



Item No. 2d

AGENDA ITEM REQUEST FORM

Development Services

Jeff Bowman

Department Submitting Request

Department Director

REGULAR
COMMISSION MTG
Meeting Dates - 7:00 PM

DEADLINE TO
Town Clerk

ROUNDTABLE
MEETING
Meeting Dates - 7:00 PM

DEADLINE TO
Town Clerk

Mar 22, 2011

Mar 11 (5:00 pm)

Mar 8, 2011

Feb 25 (5:00 pm)

SUBJECT TITLE: Ordinance 2011-07 (Exhibit 1) Conditional Uses within the Business Districts and Conditional Use Procedures.

Conditional Uses

Staff has placed this item on the Commission Roundtable Agenda, so that the Town Commission has an opportunity to review the attached Ordinance and provide any comments before first reading, which is currently scheduled for March 22.

At the July 14, 2010 Commission Roundtable meeting, direction was given to staff to broaden the Code's lists of permitted business uses to become more business friendly. While amending the Code to expand uses within the Business Districts (Ordinance 2010-15), and through additional research and analysis, several uses were identified for possible inclusion in the Business Districts as "Conditional Uses." "Conditional Uses" were outside the scope of the Notice of Intent which governed Ordinance 2010-15, and staff was directed to bring back recommended "Conditional Uses" at a later time under the new Notice of Intent adopted in January (Resolution 2011-01). The proposed Conditional Uses would apply in both the B-1 and B-1-A business zoning districts.

Permitted uses are those uses that the Town believes are suitable under any circumstances in a particular zoning district. Conditional uses are uses that could be appropriate in the zoning district under some circumstances, but might not be appropriate in other circumstances. A conditional use permit allows a use to locate in the zoning district only if the Town determines that criteria are met, and only with conditions necessary to minimize possible adverse impacts. Conditions may include such things as number, area, location, hours of operation, and compatibility with the neighborhood or impacted vicinity, and are designed to promote the public health, safety, welfare, order, comfort, convenience, appearance, or prosperity of the neighborhood. These uses can, with appropriate conditions, be permitted on specific sites where the proposed use may be adequately accommodated, without generating adverse impacts on properties and land uses within the immediate vicinity.

The uses that could be considered as conditional uses are listed on pages 4, 5, and 8 of the ordinance and include paid private parking on parcels with a different primary use.

The conditional use permit process proposed involves an application, development of a staff recommendation, review and recommendation by the Planning and Zoning Board, and approval at a public hearing before the Town Commission.

The Planning and Zoning Board reviewed the proposed conditional use amendments on February 16, 2011 and provided their recommendation.

Conditional Use Procedures

There is currently no uniform approach to Conditional Use approvals and the concept is described in different ways in different parts of the Code. The attached Conditional Use procedures would apply to all conditional use approvals, with clear processes and criteria. This proposed amendment would provide clarity. The scope of the changes synthesize conditional use procedures referenced in various sections of Chapter 30 including 30-241 (addressing passive recreational rooftops), and



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provides one set of procedures in a centralized location. The procedures provide for application, criteria for review and approval, review by the Planning and Zoning Board and approval by the Town Commission.

PLANNING AND ZONING BOARD RECOMMENDATION: On February 16, 2011 the Board approved the amendments with one (1) recommendation. The recommendation was to add language to proposed Chapter 30-56 (d) (1) from Chapter 30-54 (m) (4) (**Exhibit 2**), which defines a major and minor site plan modification. The P&Z minutes are attached (**Exhibit 3**).

The difference between a major and minor modification proposed within proposed Chapter 30-56 is:

Minor Modification – Can be approved administratively without having to go through the application and site plan review process again.

Major Modification – Subject to the same procedures as a new application. This would entail review by Planning and Zoning and approval by the Town Commission.

TOWN MANAGER COMMENT: The Town Manager reviewed this after it went to the P&Z Board and suggests that the Commission discuss whether “check cashing stores” are a use the Town wants to consider.

STAFF RECOMMENDATION: Approval of the proposed amendments.

- EXHIBITS:**
- Exhibit 1 – Ordinance**
 - Exhibit 2 – Copy of Chapter 30 -54 (m) (4)**
 - Exhibit 3 – Planning and Zoning Minutes**

Reviewed by Town Attorney
 Yes No

Town Manager Initials JB

Exhibit 1

Ordinance 2011-07

65	M.	Catering businesses,
66	N.	Church and place of worship,
67	O.	Clothing,
68	P.	Coin-operated dry cleaning and laundry and/or pickup station,
69	Q.	Community theaters, dinner theaters and cultural centers,
70	R.	Computer/software store,
71	S.	Consignment
72	T.	Convenience store,
73	U.	Cooking schools,
74	V.	Copy center,
75	W.	Courier service,
76	X.	Delicatessen,
77	Y.	Dental laboratory,
78	Z.	Drug store/pharmacy (no on-site prescription writing for controlled substances
79		identified in Schedule II, III, or IV in F.S. §§ 893.03, 893.035, or 893.0355),
80	AA.	Fabric/needlework/yarn shop,
81	BB.	Fishing pier,
82	CC.	Florist shop,
83	DD.	Formal wear sales and rental,
84	EE.	Fruit and produce store,
85	FF.	Furniture, and home furnishings,
86	GG.	Gift shop,
87	HH.	Government administration,
88	II.	Grocery/food store/supermarket,
89	JJ.	Hardware,
90	KK.	Health and fitness center,
91	LL.	Household appliances store,
92	MM.	Ice cream/yogurt store,
93	NN.	Interior decorator,
94	OO.	Jewelry store,
95	PP.	Library branch,
96	QQ.	Linen/bath/bedding store,
97	RR.	Luggage/handbag/leather goods store,
98	SS.	Mail/postage/fax service,
99	TT.	Marine parts and supplies store,
100	UU.	Market,
101	VV.	Massage therapist (licensed therapist to be on premises at all times of
102		operation),
103	WW.	Meat and poultry store,
104	XX.	Medical supplies sales,
105	YY.	Motorized scooter sales or moped sales and rentals (indoor only, outdoor sales,
106		storage or display prohibited),
107	ZZ.	Museum,
108	AAA.	Music/musical instrument store,
109	BBB.	Office building,
110	CCC.	Optical store,
111	DDD.	Party supply store,
112	EEE.	Personnel services,
113	FFF.	Photographic studio,

