spots. He has been complaining about this approach for ten years. If he talks to the city, they say he should talk to the county. If he talks to the county, they say the problem is the city's. Mr. Rohmer concluded someone needs to clean up that part of the beach every morning.

Mr. Studner, applicant, owner of the Beach Bucket, is also concerned about the beach approach. He has placed numerous calls to the police over the years, about the high school kids who park there every single day and drink beer and smoke pot and cigarettes. Mr. Studner strongly objects to anyone associating the problems with trash to his business. The people who drink on his property are not allowed to leave the property with anything. The Beach Bucket is not a package store. There are people parking on that approach and doing a lot of bad things, and he strongly supports anything that can be done to clean up the approach, but it has nothing to do with the Beach Bucket.

Mr. Studner explained that the Beach Bucket was primarily set up to cater to locals, not the tourists. There is no signage, they don't advertise, and he wants to attract mature locals. When Mr. Studner became aware of the fact that Mr. Kraslawsky had a problem with the live music, Mr. Studner began to immediately take steps to address it. Mr. Kraslawsky did not have a problem until a speaker was moved up on the platform where the entertainer is located, which projected the sound up toward the condo. The speaker has since then been moved to a different location, which should minimally impact Mr. Kraslawsky.

Mr. Studner wants to make this a win-win. As soon as he was aware of the problem, he addressed the situation, and will continue to address it. The video clips that were shown, were made when the speaker was up on the platform. Mr. Studner also emphasized that his business closes at 9:00 p.m. He wants a business where people can carry on a conversation while they are eating, and enjoy the ocean. His mature crowd likes to talk to each other, and so he will keep his volume low.

Mr. Studner's goal is to have live music on two or three days only. Mr. Jorczak asked if the platform was built for the entertainment. Mr. Studner stated that the platform was built for raised visibility for when the association at Ocean's Edge is playing bingo, or if the Beach Bucket has a wedding. Mr. Jorczak also questioned the relocation of the speakers to the floor level, and were they pointing toward the building. Mr. Studner stated the speakers are actually against the building and pointing toward the ocean.

Mr. Heaster asked Mr. Studner when was he made aware that he needed to get the Special Exception to have live music. Mr. Studner replied that when Riptides went before the Planning Board, the owner then came to him and told him that the Beach Bucket having live music had been mentioned during the meeting. Soon after that, Mr. Studner received a notice concerning his live music. Mr. Heaster also questioned where the speakers were at for the sound test. Mr. Studner commented that the speakers were up on the platform when the two video clips were made, but for the sound test they had already been taken down from the platform to the lower level. Since then, the speakers have been moved up against the building, facing out to the ocean.

Mr. Wigley asked if there was access to the restaurant from the approach. Mr. Spraker pointed out on the presentation where the pass-through goes to the Beach Bucket. Mr. Wigley stated that some of the customers could be parking on the approach. Mr. Wigley also stated that years ago the Oceans East used to be a Quality Inn, and there has always been a restaurant on that corner. Mr. Wigley feels Mr. Studner has done a wonderful job, has a wonderful restaurant, and it is an asset to have a place to go and eat on the ocean front. Mr. Studner stated it is a pleasure to have an enterprise where you have local people coming into your establishment over and over.

Ms. Behnke questioned if the police have ever been called out to the Beach Bucket because of the loud music. Mr. Studner replied never for the music. He has on occasion called the police to have people trespassed off of his property. Ms. Behnke feels it would be unfair to give one business special hours for their music, so she can agree to approving this with the same hours as Dimitri's and Riptide's.

Mr. Studner would like to be able to play music earlier on Sunday. He has a lot of people come for Sunday brunch and dinner and would like the music to start earlier. Mr. Heaster explained how the Planning Board is trying to stay consistent with all of the venues, which makes it easier for enforcement.

Mr. Wigley stated that he understands the Board trying to do a one size fits all, but he feels this is a totally different situation, an oceanfront restaurant with a different type of crowd. The River Grille and Riptides are more for night time entertainment, and Mr. Wigley doesn't feel like the Beach Bucket should be locked in to the same specific times, but should be a little more flexible.

Mr. Heaster explained that if the other businesses in close proximity to the Beach Bucket feel they need the times changed, then they can come back to the Board and propose something different. But at this time, Mr. Heaster feels that a few months ago the Board decided that they wanted to be consistent with the live music, and they need to stay with the times they established.

Mr. Heaster moved to approve SE #14-093 Special Exception as submitted, keeping the allowable times consistent with Riptides and Dimitris. Ms. Behnke seconded the motion. Vote was called. Mr. Heaster for; Mr. Jorczak for; Ms. Press for; Mr. Wigley against (because he doesn't agree with the time restraints); Ms. Behnke for. The motion carried (4-1).

B. PP #14-105: Deer Creek, Phase 4B, Preliminary Plat

Mr. Spraker stated that the Deer Creek subdivision has been under construction since 2005, and they need to get approval from the Planning Board before they begin construction in the next phase. Mr. Spraker explained the location, orientation, and characteristics of the property, and stated that Staff is recommending approval.

Mr. Jorczak asked how long it would take to build this out, based on the past history. Mr. Spraker stated that it would be done in August.

Ms. Press asked if everyone in the subdivision would be exiting onto Airport Road. Mr. Spraker stated that there is only one entrance into the subdivision, and that is off Airport Road. Ms. Press also wanted to know if there were sidewalks along Airport Road leading to the school, and Mr. Spraker stated yes there were sidewalks.

**867 South Atlantic Avenue,
Beach Bucket**

City Commission Minutes

August 6, 2014

	Commissioner Stowers	Abstain
	Commissioner Kent	Yes
Carried.	Mayor Kelley	Yes

Item #8C – Special Exception for Outdoor Music at The Beach Bucket

City Clerk Scott McKee read by title only:

RESOLUTION NO. 2014-127

A RESOLUTION AUTHORIZING THE EXECUTION AND ISSUANCE OF A DEVELOPMENT ORDER FOR A SPECIAL EXCEPTION TO ALLOW OUTDOOR LIVE MUSIC AT "THE BEACH BUCKET" RESTAURANT LOCATED AT 867 SOUTH ATLANTIC AVENUE, WITHIN THE B-6 (OCEANFRONT TOURIST COMMERCIAL) ZONING DISTRICT; ESTABLISHING CONDITIONS AND EXPIRATION DATE OF APPROVAL; AND SETTING FORTH AN EFFECTIVE DATE.

Mr. Steven Spraker, Senior Planner, stated that the Planning Board recommended approval. He explained that there had been one dissenting vote by a member who wanted the hours of operation to extend to 11:00 a.m. on Sundays. He stated that the resolution before them was written following the Planning Board recommendation which had the hours of Sunday from 4:00 p.m. to 8:00 p.m. He noted that there were two letters of objection included in the agenda packet, one from an individual who could not attend that evening and the other was from the Aliki Atrium Condominium.

Mr. Scott Studner, The Beach Bucket, 321 S. Atlantic Avenue, stated that the issue discussed at the Planning Board was that The Beach Bucket was unique compared to the other establishments granted special exceptions for outdoor music in that they were open every day for breakfast. He stated that they wished to have the hours begin on Sunday at 11:00 a.m., rather than 4:00 p.m. He explained that it made more sense to him to have the hours begin earlier on Sunday, and he stated he did not understand why it was originally written that the hours on Friday would begin at 11:00 a.m., since that was a work day, and not a Sunday. He further explained that the concern from the board had been that if the earlier time Sunday was granted, then The Beach Bucket would have different hours allowed than other establishments that had been granted outdoor music exceptions. He asked the Commission to take into account the differing circumstances, noting that his establishment was open seven days a week starting at 7:00 a.m. serving breakfast. He stated that the breakfast was a large part of their business on Sunday. He noted that the Commission had been very helpful by changing the liquor laws so that they could serve alcohol earlier on Sunday.

Commissioner Kent asked how the liquor law change was working out.

Mr. Studner explained that The Beach Bucket was keeping more business due to the law change, explaining that customers used to leave and go to Daytona Beach when they were informed they could not have an alcoholic beverage with their brunch. He noted that he believed that Publix was the biggest beneficiary of the law change. He asked the Commission to consider changing the Sunday allowable hours to begin at 11:00 a.m.

Commissioner Partington moved, seconded by Commissioner Kent, for approval of Resolution No. 2014-127, as read by title only.

Commissioner Boehm clarified that Commissioner Partington was moving to approve the resolution as drafted.

Mayor Kelley suggested that it was best to approve the resolution as presented and then revisit changing the hours for the entire ordinance at a later date. He noted that The Beach Bucket did seem to have a unique situation.

Commissioner Boehm noted that Dmitri's and Riptides, two other outdoor music permitted restaurants, would also be open at 11:00 a.m. on Sunday for lunch. He stated that it would be inconsistent to approve different hours for The Beach Bucket than the other restaurants.

Mayor Kelley suggested they look at the regulations as a whole.

Commissioner Partington stated that it was an issue of being consistent and fair. He noted that he did not think that it would hurt The Beach Bucket's business, noting that the restaurant was packed on Sunday mornings. He stated that he could not think of anywhere else in Ormond Beach that had good quality food and service, with the view that The Beach Bucket had. He explained that some people considered Sunday a day of rest noting that The Beach Bucket was located close to condominium residences. He stated that he would be happy to revisit the issue in the future but at the present time he thought the best course of action would be to approve the resolution as currently presented.

