

MINUTES OF A REGULAR MEETING OF THE CITY COMMISSION OF THE CITY OF FORT PIERCE, FLORIDA, HELD IN THE CITY HALL COMMISSION CHAMBERS, 100 NORTH U.S. #1, FORT PIERCE, FLORIDA, AT 7:00 P.M. ON MONDAY, FEBRUARY 7, 2005.

Mayor Benton called the meeting to order.

Reverend Sharon Britcher, Mustard Seed Ministries, gave the invocation.

The Pledge of Allegiance was recited.

Upon Roll Call, those present were: Mayor Robert J. Benton; Commissioners Rufus Alexander, Edward Becht, Christine Coke, and R. Duke Nelson; City Manager Dennis Beach; City Attorney Robert Schwerer; and City Clerk Cassandra Steele. Those absent: None.

Mayor Benton proclaimed February 20-26, 2005 as "**National Engineer's Week**". Mr. John Donahue was present to receive the proclamation.

Mr. John Donahue said thank you on behalf of the Florida Engineering Society. He is a State Director of that Society, who wishes to thank the City of Fort Pierce for this proclamation.

The next item on the Agenda was Mr. John Donahue of LBF&H to give update on **State Road A-1-A** Construction Project.

Mr. John Donahue said he is with LBF&H Engineers & Surveyors. He was asked to come here tonight by the City Engineer to give an update on the design of the State Road A-1-A improvements. When he was here in front of the City Commission last February, he explained that the project was being split into three phases. Phase I runs from Binney Drive and to the east to the intersection of Seaway Drive and South Ocean Drive and then it runs south to Gulfstream Avenue. It also includes a roundabout at the intersection of Seaway Drive and Gulfstream Avenue. Phase II runs from U.S. #1 down to the west side of the South Bridge and then from the east side of the South Bridge to Binney Drive. It also includes a roundabout at the Harbour Isle development and that roundabout is being designed by the Harbour Isle engineers. The last phase, Phase III runs from Gulfstream Avenue on South Ocean Drive down to the City limits at Blue Heron Boulevard. With the exception of that segment in Phase II which runs from U.S. #1 to the west side of the South Bridge, it is a pretty nice reconstruction project. It will include curb and gutter, sidewalks, bike lanes where there is enough right-of-way, landscaping, and other improvements like that. The segment that runs from U.S. #1 down to the west side of South Bridge is a milling and resurfacing project. He has been asked to give them just a status of the overall project. Typical sections for the project were submitted to FDOT in September 2003 and approved in May 2004. All of the survey is completed and it was approved by FDOT just last month. They held an initial meeting with all the utilities in May of last year; and then a follow-up meeting just last week or the week before with FPUA to talk about what they are going to do with their utilities out there. He believes the FPUA said that the gravity sewer system is pretty new or has just been sleeved, so they are not going to touch that; but they are going to do some water main adjustments and electrical line adjustments. Conceptual roundabout plans were submitted to FDOT back in February 2004. They received comments from them in July 2004, resubmitted the roundabout to them in August, and then received their final comments back in December, so they don't anticipate any more comments on the roundabout package; but they want to get this in

writing because they would like to have everything in writing. They had a contamination screening evaluation given to them by the City's Geotechnical Consultant in December and then the geotechnical study for the roadway was completed in January 2005. As far as Phase I goes, 30% plans were submitted to the City in May 2004 and approved in June. Drainage permit applications to South Florida Water Management District was submitted in January of this year. 60% plans were submitted to FDOT and the City in January of this year. They expect comments from them in February. They expect to receive a permit from the South Florida Water Management District in May 2005 and then submit 100% plans to the City and FDOT in June of this year. What this comes down to is, as far as the roundabout goes, they expect completion of construction of the roundabout in April 2006 and the remainder of Phase I in March 2007. It is going to take a little longer for the roundabout because there is some property acquisition that is going to be required for some corner clips. They have given the City five months to go through that process and have it all approved by the FDOT. They have to do it their way because it is FDOT's money, so they have to follow their rules. He has similar schedules for Phase II and III. But in general it puts beginning of construction of Phase II in January 2006 and ending in May 2007; and then Phase III puts beginning construction in March 2006 and ending in July 2007. They are also working with various departments in the City for trying to do some master planning of some South Beach park improvements.

Commissioner Alexander said he has a concern on the west side of the bridge east to the first roundabout. What are they going to do as far as the four lane? How far would they be taking that from the base of the bridge?

Mr. Hector Arias, City Engineer, said that is a two lane reconstruction project.

Commissioner Alexander asked is it going to stay two lane from the base of that bridge?

Mr. Arias said that is right.

Commissioner Alexander said with the impact they have coming... They have 20 foot sidewalks in there. They are going to leave that a two lane?

Mr. Arias said according to FDOT, they are not going to be able to have 20 foot sidewalks. It is going to be 12 foot sidewalks on each side of the road. The other thing they must be aware of, there is a Development Agreement with Harbour Isle that was approved by this Commission by which Harbour Isle would have to build the roundabout instead of four laning. The four lanes he was asking about, there was an old agreement with MacArthur in 1983 that the owner of the property, whoever he may be, must build the four lanes. Now if Harbour Isle by that agreement they approved builds the roundabout, the four lane agreement would be void. That was approved by the City Commission.

Commissioner Nelson asked when? What year was it approved?

Mr. Arias said the agreement was approved in 2003.

The following letters will be kept on file in the City Clerk's Office:

Memorandum from Chief of Police Eugene Savage in appreciation of the hard work and dedication of Fort Pierce Police Commander Gregory Kirk, Sgt. Daniel Flaherty, Sgt. Robert Ridle, Det. Daniela Dreizehnter, Det. Charles Donnon, CSI Tommy Garrason, and CSI John Robinson.

Memorandum from Chief of Police Eugene Savage in appreciation of the diligent efforts and contribution of Fort Pierce Police Lt. Gregory Kirk, Commander Richard Debevec, Lt. Dennis Smith, Sgt. Daniel Flaherty, Sgt. Timothy Gahn, Sgt. Katherine England, Sgt. William Hall, ASA Lynn Park, ASA Christopher Taylor, Sgt. Antonio Hurtado, Det. Stephen Griffith, Officer Richard Rust, Officer Angelo Tsauosis, Officer Dean Ovshak, and CSI Tommy Garrason.

Card from Mary Mandy in appreciation and gratitude to Fort Pierce Police Sgt. Donald Christman and Detectives Roberto Sarmiento, Christopher Newman, Caleb Gillette, Michael Oliver, Eric Pierre-Jerome, Charles Davis, and David Jones.

The next item was the Consent Agenda. Mayor Benton asked does any Commissioner wish to remove an item?

Commissioner Becht said he would like Item 7a (City Commission Minutes) removed for discussion.

Commissioner Nelson said he would like Item 7c (Independent Contractor Agreement) removed for discussion.

Commissioner Coke said she would like Item 7f (Letters of Commitment to Florida Department of Transportation) removed for discussion.

Motion was made by Commissioner Coke, seconded by Commissioner Alexander, and unanimously carried, that the following items on the Consent Agenda be approved:

b. Authorize City Manager to enter into an **Independent Contractor Agreement** between the City and Daniel Gargas for professional services related to the inspection of structures and building permitting.

d. Approve travel and attendance by Commissioner Coke at Treasure Coast **Legislative Conference** in Tallahassee on February 15-17, 2005.

e. Approve travel by City Manager Beach to attend **Bond Rating** meetings with Financial Consultant in New York City, February 17 & 18, 2005.

g. Authorize Police Department application for U.S. Department of Justice FY 2005 **Bullet Proof Vest Grant**.

h. Approve Police Department application for 2004/2005 **Victims of Crime Act Grant** from the U.S. Department of Justice.

i. Authorize expenditures for **Hurricane Frances and Hurricane Jeanne Debris Removal** for a total of \$6,762,098.18 to: (1) DRC, Inc (Work thru 9-10-04, \$358,234.50); (2) AshBritt Environmental (Work thru 12-30-04, \$6,328,863.68); and (3) American Consulting Engineers, LLC (Tower Monitoring & Ticket Processing, not to exceed \$75,000).

j. Authorize piggyback City of South Miami Purchase Order for the purchase of one 33-cubic yard Automatic **Garbage Truck** on Autocar Chassis for the Solid Waste Department from General GMC Truck Sales & Service in the amount of \$165,049.00. Bid No. 5498

k. Approve payment of \$59,553.29 to the St. Lucie County Landfill for marina and boat debris under the **City Marina** Dock Demolition & Removal of Debris Land/Water bid. (Sole Source) Emergency bid No. 5468.

l. Approve additional \$300,000 to the existing contract with R & J Marine, Inc. to complete underwater surface debris removal and removal of "E" Dock under the **City Marina** Dock Demolition & Removal of Debris Land/Water bid. Emergency Bid No. 5468.

m. Authorize piggyback Florida State Contract for purchase of one Ford F-450 **Crew Cab** and Heil Yardbird Dump Body for Public Works, Streets & Drainage Division, in the amount of \$28,804 from Don Reid Ford. Bid No. 5499

The next item considered was Item 7a, which had previously been removed from the Consent Agenda: Approve the **Minutes** of the Special Workshop Meeting on January 10, 2005; and the Minutes of the Special Joint Meeting on January 14, 2005; and the Minutes of the Regular Postponed Meeting on January 18, 2005.