- 114 **GGG.** Police and fire substation,
 115 **HHH.** Retail electronic sales and repair,
 116 **III.** Restaurant, including sidewalk cafes which would be appurtenant to, and a part
 117 of, a restaurant,
 118 **JJIII.** Seafood store,
 119 **KKKJJJ.** Shoe sales and repair,
 120 **LLLKKK.** Shop for marking articles sold at retail on the premises,
 121 **MMMLLL.** Specialty shop,
 122 **NNNMMM.** Sporting goods store, including dive shops,
 123 **OOONNN.** Studios for artists, photographers, musicians (including recording
 124 studios), and dance,
 125 **PPPOOO.** Sundries,
 126 **QQQPPP.** Tailor/dressmaking store, direct to the customer,
 127 **RRRQQQ.** Tapes/videos/music CD stores,
 128 **SSSRRR.** Tool rental (small tools and equipment, indoor display only),
 129 **TTTSSS.** Toy/game store,
 130 **UUUTTT.** Trade/business school,
 131 **VVVUUU.** Travel agency,
 132 **WWVAVV.** Veterinarian or animal grooming with all activities enclosed within the
 133 building with no outside noise,
 134 **XXXWWW.** Watch and jewelry repair, and
 135 ~~**XXX.** Drive through services that are accessory to a use in this zoning district shall be~~
 136 ~~allowed only as a conditional use requiring Planning and Zoning Board review~~
 137 ~~and Town Commission approval, provided that any approval of the drive through~~
 138 ~~use by the Town Commission shall specifically establish the location and traffic~~
 139 ~~flow pattern of the drive through.~~
 140 **YYY.** Uses not listed. Any use not covered by the above list may be authorized in the
 141 B-1 district by the Town Manager or designee only if the proposed use is similar
 142 to a listed use; otherwise, an amendment to this chapter is required. The Town
 143 Manager or designee shall consult with the Town Commission on any proposal to
 144 find that a use is similar, prior to authorizing such use in the B-1 district.

146 (3) **Conditional Uses.** The following conditional uses may be permitted upon approval
 147 pursuant to the conditional use procedures of this Code:

- 148 **A.** Bicycle taxi (no outside storage or display)
 149
 150 **B.** Car wash/Outdoor hand wash
 151
 152 **C.** Charter and sightseeing boat
 153
 154 **D.** Check cashing store
 155
 156 **E.** Child and adult day-care centers
 157
 158 **F.** Drive-through services that are accessory to a primary use, provided that any
 159 approval of the drive-through use by the Town Commission shall specifically
 160 establish the location and traffic flow pattern of the drive-through.
G. Dry cleaner
H. "Paid Private Parking" on parcels with a primary use, excluding stand alone
parking lots, in accordance with the following requirements:

- 161 i. During business operational hours, only non-required parking spaces
 162 may be used as Paid Private Parking.
- 163 ii. After business hours, required parking may also be used for Paid Private
 164 Parking.
- 165 I. Pool supply store.
- 166 J. Outside seating for restaurants, on private property, that is accessory to the
 167 primary use and that are not regulated under Chapter 17, Article VI.
- 168 K. Outside storage of propane tank cabinets for the storage of propane tanks sold
 169 and rented at hardware stores and gas stations.
- 170 L. Water craft sales and rental (new or used)
- 171 M. Conditional Uses not listed. Permission to apply for conditional uses not covered
 172 by the above list in the B-1-A district may be granted by the Town Manager or
 173 designee only if the proposed conditional use is similar to a listed conditional use;
 174 otherwise, an amendment to this chapter is required. The Town Manager or
 175 designee shall consult with the Town Commission on any proposal to determine
 176 that a conditional use is similar to those listed, prior to authorizing the filing of an
 177 application to seek approval of that conditional use in the B-1-A district.

- 178
 179 (34) *Height.* No building shall be erected to a height greater than two stories on single 25-foot
 180 lots, nor greater than three stories on 50-foot lots.
- 181
 182 (45) *Areas.* No building which is used for residence purposes above the ground floor shall
 183 occupy an area greater than 70 percent of the entire lot. The required lot area per
 184 apartment or kitchen unit shall be 800 square feet. The required floor area for a kitchen
 185 unit shall be not less than 250 square feet minimum and the area for a hotel room with
 186 bath shall not be less than 200 square feet. Buildings not used for residential purposes
 187 shall not occupy more than 90 percent of the lot area.
- 188
 189 (56) *Residences.* All residences constructed in B-1-A districts shall conform to requirements
 190 for RS-5 districts hereinafter provided and all apartments, hotels, or rental units
 191 constructed in B-1-A districts shall conform to requirements for RM-25 districts,
 192 hereinafter provided.
- 193
 194 (67) *Design.* Construction shall be limited to one building on B-1-A lots that are 50 feet or less
 195 in width. All business buildings constructed in a business district shall be of C.B.S.
 196 construction and shall be designed with every practical consideration for appearance, fire
 197 protection, health, light, air. All plans and specifications of the building shall be approved
 198 by the Town Building Inspector. The Building Inspector need not approve design and use
 199 of a building and may ask the Town staff, Planning and Zoning Board or the Board of
 200 Adjustment for an official opinion or decision thereon. Open fronts are specifically
 201 prohibited in B-1-A districts and there shall be a maximum opening of ten feet by ten feet
 202 for doorways in each business building.
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SECTION 3. Amendment. Chapter 30, Unified Land Development Regulation of the Code of Ordinances, Section 30-271, is hereby amended as follows²:

Section 30-271. B-1 district—Business.