Commissioner Kent agreed with Commissioner Boehm and Commissioner Partington. He noted that the Commission may want to discuss allowing earlier Sunday times for all of the permitted businesses at another time. He addressed Mr. Studner and asked him to remind them to reevaluate the issue of the times at a later date.

Call Vote:	Commissioner Partington	Yes
	Commissioner Stowers	Yes
	Commissioner Kent	Yes
	Commissioner Boehm	Yes
Carried.	Mayor Kelley	Yes

Mayor Kelley closed the public hearing without objection.

Item #9A – Settlement Agreement 1545 Ormond Beach LLC and 1545 Operations, Inc.

City Clerk Scott McKee read by title only:

RESOLUTION NO. 2014-129
 A RESOLUTION APPROVING AND AUTHORIZING THE EXECUTION OF
 A STIPULATION FOR SETTLEMENT BETWEEN THE CITY AND 1545
 ORMOND BEACH, LLC AND 1545 OPERATIONS, INC.; AND SETTING
 FORTH AN EFFECTIVE DATE.

Commissioner Boehm moved, seconded by Commissioner Stowers, for approval of Resolution No. 2014-129, as read by title only.

Mayor Kelley thanked City Attorney Randy Hayes for his leadership in pursuing a resolution to the issue. He also thanked Attorney Tom Leek, Cobb Cole, for his work on the topic.

Commissioner Kent stated that he thought extremely highly of Mr. Hayes both personally and professionally, and stated that he did a great job with the issue, including by making the decision to hire Mr. Leek. He noted that while the process had been a long one, the resolution looked to be the right one.

Commissioner Boehm stated that the strategy employed by the city was unique. He noted that the other party involved was very familiar with the first amendment and with first amendment cases nationwide. He stated that he thought that the city was highly successful and credited Mr. Hayes and Mr. Leek for their work. He noted that the appearance of US1 would certainly improve if sometime in the future a pink building was no longer there and was replaced with a building more typical of Ormond Beach.

Call Vote:	Commissioner Stowers	Yes
	Commissioner Kent	Yes
	Commissioner Boehm	Yes
	Commissioner Partington	Yes
Carried.	Mayor Kelley	Yes

Item #10 – Reports, Suggestions, Requests

Upcoming Meetings

Ms. Shanahan stated that the next City Commission meeting would be on Tuesday, August 19, 2014. She reminded the Commission that they would have a shade meeting to discuss active litigation that day at 5:30 p.m. prior to the Commission meeting.

Ms. Shanahan reminded the City Commission of the revised meeting dates for September, noting that the Commission meetings would be held on Monday, September

ATTACHMENT 3

- **Proposed amendment related to hours allowed of outdoor live music.**
 - **Resolution 2014-65**

DRAFT PLANNING BOARD DEVELOPMENT ORDER AMENDMENT BASED ON APPLICANT'S REQUEST

BEFORE THE CITY COMMISSION OF THE CITY OF ORMOND BEACH

IN RE: Sammarbra, LLC, a Florida limited liability company
SE 2015-091
“Riptides Raw Bar and Grill” Restaurant Live Outdoor Music Amendment
869 South Atlantic Avenue
PARCEL ID NO: 4224-04-00-5001

SPECIAL EXCEPTION 1st AMENDED AND RESTATED DEVELOPMENT ORDER

This matter having come on for public hearing before the City Commission of the City of Ormond Beach, Florida, on June 23, 2015, and the City Commission having considered those items as required by Section 1-18(B) of the *Land Development Code*, and having heard testimony and evidence from all affected persons, the City Commission hereby finds that:

1. The proposed use conforms to the standards and requirements of this Code and will not create undue crowding beyond the conditions normally permitted in the B-6 (Oceanfront Tourist Commercial) zoning district, or adversely affect the public health, safety, welfare or quality of life;
2. The proposed use is consistent with the *Comprehensive Plan*;
3. The proposed use will not adversely impact environmentally sensitive lands or natural resources, including but not limited to waterbodies, wetlands, xeric communities, wildlife habitats, endangered or threatened plants and animal species or species of special concern, wellfields, and individual wells;
4. The proposed use will not substantially or permanently depreciate the value of surrounding property; create a nuisance; or deprive adjoining properties of adequate light and air; create excessive noise, odor, glare, or visual impacts on the neighborhood and adjoining properties;

5. There are adequate public facilities to serve the development, including but not limited to, roads, sidewalks, bike paths, potable water, wastewater treatment, drainage, fire and police safety, parks and recreation facilities, schools, and playgrounds;

6. Ingress and egress to the property and traffic patterns are designed to protect and promote motorized vehicle and pedestrian/bicycle safety and convenience, allow for desirable traffic flow and control, and provide adequate access in case of fire or catastrophe. This finding shall be based on a traffic report where available, prepared by a qualified traffic consultant, engineer or planner which details the anticipated or projected effect of the project on adjacent roads and the impact on public safety;

7. The proposed development is functional in the use of space and aesthetically acceptable;

8. The proposed development provides for the safety of occupants and visitors;

9. The proposed use of materials and architectural features will not adversely impact the neighborhood and aesthetics of the area; and

10. The testimony provided at public hearings.

Thereupon and in consideration thereof, the City Commission hereby orders

that:

A. The application submitted by Sammarbra, LLC, a Florida limited liability company, (the "Applicant") with the permission of Oceans East Resort Club Association, Inc., a Florida corporation, the property owner, for a Special Exception to amend Resolution 2014-65, the hours of live outdoor music on Sunday to Thursday from 4:00 – 8:00 PM to 4:00 – 10:00 PM, at "Riptides Raw Bar and Grill" restaurant, located at 869 South Atlantic Avenue within the B-6 (Oceanfront Tourist Commercial) zoning district and on the parcel of real property described and depicted on Exhibit "A" attached hereto and incorporated herein by reference, is hereby granted, subject to the following conditions:

1. All applicable provisions of the *Land Development Code* shall be complied with at all times, such provisions being incorporated herein by reference and hereby specifically made a part of this Special Exception;

2. There were no outstanding Site Plan Review Committee comments to satisfy;

3. Karaoke is not allowed outside the building; karaoke shall only be allowed inside the building;

4. No more than two live outdoor performers shall be allowed at any one time;

5. Live outdoor music is allowed only between the following hours: Sunday through Thursday, 4:00 – 8:10:00 PM, and Friday and Saturday, 11:00 AM – 11:00 PM; and

6. In the event a Special Magistrate determines through the city's code enforcement program that two violations have occurred, within any continuous twelve month period, of the conditions in this development order allowing live outdoor music, which shall include but shall not be limited to the time limitation or maximum decibel level allowed by the Land Development Code and/or the Code of Ordinances, then in such event the right to play outside music as authorized by the Special Exception Development Order shall be automatically revoked without further action by the City Commission. Upon the issuance of a second notice of code enforcement violation, the authority provided by this Special Exception Development Order shall be deemed to automatically suspended pending a final outcome of the Special Magistrate code enforcement hearings. If the Special Magistrate determines that a violation did not occur, the Applicant shall be permitted to resume live outdoor music in accordance with this Special Exception Development Order;

B. The location of the live outdoor music shall be consistent with all of the conditions listed in Paragraph A hereof, and the plans depicted in Exhibit "B" attached hereto shall be amended as necessary in order to achieve such consistency. The speakers for the outdoor music shall be directed towards the building at 869 South Atlantic Avenue.

C. No material change shall be made to the final plans attached as Exhibit "B" and incorporated herein by reference for this Special Exception without further review by the Planning Board and approval by the City Commission in accordance with the procedures for the approval of this Special Exception Development Order.

D. All site construction activity shall be performed in strict compliance with the terms and conditions of this Special Exception, and of the *Land Development Code*.

E. In the event a Neighborhood Improvement Officer subsequently determines there to be any violation of this Special Exception, such Officer shall promptly present such determination to Special Magistrate for hearing.

F. If the activity that is authorized by this Special Exception is abandoned for a period of six (6) months, the authority provided herein shall be deemed to be automatically revoked; and business tax receipt for a new use shall not be issued until all of the conditions of Chapter I, Article II, Section 1-14(C) of the *Land Development Code* have been satisfied.

G. This Special Exception Development Order shall be recorded in the public records of Volusia County, Florida, at the expense of the Sammarbra, LLC, a Florida limited liability company and shall be binding upon Sammarbra, LLC, and Ocean East Resort Club Association, Inc., a Florida corporation, the property owner, and its successors and assigns, and shall run with the real property described and depicted in Exhibit "A" attached hereto and incorporated herein by reference. (Parcel ID No.: 4224-04-00-5001).

ORDERED this 23rd day of June, 2015.