Commissioner Becht said in the Minutes of the Special Workshop he has two corrections he would like to make. The first being on Page 2, next to the last full paragraph. It should read, "Commissioner Becht said one of the things he thinks they need as a City is to be able to have a five year plan with this *Commission* giving some thought to where they want to go as a City when they grow up". Currently it says *Commissioner*. Then on Page 28, somehow he got promoted to Mayor. He doesn't think he is.

City Clerk Steele asked doesn't Commissioner Becht want to be the Mayor? If not, they will fix that.

Motion was made by Commissioner Becht, seconded by Commissioner Nelson, to approve the Minutes of the Special Workshop Meeting on January 10, 2005, as corrected; and the Minutes of the Special Joint Meeting on January 14, 2005; and the Minutes of the Regular Postponed Meeting on January 18, 2005.

Those voting in favor of the motion were: Commissioners Alexander, Becht, Coke, Nelson, and Benton. Those opposed: None.

The next item considered was Item 7c, which had previously been removed from the Consent Agenda: Authorize City Manager to enter into an **Independent Contractor Agreement** between the City and Jeffrey Neese for professional services related to the inspection of structures and building permitting.

Commissioner Nelson said during the early phases of their hurricane problems, they had people volunteering to come in here and do some of their inspection requirements and they were doing it basically for free. To what extent did they go out and search for individuals to perform this service? And what is going to be their funding source for paying these people?

City Manager Beach said he doesn't believe they are actively soliciting volunteers to do this work at this point in time. The Independent Contractor Agreements they see here, and there are two of them on the Agenda tonight, those are intended to be positions that are of a temporary nature. To give an example of the work load that is caused by the repair from the two hurricanes, in December 2004 they issued approximately 100 and something building permits valued at around \$6 million. In January 2005 they issued 700 and something building permits with a value of around \$26 million. The source of revenue to pay for these is the revenue generated by the permit fees from that additional construction.

Commissioner Nelson asked is he estimating a sizeable amount for those fees?

City Manager Beach said the difference in one year ago was \$100,000 for that month. This year it was in the vicinity of \$700,000 in revenue.

Commissioner Nelson asked are these people going to be State Certified?

City Manager Beach said they will be qualified. What their certifications are depends on what is required to do their job.

Commissioner Alexander said he just wants to follow up on that. Mr. Beach said they will be certified, but are they going to follow up behind them to make sure they are doing what they are supposed to do?

City Manager Beach said yes. They will be operating under the license of their Licensed Building Official, who has the responsibility of making sure they have the certifications necessary to conduct whatever inspections they are charged with doing and he will do that.

Commissioner Alexander said that question leads up to another one he has. He thought the Commission at one time, he can't recall what date it was, but they were going to relax the liens and fines they put on people at the time of the hurricanes. Did they not say that?

City Manager Beach said these are building inspections.

Commissioner Alexander said he knows, but he is leading up to that. Regardless, that is the Building Department. He was in a Code Enforcement meeting the other day and on September 1st... When did they get the hurricane? Did they get it in September?

City Manager Beach said he thinks they had two in September.

Commissioner Alexander said yes; and he had the privilege of sitting there in the audience when this person was getting drilled by fines in September that they were going to kind of alleviate

those.

City Manager Beach said he is not familiar with what the Commissioner is referring to.

Commissioner Alexander said he thought they were going to relax fines during the hurricane.

City Manager Beach said direction that staff received from the Commission on that subject - and he is not even sure this was direction, it was just kind of a general consensus - was that the code enforcement activity was going to be placed in abeyance until they get back to some state or level of normalcy.

Commissioner Alexander said absolutely. So when he sees an individual who had to fly in from New York to plead about having work done on their house on September 3rd, that was really appalling to him. He is going to leave it like that. But again, he wants to say Code Enforcement is doing an excellent job, but again it is how they speak to individuals. These people are tax payers of this community; and when they speak to them any kind of way, he resents it, in his presence.

City Manager Beach said again, he is unfamiliar with the specific circumstances he is referring to.

Commissioner Alexander said they will follow up on that.

Motion was made by Commissioner Coke, seconded by Commissioner Becht, to authorize the City Manager to enter into an Independent Contractor Agreement between the City and Jeffrey Neese for professional services related to the inspection of structures and building permitting.

Those voting in favor of the motion were: Commissioners Alexander, Becht, Coke, Nelson, and Benton. Those opposed: None.

The next item considered was Item 7f, which had previously been removed from the Consent Agenda: Approve execution of Letters of Commitment to the Florida Department of Transportation for **Lighting Maintenance** and for **Landscape Maintenance** located in the right-of-way of State Road 615 - 25th Street from Orange Avenue to Avenue Q.

Commissioner Coke said she asked to pull that at the request of the City Attorney, who she trusts is going to keep his comments brief.

City Attorney Schwerer said this is a routine matter that is before them for a commitment for landscaping and lighting maintenance. His only comment is because of some pending lawsuit issues, please make their approval of these subject to legal review and editorial comment. They are going to change some of the language in this form when it goes back to FDOT. That is all he has to add.

Motion was made by Commissioner Coke, seconded by Commissioner Becht, to approve execution of Letters of Commitment to the Florida Department of Transportation for Lighting Maintenance and for Landscape Maintenance located in the right-of-way of SR 615 - 25th Street from Orange Avenue to Avenue Q, subject to legal review and comment.

Those voting in favor of the motion were: Commissioners Alexander,

Becht, Coke, Nelson, and Benton. Those opposed: None.

The next item on the Agenda was Application for **Site Plan** Review submitted by **Beach Group Investments**, LLC, for a proposed Preliminary Planned Unit Redevelopment for a commercial retail and residential mixed use project at 222 South Ocean Drive; said property concurrently being considered for rezoning from C-5 to PUR. (Postponed from August 2, 2004. Public Hearing held on August 16, 2004 - Action on Application postponed to September 20, 2004. Action on Application postponed to October 4, 2004. Postponed to November 15, 2004, at applicant's request. Postponed to December 6, 2004. Postponed to January 3, 2005, at applicant's request. Postponed to February 7, 2005, at applicant's request.)

Mayor Benton said he believes that is why most everybody in the audience is here. He was hoping to see this crowd in August. In August 2004, they held the Public Hearing. This item has been tabled several times since August. What they would have to do is there would have to be a vote to open up the Public Hearing to allow them all to speak because it was closed back in August. So right now he will see if there is a motion to reopen the Public Hearing.

Motion was made by Commissioner Becht, seconded by Commissioner Coke, to reopen the Public Hearing on the Application for Site Plan Review submitted by Beach Group Investments, LLC, for a proposed Preliminary Planned Unit Redevelopment for a commercial retail and residential mixed use project at 222 South Ocean Drive.

Commissioner Alexander said he just wanted to let everyone here know their action speaks well. He will pay attention. But smiles take care of all that heated conversation.

Those voting in favor of the motion were: Commissioners Alexander, Becht, Coke, Nelson, and Benton. Those opposed: None.

Mayor Benton said before he opens this Public Hearing, if there is someone here who represents the majority of the group, they should speak. Then when he closes the Public Hearing, he will ask for a show of hands of folks who are against or for the project. Because if everybody wants to speak, then so be it; but they could be here all night. Please try to hold comments to five minutes or less.

Mayor Benton declared a Public Hearing in session and asked if anyone in the audience wished to be heard.

Mr. Robert Klein said he is with the law firm of Klein & Dobbins here in Fort Pierce. With him tonight are Greg Boggs and Al Brodeur from Thomas Lucido & Associates, the land planners. He believes Don Bergman is here, as is Stefan Matthes from Culpepper & Terpening, but he is not able to locate them with the crowd. He appreciates their allowing them the time to speak on this. He is going to ask them in advance for some patience because he does have to go through a number of items. They have seen these before. They know what he is talking about. First though, he has a little housekeeping. Mr. Mayor, he is going to have to ask him to vacate his seat because at the John Carroll auction on Friday night, he bought the Mayor for a Day. He asked his mother to come and be Mayor today, but she couldn't make it, so he thinks they are going to let him sit there. Anyway, thank you for seeing the humor in that. He thought they could use a little bit here before they got

started. He noticed there are a lot of people here and he thought they were all here for him and this project.

Mr. Klein said he did happen to notice there was a notice marked "Important" that was posted at Sea Pointe Towers. (Mr. Klein gave a copy of the notice to the Commissioners.)

Mayor Benton asked how did he get in there? Does he know somebody who lives there? How did he get past the guard?

