

ORDINANCE NO. 2005 - 41

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Page: 3583

AN ORDINANCE OF THE CITY OF DELAND, FLORIDA, CHANGING THE ZONING FROM VOLUSIA COUNTY B-5, HEAVY COMMERCIAL, R-4 AND R-3, URBAN SINGLE FAMILY TO PD, PLANNED DEVELOPMENT DISTRICT, ON DESCRIBED PROPERTY LOCATED ON THE NORTH SIDE OF BARRINGTON AVENUE, +/- 525 FEET EAST OF SOUTH WOODLAND BOULEVARD; APPROVING A DEVELOPMENT PLAN FOR 22 SINGLE FAMILY DETACHED UNITS, A RESIDENTIAL PLANNED DEVELOPMENT CONSISTING OF APPROXIMATELY 5.878 ACRES OF PROPERTY; DIRECTING A CHANGE IN THE COMPREHENSIVE ZONING MAP; CONDITIONING FINAL DEVELOPMENT APPROVAL ON A DETERMINATION OF CONCURRENCY; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, Viscomi and Associates, Inc, C/o Vincent Viscomi, owner (hereinafter referred to as "Applicant"), owns a 5.878 acre parcel of land located on the north side of Barrington Avenue, +/- 525 feet east of South Woodland Boulevard, which is more particularly described in the legal description attached hereto as Exhibit "A" and by this reference made a part hereof; and

WHEREAS, Applicant has applied for a change of zoning from the present zoning classification of Volusia County B-5, Heavy Commercial, R-4 and R-3, Urban Single Family, to PD, Planned Development District; and

WHEREAS, said rezoning as a PD District is consistent with both the Comprehensive Plan and the purpose and intent of Section 33-32 of the Code of Ordinances of the City of DeLand (the "Code"); and

WHEREAS, Applicant has submitted an application for approval of a development plan for the Country Club Village PD to encompass all of the property described in Exhibit "A" (hereinafter the "Property" or the "Project"); and

WHEREAS, the proposed development plan meets or exceeds the minimum conditions and standards for the PD District with respect to minimum development size, perimeter setbacks, comprehensive plan consistency, internal compatibility, external compatibility, open spaces, sidewalks, environmental constraints, internal access and circulation, external transportation access, off-street parking, public facilities and unified control; and

WHEREAS, the proposed development plan is consistent with the low density residential land use designation which: encourages intensified development in outlying or newly developed areas for a variety of commercial and office needs; encourages clustering of new development to promote shared facilities and access and to discourage linear development along collector and arterial level roadways; permits energy and cost effective delivery of services; and, requires properly designed ingress and egress to avoid undue traffic hazards or congestion;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF DELAND, FLORIDA:

Section 1. The City Commission has held a public hearing to approve the change of zoning from Volusia County B-5, Heavy Commercial, R-4 and R-3, Urban Single Family, to PD, Planned Development District.

Section 2. Pursuant to the determination made at public hearing, the City Commission hereby amends the Comprehensive Zoning Map of the City to include the land described in Exhibit "A" as PD, Planned Development District.

Section 3. The zoning of the Property as PD, Planned Development District, is made pursuant to Section 33-32 of the Code and the development of the Property shall take place in accordance with that Section and in substantial compliance with the Development Plan Report,

Narrative, Maps and other supporting documentation submitted by Applicant which shall be filed and retained for public inspection in the office of the City Planning Department and constitute a supplement to the official Zoning Map of the City.

Section 4. The approved Development Plan for the Country Club Village PD, including the Development Plan Agreement, Map and other supporting documentation (on file with the City Planning Department), are attached hereto as Exhibit "B" and by this reference made a part hereof.

Section 5. The failure of the approved Development Plan to address a particular permit, condition, term or restriction shall not relieve the Applicant of the necessity of complying with any law governing said permitting requirements, conditions, terms or restrictions, as same may be amended or enacted from time to time in the future. All current land development regulations of the City are applicable to the PD District except to the extent that they conflict with a specific provision of the approved Development Plan.

Section 6. At the time of development, the Applicant shall comply with all relevant building codes and development standards contained in the City's Code of Ordinances or in the Development Plan; provided, however, that the development standards contained in the adopted Development Plan shall supersede comparable standards contained in the Code of Ordinances.

Section 7. Pursuant to Article 5 of the City's Land Development Regulations, the Applicant shall comply with all applicable infrastructure regulations.