By: _____
ED KELLEY
Mayor

(CITY SEAL)

Attest: _____
JOYCE A. SHANAHAN
City Manager

EXHIBIT "A"

LEGAL DESCRIPTION

UNIT 5001 OCEAN EAST RESORT CLUB CONDO PER OR 2316 PG 1913, OF THE PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA

RESTAURANT OWNER: Sammarbra, LLC, a Florida limited liability company

LOCATION: 869 South Atlantic Avenue

PARCEL ID NUMBER: 4224-04-00-5001

LOCATION MAP

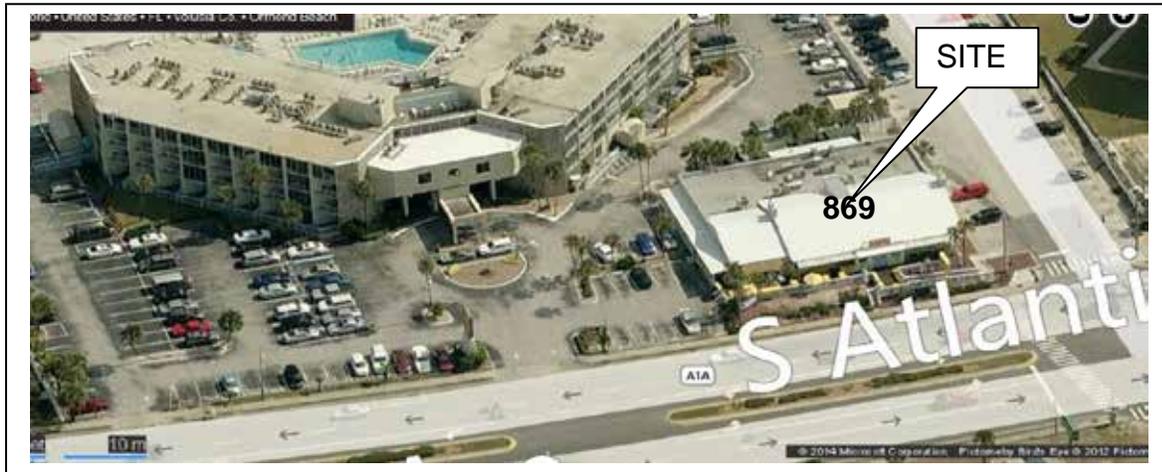
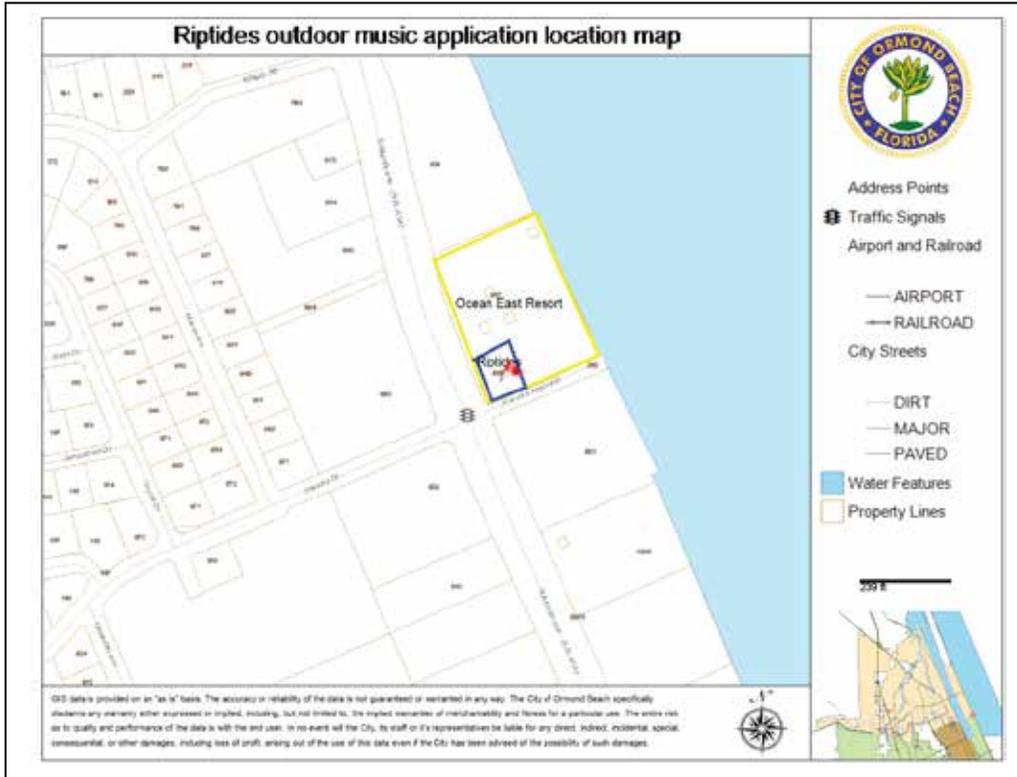


EXHIBIT "B"
LOCATION OF SPEAKERS



RESOLUTION NO. 2014-65

A RESOLUTION AUTHORIZING THE EXECUTION AND ISSUANCE OF A DEVELOPMENT ORDER FOR A SPECIAL EXCEPTION TO ALLOW OUTDOOR LIVE MUSIC AT "RIPTIDES RAW BAR AND GRILL" RESTAURANT LOCATED AT 869 SOUTH ATLANTIC AVENUE, WHICH IS WITHIN THE B-6 (OCEANFRONT TOURIST COMMERCIAL) ZONING DISTRICT; ESTABLISHING CONDITIONS AND EXPIRATION DATE OF APPROVAL; AND SETTING FORTH AN EFFECTIVE DATE

WHEREAS, Sammarbra, LLC, a Florida limited liability company (the "Applicant"), with the authorization of Oceans East Resort Club Association, Inc., a Florida corporation, the property owner, has applied for the issuance of a Special Exception to allow outdoor live music at "Riptides Raw Bar and Grill" restaurant, located at 869 South Atlantic Avenue is in the B-6 (Oceanfront Tourist Commercial), and

WHEREAS, "Riptides Raw Bar and Grill" restaurant is located at 869 South Atlantic Avenue a part of the Ocean East Resort Club transient lodging facility located at 867 South Atlantic Avenue, and

WHEREAS, the Applicant conducted a neighborhood meeting on March 25, 2014 that included a sound test in accordance with Section 2-57.O.1(3) of the City of Ormond Beach *Land Development Code* ("the *Land Development Code*"), and

WHEREAS, the said application is in compliance with the provisions of the *Land Development Code* and the general laws of Florida, and

WHEREAS, the Planning Board held a public hearing on April 10, 2014, as required by Chapter 1, Article II, Section 1-15D(2), of the *Land Development Code*, and

WHEREAS, the City Commission has duly held a public hearing on the application and has considered the testimony and evidence presented, and

WHEREAS, the City Commission has considered the following:

- (1) The report and recommendations of the Planning Board;
- (2) The report and recommendations of the Site Plan Review Committee; and
- (3) The comments of governmental agencies, utility corporations and individuals, as received, and

WHEREAS, based upon all of the foregoing and in consideration thereof, the City Commission finds that:

- (1) The proposed use conforms to the standards and requirements of this Code and will not create undue crowding beyond the conditions normally permitted in the B-6 (Oceanfront Tourist Commercial) zoning district, or adversely affect the public health, safety, welfare or quality of life;
- (2) The proposed use is consistent with the *Comprehensive Plan*;
- (3) The proposed use will not adversely impact environmentally sensitive lands or natural resources, including but not limited to waterbodies, wetlands, xeric communities, wildlife habitats, endangered or threatened plants and animal species or species of special concern, wellfields, and individual wells;
- (4) The proposed use will not substantially or permanently depreciate the value of surrounding property; create a

nuisance; or deprive adjoining properties of adequate light and air; create excessive noise, odor, glare, or visual impacts on the neighborhood and adjoining properties;

- (5) There are adequate public facilities to serve the development, including but not limited to, roads, sidewalks, bike paths, potable water, wastewater treatment, drainage, fire and police safety, parks and recreation facilities, schools, and playgrounds;
- (6) Ingress and egress to the property and traffic patterns are designed to protect and promote motorized vehicle and pedestrian/bicycle safety and convenience, allow for desirable traffic flow and control, and provide adequate access in case of fire or catastrophe. This finding shall be based on a traffic report where available, prepared by a qualified traffic consultant, engineer or planner which details the anticipated or projected effect of the project on adjacent roads and the impact on public safety;
- (7) The proposed development is functional in the use of space and aesthetically acceptable;
- (8) The proposed development provides for the safety of occupants and visitors;
- (9) The proposed use of materials and architectural features will not adversely impact the neighborhood and aesthetics of the area; and
- (10) The testimony provided at public hearings,

now therefore,

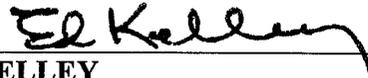
**BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF
ORMOND BEACH, FLORIDA, THAT:**

SECTION ONE. The above recitals are true and correct, and shall serve as the legislative findings of the City Commission, and are incorporated herein by reference.

SECTION TWO. The Mayor and the City Manager are hereby authorized and directed to execute and issue a Development Order for a Special Exception to allow outdoor live music at "Riptides Raw Bar & Grill" restaurant located at 869 South Atlantic Avenue in accordance with the conditions and site plan exhibit described in the Special Exception Development Order, a copy which is attached and incorporated herein by reference.

SECTION THREE. This Resolution shall take effect immediately upon its adoption.

APPROVED AND AUTHENTICATED this 6th day of May 2014.