* * *

(a) *Uses.*

* * *

(2) No building or premises shall be used and no building with the usual accessories shall be erected or altered other than a building or premises arranged, intended, or designed for any of the following uses:

- A. Antiques store,
- B. Art galleries,
- C. Arts and crafts supply store,
- D. Automobile rental or leasing agencies (no outdoor display),
- E. Bait and tackle shop,
- F. Bakery,
- G. Beauty schools, barber shops and hair salons,
- H. Bicycle rental shop with no outside storage,
- I. Book store,
- J. Business and professional employment agency,
- K. Camera and photographic supply store,
- L. Card and stationery store,
- M. Catering businesses,
- N. Church and place of worship,
- O. Clothing,
- P. Coin-operated dry cleaning and laundry and/or pickup station,
- Q. Community theaters, dinner theaters and cultural centers,
- R. Computer/software store,
- S. Consignment
- T. Convenience store,
- U. Cooking schools,
- V. Copy center,
- W. Courier service,
- X. Delicatessen,
- Y. Dental laboratory,
- Z. Drug store/pharmacy (no on-site prescription writing for controlled substances identified in Schedule II, III, or IV in F.S. §§ 893.03, 893.035, or 893.0355),
- AA. Fabric/needlework/yarn shop,
- BB. Fishing pier,

² Additions to existing text are shown in underline. Deletions are shown in ~~strikethrough~~. Additions and deletions in red were made subsequent to Planning and Zoning Board Review to resolve conflicts and provide clarity.

246	CC.	Florist shop,
247	DD.	Formal wear sales and rental,
248	EE.	Fruit and produce store,
249	FF.	Furniture, and home furnishings,
250	GG.	Gift shop,
251	HH.	Government administration,
252	II.	Grocery/food store/supermarket,
253	JJ.	Hardware,
254	KK.	Health and fitness center,
255	LL.	Household appliances store,
256	MM.	Ice cream/yogurt store,
257	NN.	Interior decorator,
258	OO.	Jewelry store,
259	PP.	Library branch,
260	QQ.	Linen/bath/bedding store,
261	RR.	Luggage/handbag/leather goods store,
262	SS.	Mail/postage/fax service,
263	TT.	Marine parts and supplies store,
264	UU.	Market,
265	VV.	Massage therapist (licensed therapist to be on premises at all times of operation),
266		
267	WW.	Meat and poultry store,
268	XX.	Medical supplies sales,
269	YY.	Motorized scooter sales or moped sales and rentals (indoor only, outdoor sales, storage or display prohibited),
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271	ZZ.	Museum,
272	AAA.	Music/musical instrument store,
273	BBB.	Office building,
274	CCC.	Optical store,
275	DDD.	Party supply store,
276	EEE.	Personnel services,
277	FFF.	Photographic studio,
278	GGG.	Police and fire substation,
279	HHH.	Retail electronic sales and repair,
280	III.	Restaurant, including sidewalk cafes which would be appurtenant to, and a part of, a restaurant,
281		
282	JJJIII.	Seafood store,
283	KKKJJJ.	Shoe sales and repair,
284	LLLKKK.	Shop for marking articles sold at retail on the premises,
285	MMMLLL.	Specialty shop,
286	NNNMMM.	Sporting goods store, including dive shops,
287	OOONNN.	Studios for artists, photographers, musicians (including recording studios), and dance,
288		
289	PPPOOO.	Sundries,
290	QQQPPP.	Tailor/dressmaking store, direct to the customer,
291	RRRQQQ.	Tapes/videos/music CD stores,
292	SSRRR.	Tool rental (small tools and equipment, indoor display only),
293	TTTSSS.	Toy/game store,
294	UUUTTT.	Trade/business school,

- 295 VVVUUU. Travel agency,
 296 WWWAAA. Veterinarian or animal grooming with all activities enclosed within the
 297 building with no outside noise,
 298 XXXWWWW. Watch and jewelry repair, and
 299 ~~XXX.~~ Drive through services that are accessory to a use in this zoning district shall be
 300 allowed only as a conditional use requiring Planning and Zoning Board review
 301 and Town Commission approval, provided that any approval of the drive through
 302 use by the Town Commission shall specifically establish the location and traffic
 303 flow pattern of the drive through.
 304 YYY. Uses not listed. Any use not covered by the above list may be authorized in the
 305 B-1 district by the Town Manager or designee only if the proposed use is similar
 306 to a listed use; otherwise, an amendment to this chapter is required. The Town
 307 Manager or designee shall consult with the Town Commission on any proposal to
 308 find that a use is similar, prior to authorizing such use in the B-1 district.
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310 (b) Conditional Uses. The following conditional uses may be permitted upon approval pursuant to
 311 the conditional use procedures of this Code:
 312

- 313 (1) Bicycle taxi (no outside storage or display)
 314 (2) Car wash/Outdoor hand wash
 315 (3) Charter and sightseeing boat
 316 (4) Check cashing store
 317 (5) Child and adult day-care centers
 318 (6) Drive-through services that are accessory to a primary use, provided that any approval of
 319 the drive-through use by the Town Commission shall specifically establish the location
 320 and traffic flow pattern of the drive-through.
 321 (7) Dry cleaner
 322 (8) "Paid Private Parking" on parcels with a primary use, excluding stand alone parking lots
 323 in accordance with the following requirements:
 324
 325 i. During business operational hours, only non-required parking spaces, may be
 326 used as Paid Private Parking.
 327 ii. After business hours, required parking may also be used for Paid Private
 328 Parking.
 329 (9) Pool supply store.
 330 (10) Outside seating for restaurants, on private property, that is accessory to the primary use
 331 and that are not regulated under Chapter 17, Article VI.
 332 (11) Outside storage of propane tank cabinets for the storage of propane tanks sold and
 333 rented at hardware stores and gas stations.
 334 (12) Water craft sales and rental (new or used)

336 proposed conditional use is similar to a listed conditional use; otherwise, an amendment
337 to this chapter is required. The Town Manager or designee shall consult with the Town
338 Commission on any proposal to determine that a conditional use is similar to those listed,
339 prior to authorizing the filing of an application to seek approval of that conditional use in
340 the B-1 district.

341 (bc) *Height.*

342 No building shall be erected to a height greater than two stories on single 25-foot lots
343 nor greater than three stories on 50-foot lots.

344 (ed) *Areas.*

345 No building which is used for residence purposes above the ground floor shall
346 occupy an area greater than 70 percent of the entire lot. The required lot area per apartment
347 or kitchen unit shall be 800 square feet. The required floor area for a kitchen unit shall not be
348 less than 250 square feet minimum and the area for a hotel room with bath shall not be less
349 than 200 square feet. Buildings not used for residential purposes shall not occupy more than
350 90 percent of the lot area.

351 (de) *Residences.*

352 All residences constructed in B-1 or RD-10 districts shall conform to requirements for
353 RS-5 districts hereinafter provided and all apartments, hotels, or rental units constructed in
354 B-1 districts shall conform to requirements for RM-25 districts, hereinafter provided.