Section 8. The City Commission may rezone any portion of the Project which has not obtained a certificate of occupancy within five years from the date of adoption of this Ordinance.

Section 9. Prior to the issuance of a building permit for any nonresidential development, Applicant shall submit an easement document, acceptable to the City of DeLand, permitting additions to shared access, parking, utilities and stormwater.

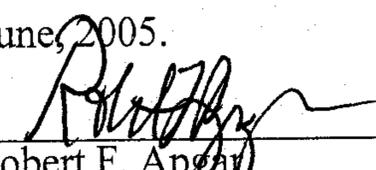
Section 10. The City Engineer, Planning Director and Building Department are hereby directed to change the Comprehensive Zoning Map of the City of DeLand to conform with the change of zoning enacted in this Ordinance.

Section 11. No rights to obtain final development orders nor any rights to develop the property have been granted or implied by this Ordinance. Final development orders for the property including, but not limited to, subdivision and site plan approval shall be subject to a determination of concurrency.

Section 12. If any section, sentence, clause or phrase of this Ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, that holding shall in no way affect the validity of the remaining portions of this Ordinance.

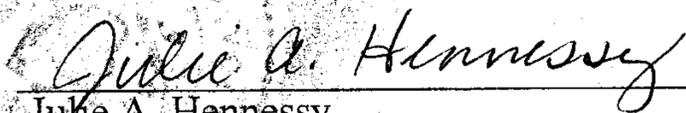
Section 13. This Ordinance shall become effective immediately upon its adoption.

PASSED AND DULY ADOPTED this 20th day of June, 2005.



Robert F. Apgar
Mayor - Commissioner

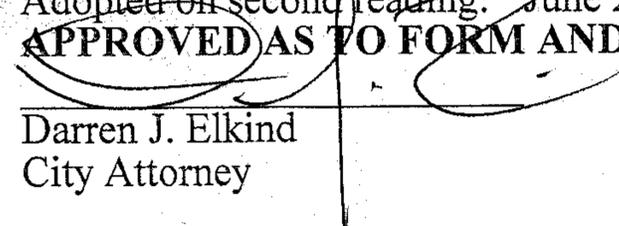
ATTEST:



Julie A. Hennessy
City Clerk - Auditor

Passed on first reading: April 4, 2005
Adopted on second reading: June 20, 2005

APPROVED AS TO FORM AND LEGALITY:



Darren J. Elkind
City Attorney

Exhibit "A"

LEGAL DESCRIPTION

LEGAL DESCRIPTION PER OFFICIAL RECORD BOOK 4363,
PAGE 3771: THE EAST 780.00 FEET OF THE SOUTH 294.50
FEET OF THE NORTH $\frac{1}{2}$ OF THE SOUTHEAST $\frac{1}{4}$ OF THE
NORTHWEST $\frac{1}{4}$ OF SECTION 28, TOWNSHIP 17 SOUTH, RANGE
30 EAST, VOLUSIA COUNTY, FLORIDA

AND

LOTS 1, 2, 3 AND "H", BLOCK "A", EDZELL SUBDIVISION AS PER
MAP BOOK 10, PAGE 44, PUBLIC RECORDS OF VOLUSIA
COUNTY, FLORIDA.

**PD PLANNED DEVELOPMENT AGREEMENT
IN THE CITY COMMISSION OF THE
CITY OF DELAND, FLORIDA**

IN RE: _____
(Case #)

**Application of
VISCOMI & ASSOCIATES INC.**

ORDINANCE # 2005-41

**ORDER AND RESOLUTION
GRANTING A REQUEST FOR CHANGE OF ZONING FROM
VOLUSIA COUNTY R4
TO
PD (PLANNED DEVELOPMENT)**

The application of Viscomi & Associates, Inc., hereinafter, "Applicant", for rezoning was heard by and before the City Commission, DeLand Florida, on June 20th 2005. Based upon the verified Application and other supporting documents, maps, charts, overlays, other evidence and instruments; the advice, report, and recommendations of the Community Development, and other Departments and agencies of DeLand, Florida; and the testimony adduced and evidence received at the Public Hearing on this Application by the Planning Board on February 16th 2005 and otherwise being fully advised, the City Commission does hereby find and determine as follows:

