

**ORDINANCE NO. 2012-10**

**AN ORDINANCE OF THE CITY OF DAYTONA BEACH SHORES, VOLUSIA COUNTY, FLORIDA, ASSIGNING THE PUD-R PLANNED UNIT DEVELOPMENT-RIVERSIDE DISTRICT ZONING CLASSIFICATION TO PROPERTY LOCATED AT 3704 CARDINAL BOULEVARD WHICH IS ASSIGNED TAX PARCEL IDENTIFICATION NUMBER 02-16-33-06-00-0220 (LONG) AND 6302-06-00-0220 (SHORT) BY THE VOLUSIA COUNTY PROPERTY APPRAISER; PROVIDING MODIFICATION OF THE OFFICIAL ZONING MAP; PROVIDING FOR IMPLEMENTING ADMINISTRATIVE ACTIONS; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR NON-CODIFICATION; PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the City Council of the City of Daytona Beach Shores is committed to planning and managing the future growth of the City in a high quality manner; and

**WHEREAS**, the real property which is the subject of this rezoning action is owned by Lady Godiva 2 LLC whose sole corporate officer is Mr. Mark Nagrani; and

**WHEREAS**, the subject real property was annexed into the City on May 10, 2006 by means of the enactment of Ordinance Number 2006-06; and

**WHEREAS**, as a result of that annexation, and in accordance with the controlling provisions of State law, an appropriate City land use designation zoning classification must be assigned to the subject property in accordance with the requirements of controlling law; and

**WHEREAS**, although Section 171.062 (1), *Florida Statutes*, provides that “[a]n area annexed to a municipality shall be subject to all laws, ordinances, and regulations in force in that municipality and shall be entitled to the same privileges and benefits as other parts of that municipality upon the effective date of the annexation,” Section 171.062 (2), *Florida Statutes*, provides that “[i]f the area annexed was subject to a county land use plan and county zoning or subdivision regulations, these regulations remain in full force and effect until the municipality adopts a comprehensive plan amendment that includes the annexed area”; and

**WHEREAS**, the City Council of the City of Daytona Beach Shores has previously taken legislative action to assign an appropriate City land use designation to the subject property in accordance with the requirements of controlling law said action being final and unappealed; and

**WHEREAS**, a Joint Stipulation of Settlement Agreement, dated April 6, 2009, was entered relating to the subject property and concerning the land use and zoning of the property said Stipulation resulting from litigation which was initiated relative to certain land use issues pertaining to the property and being a document to which the City has rigidly adhered; and

**WHEREAS**, the Joint Stipulation of Settlement Agreement calls for development of the subject property by means of a planned unit development zoning designation of the property under certain conditions and providing certain requirements are met; and

**WHEREAS**, the parties to the Joint Stipulation of Settlement Agreement have expressed no objections to the proposed zoning; and

**WHEREAS**, the City Council of the City of Daytona Beach Shores has received recommendation from City staff and the City's Planning and Zoning Board supporting the assignment of the zoning classification as set forth herein to the subject property; and

**WHEREAS**, the City Council of the City of Daytona Beach Shores is committed to sound land use planning and development activities within the City and ensures that sound and generally accepted land use planning and development practices and principles are applied to all land use decisions of the City such as the quasi-judicial decision set forth in this Ordinance; and

**WHEREAS**, the City Council of the City of Daytona Beach Shores has complied with all requirements and procedures of Florida law in processing and advertising this Ordinance; and

**WHEREAS**, the City Council of the City of Daytona Beach Shores finds the rezoning of the subject property as set forth herein to be consistent with the *City of Daytona Beach Shores Comprehensive Plan Update 2020* and in the best interest of the inhabitants of said City to amend the Official Zoning Map as hereinafter set forth, and

**WHEREAS**, development of the subject property will occur subject to and consistent with and in compliance to the *LDC* and all other applicable regulations and ordinances as set forth in the *Code of Ordinances of the City of Daytona Beach Shores*.

**NOW, THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF DAYTONA BEACH SHORES, FLORIDA, as follows:**

**SECTION ONE: LEGISLATIVE FINDINGS AND INTENT.**

(a). The City Council of the City of Daytona Beach Shores hereby adopts and incorporates into this Ordinance the City staff report and City Council agenda memorandum relating to the application relating to the proposed rezoning of the subject property as well as the recitals (whereas clauses) to this Ordinance.

(b). The City of Daytona Beach Shores has complied with all requirements and procedures of Florida law in processing and advertising this Ordinance.