355 (ef) *Design.*

356 Construction shall be limited to one on B-1-A lots 50 feet or less in width. All
357 business buildings constructed in a business district shall be of C.B.S. construction and shall
358 be designed with every practical consideration for appearance, fire protection, health, light,
359 air. All plans and specifications of the building shall be approved by the Town Building
360 Inspector. The Building Inspector need not approve design and use of a building and may
361 ask the Town staff, Planning and Zoning Board or the Board of Adjustment for an official
362 opinion or decision thereon. Open fronts are specifically prohibited in B-1 districts and there
363 shall be a maximum opening of ten feet by ten feet for doorways in each business building.

364 **SECTION 4.** Amendment. Chapter 30, Unified Land Development Regulations, of the

365 Code of Ordinances is hereby amended as follows³:

366 **Sec. 30-241. - RM-25 district—Apartments.**

367

368 * * *

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370 (d) *Height.*

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372 * * *

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374 (2) All passive recreational rooftop use requires a conditional use permit.

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³ Additions to existing text are shown in underline. Deletions are shown in ~~strikethrough~~. Additions and deletions in red were made subsequent to Planning and Zoning Board Review to resolve conflicts and provide clarity.

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i. Transient Uses. ~~Upon approval, a A C~~conditional use permit for transient uses such as a hotel, motel, apartment building, condominium, or time share will be issued for the a period of one year. ~~This permit shall be administratively reviewed by Town staff annually; The transient use shall apply for renewal of the permit annually to the Town Manager,~~ prior to re-issuance. The conditional use permit may be renewed if ~~it is the Town~~ determines~~d~~ that (a) the conditional use does not adversely impact neighboring properties and (b) it complies with the conditions of site plan approval. ~~The conditional use permit is revocable, following notice to the permit holder and opportunity to be heard by three members of the Town Administration, designated by the Town Manager, when the use adversely impacts adjacent property or the permit terms and conditions are violated.~~ An administrative decision not to renew a rooftop use may be appealed to the Town Commission by the property owner. An administrative decision to renew a rooftop use may be appealed to the Town Commission by a neighboring property owner. The Town Commission's decision on appeal shall constitute a final development order.

ii. Non-Transient Uses. ~~A conditional~~ passive recreational rooftop use permit for a non-transient residential property, ~~other than a hotel, motel, apartment building, condominium, or time share,~~ is exempt from the annual review ~~process heretofore set forth~~ for such roof tops for transient uses.

~~Rooftop uses, as heretofore set forth, are permissible in RM-25 (south of Pine Avenue) districts only when reviewed and approved by the Planning and Zoning Board and Town Commission pursuant to site plan review and approval as a conditional use.~~

For the purpose of this section, "apartment building" is defined as a residential rental property with four or more dwelling units.

SECTION 5. Amendment. Section 30-56, Unified Land Development Regulations, of

the Code of Ordinances is hereby created to read as follows⁴:

Section 30-56. Conditional Uses Review.

(a) **Generally.** A conditional use is a use that would not be appropriate without restriction throughout the land use district, but which, if controlled as to number, area, location, hours of operation, and relation to the neighborhood or impacted vicinity, would promote the public health, safety, welfare, order, comfort, convenience, appearance, or prosperity of the neighborhood. The purpose of this Section is to ensure that a conditional use shall only be permitted on specific sites as provided in a particular zoning district or as provided in this Code, where the proposed use may be adequately accommodated without generating adverse impacts on properties and land uses within the immediate vicinity.

⁴ All text in this section is new text.

420 This Section sets forth the procedures and criteria for approval of conditional
421 uses on specific sites. ~~In the event of conflict with any other provisions of this~~
422 ~~Code, this Section shall prevail.~~ A conditional use shall be permitted only upon a
423 finding that the proposed use satisfies the specific review criteria of this Section
424 and other requirements of this Code.

425
426 An approval of a conditional use does not eliminate the need for other approvals,
427 which may be required under this Code, including but not limited to site plan
428 review. Site plan approvals shall be processed concurrently with the conditional
429 use application (and, if required, the site plan public hearing shall be held jointly
430 with the conditional use public hearing).

431
432 (b) **Application.** A conditional use application shall provide the following information
433 unless waived by the Development Services Director:

- 434 i. A copy of any existing approved site plan;
- 435 ii. If no previously approved site plan exists, a site plan, providing the
436 information required in Article IV of Chapter 30 of the Land
437 Development Code, except that the Development Services
438 Director may waive individual components of the site plan
439 requirements;
- 440 iii. Traffic generation impact study meeting the requirements of
441 Section 30-71(a)(4);
- 442 iv. Square feet designated (indoors or out) for each specific use;
- 443 v. Estimated employment;
- 444 vi. Estimated number and type of service vehicles;
- 445 vii. Any unique facilities or structures proposed as part of site
446 improvements; and
- 447 viii. A description of any mitigative techniques to abate any possible
448 adverse impacts of the proposed use on properties in the
449 immediate vicinity including smoke, odor, noise, and other
450 impacts.
- 451 ix. Application fee.

452
453 (c) **Review.** The Planning and Zoning Board shall review the application and
454 provide a recommendation for approval, modified approval, or denial to the Town
455 Commission. The Town Commission shall follow the quasi-judicial procedures in
456 the Code of Ordinances and shall, prior to taking action on a conditional use
457 application, hold a quasi-judicial public hearing. The Board and/or Commission
458 may impose conditions and safeguards, in addition to those prescribed in the
459 Code, as they determine are necessary for the protection of the surrounding area
460 and to preserve the spirit and intent of the Town Code and Comprehensive Plan.
461 Notice of the public hearing shall be given and the hearing shall be conducted as
462 provided in the quasi-judicial procedures.