ED KELLEY
Mayor

ATTEST:



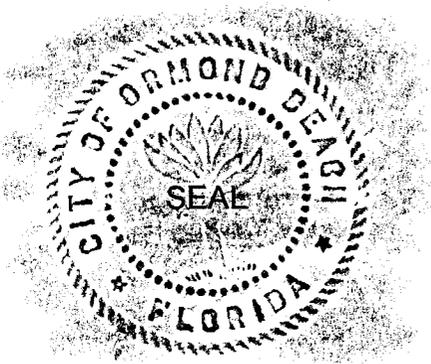
SCOTT McKEE
City Clerk

CERTIFICATE

STATE OF FLORIDA
COUNTY OF VOLUSIA
CITY OF ORMOND BEACH

I, J. Scott McKee, City Clerk of the City of Ormond Beach, Florida, do hereby certify that the foregoing is a true, correct and complete copy of Resolution No. 2014-65 as the same appears of record at City Hall, City of Ormond Beach, Florida.

Dated this 8th day of May 2014.





J. Scott McKee
City Clerk
CITY OF ORMOND BEACH, FLORIDA

**BEFORE THE
CITY COMMISSION
OF THE
CITY OF ORMOND BEACH**

IN RE: Sammarbra, LLC, a Florida limited liability company
SE 14-070
“Riptides Raw Bar and Grill” Restaurant Live Outdoor Music
869 South Atlantic Avenue
PARCEL ID NO: 4224-04-00-5001

**SPECIAL EXCEPTION
DEVELOPMENT ORDER**

This matter having come on for public hearing before the City Commission of the City of Ormond Beach, Florida, on May 6, 2014, and the City Commission having considered those items as required by Section 1-18(B) of the *Land Development Code*, and having heard testimony and evidence from all affected persons, the City Commission hereby finds that:

1. The proposed use conforms to the standards and requirements of this Code and will not create undue crowding beyond the conditions normally permitted in the B-6 (Oceanfront Tourist Commercial) zoning district, or adversely affect the public health, safety, welfare or quality of life;
2. The proposed use is consistent with the *Comprehensive Plan*;
3. The proposed use will not adversely impact environmentally sensitive lands or natural resources, including but not limited to waterbodies, wetlands, xeric communities, wildlife habitats, endangered or threatened plants and animal species or species of special concern, wellfields, and individual wells;
4. The proposed use will not substantially or permanently depreciate the value of surrounding property; create a nuisance; or deprive adjoining properties of adequate light and air; create excessive noise, odor, glare, or visual impacts on the neighborhood and adjoining properties;

5. There are adequate public facilities to serve the development, including but not limited to, roads, sidewalks, bike paths, potable water, wastewater treatment, drainage, fire and police safety, parks and recreation facilities, schools, and playgrounds;

6. Ingress and egress to the property and traffic patterns are designed to protect and promote motorized vehicle and pedestrian/bicycle safety and convenience, allow for desirable traffic flow and control, and provide adequate access in case of fire or catastrophe. This finding shall be based on a traffic report where available, prepared by a qualified traffic consultant, engineer or planner which details the anticipated or projected effect of the project on adjacent roads and the impact on public safety;

7. The proposed development is functional in the use of space and aesthetically acceptable;

8. The proposed development provides for the safety of occupants and visitors;

9. The proposed use of materials and architectural features will not adversely impact the neighborhood and aesthetics of the area; and

10. The testimony provided at public hearings.

Thereupon and in consideration thereof, the City Commission hereby orders

that:

A. The application submitted by Sammarbra, LLC, a Florida limited liability company, (the "Applicant") with the permission of Oceans East Resort Club Association, Inc., a Florida corporation, the property owner, for a Special Exception to allow live outdoor music at "Riptides Raw Bar and Grill" restaurant, located at 869 South Atlantic Avenue within the B-6 (Oceanfront Tourist Commercial) zoning district and on the parcel of real property described and depicted on Exhibit "A" attached hereto and incorporated herein by reference, is hereby granted, subject to the following conditions:

1. All applicable provisions of the *Land Development Code* shall be complied with at all times, such provisions being incorporated herein by reference and hereby specifically made a part of this Special Exception;

2. There were no outstanding Site Plan Review Committee comments to satisfy;

3. Karaoke is not allowed outside the building; karaoke shall only be allowed inside the building;

4. No more than two live outdoor performers shall be allowed at any one time;

5. Live outdoor music is allowed only between the following hours: Sunday through Thursday, 4:00 – 8:00 PM, and Friday and Saturday, 11:00 AM – 11:00 PM; and

6. In the event a Special Magistrate determines through the city's code enforcement program that two violations have occurred, within any continuous twelve month period, of the conditions in this development order allowing live outdoor music, which shall include but shall not be limited to the time limitation or maximum decibel level allowed by the Land Development Code and/or the Code of Ordinances, then in such event the right to play outside music as authorized by the Special Exception Development Order shall be automatically revoked without further action by the City Commission. Upon the issuance of a second notice of code enforcement violation, the authority provided by this Special Exception Development Order shall be deemed to automatically suspended pending a final outcome of the Special Magistrate code enforcement hearings. If the Special Magistrate determines that a violation did not occur, the Applicant shall be permitted to resume live outdoor music in accordance with this Special Exception Development Order;

B. The location of the live outdoor music shall be consistent with all of the conditions listed in Paragraph A hereof, and the plans depicted in Exhibit "B" attached hereto shall be amended as necessary in order to achieve such consistency. The speakers for the outdoor music shall be directed towards the building at 869 South Atlantic Avenue.

C. No material change shall be made to the final plans attached as Exhibit "B" and incorporated herein by reference for this Special Exception without further review by the Planning Board and approval by the City Commission in accordance with the procedures for the approval of this Special Exception Development Order.

D. All site construction activity shall be performed in strict compliance with the terms and conditions of this Special Exception, and of the *Land Development Code*.

E. In the event a Neighborhood Improvement Officer subsequently determines there to be any violation of this Special Exception, such Officer shall promptly present such determination to Special Magistrate for hearing.

F. If the activity that is authorized by this Special Exception is abandoned for a period of six (6) months, the authority provided herein shall be deemed to be automatically revoked; and business tax receipt for a new use shall not be issued until all of the conditions of Chapter I, Article II, Section 1-14(C) of the *Land Development Code* have been satisfied.

G. This Special Exception Development Order shall be recorded in the public records of Volusia County, Florida, at the expense of the Sammarbra, LLC, a Florida limited liability company and shall be binding upon Sammarbra, LLC, and Ocean East Resort Club Association, Inc., a Florida corporation, the property owner, and its successors and assigns, and shall run with the real property described and depicted in Exhibit "A" attached hereto and incorporated herein by reference. (Parcel ID No.: 4224-04-00-5001).

ORDERED this 6th day of May, 2014.

By: Ed Kelley
ED KELLEY
Mayor

Attest: Joyce A. Shanahan
JOYCE A. SHANAHAN
City Manager

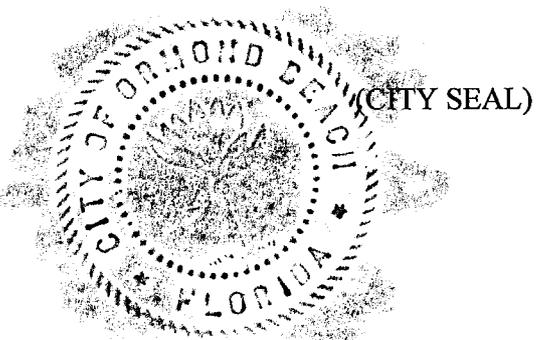


EXHIBIT "A"

LEGAL DESCRIPTION

UNIT 5001 OCEAN EAST RESORT CLUB CONDO PER OR 2316 PG 1913, OF THE PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA

RESTAURANT OWNER: Sammarbra, LLC, a Florida limited liability company

LOCATION: 869 South Atlantic Avenue

PARCEL ID NUMBER: 4224-04-00-5001

LOCATION MAP

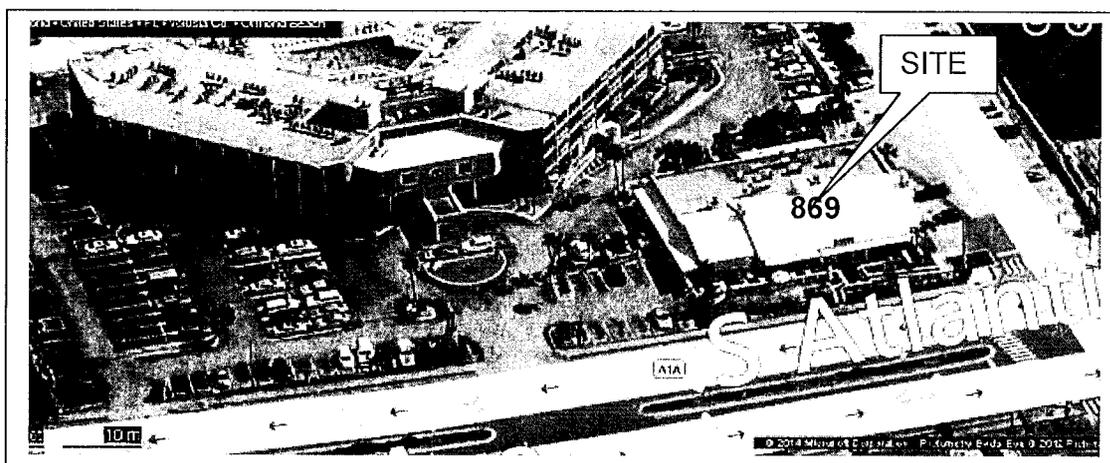
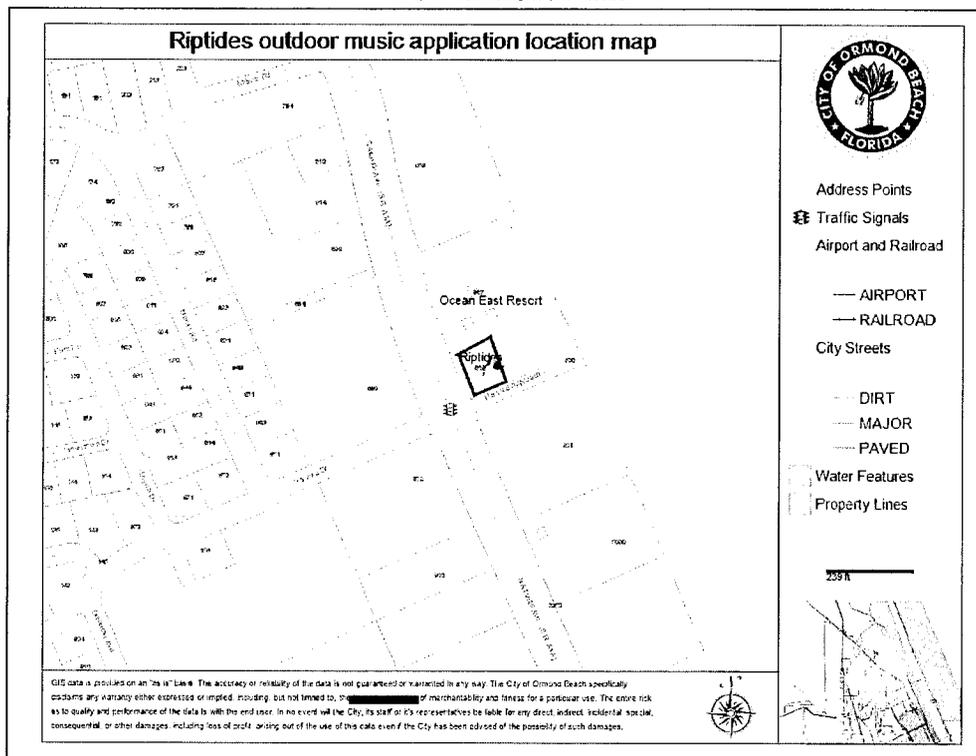
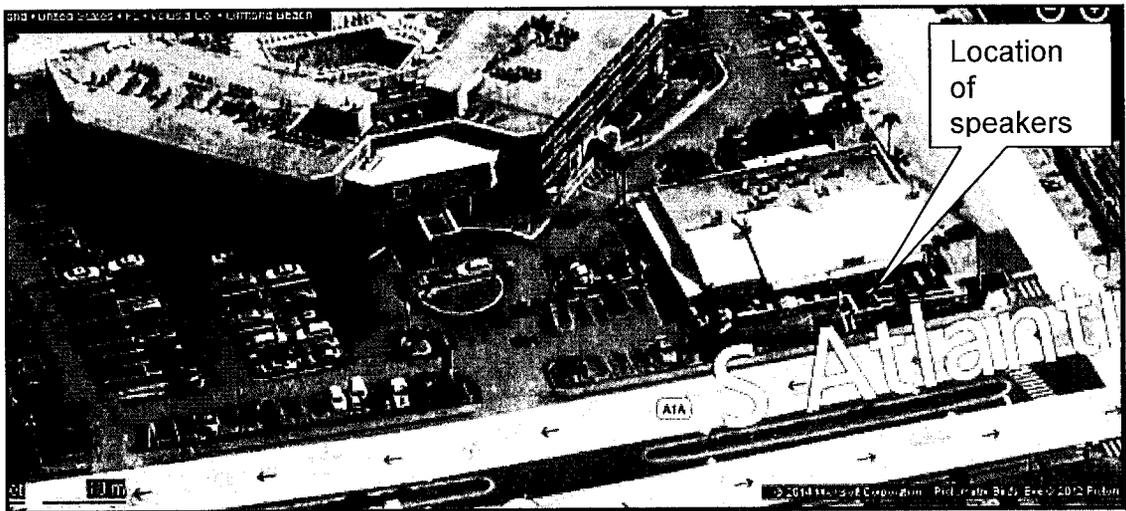


EXHIBIT "B"
LOCATION OF SPEAKERS



ATTACHMENT 4

- . Objection e-mail received regarding application.**

Spraker, Steven

From: Walter Kraslawsky [walterkras@cfl.rr.com]
Sent: Saturday, May 30, 2015 11:39 AM
To: Spraker, Steven
Cc: Naumann, Joanne
Subject: June 11, 2015 Planning Board
Attachments: FW: Code Enforcement; RE: Code Enforcement

Dear Mr. Spraker,

With regrets, I will be out of town the evening of June 11, 2015. I will therefore be unable to speak in person at the hearing that evening, and am therefore submitting this email instead. Please include this email and the attachments with all other responses.

===

I received your May 28, 2015 letter with great distress on learning that the Planning Board is considering extending Riptides hours for outdoor live entertainment. In spite of Riptides being placed on notice for violating the current restrictions, playing well past 8 PM Sunday-Thursday (see attached 3/18/2015 email), and my further complaints both via email (see attached 4/23/2015) and in person directly to the on-site Riptides shift manager, Riptides has continued to ignore that restriction. It is incredible to me that an application to extend their hours is being considered rather than considering an action to revoke their Special Exception.

That being said, regardless of my ignored complaints, I am also opposed to setting a new precedent. You might recall back in 2013, when Riptides requested their first Special Exception (after having been cited for outdoor entertainment in violation of existing code), I spoke on this matter in opposition specifically because I feared Beach Bucket would use Riptides approval as a precedent to get their own approval. (Beach Bucket faces my balcony more directly than Riptides and is therefore a greater problem.) Unfortunately my argument at that time was moot since there was already a precedent set by Dimitri's prior approval. As it turns out, the Dimitri's exception was the explicit basis for Riptides being allowed the same hours as Dimitri's, and that was soon followed by Beach Bucket being allowed the same hours as Dimitri's and Riptides.

The situation is different now, where if this new application is approved you will indeed be setting a new precedent that further adversely impacts residents located within 300 feet of live outdoor entertainment. Allowing the hours of 4-10 PM on Sunday-Thursday for Riptides will almost inevitably lead to the same extended hours for Dimitri's and the Beach Bucket.

Live outdoor entertainment at Riptides is already a particular problem for residents that go to work Monday-Friday morning, since performances at Riptides Sunday-Thursday evenings are already common past 10 PM in violation of the current 8 PM restriction. We fear that an extension to 10 PM on Sunday-Thursday nights will result in common violations past that hour, followed by subsequent applications for further extensions into those violated hours in lieu of code enforcement.

===

I have no doubt that inspection of Riptides prior contracts and payments to performers will reveal they have explicitly included prohibited hours, and instead of condoning such violations by eliminating the restrictions, I request that the Riptides current Special Exception be revised to revoke Sunday-Thursday hours entirely.

Failing that, I request that the Special Exception be revised to require actual written contracts signed by Riptides management, acting shift managers, and the Live Entertainers themselves be submitted to code enforcement officials

for prior approval. (The last time I complained in person to a Riptides shift manager at 10:30 PM on a Thursday evening, he said that he had no knowledge of any weekday restriction and thought the limit was 11 PM every day.)

Respectfully submitted,
Walter Kraslawsky

Spraker, Steven

From: Naumann, Joanne [Joanne.Naumann@ormondbeach.org]
Sent: Wednesday, March 18, 2015 10:08 AM
To: 'Walter Kraslawsky'
Cc: Bouck, John; Crimins, Jim
Subject: FW: Code Enforcement
Attachments: RES NO 2014-65-1.pdf

Dear Mr. Kraslawsky:

Thank you for bringing this matter to our attention. I have attached the City Commission approval which outlines the hours when music is allowed. We have initiated a case regarding the failure to comply with the approval by the City Commission. My staff will speak with the manager at Riptides to place him on notice. Via this email I have also advised Captain Crimins of your complaint and he too will have a copy of the conditions of approval by the commission. Should this occur in the future please contact the non emergency dispatch number at 248-1777. An officer will be dispatched to the location to address this matter.

Please do not hesitate to contact me with regard to any future violations.

Best Regards,
Joanne Naumann, Manager
Neighborhood Improvement Division
Ormond Beach Police Department
170 W. Granada Blvd.
Ormond Beach, FL 32174
(386) 676-3352 (office)
(386) 615-7074 (fax)
email: Joanne.Naumann@ormondbeach.org

From: Weedo, Becky
Sent: Wednesday, March 18, 2015 8:21 AM
To: Naumann, Joanne
Subject: RE: Code Enforcement

Hello Joanne,

Please find attached the adopted Resolution approving the conditions for outdoor live music at Riptides. Mr. Kraslawsky is correct, the live outdoor music is restricted to Sunday through Thursday 4-8 pm, and Friday and Saturday, 11 am through 11 pm. Let me know if you need anything else.

Becky

From: Naumann, Joanne
Sent: Wednesday, March 18, 2015 8:09 AM
To: Weedo, Becky
Subject: FW: Code Enforcement

Can I obtain a copy of Riptides approval for outside entertainment please. I don't recall what was approved. thanks

From: Walter Kraslawsky [<mailto:walterkras@comcast.net>]

Sent: Tuesday, March 17, 2015 11:30 PM

To: Naumann, Joanne

Subject: RE: Code Enforcement

Dear Ms. Naumann,

It has been some time since I was disturbed by live entertainment coming from next door. However, the music from Riptides was particularly loud this evening since the weather was nice enough for us to have our balcony sliding doors open to enjoy the breeze.

