CALL TO ORDER
Chairman Wallace called the meeting to order at 5:27 p.m.

APPROVAL OF MINUTES
Guidera made a motion, seconded by Green, to approve the January 5, 2012 minutes as written. The vote in favor was unanimous. The motion carried.

LETTERS OF CREDIT

A. Tiger Grand (Infrastructure)

Leinwand said that the January 5, 2012 meeting, the Board voted to not renew the letter of credit. He said the letter of credit was about $107,000, and would expire on February 9, 2012.

Leinwand said since the January meeting, he contacted the property owner and the developer of the subdivision. He said he was at the meeting this evening to ask the Board to reconsider their decision. Leinwand said he probably should have invited the owner/developer here for the January meeting, but he did not think the Board would deny it.
Guidera asked if this was the one that they had leeway with. Leinwand said this one originated in October 2006, which was about 5 years ago. He said under the old ordinance, which was in effect up until the middle of December 2011, there was no condition that stated there was only a 5-year limit on letters of credit. He said the new ordinance had a 5-year limit, but the Board could extend a letter of credit if they felt there were any extraordinary conditions or financial hardships. He said it was up to the Board which ordinance they wanted to go by. He said it had been over 5 years, but they could grant an extension if they wanted to.

Earl McDaniel said he owned the property. He said he would like to have the letter of credit renewed because he was concerned that trucks would tear up the sidewalks if they were installed. He said would be much easier to get the houses in and then pour the sidewalks. He said if they put the sidewalks in first, they might not know where the driveways were going to be installed.

Wallace said as Leinwand had stated, a new policy had been started where letters of credit would not be extended indefinitely. He said he could understand McDaniel position since things had not been selling.

Guidera asked McDaniel if it would be a financial hardship for him to put in all the infrastructure at this time. McDaniel said that it would be a financial hardship for him.

Jordan asked if the Board was even allowed to reconsider this. Wallace said they were. Jordan asked on what basis. Wallace said the Board had the power to grant and refuse extensions of credit. Jordan said read from Section 14.3.3.D of the Unified Development Ordinance “only when requested by the governing body or the applicant brings to the attention of the commission new facts, a mistake of fact, correction of clerical error or matters not the fault of the applicant which affect the result of the review.” Wallace said today’s economy was not the fault of the applicant. He said there was no reason they had to change their mind, but the applicant wanted to plead his case. He said since they were a public body and the public wanted to speak, he had no problem with it.

Jordan said he was worried about precedents being set. He said he didn’t think he should have to put sidewalks in. He said the precedent they were setting was that if an applicant didn’t like the result this month that they could come back the following month. Green said he agreed with that, but that the precedent had already been set with the new ordinance with the 5 year time limit on it. He said he could completely understand not getting out there this month and putting the sidewalks in, but he felt there ought to be sidewalks for the people who lived there for walking and for safety. Guidera said he thought they had talked about the construction aspects of it. He said it was not impossible to build and not damage sidewalks. He said if there was a small amount of damage done to the sidewalk, it was not a huge deal. He said more of the case here, was the amount of infrastructure needed to finish it was more of a consideration of financial hardship than anything else. He said the construction aspect of it to him was not something you could argue.
Leinwand said he should have asked the applicant to come to the January 2012 meeting. He said he would from now on inform the property owner and/or developer that he or she should come to the meeting. He said if the applicants didn’t come to the meetings, then they had no voice in it.

Grabarz said that when a house was going to be built on the property, the contractor has the plans in front of him and knew where the driveway would be installed. Gobbel said what concerned him was that this had gone on for 5 years. He said based on existing conditions as they were today, how much longer would it be. He said nobody could give an answer to that, but he said they were easily looking at another 2-5 years. He said the sidewalks should be put in at the same time the roads were put in, but it would have to be a policy generated by the city. He the city needed something in place to get the sidewalks built. He said Tiger Grand was like a checkerboard. He said he knew $100,000 was a hardship to anybody these days, but they needed an answer of when they were going to be built. He said not based on when all the houses were built because that could be forever.

Green said the city would not issue a C/O if the sidewalks were damaged and not repaired prior to C/O. Leinwand said the building inspector checked the sidewalks when they were poured and when they were completed before the C/O was issued.