Mr. Klein said he didn't say he went in there. There has been a lot of misconceptions, misrepresentations, and confusion. He noticed it when he went through the Minutes. He knows some of the codes are confusing. He normally doesn't speak to the crowd when he gets up here, but that document references that there is a project tonight that is going to be 15 stories and it is going to have more than 18 units per acre. Just so everybody behind him is clear, this is the project that they submitted. (Mr. Klein showed a drawing to the audience and to the Commissioners.) He doesn't know that they could all see it before. It is four stories. The density is not 18 units per acre, it is under that. It is just over 16 units per acre. Well, he thought the humor part was over, but he guesses he was wrong. The point is that if anyone here was under the misconceptions that were raised by that notice, then he wanted them to understand that it was not 15 stories and it was not more than 18 units per acre. That was the point of that whole discussion.

Mr. Klein said as he indicated, there is a lot of confusion about this matter. It has been going on for months. He thought he understood it; but as he read back through the Minutes, he found himself getting confused. So what they did today was prepare a booklet that they are going to hand out now and he is going to walk through his presentation and he has materials for them to refer to as they do that. (Mr. Klein submitted booklets entitled "Beach Investment Group Planned Unit Redevelopment Project - 222 South Ocean Drive" to the Commissioners.) In two previous meetings, September 20th and November 15th, this Commission instructed Beach Group Investments to table their application and to meet with staff to try to work this out. On both occasions they have done that. They can see under Item #1 it is something they already have and that is Mr. Trias's memo to the Commission from last week (dated January 3, 2005) indicating that staff recommends approval of this project. He wants to spend a little bit of time going through why he thinks staff did make that recommendation in addition to other things they told them. Item #2 is a letter from Greg Boggs, who is a Land Planner with Thomas Lucido & Associates, which talks about the applicability of the PUR zoning to this property and references what this Commission did a few weeks ago in affirming that the PUR is applicable to vacant property. Again, they are talking about a 36 unit project, which is down from the 39 units that were previously part of the application, and there are 3,000 square feet of commercial property in the project.

Commissioner Coke said on Item #2, she understands they have a letter here stating that it is appropriate to re-designate this property as Planned Unit Redevelopment. And she sees also he highlighted the Minutes of January 3rd where she said she doesn't believe vacant land should be re-zoned as redevelopment. There is no redevelopment involved. It is kind of a technicality way to get around the zoning that is already in place. And that is her

opinion on it, she voiced it then, and this letter just didn't change her opinion. She wanted to let him know that, number one. Number two, when he says he has a memo from staff recommending approval, her first problem with it is that it says "Staff has reviewed the site plan and has determined that it complies with City Code." But it doesn't comply with City Code as the property is zoned now. It complies with City Code were he to receive that Planned Unit Redevelopment status. Is she correct on that?

Mr. Klein said yes, she is correct. He understands her point and he does agree with her, she did say that. But he thinks when they look further that Mr. Trias did indicate that it was appropriate. And his recollection was the vote on that was 5 to 0. It was a unanimous vote. He doesn't want to debate that because it is still Mr. Boggs opinion in his letter; and he was presenting it to them from someone who does land planning as to what they thought about it. To continue, Item #3 is an excerpt from the City's Comprehensive Plan which indicates that high density residential uses can sometimes be effectively accommodated in general commercial areas. If they look at Item #4, the second page of that, they will notice it has been colored to highlight the Medium Density Residential Hutchinson Island which is RMHI and the CG in red. He would remind this Commission, if they are not already aware of it, that this property is in General Commercial Land Use. It is currently zoned C-5. That aspect of it being in the commercial general area will be important later, so he asks that they keep that in mind. Clearly the discussions that were held previously, the main issues were the height and the density. If they look under Item #5, they will see an excerpt from the PUR zoning. The item highlighted reads as follows. One of the requirements of the application is, "A statement indicating the justification for a gross density in excess of eighteen (18) units per acre if such a density is being proposed." To reiterate, they are not proposing a density in excess of 18. They are proposing a density less than 18. Therefore, no justification of that density is required under the City's own code.

Commissioner Coke said that is if the zoning were changed to PUR.

Mr. Klein said yes, he is not going to dispute her. But if the zoning is appropriate - and they contend the zoning is appropriate - then as he reads this code, the justification is required more than 18, not less. If they look at Item #6, this is the Planning Board Minutes (July 13, 2004). The highlights indicate that the motion was to approve this application. There was discussion. There was a limitation that the mean height be 60 feet, 4 inches. Now there has been some confusion regarding the height discussions as it relates to the City Code and there is a difference in terms of what type of roof they have as to how height is measured. But "mean" means average. And he has included a couple of dictionary definitions of that just for the record (Item #7). It is not the maximum. However, he would point out to this Commission that what the Planning Board approved was a building that was higher than what they currently have here. The main deck of that building, the flat roof, was 60 feet, 4 inches. The flat roof of this building is now 45 feet. If they look at Item #9, they will see that building height is defined "...to the deck line of a mansard roof..." And for anyone who doesn't know, a mansard roof is a flat deck with a fake facade to make it look like it is an elevated roof. So it is to the deck line of the mansard roof "...or to the center height between the highest and lowest points..." The deck

right there (Mr. Klein indicated the drawing) is 45 feet high. The only thing they are really talking about for people who have a concern about the height is the architectural features that hide the stairwells and create a bit of height. Everything else about this building, the vast majority of this building, is 45 feet high pursuant to the code. To go to Item #8, they will see a list of self-imposed conditions on the approval. These are the same conditions that were in his letter to the City where they submitted the package for tonight's Commission meeting and they should have that in front of them; but in case they don't, he has reproduced them here. They will see that they have limited the maximum units to 36. The maximum height is 65 feet. But nothing over 45 feet is livable space. The stairwells will be concealed from view by the architectural enhancements. Number 5 on the list of self-imposed conditions of approval is a series of improvements that Beach Group Investments is going to make to improve St. Lucie Court. They will notice there are certain other conditions. And one that is in their letter that is not in here is that the building that will be built will be matching this as much as it can given the construction process. He understands there was a previous application prior to the hurricanes where apparently what was built didn't match what they were shown and they do not want to be like that. They are committing themselves in fact to build this.

Commissioner Nelson asked has he had a chance to or did he discuss any of these self-imposed provisions with members of the various organizations or persons who are here tonight?

Mr. Klein said no, he didn't meet with everybody here. They met with about six people at his office last week. They talked to them about what they were doing. They talked about improving the St. Lucie Court and the beach access. He understood that there was some concern by the people they spoke to - and he is not sure they speak for everybody here, he is guessing that they don't - that things were not really looking that great out on the island right now. In this case, he talked to them about having a developer who was willing to do his part. There is a concept that they hear a lot locally called public benefit. Basically putting it into simple terms, "What are you doing for me?" And in this case, in addition to creating a very beautiful architecturally-pleasing project with increases to the tax base and some retail on the island, they are also spending several hundred thousand dollars on beach improvements. He knows he went longer than Commissioner Nelson's question, but if he would like him to continue, he can do that.

Commissioner Nelson said continue.

Mr. Klein said in their packet they also have a representation of the beach access. There is going to be a streetscape involved. There will be pavers, there will be parking area, there will be showers, there will be dune restoration, a sidewalk, and there will be a dune hopper for the public to use in addition to the dune hopper that would serve the private development they are talking about tonight. So they do believe in fact that this is benefitting the neighborhood.

Commissioner Becht asked before he moves on, could he elaborate a little bit on Number 3. It says, "...the interior area above 45 feet may be incorporated into a unit as part of the ceiling height..." What does that mean exactly?

Mr. Klein said what they are really talking about is this area here that exceeds the 45 feet. They wanted to make it clear that no one could put a floor up there and add another floor of living space above the 45 feet.

Commissioner Becht asked how high are the ceilings going to be in that particular unit?

Mr. Klein said the maximum height is 65 feet, so if they have this extra, they probably have... He is not an architect, obviously.

Commissioner Becht said Mr. Bergman is in the back. Can he tell them how high those ceilings are? Also he is curious, there is a balcony that appears to be attached to that unit on what he would call the 4th floor or maybe even the 5th floor. Is it accessible from the interior of that unit?

Mr. Klein said no, it is not. In fact, they at one time actually had in there that there that would be a balcony and it would be accessible, but they took it out. He thinks that is merely an architectural enhancement.

Commissioner Becht asked is that correct?

Mr. Don Bergman, Peacock & Lewis, AIA, asked is that the balconies?

Commissioner Becht said the balcony in this particular unit where it looks like they are going to have 25 foot or 30 foot ceilings. Is that highest balcony accessible from the interior?

Mr. Bergman asked this highest balcony here, yes. That is for that particular unit.

Commissioner Becht asked it is accessible from the interior?

Mr. Bergman said from that unit, correct.

Mr. Klein said that is a mis-communication with him and Mr. Bergman. And whether that is there or not, it is not intended to be and it was taken out of here, clearly.

Commissioner Becht said actually the first part of his question was, what is the ceiling height in that particular unit?

Mr. Bergman said probably typically 12 to 14 feet. It is not going to be excessively high. They are not going to look at something that is going to be 20 feet.

Commissioner Becht said then he is totally confused now.

Mr. Bergman said on this top floor, he thinks they have it set up now they are like 12 foot floor to floor heights for the main unit.

Commissioner Becht said in that section where they go over 45 feet, walk him from the ground up to the top. On the ground floor they have parking or retail.