GENERAL FINDINGS

- A. That the application of Viscomi & Associates, Inc., was duly and properly filed herein on December 20th 2004 as requested by law.
- B. That all fees and costs, which are by law, regulation, or Ordinance required to be borne and paid by the applicant, have been paid.
- C. That the applicant is the contract purchaser of a 5.78 acre parcel of land which is situated in DeLand, Florida. This parcel of land is described more particularly in the survey and legal description, a true copy of which is attached hereto as Exhibit "A".
- D. That the Applicant has complied with the concept plan provision as required by Land Development Regulation Ordinance #2002-09, as amended.
- E. That the Applicant has complied with the "Due Public Notice" requirements of the City Commission, Land Development Regulations Ordinance # 2002-09, as amended.
- F. That the owner of the property, Viscomi & Associates, Inc., Vincent Viscomi, President, agrees with the provisions of the Development Agreement.

FINDING REGARDING REZONING

- A. That the Applicant has applied for a change of zoning from the present zoning classification(s) of the parcel described in Exhibit "A" from Volusia County R4 to PD (Planned Development).
- B. That the said rezoning to a PD is consistent with both the City of DeLand Comprehensive Plan Ordinance #1990-04, as amended, and the intent and purpose of the City of DeLand Land Development Regulations Ordinance # 2002-09, as amended, and does promote the public health, safety, morals, general welfare and orderly growth of the area affected by the rezoning request.

NOW, THEREFORE, BE IT RESOLVED AND ORDERED BY THE CITY OF DELAND, FLORIDA, IN OPEN MEETING DULY ASSEMBLED IN THE CITY COMMISSION CHAMBERS, 121 WEST RICH AVENUE, DELAND, FLORIDA, THIS 20 DAY OF June, 2005, AS FOLLOWS:

- A. That the Application of Viscomi & Associates, Inc. for rezoning of the subject parcel is hereby granted.

- B. That the zoning classification of the subject parcel described in Exhibit "A" attached hereto is hereby amended from Volusia County R4 to PD as described in Article VII of the City of DeLand, Land Development Regulations Ordinance # 2002-09, as amended.
- C. That the Official Zoning Map of the City of DeLand, is hereby amended to show the rezoning of said parcel to Country Club Village PD.
- D. That the City of DeLand Land Development Regulations Ordinance #2002-09, as amended, is consistent with the provisions of the "Development Agreement" as hereinafter set forth in this Ordinance and with respect to any conflict between Land Development Regulations Ordinance #2002-09, as amended, and the "Development Agreement", the provisions of the "Development Agreement" shall govern. Ordinance No. 02-09, as amended, shall govern with respect to any matter not covered by the "Development Agreement". The City of DeLand, will ensure overall compliance with this Ordinance.
- E. Unless otherwise provided for herein the City of DeLand, Land Development Regulations Ordinance #2002-09, as amended, shall apply to the PD in the same manner as the R-8 zoning classification.

F. Nothing in this Ordinance shall abridge the requirements of any City of DeLand Ordinance other than Ordinance 2002-09, as amended. Timing and review procedures contained in this Order and Resolution may be modified to comply with the City of DeLand Land Development Regulations, Ordinance No. 2002-09, as amended. Further, nothing in the Development Agreement is intended to abridge the requirements of Ordinance No. 2002-09, as amended, and any other County Ordinances.

DEVELOPMENT AGREEMENT

A. **Development Concept.** The property shall be developed as a PD substantially in accordance with the Conceptual Site Plan, hereafter called the Planned Development Plan, dated 10-10-04. The Planned Development Plan shall govern the development of the property as a PD and shall regulate the future land use of this parcel.

1. **Planned Development Plan.** The Planned Development Plan shall consist of the Development Plan Map prepared by Parker Mynchenberg & Associates, Inc. and dated 10-10-04, and this Development Agreement. The Planned Development Plan is hereby approved and incorporated in this Ordinance by reference

as Exhibit "B". The Planned Development Plan shall be filed and retained for public inspection in the Planning Department and it shall constitute a supplement to the Official Zoning Map of the City of DeLand.