Just to be sure, I went back to old email to see what guidance I could find regarding code enforcement. I was particularly surprised to see below that – unless the information below is incorrect – Riptides is not allowed to play outdoor entertainment past 8:00 PM Sunday through Thursday. Right now it is almost 11:30 PM on a Tuesday, and the loud entertainment is still going on.

Please reply with confirmation of the current restrictions, and contact Riptides to remind them of their requirements if they are in violation.

Best Regards,
Walter Kraslawsky

From: Walter Kraslawsky [<mailto:walterkras@comcast.net>]

Sent: Monday, April 21, 2014 9:15 PM

To: Naumann, Joanne

Subject: Code Enforcement

Dear Ms. Naumann,

I attended the recent meeting regarding the application by Riptide to play outdoor entertainment, and spoke against approval due to concern a similar approval would then be granted for the Beach Bucket, unaware that a precedent had already been set by approval for Dimitri up the street.

If I misunderstood what was approved, please advise, because I thought Riptide was approved to entertain outdoors until 8 PM on Sunday-Thursday and until 11 PM Friday-Saturday. Otherwise please remind them, since Riptide had not stopped their outdoor entertainment by 8 PM this evening.

To be clear, I am not especially bothered by the Riptide program. Although I am literally next door to Riptide and can look down on them from my Aliko Atrium balcony, their music is rarely audible due to the angle with them being off the edge of my balcony.

Rather, my concern is the establishment of precedents and expectations for my more serious problem with the music coming from the Beach Bucket behind Riptide. My balcony does not face towards Riptide, but it does face directly towards the Beach Bucket and vice versa, such that it is difficult to enjoy a quiet evening at home when they are playing. I am attaching two compressed 3MB videos from my iPhone showing the problem. If your volume is set loud enough to hear my TV it should also be loud enough to hear the Beach Bucket music and audience enthusiasm.

I suppose I have no hope that Beach Bucket will be denied approval for outdoor entertainment. However I can at least hope that the expected approval for Beach Bucket will at least be modified to terminate at 8 PM every evening Sunday-Saturday during turtle season since they are directly on the beach.

Best Regards,

Walter Kraslawsky
901 S Atlantic Ave PH 1
Ormond Beach, FL 32176
757-870-0210

Notice:

Under Florida law, e-mail addresses are public records. If you do not want your e-mail address released in response to a public-records request, do not send electronic mail to this entity. Instead, contact this office by phone or in writing.

Notice:

Under Florida law, e-mail addresses are public records. If you do not want your e-mail address released in response to a public-records request, do not send electronic mail to this entity. Instead, contact this office by phone or in writing.

Spraker, Steven

From: Walter Kraslawsky [walterkras@cfl.rr.com]
Sent: Thursday, April 23, 2015 10:36 PM
To: Naumann, Joanne; 'Walter Kraslawsky'
Cc: Bouck, John; Crimins, Jim
Subject: RE: Code Enforcement

Good Evening Ms. Naumann et al,

It is 10:15 PM on Thursday 4/23, and I regret to report that Riptides is performing live entertainment on their outside deck in violation of the 4-8 PM Sunday - Thursday restriction.

Although I do have the number below to call, I think this can be handled in a manner other than calling for a police investigation. If this should only be handled by police, then I would prefer it be enforced when observed by a routine passing patrol.

Regards,
Walter Kraslawsky

From: Naumann, Joanne [mailto:Joanne.Naumann@ormondbeach.org]
Sent: Wednesday, March 18, 2015 10:08 AM
To: 'Walter Kraslawsky'
Cc: Bouck, John; Crimins, Jim
Subject: FW: Code Enforcement

Dear Mr. Kraslawsky:

Thank you for bringing this matter to our attention. I have attached the City Commission approval which outlines the hours when music is allowed. We have initiated a case regarding the failure to comply with the approval by the City Commission. My staff will speak with the manager at Riptides to place him on notice. Via this email I have also advised Captain Crimins of your complaint and he too will have a copy of the conditions of approval by the commission. Should this occur in the future please contact the non-emergency dispatch number at 248-1777. An officer will be dispatched to the location to address this matter.

Please do not hesitate to contact me with regard to any future violations.

Best Regards,
Joanne Naumann, Manager
Neighborhood Improvement Division
Ormond Beach Police Department
170 W. Granada Blvd.
Ormond Beach, FL 32174
(386) 676-3352 (office)
(386) 615-7074 (fax)
email: Joanne.Naumann@ormondbeach.org

From: Weedo, Becky
Sent: Wednesday, March 18, 2015 8:21 AM
To: Naumann, Joanne
Subject: RE: Code Enforcement

Hello Joanne,

Please find attached the adopted Resolution approving the conditions for outdoor live music at Riptides. Mr. Kraslawsky is correct, the live outdoor music is restricted to Sunday through Thursday 4-8 pm, and Friday and Saturday, 11 am through 11 pm. Let me know if you need anything else.

Becky

From: Naumann, Joanne
Sent: Wednesday, March 18, 2015 8:09 AM
To: Weedo, Becky
Subject: FW: Code Enforcement

Can I obtain a copy of Riptides approval for outside entertainment please. I don't recall what was approved. thanks

From: Walter Kraslawsky [<mailto:walterkras@comcast.net>]
Sent: Tuesday, March 17, 2015 11:30 PM
To: Naumann, Joanne
Subject: RE: Code Enforcement

Dear Ms. Naumann,

It has been some time since I was disturbed by live entertainment coming from next door. However, the music from Riptides was particularly loud this evening since the weather was nice enough for us to have our balcony sliding doors open to enjoy the breeze.

Just to be sure, I went back to old email to see what guidance I could find regarding code enforcement. I was particularly surprised to see below that – unless the information below is incorrect – Riptides is not allowed to play outdoor entertainment past 8:00 PM Sunday through Thursday. Right now it is almost 11:30 PM on a Tuesday, and the loud entertainment is still going on.

Please reply with confirmation of the current restrictions, and contact Riptides to remind them of their requirements if they are in violation.

Best Regards,
Walter Kraslawsky

From: Walter Kraslawsky [<mailto:walterkras@comcast.net>]
Sent: Monday, April 21, 2014 9:15 PM
To: Naumann, Joanne
Subject: Code Enforcement

Dear Ms. Naumann,

I attended the recent meeting regarding the application by Riptide to play outdoor entertainment, and spoke against approval due to concern a similar approval would then be granted for the Beach Bucket, unaware that a precedent had already been set by approval for Dimitri up the street.

If I misunderstood what was approved, please advise, because I thought Riptide was approved to entertain outdoors until 8 PM on Sunday-Thursday and until 11 PM Friday-Saturday. Otherwise please remind them, since Riptide had not stopped their outdoor entertainment by 8 PM this evening.

To be clear, I am not especially bothered by the Riptide program. Although I am literally next door to Riptide and can look down on them from my Aliko Atrium balcony, their music is rarely audible due to the angle with them being off the edge of my balcony.

Rather, my concern is the establishment of precedents and expectations for my more serious problem with the music coming from the Beach Bucket behind Riptide. My balcony does not face towards Riptide, but it does face directly towards the Beach Bucket and vice versa, such that it is difficult to enjoy a quiet evening at home when they are playing. I am attaching two compressed 3MB videos from my iPhone showing the problem. If your volume is set loud enough to hear my TV it should also be loud enough to hear the Beach Bucket music and audience enthusiasm.

I suppose I have no hope that Beach Bucket will be denied approval for outdoor entertainment. However I can at least hope that the expected approval for Beach Bucket will at least be modified to terminate at 8 PM every evening Sunday-Saturday during turtle season since they are directly on the beach.

Best Regards,
Walter Kraslawsky
901 S Atlantic Ave PH 1
Ormond Beach, FL 32176
757-870-0210

Notice:

Under Florida law, e-mail addresses are public records. If you do not want your e-mail address released in response to a public-records request, do not send electronic mail to this entity. Instead, contact this office by phone or in writing.

Notice:
Under Florida law, e-mail addresses are public records. If you do not want your e-mail address released in response to a public-records request, do not send electronic mail to this entity. Instead, contact this office by phone or in writing.

**By STAFF REPORT
City of Ormond Beach
Department of Planning**

DATE: June 1, 2015

SUBJECT: LDC Amendment

APPLICANT: City of Ormond Beach

NUMBER: LDC 15-98

PROJECT Richard P. Goss, AICP

PLANNER:

Affected LDC Sections	Amendments
Article III, Chapter 1, Section 1-22 Definitions	1 added and 1 amended definition
Article I, Chapter 2, Section 2-05 Compliance with District Regulations	New subsection (b)

A. INTRODUCTION:

This is one of several interrelated city initiated amendments of either the Land Development Code or the City Code Ordinances related to organized gang related regulations. The Planning Board in May conducted a public hearing on the Itinerant Merchant License (IML) criteria which added Article VII to the Land Development Code. As part of the IML amendment, a definition for Organized or criminal gang, organized or criminal gang member and organized or criminal gang associate was added; the use of land, property, business or structure for unlawful purposes and its use by organized gangs or associates was prohibited for Recognized Special Events and Outdoor Entertainment Activity; and enforcement was referenced through Article X, Chapter 14 of the City Code of Ordinances. The purpose of this amendment is to ensure internal consistency between amendments.