463
464 (d) **Specific Criteria for Approving a Conditional Use.** A conditional use shall be
465 permitted upon a finding by the Town Commission that the proposed use, as
466 proposed or with additional conditions or modifications, satisfies the criteria
467 herein specified. A conditional use shall be denied if the Town Commission

468 determines that the proposed use does not meet the criteria herein provided or is
469 adverse to the public interest. The applicant shall demonstrate the following:

- 470
471 (1) *Land Use Compatibility.* The conditional use, including its proposed scale
472 and intensity, traffic generating characteristics, and off-site impacts shall
473 be compatible and harmonious with adjacent land uses and shall not
474 adversely impact land use activities and residential areas in the
475 immediate vicinity.
476

477 For purposes of a conditional use review, compatibility is defined as a
478 condition in which land uses or conditions can coexist in relative proximity
479 to each other in a stable fashion over time such that no use or condition is
480 unduly negatively impacted directly or indirectly by another use or
481 condition. Compatibility of land uses is dependent on numerous
482 development characteristics, which may impact adjacent or surrounding
483 uses. They include: type of use, density, intensity, height, general
484 appearance and aesthetics, odors, noise, smoke, vibration, traffic
485 generation and nuisances. The Town Manager shall recommend whether
486 the conditional use is compatible. Compatibility shall be measured based
487 on all of the following characteristics of the proposed use or development
488 in relationship to surrounding development in the immediate area:

- 489 i. Permitted uses, structures and activities allowed within the land
490 use category.
491 ii. Building location, dimensions, height, and floor area ratio.
492 iii. Location and extent of parking, access drives and service areas.
493 iv. Traffic generation, hours of operation, noise levels and outdoor
494 lighting.
495 v. Alteration of light and air.
496 vi. Setbacks and buffers such as fences, walls, landscaping and
497 open space treatment.
498 vii. The architectural and site design are compatible with the
499 character of the surrounding area.
500 viii. Any existing or proposed signs or lighting will not adversely affect
501 surrounding areas or vehicular traffic.
502

- 503 (2) *Sufficient Site Size, Site Specifications, and Infrastructure to*
504 *Accommodate the Proposed Use.* The size and shape of the site, the
505 proposed access and internal circulation, and the urban design must be
506 adequate to accommodate the proposed scale and intensity of the
507 conditional use requested. The site shall be of sufficient size to provide
508 adequate screening, buffers, landscaping, open space, off-street parking,
509 efficient internal traffic circulation, infrastructure and similar site plan
510 improvements needed to mitigate against potential adverse impacts of the
511 proposed use.
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- 513 (3) *Compliance with the Comprehensive Plan and Code of Ordinances.* The
514 conditional use shall comply with environmental, zoning, concurrency and
515 other applicable regulations of this Code of Ordinances and shall be
516 consistent with the Comprehensive Plan.

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(4) *Proper Use of Mitigative Techniques.* The conditional use and site plan shall incorporate mitigative techniques needed to prevent adverse impacts to adjacent land uses. In addition, the design scheme shall appropriately address off-site impacts to ensure that land use activities in the immediate vicinity, including community infrastructure, are not burdened with adverse impacts detrimental to the general public health, safety and welfare.

(e) **Conditional Use Approval Amendments.** A conditional use approval is specific to the density and intensity of the proposed use, the particular site plan and any supplemental conditions approved. Unauthorized modification to a site plan or any of the specifics or conditions of the conditional use approval is a violation of the Town Code and subject to code enforcement action and/or revocation of the conditional use approved. Any proposed modification to the conditional use that affects density, intensity or minimum code requirements of the site development plan will require review and approval by the Town Commission.

(1) *Level 1 Amendment.* The Town Manager or his or her designee may approve minor changes and deviations to the approved conditional use. A change or deviation shall be classified as a Level 1 Amendment if it meets the criteria of Section 30-54(m)(4)a. of the Code. All other requested changes and deviations shall be processed as a Level 2 Amendment.

(2) *Level 2 Amendment.* Changes and deviations to an approved conditional use meeting the criteria of Section 30-54(m)(4)b. of the Code, shall constitute a Level 2 Amendment and shall require that the requested changes be subject to the same procedure as required for a new application.

(3) In deciding whether an application is making a Level 1/ or Level 2 Amendment determination, the Town Manager shall consider the requirements of Section 30-54(m)(4)c. of the Code.

(f) **Continuing Jurisdiction.** The Town Commission hereby reserves to itself the jurisdiction and authority to review and revoke conditional use permits where the use or the continuation of the use:

- (1) Violates the conditions set forth by the Town Commission as a requirement for the granting of the use;
- (2) Is injurious to the health, safety or welfare of the community or of the public;
- (3) Tends to attract vagrants, loiterers or habitually intoxicated persons; or
- (4) Has a history of repeated Code violations.

(g) **Application Fees.** Fees for conditional use permits, and for Level 1 and Level 2 Amendments shall be established by the Town Commission by resolution.

568 **SECTION 6. Severability.** If any section, sentence, clause or phrase of this Ordinance is
569 held to be invalid or unconditional by any court of competent jurisdiction, then said holding shall in
570 no way affect the validity of the remaining portions of this Ordinance.

571 **SECTION 7. Conflicts.** All ordinances or parts of Ordinances and all Resolutions or
572 parts of Resolutions in conflict with the provisions of this Ordinance are hereby repealed.

573 **SECTION 8. Codification.** This Ordinance shall be codified.

574 **SECTION 9. Effective Date.** This Ordinance shall become effective immediately upon
575 adoption on second reading.

576 **SECTION 10. Adoption.** Passed on the first reading, this ___ day of _____, 2011.

577 Passed and adopted on the second reading, this ___ day of _____, 2011.

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Mayor Roseann Minnet

	First Reading	Second Reading
Mayor Minnet	_____	_____
Vice-Mayor Dodd	_____	_____
Commissioner Clotney	_____	_____
Commissioner Sasser	_____	_____
Commissioner Vincent	_____	_____

Attest:

Town Clerk, June White

(CORPORATE SEAL)

Approved as to form:

Susan L. Trevarthen, Town Attorney

Exhibit 2

Copy of Section 30-54 (m) (4)

Modification of approved site plan.

a.

Minor: A non-impacting modification which will have no adverse effect on the approved site and development plan and no impact upon adjacent and nearby properties, and no adverse aesthetic impact when viewed from a public right-of-way as determined by the Town Manager and/or his designee(s).

b.

Major: A modification which presents a significant change in intensity of use which, in turn, may have a significant impact upon facilities, concurrency; upon nearby and adjacent properties, or upon findings made at the time of approval of the site and development plan as determined by the Town Manager and/or his designee(s).

c.

In making a minor/major modification determination, the Town Manager and/or his designee(s) shall consider the following:

1.

Does the modification increase the buildable square footage of the development.

2.