2. Amendments. All amendments of the Planned Development Plan, other than those deemed by the Planning Department to be minor amendments as set out in Ordinance No. 2002-09, as amended, shall require the review and recommendation of the Planning Board and action by the City Commission in the same manner as a rezoning of the parcel.
3. Subdivision Approval. After the Planned Development Plan is recorded, and prior to any construction, including clearing and landfill, an application, a preliminary plat and final plat of the area to be subdivided shall be submitted for review and approval in the manner required by Article 13 of the City of DeLand Land Development Regulations, Ordinance No. 2002-09, as amended.
4. Final Site Plan Approval. After the Planned Development Plan is recorded, and prior to issuance of any permits for construction, including clearing and landfill, a Final Site Plan shall be prepared and submitted for review and approval in the manner required by Article 12 of the City of DeLand, Land Development Regulations Ordinance #2002-09, as amended.

B. Unified Ownership. The Applicant or his successors shall maintain unified ownership of this subject parcel until after issuance of the Plan Final Development Order and Final Site Plan Development Order.

C. Phases of Development. The project will be a one phase development. Construction will commence once all permits are received.

D. Land Uses Within the PD. The development of the parcel shall be consistent with the uses prescribed for each area within the proposed Country Club Village PD. The location and size of said land use area are shown on the Development Plan Map, Exhibit "B". The following land uses shall be allowed as permitted principal uses and structures along with their customary accessory uses and structures: single family Town homes/ Villas.

E. Development Standards. The minimum site design regulations within the Country Club Village PD are listed below:

- | | |
|-----------------------------------|----------------------|
| 1. Minimum lot area | 7,200 SF |
| 2. Minimum lot width and/or depth | 60' wide x 120' deep |

3. Minimum setback requirements
 - a. Front Yard 20 ft.
 - b. Rear Yard 20 ft.
 - c. Side Yard 7.5 ft.
 - d. Waterfront Yard N/A
4. Minimum ^{Living} floor area 1,800 S.F.
5. Maximum lot coverage 40%
6. Maximum building height 35 ft.
7. Landscape buffer requirements
 - South - 15'
 - North - 10'
 - East - 15'
 - West - 15'
8. Parking requirements 2 / Dwelling Unit
9. Signage requirements for sign detail Per Sign Detail Exhibit "C"

F. Environmental Considerations. Existing environmental vegetation will be preserved where possible by creating a 15 foot south property line buffer, and a 10 foot north, east and west property line buffer. A Homeowners Association will be responsible for the common perpetual maintenance of all common areas, including the stormwater management system, signage, and other common elements/lands.

G. Sewage Disposal and Potable Water. Provision for sewage disposal and potable water needs of the PD will be provided in accordance with the Comprehensive Plan, Ordinance No. 1990-04, as amended, the Land Development Regulations Ordinance No. 2009-09, as amended, and State of Florida Administrative Code 64E-6.

H. Stormwater Drainage. Provision for stormwater retention shall be in accordance with the Land Development Regulations Ordinance 2002-09, as amended.

I. Access and Transportation System Improvements. All access and transportation system improvements shall be provided in accordance with the Land Development Regulations, Org. 02-09, as amended. The parcel shall be developed in substantial accordance with the following access and transportation system improvements:

1. Access. A 50-foot wide public road row is proposed to intersect with Barrington Avenue, an existing paved public road.
2. Transportation System Improvements. Twenty-two (22) residential driveways are proposed.

J. Internal Roadways. Construction of a 50 foot wide City of DeLand dedicated right-of-way, with a 108'-0" foot diameter cul-de-sac right-of-way, with 22 feet of asphalt and Miami curb and gutter constructed on both sides of the street. All roadways will be dedicated to the City of DeLand and constructed to City Standards.

1. The entrance drive off Barrington Avenue must have a double entrance with a vegetated median separation.
2. There must be a dedicated 40 foot wide emergency access easement to the north property line, with a minimum of 20 feet of the easement stabilized for a 20 ton emergency vehicle.

K. Building or Property Owners Association The applicant will create a Homeowner's Association. The charter and by-laws of said association and any other agreements, covenants, easements or restrictions shall be furnished to the City of DeLand at the time of creation. The applicant shall be responsible for recording said information in the Public Records of Volusia County, Florida. Also, the applicant shall bear and pay all costs for recording all of the aforementioned documents. With respect to the enforcement of said agreements, covenants, easements or restrictions entered into between the applicant and the owners or occupiers of property within the Country Club Village PD, the City of DeLand shall only enforce the provisions of

the "Development Agreement" and City of DeLand Land Development Regulations Ordinance # 2002-09, as amended, whichever is applicable, and not the private agreements entered into between the aforementioned parties.