Guidera asked what the stance was on this being a new ordinance. He said in most other circumstances there was a grandfather clause. He asked how that would work with existing developments. He asked if there was any consideration or timeline or leeway or provision put in for those people. Leinwand said the old ordinance really gave no guidelines on when the sidewalks should be put in. He said it was up to the Planning Commission to make that decision. He said the new ordinance stated a maximum of 5 years or 75% build out or the condition of extraordinary circumstances or financial hardships that would allow the Planning Commission to extend it more than 5 years. He said he did not think it mattered which ordinance was used. He said it was up to the Board.

Guidera said changing the ordinance this way did cause an extraordinary circumstance. He said he did not see these sidewalks getting in this year. He said most people would not be able to do it. He said to be reasonable, he thought they needed to find a provision for people who were coming due in this first year of the new ordinance to have some type of leeway to move forward. He said to put a timeline on it, but they were getting hit with no notice whatsoever.

Humphries asked if it were within the Board’s authority to set such timelines. Leinwand said it was up to the Planning Commission whether or not to renew. Foye said they could approve one year and the next year deny. Foye said if they approved the extension now, they probably would not get an extension next year. Foye said this original letter of credit was issued under the old ordinance. He felt the applicant should have a year to get things in line and get it done.
Wallace said as an alternative, one end of the development seemed to be where everything was concentrated. He asked if there was any possibility in at least putting sidewalks up to the third crossroad. McDaniel said he thought that could be done in the next six months. Wallace said it looked that on Millsite Drive every lot was built to a point. Wallace said they could not make ordinances but they could establish policy. Humphries said that was going to be important going forward. He said deciding on a case-by-case basis left the opportunity to be inequitable.

Green said that the new ordinance more or less set the precedent. Green said he didn’t mind saying that Tiger Grant, for example, had “x” number of days to get it done. He said if they didn’t, the old letters of credit would sit out there forever.

Guidera asked if the city was interested in looking at these on a case-by-case basis by dividing the developments up so it was easier on the developer. Leinwand said that could be a good compromise on future decisions. Gobble said they were only talking about Phase 1 in Tiger Grand. Leinwand said Phase 2 was not a part of this particular letter of credit.

Green made a motion, seconded by Gobble, to extend the letter of credit for an additional year only. Humphries said he thought they would be entitled to come back and ask for an extension even if they knew what the outcome would be. The vote in favor was unanimous. The motion carried.

Wallace wished McDaniel good luck in his sales in the coming year. He said it was a nice project, and he hoped it took off.

B, Forest Glen (infrastructure)

Leinwand said this was a similar situation to Tiger Grand. He said the applicant was here as well. He said the bank was in the process of taking ownership of the subdivision. He said they were looking for a developer who would buy the subdivision. He said the applicant could explain it better, but they did want an extension of another year.

Jay Small from KeyBank introduced himself. He said they were the lender on the project. He thanked the Board for allowing him to plead the bank’s case. He said they had been in negotiations with the developer for a little while now. He said they had negotiated the deed, which should be closing and transferring into an entity that the bank held all their REO properties (foreclosed properties) in February. He said it would be put on the market then.

He said they did not do improvements unless it was a lifesaving issue. He said improvements, such as sidewalks, they did not do as a matter of policy. He said they would not be putting in the sidewalks, but they would hopefully be selling the subdivision within a year. He said that developer would then be taking on the letter of credit. He
said he thought the new developer would be talking to them about the other phases of the subdivision.

Guidera said this was a property that was changing hands and they would then have to sit down with another person that would be coming in and trying to get them to put the sidewalks in. Leinwand said that was correct. Jordan said if the Board renewed the letter of credit, it was still on the bank. Leinwand said the letter of credit was in the bank’s name right now. Jordan said part of the sale would be Shouldering that responsibility. Small said that was exactly right. He said they would make sure the sidewalks were the buyer’s responsibility.

Green asked Small if he foresaw any issues with the transfer of the letter of credit. He asked if the buyer would provide a letter stating they were now the ones responsible. Humphries asked if the Board would get a copy of the closing package. Small said if the buyer did not take on the letter of credit, it would still be in the bank’s name. He said if the buyer did not take responsibility of the letter of credit, when a year came around, he would fully not expect the Board to not approve the extension. Jordan said the city would draw down on the letter. Small said that was right. He said if the buyer took on the responsibility of the letter of credit, they would have to post their own letter of credit to replace the banks. He said the Board could then negotiate the timeframe with the buyer.