Mr. Bergman said correct.

Commissioner Becht asked the next floor is?

Mr. Bergman asked is he talking about the tower part?

Commissioner Becht said correct.

Mr. Bergman said okay. Originally what they planned in there was...

Commissioner Becht said he doesn't care about originally.

Mr. Bergman said he thinks what they have now is there is an exercise room and spa in the two story lobby space. And they have three units above it.

Commissioner Becht said so the ground floor of the third unit is at 45 feet.

Mr. Bergman said he believes so.

Mr. Klein said he understands Commissioner Becht's confusion. And frankly he is going to tell them that is not what they put in there and that is not how it is going to be.

Commissioner Becht said he needs to disclose that he met with Mr. Klein, he met with Mr. Cahill, and he talked to a bunch of people. As a matter of fact, he doesn't know who he has not talked to in the last two weeks. But Mr. Klein and he had a conversation about this and he thought they at least were clear on that. But Mr. Bergman's clarification is different from what they talked about.

Mr. Klein said it is, absolutely. They have committed to do what they are going to do. If they have to modify the interior floor plan to accommodate what they have said here, that is what they are going to do.

Commissioner Coke said first of all she will disclose that she has met with a lot of people too, including Mr. Klein and several of his associates, regarding this project. She will reiterate the same thing she has said every time they have come here. Harbour Isles to the top of the roof line is 54 feet, 6 inches. She has said every day that would be as high as she would be willing to go. Her concern now becomes, they have discussed this several times in the last few months, and that great big area that they wanted 65 feet, the last time they were here they told her that was air conditioning storage.

Mr. Klein said no.

Commissioner Coke said yes. The big tower down at that end where it goes up to 65 feet. She was told that was air conditioning storage and no one would be living in it.

Mr. Klein said no. They were talking about the roof top. They have stairwells here and they have the mechanical on the roof top.

Commissioner Coke said okay.

Mayor Benton said before Mr. Klein represented the applicant, he believes they had come in front of the Commission several times and many times it was sent back because they didn't know and they couldn't tell the Commissioners exactly what the elevations were.

Mr. Klein said he understand his point. He is not real happy about what they are talking about right now. And if they need to accommodate what they need to accommodate to make them happy, then that is fine. But they were very clear when they wrote these; and apparently there was some mis-communication and he will accept responsibility for that. To go forward, there is also in their packet a traffic report that indicates that the impact is minimal.

Mayor Benton said he has a question on that report (Traffic Impact Statement for Inlet PUR prepared by Culpepper & Terpening). In the copy that was provided in their Agenda package, on Page 9 under "Conclusion" it says, "The following summarizes the results of the analysis performed by our office, which..."

Mr. Klein asked is he talking about the typo where it says Coconut Cove Marina?

Mayor Benton said yes. It says, "...which reflect the anticipated impacts and Levels of Service by the development of the Coconut Cove Marina development project." Which project are they talking about?

Mr. Klein said they are talking about the Beach Group project. He noticed that this morning. He spoke to Mr. Matthes and he is asking that he come down here so he can explain the traffic to them.

Mr. Stefan Matthes, Culpepper & Terpening, Inc., said he is a professional engineer. He has been the Traffic Engineer in this area for over 20 years. He supervised the preparation of the traffic report for this project. He understands there are some questions with respect to the conclusions. Does he need to just go over them briefly; or are there pointed questions that he needs to answer?

Mayor Benton said he just questioned Mr. Klein because basically on Page 9 it was referring to Coconut Cove instead of this project. The way he sees it, if they were to allow the density to double, which this would be doing if they approve this. Mr. Matthes is representing Coconut Cove too with a traffic study or this would not have been in here. His concern is, how many developments are going to say, "No actions for roadway improvements are necessary." They just talked about on the beach there was going to be two lanes. If they are going to double the density of what they were planning on having out there, they might have to go back to FDOT and four lane the roads.

Mr. Matthes said there was a typographical error in the original report. It should have been changed. The conclusions are still the same. Thirty-six units in a peak hour from multi-family condominium units, they generate in a peak hour traffic about 24 trips. Twenty-four trips is less than one half percent of the capacity of the roadway. It is still under the capacity of the roadway as defined by the Department of Transportation.

Commissioner Becht said in the capacity analysis on Page 8, going south from the project down South Ocean Drive, they say it is a Level of Service C, and going west to the bridge they say it is a Level of Service D. He thinks it is vehicle trips per day. What trips it from C to D?

Mr. Matthes said he believes that is about 12,800 vehicles, somewhere around there. He believes they have a chart in there that FDOT uses to make that trip change. It is published by the Department of Transportation.

Commissioner Coke said when they are looking at this project they need to look at all the projects or potential projects on the beach in their entirety. Since Mr. Matthes is a professional and he works in this area and has for many years, she is wondering, can he tell her honestly that he doesn't think that if they went to 16 units per acre on all of the undeveloped parcels on the beach now, and they have to recognize the fact that a lot of property on the beach has been destroyed beyond repair so many people will be coming in and buying duplexes and single family residents and looking to take them down, and if the City were to allow all of that to develop at this 16 units per acre, can he tell her honestly that they would be able to get on and off the beach within an hour's time frame?

Mr. Matthes said he is not even sure he can make a representation for what would happen if every piece of property that was undeveloped on the beach was brought up to a density at that point. What he can tell them though is this project and this situation at this time falls within the code that they have to do their traffic reports under and it does fall under the Level of Service standards which would require triggering improvements. Thirty-six units is considered to be fairly insignificant in the scheme of things out on the island. But she is correct if they take a look at everything; but that is a supposition and they can't analyze that at this point.

Commissioner Nelson said under the disclosure requirements he has to mention that he has in fact talked to the developer. He has talked with many in the audience. And he has read documents dating back to 1981 where they had the referendum concerning these issues and he has seen the various petitions they have provided. He thanks them for that input. What they are going to try to do as they proceed through here is to be open minded and hopefully be fair and consistent and follow the law as much as they possibly can on their behalf.

Mr. Klein said just to finish up on the project itself. It is intended that the project will have three different types of units. They will all be three bedroom. One of them will be three baths and the other two types will be two baths. The size of the units will range from 2,140 square feet, which is 1,860 square feet under air with a terrace of 280 square feet, up to 3,379 square feet which has 2,800 square feet under air and a terrace of 525 square feet. They expect the prices to begin at \$750,000 and go up, depending on the unit. He realizes they have had some discussions about this elevation and he is sure they are going to have a few more. He does want to show them how they came to this project and the way it looks now. They may remember this version which was one that was here before but this all started with this version. (Mr. Klein displayed drawings.) Again, it has the height aspect, it has the concerns; but at least from his personal opinion, they believe this is a more aesthetically pleasing project than the block and cut down version here. He appreciates Commissioner Nelson referencing the history of this project, because that is really where he wants to spend the time now. Item #11 is a copy of the Minutes of the City Commission meeting of April 8, 1981. This is

where the referendum on height was certified. The question for the referendum was, "Are you in favor of limiting building specifications to the following: Four (4) stories in height and a density of eight (8) units per acre, all within the city limits of the City of Fort Pierce, Florida?" Two things that are important here. One is, this is for the entire City. The other thing is, it talks about four stories. Included in these Minutes are a long discussion with then City Attorney John Brennan who advises the Commission that they are not able to change zoning or comprehensive plan by referendum. So it shouldn't surprise anyone that soon thereafter there was an ordinance that was enacted. They believe that ordinance, Item #12 which is Ordinance No. I-114, that was done July 2, 1985 and this ordinance created Section 22-68 of the Fort Pierce City Code and described the "Hutchinson Island Height and Density" as the title of that section. Interestingly enough this ordinance limits height to 45 feet, except in R-5 where it can go to 65 feet. But this ordinance says 45 feet. Remember the referendum was non-binding, he doesn't think anyone disagrees with that, but the referendum said four stories. So he doesn't know why it is different, but here 45 feet came into being. What is interesting about this is, if they skip over to Item #15 which is an excerpt from the Fort Pierce Code, they will see highlighted in there the areas of special flood hazards; and they will note the dates there established areas of special flood hazards and the date was May 28, 1982 was the flood insurance study and the maps were adopted on January 5, 1984. And if they turn the page, they will see that Hutchinson Island is in fact one of these areas of a special flood hazard. What is interesting is that this is what prevents residential construction from going on the ground floor. This took place after the referendum and before the ordinance was passed. As they could imagine, there is a little bit more. If they turn to Item #13, they will see that Ordinance No. I-461 created Section 22-27A of the City Code and established the Hutchinson Island Medium Density Residential Zone otherwise known as R-4A. If they notice, the highlighted sentence says, "The R-4A zone is compatible with the Medium Density Residential Hutchinson designation in the Comprehensive Plan." So if they turn back to Item #4, which was the map, they will note that is in yellow. So Section 22-27A does not apply to this property, it only applies to the residential RMHI, the Medium Density Residential Hutchinson Island land use. This property is in red, it is in the commercial.

Commissioner Coke asked this property in question, is that not zoned C-5 Tourist Commercial?