Does the modification reduce the provided number of parking space below the required number of parking spaces.

3.

Does the modification cause the development to be below the development standards for the zoning districts in which it is located or other applicable standards in the land development regulations.

4.

Does the modification have an adverse effect on adjacent or nearby property or reduce required physical buffers, such as fences, trees, or hedges.

5.

Does the modification adversely affect the elevation design of the structure or reduce the overall design of the structure below the standards stated in the community design plan.

6.

Does the modified development meet the concurrency requirements of the Town of Lauderdale-By-The-Sea Comprehensive Plan.

7.

Does the modification alter the site layout so that the modified site plan does not resemble the approved site plan.

Exhibit 3
Planning and Zoning Minutes

February 16, 2011 P&Z Minutes

Item #1: Proposed Amendments to the Unified Land Development Code (Conditional Uses Within the Business Districts)

Jeff Bowman, Director of Development Services, reminded the Board staff had been working on business uses since 2010, and the Code had been amended and expanded. Conditional uses were discussed, though they were not part of the original notice of intent, and staff did a new notice of intent to add conditional uses, advising the Board they would be presented to those uses for a recommendation to the Commission. He reviewed the information on conditional uses located on the last two pages of the backup, items A through J, and a memo staff handed out to the Board with two additional recommended conditional uses: K, a pool supply store, and L, outside storage of propane tank cabinets for hardware stores and gas stations.

Mr. Wick sought clarification as to item I, primary use, asking if it pertained to such practices as a bank that rented out its parking lot after business hours.

Mr. Bowman affirmed this to be the case, noting the structure could also be a business building, an office, etc. that closed at 5:00 p.m. and whose parking spaces were unused during the evening hours.

Vice Chair Brandt remarked not being particularly comfortable with the last paragraph of the attached memo pertaining to conditional uses not listed. He wondered if by the language staff meant the Town's administration could, potentially, recommend allowing a new use and the Town Commission would have to approve the use.

Mr. Bowman responded the language in the last paragraph stated if the use being requested was similar to that of other allowed conditional uses, the use could be administratively approved if the Town Commission deemed it appropriate.

Town Attorney Kathryn Mehaffey explained it would be a two-step process; if a requested conditional use appeared similar to existing conditional uses, the Town Manager could take the request to the Commission. If the latter made the determination and the requested use was similar to existing conditional uses, the Town Manager could authorize the applicant to apply for the conditional use. At that point, the application would proceed through the standard procedure to the Town Commission for approval.

Vice Chair Brandt suggested the Board recommend changing the word "consult" to "with the approval of the Commission," as the word consult could be somewhat vague. He sought clarification as to paid private parking, querying if hotel parking qualified; and how staff determined business hours in order to identify what business could become a potential private parking vendor.

Mr. Bowman replied, for example, if a hotel with 130 spaces required the use of 100 spaces, the additional 30 spaces could be leased, though the 100 spaces could not, as hotels tended to be 24-hour businesses. An office building on Commercial Blvd., for instance, that provided its own parking and the entire building shuts down at 5:00 p.m., could elect to lease all their parking spaces after business hours. Business hours were determined by the time the particular business closed each day.

Vice Chair Brandt wished to know if there was any language in the Code that classified hotels as 24-hour businesses. He repeated his question as to what staff was using to determine when a business was considered closed for the day and whether the situation was completely subjective?

Mr. Wick felt the situation was subjective, as the hours of operation depended on the type of business. Though some banking was available 24 hours, the bank closed at a set time and the banking staff was no longer on the property; the bank was then free to rent the parking spaces after the staff left. Despite the process being subjective, he did not foresee a major problem; all hotels were open 24 hours a day as long as they had at least one patron.

Vice Chair Brandt questioned when a hotel was not fully occupied, could the unused parking spaces be rented. There appeared to be a lot of room for interpretation. The Board previously discussed the Town's budget shortfalls for the Town's taxpayer-owned parking lots being in the region of \$60,000 to \$70,000 range, and he wondered if the Town was potentially losing volume on Town parking lots if private parking lots would be competing by making spaces available.

Bud Bentley, Assistant Town Manager, commented first as to the interpretation of business hours and how hotels were seen, noting at a prior staff debate, he took the position that hotels should be included, and an hour selected, such as eight o'clock, by

which if a room remained vacant, a hotel could consider the dedicated parking space an excess spot. As this was such a day-to-day issue for hotels, staff was unsure how to effectively include this in the conditional use section of the Code; the dilemma applied to any 24-hour business with fluctuating parking space usage. On the issue of employees staying after hours, etc., such as a bank, he understood in some buildings the bank was on the first floor and other businesses were housed on the floors above; thus, the hours of operation could vary. He pointed out the conditional use for renting unused parking spaces after business hours was site and condition specific, and the process was fairly manageable and could be reviewed by Town staff on an ongoing basis. On the second matter of the effect on the Town's revenue from its taxpayer parking lots by permitting the renting out private parking spaces, he understood there were drivers parking in areas after business hours without the business owner's permission. For example, it was common practice to park at the SunTrust bank parking lot. However, when the bank began charging to use their parking lot, he expected people to make an economic market decision on how much they would pay to park at SunTrust versus what the Town charged, and if the Town's parking lot was closer to their destination, they would decide where to park accordingly.

Mr. Wick asked if parking permits could be issued to open up more spaces in Town parking lots, such as on A1A, to make employee parking available at a discounted rate.

Mr. Bentley believed, at present, a parking permit in the employee parking area was approximately \$22 per month; the last time the Commission visited the matter in 2010, they provided for permit parking in the A1A lot for \$25. Thus, if someone worked east of A1A and for about \$3 a day they did not have to walk the extra three blocks, this seemed a great value. He commented not many people had availed themselves of the service, but that it had more to do with the Town not marketing the service and less to do with the economics of it. The Town Commission was holding a workshop on the coming Tuesday at five o'clock on the parking exempt program and, as staff collected data that might be useful in the Commission discussion. The data included a full parking inventory of the paid spaces, employee parking, the non-metered spaces, etc. Staff also did some utilization counts in the past week and a half and would continue doing those through to the weekend, and so be able to share with the Commission some rough data on the utilization of Town parking in certain areas. He remarked there would at least be a baseline for them to look at to examine the impact of certain future actions.

Vice Chair Brandt inquired if the conditional use application included pricing.