Jordan made a motion, seconded by Grabarz to approve the extension of the letter of credit. Green mentioned that it was coming up on its 5 years as well. Jordan said it would not be 5 years until next February. Grabarz asked if they could amend the motion to revisit this. Foye said they would have to come back next year anyway. Grabarz said should stipulate that the subject should be discussed next year, not just the renewal of the letter. Jordan said he imagined there would be a policy by then.

Jordan made a motion, seconded by Humphries, to extend the letter of credit for one year only. The vote in favor was unanimous. The motion carried.

IV. ANNEXATION/REZONING REQUEST

A. Request by Dennis Corbett to annex approximately 3.0 acres of property located along US Highway 501 (TMS# 151-00-03-039) and to rezone it to the Coastal Estates PD (Planned District Development)

Leinwand said two members of the Board were recusing themselves from the Coastal Estates agenda items. David Jordan and Chris Guidera recused themselves.

Leinwand said Coastal Estates was a student housing development. He said it had a mix of retail in the front of the property, 11 student housing buildings, and amenities, which was the current approved plan. He said the developer was in the process of purchasing this adjacent parcel, which would add 3 more acres to the PD.
Wallace asked if the developer and/or contractor wanted to speak. Shuman said the request stood on its own.

Leinwand said that staff recommended the annexation of the property and the request to rezone it to the property to PD.

Green made a motion, seconded by Foye, to approve the annexation and rezoning of the property with Jordan and Guidera having rescused themselves. The motion carried.

B. Request by Reliable Investments Inc., to amend the Coastal Estates PD (Planned Development District), located along US Highway 501 (TMS# 151-00-03-074 and 151-00-03-039)

Leinwand said because of the annexation of the 3 acres, the applicant was requesting to amend their PD. He said they wanted to change their site plan to add 3 more student housing buildings. He said that would make a total of 14 housing buildings instead of 11. He said it would then go from 528 beds to 672 beds. He said this was a major amendment, and that was why it was in front of the Board. He said some of the other changes were that their amenity center, which had been in the center of the complex, would now be combined with a gymnasium and would be located on the newly annexed parcel closer to Hwy 501.

Wallace asked if it was a private gymnasium for residents only. Shuman said only the students that lived in the development would be permitted to use the gymnasium. He said the reason they were increasing the number of beds was because they were acquiring the additional 3 acres.

Shuman said the other two student housing complexes were advertising a party atmosphere. He said they were working with juniors and seniors and were going to provide a more adult living/vacation/resort type living. Shuman went on to explain various amenities and security features they were installing. Wallace said the Board did not have purview of the operations of the complex.

Wallace asked Leinwand if they staff was sure they were providing the 15% required green space. Leinwand said they were providing a little over the 15% required. Wallace asked if it was still about the same number of units per acre. Leinwand said he thought it was a little more, but McKenzie Jordan said it was less. Leinwand then agreed with Jordan.

Leinwand said staff had reviewed the amendment several times. He said for the most part they were very pleased with what had been submitted. He said staff had a couple of minor concerns regarding their landscape plan. He said some of the things did not meet the city's zoning requirements. He did say with a PD there was a lot of
flexibility. He said, for example, normally a buffer surrounding the property would require canopy trees, but they were providing a continuous hedge with the fence. He said staff felt that was a good trade-off. He said the staff's concern was the amount of landscaping around the pond. He said it did not meet current requirements.

Leinwand said the landscaping for the retail portion of the property did not meet what was required for other retail locations in the city. He said the city requires at least 5' of buffer between the structure and parking spaces. He said they were eliminating that from the front of the retail structures. He said this was one thing staff would like to see added back on the plans. Leinwand said other than that, staff was pleased with the rest of the landscape plan.

Leinwand then brought up the uses for the retail space. He said the developer had in the narrative about 20 uses that would be permitted. Staff recommended that if there was not a use in the narrative, they might want to amend the narrative to include all highway commercial uses that were in the UDO Highway Commercial (HC) Use Table. He said they might want to exclude some of the HC uses, such as auto sales or other things that were not appropriate for this type of development.

Humphries asked Leinwand if the 5' buffer was what concerned staff the most. Leinwand said it was. He said normally a landscaping buffer was required between parking spaces and a structure. Humphries asked if there was anything else like this. Leinwand said there was nothing like this overall development, but if the student section was not involved, the retail would be treated like a commercial strip center. Leinwand said he saw no difference between this retail area and a commercial strip center.