Mr. Klein said yes.

Commissioner Coke said according to the chart she received from the City, density permitted as a conditional use approved by the City Commission, the number of units per acre is eight in what it is zoned right now, C-5.

Mr. Klein said he is not exactly sure where she is getting that; but as he reads the code, when they go to multi-family in C-5, it refers them to R-5, which is 18 units per acre.

Commissioner Coke said she received a memo she requested from the City Manager and it gives her all the residential zoning, the density permitted, and the density permitted as a conditional use. So unfortunately, the best she can do to rely on is her staff, so she is going to have to assume that staff's information is correct.

Mr. Klein said he understands. He can appreciate that. He thinks C-5 also allows hotel as a permitted use; and his understanding is previously in 2002 a hotel was approved for this site. The Site Plan has expired, but it did have 64 units, it didn't have kitchens. It was basically a hotel and a restaurant, and that is a function of design guidelines and parking spaces. Parking for residential is 1.5 spaces per unit, for a hotel it is 1 space per unit. And that previous approval allowed 64 hotel units on the site. They are asking for 36 units here. And concern about impact, it would seem to him that people in the hotel are going to get out on the roads more than condos that are very expensive like these are going to be that are going to be owned by people out of town and most likely not used the entire time, whereas hotel guests are going to be coming and going. So he thinks there are varying points of view on what is able to be there now and what they are asking for. They are limiting themselves in this request to a PUR zoning to be able to do the mixed-use, limiting it to 36 units, and that is what they are asking for. But he understands where she is coming from. He would like to continue on Ordinance No. I-461, because he thinks what is important is that if they look at the end, it repealed Section 22-68. That was the Hutchinson Island standards that were established by Ordinance No. I-114. If they look at Item #14 they will notice there is an excerpt from the City Code.

Commissioner Becht asked which ordinance repeals?

Mr. Klein said this is Ordinance No. I-461, Item #13.

Commissioner Becht asked where is the language regarding repeal?

Mr. Klein said look at Section 5 of Ordinance No. I-461. It is in the title as well.

Commissioner Becht said he knows that doesn't matter.

Mr. Klein said it is their position that the ordinance that established the density and the height on the island was eliminated by Ordinance No. I-461 as to anything but that which was in the Medium Density Residential that they talked about before.

Commissioner Coke said they made a big exception. Normally if someone walked in and handed them one sheet of paper at the time of the meeting, they would have said "No, we are not taking it." Mr. Klein handed them this great big book and she is trying to follow along with it. What she can't follow along with is now trying to turn this into an argument of attorneys. If they want to talk legally what is on the books, what isn't on the books, then Mr. Klein needs to talk to Mr. Schwerer or Mr. Becht. But she is not an attorney and she cannot sit here at this point in time with him telling her that they repealed this code and ordinance, when the City Attorney has told her it is in effect, and to try to ascertain if that is correct or not. This is an argument, if it were to be made and if it were to be a valid argument, needed to be brought up prior to this point in time. She thinks the bottom line is going to be, is the Commission is going to change the zoning on it from C-5 to PUR.

Mr. Klein said yes.

Commissioner Coke said she doesn't know whether or not this is

still on the books or not is actually pertinent to what they are discussing. But she knows she can't get involved in a legal discussion until the City Attorney has a full evening or so to research it and get back to her.

Mr. Klein said he understands that. He only was able to get a copy of this historical record last week and he apologizes for the lateness of the submittal. His intention was to do the best he could with what he had and to spend some time talking to the Commissioners. He realizes it is a lot to digest. He also realizes that they would want to have the best information possible and so he gave it to them for their consideration tonight. He certainly appreciate where she is coming from. Trust him, he spent several days last...

Mayor Benton said let's get back to the project in general because he for one has some questions. When they talked about the building height having to start at the residential level because of flood levels, how are they going to be able to insure retail space on the bottom floor if they can't insure residential space? Right now since the hurricanes everybody has found out, first of all they can't get an insurance carrier anyway, they have all been cancelled. But who is going to be able to insure that retail space?

Mr. Klein said he is not able to answer that.

Mayor Benton said it is impossible.

Mr. Klein said then the Mayor knows better than him, because he has not had to experience that.

Mayor Benton said he thinks when they find out, then what happens?

Mr. Klein said there is very little local retail; and if they talk about impact, the fact that retail is there does take traffic off the roads by allowing the people in the building to utilize the retail. It is called capture. It allows the neighbors to walk there and utilize it without getting in their cars. And it was a request of City staff to try to accommodate the urban form that is coming about now. So they are putting that in with the hopes there will be retail and that all the good things that can come from it will be able to be there. But they can't put residential on the bottom and it affects the total number of units they have.

Mayor Benton said when they go to the Site Plan, and he knows this was submitted or at least the plan was drawn he thinks the date was February 2004, the survey. When he added up the figures, especially on the south side of the property from the sidewalk to the water, he came up with 259 feet. Yesterday he measured that off with a 100 foot tape and he only came up with 196 feet. That is how quickly that beach is eroding away. That area erodes away quicker than anywhere in probably the four county area. He is just wondering if the property owner or developer is planning on putting up some type of a bond to insure that whoever lives in this project when it is built, if it is built, when their back yard leaves every so many years that they don't look to the City or the County or the Federal Government to replace their swimming pool and that beautiful back yard they are going to buy into.

Mr. Klein said he doesn't believe they discussed a bond.

Mayor Benton said okay. He just is seeing what has happened. Several months ago - and he knows Mr. Klein wasn't involved with this project at the time - but he had gotten about 10 years worth of aerial photographs from the County. He sees that property every day. So for folks who don't, if the sand is not put on the beach every two or three years... If the Federal Government decides it is more important to fight a war than put sand on the beach, in five years that project might be falling in the way several of the condos down in the Jensen Beach or the south St. Lucie County line are now. This is worse because this is going to happen every couple of years.

Mr. Klein asked is he advocating that nothing be built there?

Mayor Benton said he told everybody in August that he wasn't going to support this one way or the other unless they build their own home there. In the past, he usually voted against them. In 16 years, unless it was their own home, he voted against it, knowing what happens to that property. He has seen that property under water if not twice, three times a year, all his life. He has seen it at its worst. In fact, he has pictures that were taken today of how much sand has left that beach in the last two weeks alone. But the point is, that is probably the worst piece of property to build on in the County, if not the City. In the past he said okay in certain areas east of A-1-A when people were going to build their own home; and he has explained that to them and said don't call the Mayor, because the Mayor has warned them. But when somebody is going to build 36 units and sell to people that are moving here from Ohio or New York or somewhere, and they don't understand what happens here. The developer walks away with a lot of money, but the City and the County and everybody else, every elected official, is going to hear it every time their back yard is threatened or their building or their home. So that is why he said in August that he wouldn't support this one way or the other. Now he can find so many things wrong with this. There is a reason why this has been tabled since August. First the applicant couldn't tell them the elevation of the building and still they are finding discrepancies. So what are they getting?

Mr. Klein said he guesses he is a little confused because, is the Mayor saying that if it was at the 8 units density that he has been hearing everybody talk about and if it was at 45 feet, he would still say they are not going to be able to build there?

Mayor Benton said he would have a problem with it, yes. He would have a big problem. Like he said, if it is the applicant's home that is one thing. But east of A-1-A, common sense has to come into play. If they have seen what happened in these hurricanes all over Florida, building east of A-1-A or east of the Coastal Construction Control Line, that is a big gamble. And he is not willing to take it for the 36 unsuspecting people who might move in there. Please let's refrain from the applause until they get finished with this, because he is sure they are going to hear things from everybody up here that they like or dislike, and they are going to be here late.

Commissioner Coke said although on a personal note she would echo what the Mayor has said about not wanting to see construction there, she will tell them this. As a City Commissioner, were he to bring her a project that was 8 units per acre, 45 feet to the median part of the roof and no taller than 54.5 feet to the top of

the roof, she would certainly be obliged to go ahead and approve it. Because if the City or the County didn't have the foresight years ago to purchase that property and someone else has come along to do it, they are certainly entitled to develop it. But they are entitled to develop it under the existing codes. She and Mr. Klein had this discussion before. When someone came in and purchased that property, they knew up front they couldn't build on the ground floor, that was a given. And anybody who was smart enough - and if they had enough money to buy that property, they had to be pretty smart - to purchase that property should have known what the existing development codes were and that changing them is not necessarily a given. They have had plenty of projects that the Planning Board and Staff has recommended approval, the Commissioners turn down. They have had projects Staff said no, don't build that, and the Commission said yes to. So Staff and Planning Board give recommendations, they don't dictate to this Commission. And her job sitting up there is, not that those guys make a profit, but to be sure that they develop that property to the best use of all the citizens. She has told them that all along. She couldn't oppose them developing it on a professional level because the client has purchased the property. But she can oppose them looking to do more than what it was zoned for.

Mr. Klein said Commissioner Coke is absolutely correct, that is exactly what she has told him, and he is not sure that he would argue with anything she says until the very end. But he understands what she is saying.

Commissioner Coke said he is just doing his job. She is just doing hers.