Mr. Bentley did not think pricing was specifically asked for on any of the applications in the procedures he recalled.

Town Attorney Mehaffey confirmed pricing was not presently included in the procedures.

Vice Chair Brandt questioned if staff expected any franchises use taxes to be imposed by the Commission.

Mr. Bentley was unaware of any franchise, though there might be some with regard to a retail sale, and there would be sales tax responsibilities. He stated this was not an area in which he was an expert and preferred not to offer an opinion.

Vice Chair Brandt reiterated his concern that the changes could create less flow to the Town's parking lots and thus harming the revenue coming to the taxpayers, as the Town had an internal debt service from its parking lots to the General Fund. He supported the concept of private spaces, but even at the Town's current rate of \$1.25 or \$1.50 an hour, it was possible a patron would prefer to play a flat fee of \$5 or \$10 to park at a private lot, or feed quarters into a parking meter. Until the Commission chose to act on something that increased the stimulus of the flow of parking, opening all the possible parking lots, it was important to protect the taxpayer from losing revenue, and it seemed the recommended reduction of 15 spaces could harm taxpayers' revenue from the Town's parking lots.

Mr. Hunsaker believed the Commission's directive to staff was to broaden the Code to become more business friendly, to increase the possibility for businesses to rent out their parking lots. He had no wish, therefore, to become involved with devising restrictions that were so great it was not economically feasible for businesses to try to rent out their unused parking spaces.

Vice Chair Brandt clarified he was not against conditional uses as a whole, but he would hold off removing exceeding the minimum parking requirements by 15 or more spaces.

Mr. Yankwitt thought the Town received a certain percentage of the sales tax revenue.

Mr. Bowman affirmed this to be the case.

Mr. Yankwitt observed, as the Town increased the number of available parking spaces, paid or nonpaid, more people would be encouraged to visit the Town. In theory, this would increase revenue to the Town.

Mr. Bentley remarked sales tax was distributed in the state of Florida per capita within a county. Thus, the Town would not get the exact amount in sales tax that occurred in Lauderdale-By-The-Sea. He mentioned the SunTrust building was available to serve both east and west of their location, though his whole focus had been on the waterfront area. Staff recently prepared a map to illustrate the relative distances, and SunTrust was about 550 feet to the A1A intersection; the A1A lot was about 290 feet to A1A intersection; El Prado was 800 feet to the A1A intersection; and from Tradewinds to Sea Grape, the whole stretch of Commercial Blvd. was around 1,500 feet. Thus, there were very different walking distances for which the various parking lots would provide. He said the employees would park at such distances, and people attending special events would park at greater distances, but someone going to dinner tended to park closer to their destination. The aim of the present recommendations was to widen the range of parking options to better serve the Town.

Mr. Wick made a motion, seconded by Mr. Yankwitt, to pass Item #1 Proposed Amendments to the Unified Land Development Code for conditional uses within the business district to the Town Commission for approval.

Mr. Wick made a motion to amend the main motion, seconded by Mr. Yankwitt, to include in the conditional uses as recommended by Town staff:

- K. Pool Supply store
- L. Outside storage of propane tank cabinets for hardware stores and gas stations

Mr. Hunsaker observed staff's recommendation included exceeding minimum required parking and striking 15 or more spaces. He wished to clarify Mr. Wick's motion was not to approve this recommendation, it was only to add items K and L noted in the memo to the list of conditional uses.

Mr. Wick affirmed this to be the case.

In a roll call vote for the amendment to the main motion, the motion carried 3 – 1. Vice Chair Brandt voted in the negative.

Mr. Hunsaker requested a second amendment to the main motion, seconded by Mr. Wick, to strike the verbiage "fifteen or more spaces" in Conditional Use I pertaining to "Paid Private Parking."

In a roll call vote for the second amendment to the main motion, the motion carried 3 – 1. Vice Chair Brandt voted in the negative.

Mr. Bowman asked about the conditional uses not listed.

Vice Chair Brandt remarked no amendment had been forwarded in this regard as yet. Specifically, staff was referring to the paragraph that gave the administration the ability to consult with the Commission on conditional use requests for uses that were similar to existing conditional uses in the Code for their approval.

Mr. Hunsaker requested a third amendment to the main motion, seconded by Mr. Wick, to accept the verbiage for conditional uses not listed as written by staff which states, " Any conditional use not covered by the above list may be authorized by the B-1 district by the Town Manager or designee only if the proposed use is similar to a listed conditional use; otherwise, an amendment to this chapter is required. The Town Manager or designee shall consult with the Town Commission on any proposal to find that a conditional use is similar, prior to authorizing such conditional use in the B-1 district."

In a roll call vote for the third amendment to the main motion, the motion carried 3 – 1. Vice Chair Brandt voted in the negative.

There being no further amendments to the main motion, a roll call vote was taken to approve the main motion to pass Item #1 Proposed Amendments to the Unified Land Development Code for conditional uses within the business district to the Town Commission for approval to include amendments 1, 2 and 3 as stated above. The motion carried 4 – 0.

February 16, 2011 P&Z Minutes

Item #2: Proposed Amendments to the Unified Land Development Code (Conditional Use Procedures)

Mr. Bowman reviewed the backup material, noting with abovementioned conditional uses the Board recommended for approval to the Commission, along with other conditional uses in the Code of Ordinance, there was no central or specific location in the Code addressing procedures for conditional uses. Hence, staff was recommending the Code be amended for procedures for conditional uses.

Vice Chair Brandt questioned the last page, item E, subparagraph 1, the "level one" amendment.

Mr. Bowman elaborated there was a level one and a level two: Level one pertained to minor changes or deviations from a conditional use permit that could be approved by the Town Manager or designee; Level two was implemented if the change was considered major, and the applicant had to go through the entire application process again and get Commission approval.

Vice Chair Brandt felt the terms minor and major were very subjective and wished staff to explain what was considered minor versus major changes. For instance, would a five-foot setback be considered a minor change?

Mr. Bowman responded if the applicant was requesting going from a ten-foot setback to a five-foot setback, that would be considered a major change.

Vice Chair Brandt thought, as it pertained to items related to density, setbacks, etc., the language should be more specific; before deciding on whether to recommend approval or not to the Commission, the Board should consider including language in the amendment that classified changes to setbacks and density as "major" rather than "minor" in the conditional use site plan application procedure.