Wallace said there was landscaping there. Leinwand said there was none around the building. He said there was landscaping in the parking lot. Wallace realized he was looking at the wrong building.

Shuman asked to address the landscaping at the retail area. He said the reason that they did not have the landscaping was because they wanted to make the area not as a shopping center, but more of an area for the students to enjoy sitting outside. He said they were planning to put tables around the outside. He said if they put plants there, it would be a hazard. He said if they went into the parking area, they would have a problem with parking spaces. He said in each island they were planting ground cover and a palm tree for green all year round. He said different retailers were complaining about some of the plantings did not allow the stores to be seen as the plants grew. He said they were going to the extra expense to plant ground cover. He said when you got out of your car at a shopping area if there were overgrown shrubs, they would scratch the cars or you had to walk around them. He said he had that problem in other areas, and he felt they would want to keep low-growing and green year round. He said shopping centers after developed went to the owner's rep, and they did not maintain the landscaping. He said around the front, they were doing the shade trees as requested. He said they had a lot of plants around the trees to accent them instead of having just trees sitting there.
Shuman said as far as the pond was concerned, there was a fountain in the pond, and they would be stocking it with additional fish. McKenzie Jordan said it was an existing pond that reportedly had 10 pound bass. He said whatever they planted, they did not want to hinder the fishing. Shuman said he wanted the pond attractive so if the city felt it needed more plants, they would put some more around it.

Wallace said what was needed most was shade trees. Shuman asked why. Wallace said they had a ton of parking and buildings and strips of green. He said he agreed with evergreens in the islands. McKenzie Jordan said the problem with shade trees was that the concrete was pervious and palm tree roots grew down, whereas shade tree roots grew out. He said there would be quick damage done to the concrete with shade tree roots. Shuman said he also did not want trees bare part of the year.

Wallace said that even though he said the Board was not concerned with operations, he did presume that part of the operations would be to maintain the landscaping. McKenzie Jordan said that was correct.

Shuman said he felt what he proposed would give the retailers what they wanted. He said the retailers said landscaping blocked up the area. He said he was trying to keep everything around the retail low, green and flowery. He said the area that the Board was calling a shopping center would have 80% of its volume from the students. He said it would be a student-type retail center. Wallace said he was looking then for pedestrians rather than cars. Shuman said he wanted it to be like downtown. He said he was not looking for a drive-in, drive-thru.

Humphries asked Shuman what he envisioned for the front of the retail space. Shuman said tables and chairs. Humphries asked about awnings. Shuman said there would be awnings. Humphries said he had no problem with that. McKenzie Jordan said it would not be the look of a big box.

McKenzie Jordan said the walk through was for the students and that Coastal would send its shuttle to pick up students from that area. He said the developer would also have his own 20 person shuttle to go to other areas as needed.

Green asked if the pervious pavement was part of the stormwater. Leinwand said that was correct. Leinwand said everything in light green was pervious-type surface. M. Jordan said what was white was concrete. Shuman said he had to put a well in to irrigate everything because the pond was not big enough.

Green made a motion, seconded by Grabarz, to approve the amendment to include any forthcoming staff comments. The vote in favor was unanimous with Jordan and Guidera having recused themselves. The motion carried.

Leinwand asked the Board for clarification on their motion. Leinwand said he was unsure if the Board had approved the amendment as it was presented, which meant not requiring the 5' landscape buffer between the retail structures and the parking area. The Board responded that they had approved the request as presented
without the 5’ landscape buffer at the retail area between the structure and the parking area.

Leinwand said this would now go to City Council on February 13, 2012 for the Public Hearing and First Reading.

V. PUBLIC INPUT

There was none.

VI. BOARD INPUT

Gobbel said he didn’t think there was any rule that stated when sidewalks were to be built. Leinwand said under the old ordinance, there wasn’t. He said in the new ordinance there was a policy that all infrastructure would be required to be installed if 75% of the lots had a building permit or 5 years had elapsed.

Jordan asked about the common areas. He said he didn’t think there was any reason why sidewalks at Tiger Grand weren’t installed at the common areas. Humphries said if the Board started to press, there could be legal action since the new ordinance was not in place when the letters of credit were issued. Green said there was nothing that said the Board had to renew letters of credit. Garbarz agreed, and said the developers would all claim that they were grandfathered in.