Mr. Klein said yes, and she has been consistent with him and he appreciates that and he can't dispute what she said.

Commissioner Alexander said he is concerned about the issues that are raised about the ordinance and he hears about the legal jargon and he hasn't heard from his own, so he is going to give him that moment to speak on behalf of himself as well as some of them that may not be able to comprehend all of this in a moment to spare.

City Attorney Schwerer said the first time he is reading this ordinance tonight brings back memories. He was on staff when all of these ordinances were drawn and during the litigation dealing with the density and height restrictions for the beach, so he very well recalls that. He doesn't think that Mr. Klein is suggesting that the later ordinance adopted in 1991 eliminates the four story height or the eight units per acre; and if Mr. Klein is, he would have to disagree. They are clearly part of the code. The section that says, "All ordinances or parts of ordinances in conflict herewith, including Section 22-68..." Section 22-68 was the prior ordinance that Mr. Klein cited and of course it goes into great detail about the Hutchinson Island height and density. He would suggest to them that his recollection of Ordinance No. I-114, which is containing Section 22-68, was a stop-gap measure following the referendum vote and the adoption of ordinances by the Commission. The later ordinance went into great detail, which was Ordinance No. I-461, talking about the island zoning, talking about the 45 foot height, talking about the 65 foot height, talking about zonings, landscaping, vegetation, site design. So only to the extent that the later ordinance was inconsistent with a previous ordinance does it supercede it. All he can tell them is that the ordinance

dealing with the height and density is still in full force and effect to the extent that it is part of their code currently. There is an eight unit per acre density and there is also a height limit, so those are both in effect. He doesn't think that was what Mr. Klein was exactly suggesting to them, he could be wrong. But that is his advice to this Commission tonight.

Mr. Klein said if they would like him to respond, he thinks what he was saying is something very similar to what Mr. Schwerer said he wasn't. Because he doesn't read the C-5 zoning now as restricting it to eight units to the acre. He sees it saying that multi-family is a conditional use which must satisfy the standards for multi-family housing in R-5 and standards for Hutchinson Island. The standards for Hutchinson Island, Ordinance No. I-461 says, "...including Section 22-68..." as being inconsistent with this. This established a Medium Density Residential classification for the medium family density area, which they will see by their map does not include this property. C-5 is not limited by this. There is nowhere in PUR that he is aware of that has a height restriction or a density restriction of eight units. In fact, what he talked about before is that PUR requires a justification if they want to exceed 18 units per acre. It doesn't talk about anything less than 18 units, it talks about if they want to go more than 18 units. Although he disagrees with Mr. Schwerer, his point is to show them that he doesn't think there is an applicability to this site that seems to be prevailing in the community or by some members of the Commission. He doesn't believe this site is limited by 45 feet. He doesn't believe this site is limited by eight units now or if it goes to PUR. That is really the point he was trying to make. He thinks these ordinances get him to that point.

Commissioner Becht asked on what they affectionately call South Beach, are there any other properties zoned PUR today? Does Mr. Trias know the answer to that?

Mr. Ramon Trias, Director of Development, said he doesn't recall any other properties, no.

Mayor Benton said the Port.

Mr. Trias said the Port is Planned Unit Redevelopment.

Commissioner Becht said but on South Beach, they don't have any other properties zoned PUR?

Mr. Trias said no.

City Clerk Steele said yes, they do.

Commissioner Becht said his understanding is that this property, this project is located completely eastward of the coastal construction setback line. He hasn't seen a diagram yet that shows them where the coastal construction setback line is, but he thinks it runs right through the middle of Archies if he is not mistaken.

Mr. Klein asked is he asking whether there is a requirement for a conditional use for the Coastal Construction Control Line, is that what he is talking about?

Commissioner Becht said the first question he is asking him, is it located eastward of the coastal construction setback line?

Mr. Klein said he believes it is.

Commissioner Becht asked then does the Commission have before them what they need in order to approve a development eastward of the coastal construction setback line?

City Attorney Schwerer said no, they do not. But he does not believe that what is before them is the final Site Plan. If he is not mistaken, this is the conceptual...

Commissioner Becht said this is a Site Plan, this is not conceptual.

City Attorney Schwerer said if it is final Site Plan, but he was not led to that information, because they are looking at a rezoning of the property immediately following this item. If this were final Site Plan approval, the Commission can't be considering this until the property is zoned PUR, because the type of plan that is being proposed and the density doesn't fit.

Commissioner Becht said he needs the short answer.

City Attorney Schwerer said the answer is no, they don't have before them sufficient information to approve any construction eastward of the Coastal Construction Control Line. As they know, that is a conditional use type of application process.

Commissioner Becht said he just didn't know when it started, whether it was now or later.

Mr. Klein said his understanding is the PUR process is a three part process. There is an informal meeting with staff, there is a preliminary approval, and then there is a final approval. They are in the preliminary stage at this point.

Mr. Trias said right. Just like in PUD, there is a two stage process, and considerably all of these issues are left for the last final approval.

Commissioner Becht said conceivably the Commission could approve it tonight and then kill it through the conditional use process for the coastal construction setback line.

Mr. Trias said yes. There are several approvals that the Commission has complete discretion on; and that is the second one, the coastal construction setback line is the second approval.

Commissioner Coke asked were they to consider approving this as a PUR without an actual site plan, it is her understanding then that property would be rezoned and all of the restrictions put on it by C-5 would be listed and they would then be obligated by law to follow the rules and regulations of the PUR without having had full knowledge of the development project prior to rezoning.

City Attorney Schwerer said that would necessarily be the case, except for this applicant has chosen to submit to them for approval a proposed site plan. He also has a list of developer agreed conditions that are attaching to that site plan approval and he has coupled the site plan approval with the rezoning. So if the Commissioners were to approve the rezoning to PUR, there are

sufficient conditions in place that it would not just go to a general PUR. If he was simply filing for PUR rezoning with nothing more, she is absolutely correct. But if they approve this or get anywhere near approving this, it must be approved on very specific conditions which he would be happy to review with them at that time and he is sure Mr. Trias would also review what conditions through his office he would recommend for approval.

Mr. Trias said in his view, the rezoning cannot be approved without a site plan. That is one of the requirements and that is what is before them is a preliminary site plan.

Mayor Benton asked would everybody agree it is time to open this Public Hearing up? If there are any more questions, they can bring Mr. Klein back.

Mr. Klein said he certainly understands.

Commissioner Nelson asked to what extent is he amenable to working with these various groups and persons to try to come up with a more acceptable project here meeting all of the requirements of the code and of course the various people who are in opposition to this project?

Mr. Klein said that is a loaded question, isn't it? He will tell them, he has always advocated working with the neighbors. He was fortunate enough, Mr. Cahill was able to bring a number of people to his office and they had a talk. He is not sure what his ability is to work with this large group of people and accomplish it. The other thing is that he is not sure that they all agree on what the code requires. Also he understood there was a concern about how long this has lasted. If there is a way to work this out where the developer has the opportunity to accomplish his goals and that they can work with some people, then he would have to talk to him and see. But he thinks they are willing to try anything. Certainly that is better than not getting approval. But he is just a little pessimistic that it is going to achieve anything other than spending some more time.

Commissioner Nelson said he heard each of the Commissioners express their thoughts on this issue. He is one who believes in property rights, but he also believes in people's rights. Any of them could have bought that property some time ago. He thinks after several years they had a history of Murgio who had the property over there. Every time it rains now they have flooding in the area or there is an eye sore and all. There is a term called maximum economical utilization of the land and of course the property rights that they have to deal with. The law allows certain things and of course there is a Constitution that they all live by that guarantees a certain amount of liberty and rights with respect to their property. He finds it most helpful in most cases when two people can get together to agree on a common basis. Nine times out of ten they all don't get exactly what they want, but at least they get something and they go away somewhat happy. He likes to try to promote to some extent that level of interchange so that they can all get to be at least a partial winner in this. No doubt about it, the people have a great pride in their neighborhoods and area where they live; but they also need to come to grips with the fact that as they enjoy certain things, other people try to enjoy certain things too. Therefore, there should be some means by which they can compromise on this issue. Nothing is absolute. They are

not going to sit here on this earth and get everything they want because that is not the way their system of life is working for them. So he will be asking various speakers when they come up the same question. If they can come up with some type of interchange between the two of them, of course that is what he would be looking at. He still has to worry about the law that he has to adhere to and the rights of all individuals involved.

Mr. Klein said he appreciates that. He thinks Commissioner Nelson had a similar concept when he asked them to go back and speak to staff, which they did on two occasions. Of course, he heard him mention two people getting along, but he is not sure they are quite at those numbers. But he will step down and reserve the right later to respond if necessary to any of the comments. He is sure there are other people who would like to speak. He does appreciate them indulging him with a rather lengthy presentation.

Mayor Benton said if they can hold their comments to five minutes maybe they can get through this tonight.