Mr. Wick believed density could not be changed, though setbacks could.

Vice Chair Brandt indicated he was referring to the conditional use site plan; any changes to that portion of a site plan. Thus, if something passed, even if it was within the Code, level one allowed the Town Manager or designee to make a decision of approval at their own discretion. What might be considered minor to one person could be considered as major to another, particularly with regard to site plan changes.

Mr. Yankwitt wondered if it were possible to include a definitions page or a key for clarification, as the size of property varied.

Mr. Hunsaker stated conditional uses were created due to it being impossible to be specific about all issues. It seemed unnecessary to discuss the matter in greater detail, as staff tended to send matters for a Commission decision in error rather than to approve them in error. Therefore, he felt it unnecessary for the Board to include in the language definitions of what was considered minor or major changes, as staff tended to make most changes a level two and seek guidance from the Commission.

Vice Chair Brandt suggested making level two require a new application, and level one should reflect the change(s) and must receive Commission approval. If the minor change had staff's consensus, it could be placed on the Commission's consent agenda and passed with little or no discussion. If a problem was foreseen, a Commissioner could pull the item for further discussion.

Mr. Hunsaker disagreed, stating one of the reasons for having a Town Manager was to maintain a degree of professionalism. Vice Chair Brandt's suggestion, essentially, stripped the Town Manager of his/her authority by having even minor changes going before the Commission.

Mr. Wick inquired if having minor changes go before the Commission for approval made any difference other than a possible delay in the process.

Town Attorney Mehaffey replied, as well as the delay, there was added expense associated with the delay.

Mr. Wick felt the goal was to work with the Town to help attract new businesses and keep existing businesses by reducing their expenses.

Vice Chair Brandt supported an expeditious procedure; however, he claimed an admitted lack of trust in Town Manager approvals, intending no disrespect or contempt to the current administration. Until that trust was reestablished, he preferred to rely on the elected body he and his fellow citizens voted for to make such decisions. If no fellow members of the Board wished such an amendment to be made, he would entertain a motion to approve item #2 amendments as presented by staff.

Mr. Wick made a motion, seconded by Mr. Hunsaker, to pass Item #2 Proposed Amendments to the Unified Land Development Code conditional use procedures to the Town Commission for approval.

In a roll call vote for the main motion, the motion failed 2 – 2. Vice Chair Brandt and Mr. Yankwiitt voted in the negative.

Vice Chair Brandt wondered if a motion to not recommend Item #2 was in order.

Mr. Wick recalled some four or five years previous, the Town Commission requested the Board not make negative motions.

Town Attorney Mehaffey confirmed there was language to the effect that the action in a motion should only be taken in the affirmative. This meant a failed motion was not necessarily a recommendation, versus an affirmative vote contrary to that or to implement a failed vote would be an affirmative vote to deny. However, the Board could entertain either proposed revisions or recommendations to revise certain portions of the proposed amendments that might be more favorable and considered differently. She pointed out, in boards the size of the P&Z Board, under Robert's Rules, the chairperson could act as any other board member, including making motions and seconding.

Vice Chair Brandt observed the Commission act similarly at times, but he usually refrained from doing so as a matter of courtesy.

Vice Chair Brandt made a motion, seconded by Mr. Wick, to pass Item #2 Proposed Amendments to the Unified Land Development Code conditional use procedures to the Town Commission for approval.

Vice Chair Brandt made a motion to amend item #2 Proposed Amendments to add level one amendments must be approved by the Town Commission, seconded by Mr. Wick.

Mr. Yankwiitt thought some language should be included that gave direction to the Town Manager. There should be some parameters established, particularly for future administrations, and they should include some definition as to what was considered level one and level two changes. If the decision was passed onto the Commission, then there was little need to develop a formal definition, though it would delay the process. He supported the inclusion of a decision table for attachment to level one and two in whatever manner staff could devise it; extreme cases were easier to categorize as minor or major, but it was the middle ground changes that were less easy to classify.

Mr. Hunsaker opined the subject procedure was an attempt by Town staff to establish a unified policy and procedure on conditional uses. If the suggested revisions by Board members were not included by the Commission, the latter still retained the authority to approve conditional uses; there was just no standard for that purpose. He reiterated Item #2 was an attempt to codify the conditional use approval process.

Vice Chair Brandt remarked that though a conditional use was approved by the Commission, an amendment to that conditional use could be requested; if it were minor, it would not have to come back to the Commission for approval, rather the change could be approved by the Town Manager at his/her discretion if they thought the change minor. He then withdrew his motion to amend and recommended tabling item #2 until there was an odd number of Board members present to vote.

Mr. Wick withdrew his second and made a motion to table item #2 to a date certain.

Mr. Bowman explained the Town's Code contained a section in the site plan procedures that addressed the issue of major and minor changes. Staff could include language in the proposed amendments, reverting to existing definitions under site plan procedures in the Code if this would gain the Board's confidence in moving forward with a recommendation for approval to the Commission on item #2.

Mr. Wick withdrew his motion to table.

Mr. Bowman went on to read the definitions of major and minor changes as reflected in the existing Site Plan Procedures under Chapter 30, section 54, subsection M.4 A, B and C.

Vice Chair Brandt maintained the interpretation of the language pertaining to minor and major changes was still too subjective.

Mr. Yankwitt observed if the Board passed item #2 with the amendments as stated, the Board could discuss the language at a later date.

Vice Chair Brandt pointed out if the Board passed staff's recommendations for item #2 going forward to the Commission for approval, the Board would not see the matter again before the Commission voted.

Mr. Wick made a motion to amend the main motion, seconded by Mr. Yankwitt, to include referrals to Chapter 30 Section 54, Subsection M.4 A, B and C that pertains to Site Plan Procedures for minor and major modifications.

In a roll call vote for the amendment to the main motion, the motion carried 3 – 1. Vice Chair Brandt voted in the negative.

There being no further amendments to the main motion, a roll call vote was taken to approve the main motion to pass Item #2 Proposed Amendments to the Unified Land Development Code Conditional Use Procedures to the Town Commission for approval with an amendment to include referrals to Chapter 30 Section 54 Subsection M.4 A, B and C that pertains to Site Plan Procedures for minor and major modifications. The motion carried 3 – 1. Vice Chair Brandt voted in the negative.