B. LDC AMENDMENTS:

It is proposed that Section 1-22, Definitions of the Land Development Code be amended to read as follows in alphabetical order:

Section 1-22. Definitions

Clinic, medical or dental (No change in existing text).....

Clubs and fraternal organizations means an association or organization of a fraternal, social, or recreational character that is not operated or maintained for profit and that is incorporated under the laws of the state of Florida as a nonprofit organization. It excludes any club or organization that discriminates against race, gender, religion, creed, nationality, or sexual orientation; and excludes an organized or criminal gang, organized or criminal gang member, and organized or criminal gang associate, as defined in this section

Ordinarily saturated soil..... (No change in existing text).....

Organized or criminal gang, organized or criminal gang member, and organized or criminal gang associate shall have the meanings described in Chapter 874, Florida Statutes, as the same presently exists or may be hereafter amended. Organized or criminal gangs shall also include, but shall not be limited to, those organizations or gangs described in the most recent editions of the national gang report or other national gang threat assessment published by the National Gang Intelligence Center, the Federal Bureau of Investigation, or any other state or nationally recognized agency or authority on criminal gangs; and shall include any organization or gang that meets the elements of Chapter 874, Florida Statutes, regardless of any conviction or official adjudication. Organized or criminal gang associate shall also include any owner of, or other person having an equitable, beneficial or leasehold interest in, land, property, building, structure, or business who allows or permits his or

her land, property, building, structure, or business to be used by an organized or criminal gang, or to facilitate or permit unlawful activity or a violation of this Code or the Code of Ordinances, or for the assembly of organized or criminal gang members or associates. Organized or criminal gang, organized or criminal gang member, and organized or criminal gang associate, including the assembly thereof, is prohibited in, on or upon all land, property, buildings, businesses, and structures throughout the incorporated municipal boundaries of the city, and is prohibited throughout the North U.S. 1 Highway Municipal Service Area established by that certain Interlocal Service Boundary Agreement between the city and County of Volusia which became effective on August 28, 2015 and has been recorded at Book 7026, Pages 878 through 895 of the Public Records of Volusia County, Florida. This definition shall be broadly construed, administered and enforced in favor of the city, and the regulations pertaining thereto may be enforced in accordance with Article X, Chapter 14 of the Code of Ordinances or other applicable law.

The second amendment to the Land Development Code is a new subsection (b) to Section 2-05 entitled Compliance with district regulations which is to read as follows:

Sec. 2-05. Compliance with district regulations

(b) Organized or criminal gang, organized or criminal gang member, and organized or criminal gang associate, as defined in section 1-22 of this Code, are prohibited uses or activities in, on, or upon all land, property, buildings, structures, and businesses throughout the incorporated municipal boundaries of the city, and are prohibited uses or activities throughout the North U.S. 1 Highway Municipal Service Area established by that certain Interlocal Service Boundary Agreement between the city and County of Volusia which became effective on August 28, 2015, and

which has been recorded at Book 7026, Pages 878 through 895 of the Public Records of Volusia County, Florida. In the event a city official who is responsible for administering, implementing or enforcing this Code has reasonable cause to believe any land, property, building, structure, or business is being used by an organized or criminal gang, or organized or criminal gang member or gang associate, then in such event the owner of, or other person having an equitable, beneficial or leasehold interest in, such land, property, building, structure, or business shall, upon request by the city official, produce proof or evidence sufficient to demonstrate that the land, property, building, structure, or business is not being used by an organized or criminal gang, or organized or criminal gang member or gang associate. A request for proof or evidence may include:

- i. Inspection of the land, property, building, structure, or business.
- ii. Marketing or advertisement material.
- iii. Evidence of the utilization of goods, services, and wares by customers (e.g., sales receipts; receipts evidencing the delivery of goods, services, or wares, etc.).
- iv. Monthly sales tax remittance, quarterly Internal revenue Code 941 filing, annual federal tax return, and/or other financial documentation that is deemed reasonable and appropriate under the circumstances.
- v. Any other documentation reasonably related to a request for information to evaluate the use of such land, property, building, structure, or business. A failure by an owner of, or other person having an equitable, beneficial or leasehold interest in, such land, property, building, structure, or business to

produce or provide the information requested, within the time period prescribed in a written request, shall create a legal presumption that the land, property, building, structure, or business is being used by an organized or criminal gang, or organized or criminal gang member or associate. Any violation of the requirements or provisions in this Code may be enforced through the special magistrate code enforcement system as provided in Chapter 2, Article VII of the Code of Ordinances, or any other legal or equitable action or proceeding as provided by law. No enforcement remedy shall be the exclusive remedy, and any remedy may be exercised separately from or concurrent with any other remedy, including the revocation of any license, permit, or business tax receipt; and the remedies provided by section 14-103.5, of the Code of Ordinances. The prohibitions, remedies, and penalties against organized or criminal gangs, and

- vi. Organized or criminal gang members and gang associates shall be broadly construed and applied in favor of the city for the protection of the health, safety and welfare of the general public.

C. ANALYSIS OF AMENDMENTS:

The definition of Club and fraternal organizations is amended to exclude any club or organization that discriminates based on the group, class, or category to which that person belongs. The definition also excludes any organized or criminal gang, its members and associates as defined by this amendment.

The definition of Organized or criminal gang, organized or criminal gang

member, and organized or criminal gang associate is added consistent with Chapter 874, Florida Statutes as well as described in the most recent editions of the national gang report or other national gang threat assessment published by the National Gang Intelligence Center, the Federal Bureau of Investigation, or any other state or nationally recognized agency or authority on criminal gangs.

Organized or criminal gang, organized or criminal gang member, and organized or criminal gang associate, including assembly is prohibited throughout the city to include the US 1 North Corridor which is under an Interlocal Service Boundary Agreement with Volusia County.

A process is established by which a city official responsible for administering, implementing or enforcing the Land Development Code and who has reasonable cause to believe land, property, building, structure, or business is being used by an organized or criminal gang, or organized or criminal gang member or gang associate, may require the owner or other person having an interest to provide proof or evidence sufficient to demonstrate that the land, property, building, structure, or business is not being used by an organized or criminal gang, or organized or criminal gang member or gang associate.

Failure by the owner or person having an interest such land, property, building, structure, or business to produce the required information creates a legal presumption that the land, property, building, structure, or business is being used by an organized or criminal gang, or organized or criminal gang member or associate.

Violations are to be enforced through the special magistrate code enforcement system as provided in Chapter 2, Article VII of the Code of Ordinances, or any other legal or equitable action or proceeding as provided by law.

Chapter 2, Article VII of the City Code of Ordinances will also be amended to be consistent with these amendments.

D. SUBSEQUENT ACTION BY CITY:

City Commission approval on First Reading and Public Hearing: June 23, 2015

City Commission approval on Second Reading and Public Hearing: July 28, 2015

E. CONCLUSION:

There are certain criteria that must be evaluated before this amendment can be approved. According to Article I of the Land Development Code, the Planning Board shall consider the following when making its recommendation:

- 1. The proposed development conforms to the standards and requirements of this Code and will not create undue crowding beyond the conditions normally permitted in the zoning district, or adversely affect the public health, safety, welfare or quality of life.**

The amendment is not a proposed development however it is designed to protect the health, safety and welfare of the general public; to promote the elimination of blight, encourage economic development to revitalize the MSA/Gateway and the city as a whole, and to protect property values.

- 2. The proposed development is consistent with the Comprehensive Plan.**

The amendment is consistent with and furthers the rationale for the amortization of unimproved vacant land in the Municipal Services Area. Coupled with vacant land that is occupied only

during Recognized Special Events, organized gangs also have debilitating effects on property values.

- 3. The proposed development will not adversely impact environmentally sensitive lands or natural resources, including but not limited to waterbodies, wetlands, xeric communities, wildlife habitats, endangered or threatened plants and animal species or species of special concern, wellfields, and individual wells.**

This is not a project-specific development application and the proposed Land Development Code amendment will not have an adverse impact on environmentally sensitive lands.

- 4. The proposed use will not substantially or permanently depreciate the value of surrounding property; create a nuisance; or deprive adjoining properties of adequate light and air; create excessive noise, odor, glare, or visual impacts on the neighborhood and adjoining properties.**

The amendment is designed to combat the secondary effects such as decreasing property values that occur when gang related activity occurs in an area. In addition, it is designed to abate places and groups engaged in criminal gang-related activity as a public nuisance.

- 5. There are adequate public facilities to serve the development, including but not limited to roads, sidewalks, bike paths, potable water, wastewater treatment, drainage, fire and police safety, parks and recreation facilities, schools, and playgrounds.**

There is no development proposed for this amendment. The application pertains to a Land Development Code amendment.

- 6. Ingress and egress to the property and traffic patterns are designed to protect and promote motorized vehicle and pedestrian/bicycle safety and convenience, allow for**

desirable traffic flow and control, and provide adequate access in case of fire or catastrophe. This finding shall be based on a traffic report where available, prepared by a qualified traffic consultant, engineer or planner which details the anticipated or projected effect of the project on adjacent roads and the impact on public safety.

There is no development proposed for this amendment. The application pertains to a Land Development Code amendment.