Mr. Jack Cahill said he has lived in South Florida for 36 years. For 21 of those 36 years, he has resided at 801 South Ocean Drive in the City of Fort Pierce. He is here on behalf of the South Beach Association of Fort Pierce. He is not going to be anywhere near as eloquent as Attorney Klein, but he is going to be brief. Mr. Klein is a fine attorney; he has known him for probably over 13 years or more and he is very good at what he does. But he is here to discuss density and height limits on South Beach and he is talking about South Beach only. The project at 222 South Ocean Drive, quite frankly they don't think any piece of ground on South Beach should not be allowed to be built on. However, what they are doing here is talking about going for rezoning from C-5, Tourist Commercial to 3,000 square feet of retail space on a ground floor and 36 units on 2.1 acres of ground. If they are all familiar with South Beach, it looks like Niagara Falls sometimes coming across that beach at that level. That is the most sensitive piece of property on all of South Beach. He can't answer for all of Florida, but he can answer for that area. It would be a tremendous problem to build there. He is not a accomplished speaker, but he hopes he is able to communicate to them their reasons. It will affect the quality of life on South Beach for years to come. Back in 1982 the residents of South Beach were able to foresee a major problem of extremely high density on a barrier island that is at best no more than four blocks wide. They went out door to door and they gathered signatures to pass a referendum by a 2-1 majority to limit the density to 8 units per acre and 45 feet in height. The reason why is A-1-A is the only road traveling east and west and north and south through all of South Beach. It was and is now and is projected to be no more than a two lane road. Heavy density would result in major traffic congestion on this road. To give them some idea, in Pompano Beach on A-1-A it is about four and a half miles between Pompano Beach and its neighboring community of Deerfield Beach. If they were to travel that, don't go by four and a half miles, because they go by minutes. It takes 45 minutes in bumper to bumper traffic to go from Pompano Beach to Deerfield Beach. That is what he calls traffic congestion. The heavy density would also affect the total environment on this fragile island. With beach erosion, the drop off there, they can almost break an arm on. With the erosion, flooding, and so forth. In the next area, he almost hates to mention this because they all might have some of it; and that is the virus of progressive greed. For

developers that means more units on less ground equates to bigger profits. The City, County, State, and Federal taxpayers will eventually have to pay the cost of maintaining and keeping the ocean and intercoastal from claiming these properties for years to come and it is not going to be cheap. That is why they mentioned the bond. They had the idea originally. They humbly but strongly ask them. First of all, this is a rezoning from C-5 Tourist Commercial to 16 units per acre plus 3,000 square feet of retail space. The question also is that there are a number of developers sitting back in the wings waiting for this and he doesn't blame them because "what is good for me is good for you", and they must feel that way too. Now if they are going to build units that are going to be almost 2,900 square feet in size - and that is what these are according to Attorney Klein, the largest ones - they are talking about having at least one and a half parking places per individual residential unit. They have to have an area of greenery. They are not going to be able to go high on these properties and still give greenery and not go 12 or 15 stories high. Figure it out. They are looking at almost 3,000 square feet, there is 43,560 square feet to one acre of ground. It can't get any more. That is what is there. He is not nearly as eloquent as Mr. Klein. He is a very simple man. He is going to put it in very simple terms. He urges them right now to first of all deny the zoning change from C-5 Tourist Commercial to PUR, Planned Unit Redevelopment, on a vacant piece of property. Commissioner Nelson is right, that piece of property has been lying there for years. But the thing is, when someone buys a piece of property there is something called, "buyer beware". They buy it based upon the zoning that is on that property and they know it when they buy it. If they can buy it and change that zoning to putting in at one point 39 units at a sale price of \$750,000 a unit, that is the kind of money they all dream about, isn't it? If they don't grant the rezoning, they don't have the problem. He is going to close because he vowed he wouldn't talk so long. But some of them have lived by and others have fought for Abraham Lincoln's creed that they are a nation governed by the people, for the benefit of the people. And in line with this he would like to ask the people assembled in the Commission room tonight, if they are in agreement with no more than 45 feet in height and eight units per acre, to please raise their hands high and keep them raised. (Approximately 160 people raised their hands.) Since this is only a small sample of the residents of the South Beach, they are requesting that a binding referendum of eight units per acre density and 45 feet in height be included in the next ballot covering South Beach so that their governing body may have a more definitive feeling for the opinions of their constituents. That seems to be a problem sometimes. They quite frankly didn't have a lot to say because they notified people within 500 feet of the property. Within 500 feet of that property are three empty lots, a convenience store that is closed, two motels that are quasi under contract for sale, and a real estate office; but not one person they have talked to was a resident of the island. So the thing is that it is most important, they are the people. They don't ask for an awful lot on the island, they really don't. They do ask for good government and they want to maintain their properties. But quite frankly if they go to the kind of density they are talking about, it is not going to be one property, it is going to be many more. He can almost tell them which ones they are sitting in the balance. They are going to have one major problem with density. And the thing is, when it comes time - Mayor Benton is right - when these places tip into the water... He can recall seeing the Ocean Grill back in

1984; and he was up there when it went like that, right into the water. So the thing is, when that happens, they have to know that they are using taxpayer's money to bail these things out. And quite frankly, it is really not worth the effort for 18 units per acre or 16 units per acre. Keeping in mind that they believe that any lot on South Beach has a right to be built on, providing they can conform to the zoning that is on that lot right now. Thank you very much for their indulgence and he appreciates their time.

Ms. Harriet Brenner said she and her husband live at 1630 Seaway Drive, Fort Pierce South Beach. She is a member of the City of Fort Pierce Planning Board, but tonight she speaks to them as a private citizen. Simply but respectfully put, she requests that they declare a moratorium on any new multi-family development on the South Beach and instruct staff to initiate a new charrette to hear not only from the citizens who live on the beach but the other residents of the City. Because of the lack of long range planning, the City has reached nearly a point of no return from chaos which is beginning to occur and is likely to accelerate unless they take immediate action. This Commission has the opportunity to leave a legacy of good controlled growth; otherwise, it is likely to be remembered for allowing by its inaction the quality of life for the residents of South Beach to deteriorate into high density traffic jams. Please call for a moratorium and instruct staff to initiate a South Beach Charrette as soon as possible.

Ms. Marcia Baker said she lives at 1753 Seaway Drive. Mr. Trias is mistaken. There is another Planned Unit Redevelopment on South Beach. It was approved in October 2003 at 1750 Seaway Drive. Commissioner Coke, unfortunately, is acquainted with the situation. At the time she brought to the Planning Board's attention a qualification in Planned Unit Redevelopment code that requires proof of the economic and background ability of the developer to carry forth their development. She was told this was not a function of the Planning Board and this was ignored to the detriment of many people. Now they have again a situation. She is not going to speak as others have so eloquently about height and zoning and density and so forth. She would like to pass out some copies of a little map which she has here. The developer of this property which is at 222 South Ocean Drive is a corporation was formed... Beach Group Investments was a corporation that was first licensed in January 7, 2004. They purchased the property a few months later from a company called Vandertrust and Vandertrust took back a mortgage for almost the entire amount of the purchase price. As far as she has been able to tell, the principal of the owner of the property and the one who has had this excellent attorney and architects and so forth giving the presentation has no background, no experience, no track record in any development. He is a member of 72 other corporations in the State, almost all of which were formed in the last two years. She is not going to go into people's motives for doing things like this or what they do. However, aside from all of the problems of quality of life that they on South Beach are facing, aside from the problems of the aesthetics, the zoning, the beach erosion, and everything else, they are also faced with the potential for entrepreneurs to be coming in and putting forth development ideas, not to actually develop the property, but to turn it and to sell it to innocent investors all over the place, including local banks, local people, and so forth. She is not impugning the motives of these people. Making a profit is a very noble motive in today's world. But they are going to be left with most likely in her opinion a plethora of unfinished, undeveloped

so-called rezoned properties that this Commission and the Planning Board and so forth have spent hours and hours and hours of going into as they did with this last one a year and a half ago which is still sitting there undeveloped, although the owner has now put a big sign up on some more property that he bought for a hotel/condominium and his zoning for that change was denied by the Commission. So they are faced with a lot of problems on South Beach; and one of them has nothing to do with the aesthetics or the height or the amount of units per acre, but is with the old idea of get rich quick at everybody else's expense.