(c). The survey data received into evidence in the public hearings relating to this Ordinance to include, but not be limited to, the land data provided on the Web site of the Volusia County Property Appraiser clearly show and demonstrate that the property which is

the subject of this Ordinance is approximately 3.03 acres in size, but, in any event, over 3.0 acres in size. Additionally, the City affirms the determination of the Volusia Growth Management Commission that the subject property is 3.03 acres in size as determined in Section 1. (51) i) of Resolution Number 2008-02, dated January 23, 2008, and rendered on January 31, 2008.

(d). The provisions of this Ordinance are consistent with the provisions relating to the settlement of the litigation styled *Tommy Partin, Michael Clancy, Mike Durkin, Peter Gjessing and Klara Gjessing, Petitioners, v. Volusia Growth Management Commission, Respondent, and The City Of Daytona Beach Shores, Intervenor*, (Case Number: 2008-30741-CICI) filed in the Seventh Judicial Circuit Court in and for Volusia County, Florida.

(e). This Ordinance is consistent, to the extent required by law, with the provisions of Resolution Number 2008-02, dated January 23, 2008, and rendered on January 31, 2008, as adopted by the Volusia Growth Management Commission.

(f). This Ordinance is consistent with the goals, objectives and policies of the *Comprehensive Plan of the City of Daytona Beach Shores* as well as all other controlling law and legal obligations of the City.

## **SECTION TWO: REZONING OF REAL PROPERTY.**

(a). The property described hereinafter which was annexed into the City of Daytona Beach Shores pursuant to Ordinance No. 2006-06 is hereby rezoned and assigned the zoning classification as follows:

3704 Cardinal Boulevard, Volusia County Property Appraiser Parcel Identification Number 02-16-33-06-00-0220 (Long)/ 6302-06-00-0220 (Short), as described in Exhibit "A" as attached, is assigned the PUD-R, Planned Unit Development-Riverside District Zoning Classification, totaling 3.01 acres, more or less.

(b). The map and sketch attached to this Ordinance are hereby ratified and affirmed and incorporated into this Ordinance as a substantive part of this Ordinance. The general conceptual master plan is also hereby ratified and affirmed and incorporated into this Ordinance as a substantive part of this Ordinance; provided, however, that all future development of the subject property shall conform to the requirements of the land development regulations of the City as set forth in the *City Code of the City of Daytona Beach Shores* or the *Land Development Code of the City of Daytona Beach Shores* and other controlling ordinances and laws.

**SECTION THREE: AMENDMENT OF OFFICIAL ZONING MAP.** The Official City Zoning Map is hereby amended to conform to the rezoning assigned herein. The City Manager, or designee, is hereby authorized to execute any documents necessary to formalize approval of the rezoning action taken herein and to revise and amend the Official City Zoning Map or Maps

of the City of Daytona Beach Shore as may be appropriate to accomplish the action taken in this Ordinance.

**SECTION FOUR: IMPLEMENTING ADMINISTRATIVE ACTIONS.** The City Manager, or designee, is authorized to take any and all required administrative actions to implement the provisions of this Ordinance including, but not limited to, providing notice of this rezoning to the Volusia County Council in accordance with applicable law and, without delegation, approval of the Master Development Agreement in accordance with the provisions of Section 14-24.1.18.3. of the *Land Development Code of the City of Daytona Beach Shores*.

**SECTION FIVE: CONFLICTS.** All ordinances or part of ordinances in conflict with this Ordinance are hereby repealed.

**SECTION SIX: SEVERABILITY.** If any section, sentence, phrase, word, or portion of this Ordinance is determined to be invalid, unlawful or unconstitutional, said determination shall not be held to invalidate or impair the validity, force or effect of any other section, sentence, phrase, word, or portion of this Ordinance not otherwise determined to be invalid, unlawful, or unconstitutional.

**SECTION SEVEN: NON-CODIFICATION.** This Ordinance shall not be codified in the *City Code of the City of Daytona Beach Shores* or the *Land Development Code of the City of Daytona Beach Shores*; provided, however, that the actions taken herein shall be depicted on the Official Zoning Map of the City of Daytona Beach Shores by the City Manager, or designee.

**SECTION EIGHT: EFFECTIVE DATE.** This Ordinance shall take effect immediately upon enactment.

**CITY OF DAYTONA BEACH SHORES, FLORIDA**

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**HARRY JENNINGS, MAYOR**

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**MICHAEL T. BOOKER, CITY MANAGER**

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**CHERI SCHWAB, CITY CLERK**

**Approved as to form and legality:**

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**LONNIE GROOT, CITY ATTORNEY**

Passed on first reading this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

Adopted on second reading this \_\_\_\_\_ day of \_\_\_\_\_, 2012.