7. The proposed development is functional in the use of space and aesthetically acceptable.

There is no development proposed for this amendment. The application pertains to a Land Development Code amendment.

8. The proposed development provides for the safety of occupants and visitors.

The amendment is designed to combat a mounting crises caused by organized or criminal gangs whose members threaten and terrorize peaceful citizens and commit a multitude of crimes

9. The proposed use of materials and architectural features will not adversely impact the neighborhood and aesthetics of the area.

There is no development proposed for this amendment. The application pertains to a Land Development Code amendment.

10. The testimony provided at public hearings.

The Planning Board conducted a public hearing on the Itinerant Merchant Criteria in May. Part of the amendment included the definition and the prohibition of organized gangs, members and associates from using land, buildings,

F. SUMMARY:

The amendment to the LDC is designed to work with and be consistent with other amendments proposed by the city to prohibit

organized, criminal gangs as public nuisances.

G. RECOMMENDATION:

Staff recommends that the Planning Board approve Case# 15-98 as provided.

C: Draft Ordinance

ORDINANCE 2015-XX

AN ORDINANCE AMENDING CHAPTER 1, GENERAL ADMINISTRATION, ARTICLE III, DEFINITIONS AND ACRONYMS, SECTION 1-22, DEFINITIONS, AND CHAPTER 2, DISTRICT AND GENERAL REGULATIONS, ARTICLE I, ESTABLISHMENT OF ZONING DISTRICTS AND OFFICIAL ZONING MAP, SECTION 2-05, COMPLIANCE WITH DISTRICT REGULATIONS OF THE CITY OF ORMOND BEACH LAND DEVELOPMENT CODE BY AMENDING THE DEFINITION FOR CLUBS AND FRATERNAL ORGANIZATIONS; BY PROVIDING A DEFINITION FOR ORGANIZED OR CRIMINAL GANG, ORGANIZED OR CRIMINAL GANG MEMBER, AND ORGANIZED OR CRIMINAL GANG ASSOCIATE; BY PROHIBITING ORGANIZED OR CRIMINAL GANGS, ORGANIZED OR CRIMINAL GANG MEMBERS, AND ORGANIZED OR CRIMINAL GANG MEMBERS; PROVIDING FOR ENFORCEMENT; REPEALING ALL INCONSISTENT ORDINANCES OR PARTS THEREOF; PROVIDING FOR SEVERABILITY; AND SETTING FORTH AN EFFECTIVE DATE.

WHEREAS, the Planning Board of the City of Ormond Beach, as the local planning agency, has conducted a public hearing on _____, 2015 on the requested amendment and has made recommendations thereon to the city commission, and

WHEREAS, all applicable notice requirements of Section 166.041(3)(a), *Florida Statutes*, have been complied with, and

WHEREAS, the city commission finds the amendment to be consistent with the provisions of the *Comprehensive Plan* of the City of Ormond Beach, and in the overall best interest of the public health, safety and welfare, now therefore,

**BE IT ENACTED BY THE PEOPLE OF THE CITY OF ORMOND BEACH,
FLORIDA, THAT**

SECTION ONE. Chapter 1, General Administration, Article III, Definitions and Acronyms, Section 1-22, Definitions of the City of Ormond Beach *Land Development Code* is hereby amended by adding the following definitions, which shall read as follows:

Sec. 1-22. Definitions.*

Clubs and fraternal organizations means an association or organization of a fraternal, social, or recreational character that is not operated or maintained for profit and that is incorporated under the laws of the state of Florida as a nonprofit organization. It excludes any club or organization that discriminates against race, gender, religion, creed, nationality, or sexual orientation; and excludes an organized or criminal gang, organized or criminal gang member, and organized or criminal gang associate, as defined in this section.

Organized or criminal gang, organized or criminal gang member, and organized or criminal gang associate shall have the meanings described in Chapter 874, Florida Statutes, as the same presently exists or may be hereafter amended. Organized or criminal gangs shall also include, but shall not be limited to, those organizations or gangs described in the most recent editions of the national gang report or other national gang threat assessment published by the National Gang Intelligence Center, the Federal Bureau of Investigation, or any other state or nationally recognized agency or authority on criminal gangs; and shall include any organization or gang that meets the elements of Chapter 874, Florida Statutes, regardless of any conviction or official adjudication. Organized or criminal gang associate shall also include any owner of, or other person having an equitable, beneficial or leasehold interest in, land, property, building, structure, or business who allows or permits his or her land, property, building, structure, or business to be used by an organized or criminal gang, or to facilitate or permit unlawful activity or a violation of this Code or the Code of Ordinances, or for the assembly of organized or criminal gang members or

associates, organized or criminal gang, organized or criminal gang member, and organized or criminal gang associate, including the assembly thereof, is prohibited in, on or upon all land, property, buildings, businesses, and structures throughout the incorporated municipal boundaries of the city, and is prohibited throughout the North U.S. 1 Highway Municipal Service Area established by that certain Interlocal Service Boundary Agreement between the city and County of Volusia which became effective on August 28, 2015 and has been recorded at Book 7026, Pages 878 through 895 of the Public Records of Volusia County, Florida. This definition shall be broadly construed, administered and enforced in favor of the city, and the regulations pertaining thereto may be enforced in accordance with Article X, Chapter 14 of the Code of Ordinances or other applicable law.

*(There is no change to the other definitions in this section, all of which remain unchanged)

SECTION TWO. Chapter 2, District and General Regulations, Article I, Establishment of Zoning Districts and Official Zoning Map, Section 2-05, Compliance with district regulations of the City of Ormond Beach *Land Development Code* is hereby amended to read as follows:

Sec. 2-05. Compliance with district regulations.

- (a) No building or structure shall be erected, reconstructed or structurally altered, nor shall any building, land or water be used for any purpose other than a use permitted in the zoning district in which such building, land or water is located. No building or land shall be used so as to produce greater heights, smaller yards, less unoccupied area, or higher density or intensity than is prescribed for such building or land within the zoning district regulations in which the building or land is located. No lot, which is now or which may be hereafter built upon shall be so reduced in area so that the yards and open spaces will be smaller than prescribed by this Code.

- (b) Organized or criminal gang, organized or criminal gang member, and organized or criminal gang associate, as defined in section 1-22 of this Code, are prohibited uses or activities in, on, or upon all land, property, buildings, structures, and businesses throughout the incorporated municipal boundaries of the city, and are prohibited uses or activities throughout the North U.S. 1 Highway Municipal Service Area established by that certain Interlocal Service Boundary Agreement between the city and County of Volusia which became effective on August 28, 2015, and which has been recorded at Book 7026, Pages 878 through 895 of the Public Records of Volusia County, Florida. In the event a city official who is responsible for administering, implementing or enforcing this Code has reasonable cause to believe any land, property, building, structure, or business is being used by an organized or criminal gang, or organized or criminal gang member or gang associate, then in such event the owner of, or other person having an equitable, beneficial or leasehold interest in, such land, property, building, structure, or business shall, upon request by the city official, produce proof or evidence sufficient to demonstrate that the land, property, building, structure, or business is not being used by an organized or criminal gang, or organized or criminal gang member or gang associate. A request for proof or evidence may include:
- i. Inspection of the land, property, building, structure, or business.
 - ii. Marketing or advertisement material.
 - iii. Evidence of the utilization of goods, services, and wares by customers (e.g., sales receipts; receipts evidencing the delivery of goods, services, or wares, etc.).
 - iv. Monthly sales tax remittance, quarterly Internal revenue Code 941 filing, annual federal tax return, and/or other financial documentation that is deemed reasonable and appropriate under the circumstances.

- v. Any other documentation reasonably related to a request for information to evaluate the use of such land, property, building, structure, or business.

A failure by an owner of, or other person having an equitable, beneficial or leasehold interest in, such land, property, building, structure, or business to produce or provide the information requested, within the time period prescribed in a written request, shall create a legal presumption that the land, property, building, structure, or business is being used by an organized or criminal gang, or organized or criminal gang member or associate. Any violation of the requirements or provisions in this Code may be enforced through the special magistrate code enforcement system as provided in Chapter 2, Article VII of the Code of Ordinances, or any other legal or equitable action or proceeding as provided by law. No enforcement remedy shall be the exclusive remedy, and any remedy may be exercised separately from or concurrent with any other remedy, including the revocation of any license, permit, or business tax receipt; and the remedies provided by section 14-103.5, of the Code of Ordinances. The prohibitions, remedies, and penalties against organized or criminal gangs, and organized or criminal gang members and gang associates shall be broadly construed and applied in favor of the city for the protection of the health, safety and welfare of the general public.

SECTION THREE. All Ordinances or parts of Ordinances in conflict herewith are hereby repealed to the extent of such conflict.

SECTION FOUR. In the event any work, phrase, clause, sentence, paragraph, term or provision of this Ordinance shall be held to be invalid by a court of competent jurisdiction, such judicial determination shall not affect any other work, clause, phrase, sentence, paragraph, term or provision, of this Ordinance, and the remainder of this Ordinance shall remain in full force and effect.

SECTION FIVE. This Ordinance shall take effect immediately upon its adoption.

PASSED UPON at the first reading of the City Commission, this ____ day of _____, 2015.

PASSED UPON at the second and final reading of the City Commission, this ____ day of _____, 2015.

ED KELLEY
Mayor

ATTEST:

J. SCOTT McKEE
City Clerk