Wallace said what they were concerned with was appearance. He said if they started putting sidewalks in some of the subdivisions might sell better.

Jordan said on one of his job sites in the county, they did not go on the lot anymore. He said everything was pumped in. He said he rode around a subdivision in the county where the sidewalks had been put in and 10 houses had been built. He said only one sidewalk was cracked and it was cracked on the driveway. He said nothing got repoured. He said the concrete was 10 years old and the houses less than a year.

Gobbel said back when the city started requiring sidewalks, he didn’t think sidewalks were necessary. He said if concrete trucks were indiscriminately driven over the lot, the sidewalks would get torn up. But he said if you were responsible to fix them, you would take care of them. He said the potential damage of the sidewalks was not an issue anymore.

Wallace said they had a new ordinance that could be amended if the Board wanted to put further limits in place. Humphries said if they decided letters of credit on a case-by-case basis, it was going to be a huge problem. Gobble said 75% in today’s economy was a stretch. Gobble said once the roads were bonded and turned over to the city, that the developer had exactly one year to put the sidewalks in. Jordan said that would make them hold on to the roads a bit longer.
Wallace asked if they wanted Leinwand to write up an amendment to the UDO to that effect. Humphries asked Gobble to repeat his suggestion. Gobble said once the streets were bonded and turned over to the city, the developers would have exactly one year to construct the sidewalks. Jordan asked about existing projects. Gobble said that was a problem and would always be a problem. He said all they could do there was to deny the extensions to the letters of credit. He said today they gave a warning. He said a year from now it would probably be the same old thing. He said he hoped the Board would stand up and say no.

Green said he did not view it as an appearance issue. He said it was public safety. He said Tiger Grand’s traffic was mostly cut through. He said it was not residents. Gobbel said when you buy into a subdivision, you buy in with the idea that there will be sidewalks.

Wallace said they probably would want to amend the UDO to require sidewalks at common areas be put in when the roads go in. Jordan said that would not be a bad policy.

Gobble said the cost of the sidewalks was passed on from the developer to the builder. Humphries asked if the Board had any control over that. Leinwand said it was up to the developer who paid for the sidewalks. Humphries said he was not trying to make the Board a big brother.

Green said it was risk that a developer took if the subdivision sold out quick then the builders were putting in sidewalks as they went and it was fine. He said that was not the case with the economy the way it was.

Wallace asked if the Board wanted Leinwand to come with a proposal for an amendment. The Board all agreed to that. Jordan said it should be mainly for existing developments. Leinwand said they might need a legal opinion. Grabarz said they should also look into a policy for any subdivision that had a change of ownership.

Grabarz asked if the Board was going to get a copy of the new UDO. Leinwand said he had copies for them this evening. Wallace said the UDO was also available online.

Green said in multiple phased subdivisions, if Phase 1 was built out and sidewalks in, but Phase 2 had nothing built, he thought there should be some kind of grace for those guys. Gobbel said even if they just had lots for sale, they needed sidewalks. Foye said they would probably sell faster with sidewalks. Green said he thought it would encourage phases to be sold out quicker instead of developing three phases and people picking lots in all three. He said if Tiger Grand had concentrated on just Phase 1, it might be built out by now. Guidera said Centex and Beazer were built like that. He said they did not allow picking lots in various phases until each phase was built out. Humphries said it made good sense.
VII. STAFF INPUT

Leinwand said that they needed to elect or reelect a new Chair and Vice Chair.

Foye made a motion, seconded by Humphries, to elect Gerald Wallace as Chairman. The vote in favor was unanimous. The motion carried.

Grabarz made a motion, seconded by Green to elect Larry Foye as Vice Chairman. Grabarz, Green, Wallace, Gobbel, Jordan, Humphries, Guidera voted in favor. Foye voted against. The motion carried.

There was discussion on how the Board would like to receive their packages each month. Most of the Board said email was fine. It was mentioned that some of the drawings, etc. might be too large for email. It was suggested to put the monthly packages on an FTP site. Leinwand said he would look into it.

VII. ADJOURN

There being no further business to come before the Board, the meeting adjourned at 6:50 p.m.

Approved and signed this 1st day of March, 2012.

Gerald Wallace, Chairman