- L. Underground Utilities: All utilities are to be underground.
- M. Reverter Provision: The City Commission may rezone any portion of the project which has not secured a (Final Development Order) on or before 5 years from the effective date of this ordinance as may be necessary or appropriate to protect adjoining properties or the public health, safety and welfare, unless the City Commission, for good cause shown, shall extend the time period indicated in this paragraph.
- N. Binding Effect of Plans; Recording; and Effective Date. The Planned Development Plan, including any and all amendments shall bind and inure to the benefit of the Applicant and his successor in title or interest. The Country Club Village PD zoning, provisions of the "Development Agreement," and all approved plans shall run with the land and shall be administered in a manner consistent with Article 12 of the City of DeLand Land Development Regulation Ordinance # 2002-09, as amended. This Ordinance and all subsequent

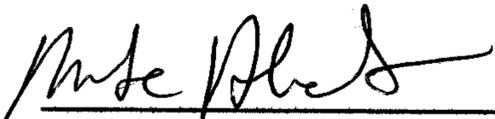
amendments shall be filed with the Clerk of the Court and recorded within forty-five (45) days following execution of the document by the City Commission, in the Official Records of Volusia County, Florida. One copy of the document, bearing the book and page number of the Official Record in which the document was recorded, shall be submitted to the Planning Department for placement in the public file. The date of recording of this document shall constitute the effective date of the Country Club Village PD or its subsequent amendments. The applicant shall pay all filing costs for recording documents.

- O. Conceptual Approval. The parties hereto acknowledge that reductions in density and/or intensity may and do occur; and that minor changes to roadway design, location and size of structures, actual location of parking spaces, specific locations for land uses, and locations and design of stormwater storage and landscape buffers may result to comply with the City of DeLand Land Development Regulations Ordinance # 2002-09, as amended. Upon determination of the Planning Department, these revisions may be processed as minor amendments as set forth in the City of DeLand Land Development Regulations Ordinance # 2002-09, as amended. The Applicant agrees to revise and record the Revised Preliminary Plan, which reflects any changes with the City Clerk immediately following the expiration of the

30 day period for appealing Development Review Committee (DRC) decisions to the County Council. A copy of the Revised Preliminary Plan, bearing the book and page number of the Official Record in which the document was recorded, shall be submitted to the Planning Department.

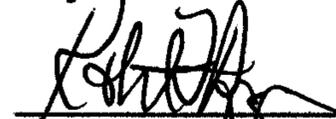
DONE and ORDERED by the City Commission, City of DeLand, Florida, this 20th day of June, 2006.

ATTEST:



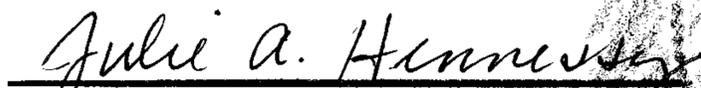
Mike Abels, City Manager **ATTEST:**

City Commission of DeLand, Florida



Robert Apgar, Mayor

STATE OF FLORIDA
CITY OF DELAND


Julie A. Hennessy, CMC
City Clerk - Auditor

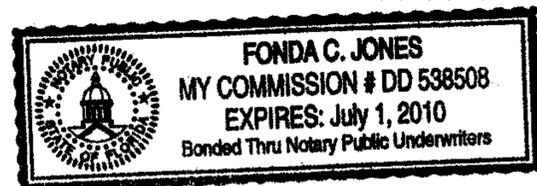
The foregoing instrument was acknowledged before me this 20th day of June, 2006, by Mike Abels and Robert Apgar, as City Manager and Mayor, City of DeLand, respectively, on behalf of the City of DeLand, and who are personally known to me.


NOTARY PUBLIC, STATE OF FLORIDA

Fonda C. Jones
Type or Print Name

Commission No.: _____

My Commission Expires: _____



WITNESSES.

[Signature]
[Signature]

VISCOMI & ASSOCIATES, INC.

[Signature]
Applicant's Signature

Vincent Viscomi, President
Print Name and Title

Owner of Property (if other than applicant)

STATE OF FLORIDA

COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this _____ day of _____, 2006, by _____, who is personally known to me or who has produced _____ as identification.

NOTARY PUBLIC STATE OF FLORIDA

Type or Print Name

Commission No. _____

My Commission Expires: _____

EXHIBIT "C"

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