Mr. Herman Berg said he lives at 801 South Ocean Drive. He has been here over ten years. His wife and he came to this area. One of the big reasons was the 8 units per acre zoning. They didn't want a high density zoning area like Fort Lauderdale or Miami or Palm Beach or New York City. What they were looking for was something... He thinks the Fort Pierce area, the Hutchinson Island, was somewhat unique in that it restricted the heights and it restricted the densities. And it was like a contract between him and the City. Here is what he can expect. Similarly, when this developer purchased his 2.16 acres - which he understands was purchased for \$2.5 million - he purchased it with the same understanding that he and his wife had, it is zoned 8 units per acre. He had to do a lot of research. He is sure all of this is old news to the rest of them. But he dug through some of the documents from the City zoning ordinance and he looked at the Hutchinson Island Medium Density Residential zone and quoting one sentence out of that code says, "This district is established because Hutchinson Island is a sensitive barrier island which represents development considerations which are unique to the area or are of added concern, such as environmental fragility, beach erosion, and hurricane evacuation." This is out of the City Code. One other thing he doesn't see mentioned is any kind of evacuation for the nuclear plant. He is from New York State and they built a nuclear plant in New York State, Shoreham which is on Long Island, for \$5 billion. It was never opened because of evacuation concerns. There is another one, Indian Point Nuclear Plant which is on the Hudson River, which they are trying to close because of evacuation concerns. Just today looking out of his window at 801 South Ocean Drive, the traffic from this property at 222 South Ocean Drive was backed up past their building. This was like at 6:00 p.m. in the evening just prior to coming to this meeting. This Section 22-27.1 says, eight units per acre plus one bonus for landscaping. That gets a little complicated. And then it says, 45 feet above grade. And this was passed through the referendum that Jack Cahill mentioned earlier by a 2-1 margin. In that same document, Section 22-42, which discusses Planned Unit Redevelopment and this is where he thinks sometimes they get the cart before the horse. He thinks it says in Section 22-42(a), Purpose, "The Planned Unit Redevelopment (PUR) Zone is intended to encourage comprehensive redevelopment within existing residential and commercial areas of the city... resulting in the provision of needed housing and the redevelopment of older, less economically viable areas." This he believes derives its authority from Florida Statute 163.360, which says "Community redevelopment in a community redevelopment area shall not be planned or initiated unless the governing body has, by resolution, determined such area to be a slum area, a blighted area, or an area in which there is a shortage of housing affordable to residents of low or moderate income, including the elderly, or a combination thereof, and designated such area as appropriate for community redevelopment." This is

what he was saying about putting the cart before the horse. They are supposed to tell the developers this is the area they want them to look at for a possible development if they are willing to develop in this area. And these are the blighted areas, not vacant land on Hutchinson Island, but the blighted areas. If the developers come in, they will give them incentives to come in and build and they will increase the densities to make their project more cost-effective. That is why the PUR consideration, he believes, comes first before they even look at a site plan. In other words, the City comes out and designates this, which he believes has already been done. He does not even believe it is appropriate to consider this for Planned Unit Redevelopment. The other thing, every day he drives past Harbour Isle. He looked at the Minutes of the November 15, 2004, meeting that this Commission had. He is reading it like that is all of a sudden the de facto standard by which they look at all other projects. That is 12 units per acre, because he believes that is the approval standard used. But in the Minutes of the meeting on November 15th, the comments in there seem to imply that they would accept 12 units per acre rather than 18 as was originally proposed. In summary, he thinks the people here send a message. This is what he believes the Commission is supposed to do is carry out the wishes of their constituents. That is why they are all here tonight.

Mayor Benton said for the record, he believes Harbour Isle is somewhere around 8.5 units per acre.

Mr. Charles Grande said he lives at 9950 South Ocean Drive, Jensen Beach. He does not live within the City, but he does live on Hutchinson Island. He is incredibly impressed by what is going on in the City - the renewal, the revitalization, bring life back to the downtown area in Fort Pierce. One of the things that is going to make that successful is drawing folks like him who are for all intents and purposes their suburbs into the downtown area to use the business facilities. A-1-A is a crowded road. It is one lane in each direction now. There is no plan in his lifetime to make it any wider than that, although it will be made a little bit better. For them to come up and use any of the restaurants or businesses in Fort Pierce to help bring money into the revitalization, they need to be able to travel through South Beach and into the downtown. This particular plan, although it looks like something that would really be of benefit in the downtown revitalization, certainly doesn't belong right on A-1-A, taking far more than this land's allotted traffic utilization. They heard from Mr. Matthes, who is as good as anybody in the County at traffic rationalization. But the concept is, unless this is the project that pushes them over the limit, they believe they have an entitlement. And what they are saying to them is, the guys with the other undeveloped properties who come in later when there are no trips left, tough luck they got here late. He is not sure that's the kind of judgements the Commissioners should be making. As their neighbors, he is asking them to keep A-1-A moveable for them, continue with the downtown revitalization, and put projects like this where they belong, not where they don't belong. Mr. Klein is a great attorney; but what he is coming here saying to them tonight is, he has a plan that is not a very good plan and they all know that it is not a very good plan, but it is a little bit better than some of the things they have seen before, and that is the basis he is asking them to approve it on. They can do better. They have done better. They are bringing this City back. They need to be proud of that. And they need to pick the right projects on the right

properties. He really hopes they won't take the approach of, they are going to get two more bites at this apple, if they pass it tonight it has got to come back again. Tonight they need to listen to the people, need to understand what is going on, need to say no to a zoning change tonight.

Ms. Marybeth Pemberton said she lives at Sea Pointe Towers. She has lived on South Beach for quite a few years and has watched the growth there. She is certainly in favor of controlled growth on the beach, it is needed. They need to have rules and regulations for that. Increasing the density, the one thing she has noticed is the increase in traffic. Tonight a gentleman earlier had said he can't project into the future. However, she knows from her position. She goes to work sometimes at 5:00 in the morning, sometimes in the afternoon, or as late as 12:00 at night. During probably the last two years, she has noticed more and more that when she leaves for work, no matter what time she is leaving, there is traffic on A-1-A. So that has increased in the last two years considerably. With Harbour Isle and Mariner Bay, those people are not just going to go to Fort Pierce, they are going to be going down to Stuart. The road is going to become more and more congested. That is one of the things that planned growth and watching the way that they do it that they can build South Beach into being a better part of the City and they can all continue to enjoy it, everyone in the City, because they have done a good job at allowing public access to their beaches. They have very nice beaches most of the time, now there are drop-offs. So she would like them to consider what they are doing and be very careful for the future of South Beach, not just today with this project.

Mr. Pat Murphy said he is President of Hoyt C. Murphy Realtors. He has no connection to the developers - he did not sell them the property, he has not even talked to them about marketing if they ever get approved. His beach office is located at 221 South Ocean Drive, directly across from the proposed project. His family owns the office there. They want to see whatever that is across the street, whether it is a two story or a four story - and he is glad to hear tonight that it is not a fifteen story, even though he lives on the twelfth floor in Ocean Village and owns on the twelfth floor in Sea Pointe Towers - they want to see high quality across the street from them. What was concerning him, he had heard rumors that they wanted to cut it strictly off at 45 feet. But when it comes to great looking rooflines and great looking architectural enhancements that go beyond that, whether it is towers. He remembers the charrette that happened four or five years ago. A lot of this design is somewhat reflective of that. So all he asks is that it is high quality. A couple of reasons. Number one particularly is, they need the higher end in this community to hopefully offset this millage rate. They have the highest millage rate of any city up and down the east coast. So if somebody is going to do it right, bring in \$750,000 units, he thinks that is in essence is a good thing. They have got to get these taxes at a more reasonable level. He is just hoping that the Commission is not hung up on 45 feet, that nothing goes beyond that, because what they are going to get is a flat roofed relatively poor looking building. So he would hope in the end when it comes to good architectural design - and Mr. Trias has certainly taught them the importance of that - that wherever this goes down the road, that it is a great looking building and high quality.

Mayor Benton said at Southpointe at Ocean Village they allowed them

to go to 52 feet and Harbour Isle to 54 feet, just for those architectural features on the roof elevations. Something to think about. The elevations in Martin County are four stories or 40 feet, with the highest per capita income in the State of Florida and a millage rate half of theirs. The same with Indian River County, and their height limit is 35 feet, so they have quality. This Commission has talked about raising the bar. Lower the height and raise the quality.

Mr. Murphy said they have the ability now to raise the bar, because everybody wants to come to this area, he believes that. If somebody is wanting to put a tower purely for architectural purposes, whether it is this or another property, he thinks there is merit to that, because it makes for a better looking building.

Mr. J. P. McKenzie said he lives at 1906 Eucalyptus. If these folks feel that height restrictions are no problem to everything they see every day, just drive north about a mile on U.S. #1 and look to the east and they are looking at North Beach. That is all he has got to say.

Seeing no one further and hearing no one wishing to be heard, Mayor Benton declared the Public Hearing closed.

Mayor Benton asked what was Staff and the Planning Board's recommendations?

Mr. Trias said the recommendations of the Planning Board and Staff pre-date the latest design change and so on, so he does not know what the relevance of any of this is. However, the applicant did comply with the requests as he understood them that the Commissioners made last time this was before them and that is what is presented to them.

Commissioner Nelson asked what are their constraints in this particular case? Can they change the zoning? Can they go to PUR? What are the rights of both the applicant and the dictates required by law to this Commission?

City Attorney Schwerer said the request before them tonight is clearly within the discretion of the Commission to either approve or deny. The only thing he can tell them is, the applicant in order to provide for the type of development that is being proposed at this point in time, the site plan, would necessarily have to have a rezoning of the property from its current C-5, Tourist Commercial Zone, to PUR, Planned Unit Redevelopment Zone. As with any rezoning, this Commission is required to consider any number of factors. They are required to consider impacts, future planning considerations, and a vast number of factors which they are very well aware of. And in doing so, they have the discretion to approve or deny the rezoning. It is that simple. They can talk about the height limits or densities if they want to. At this point in time they clearly have the density issue before them. Because under the current zoning, the density is eight units an acre, and that is an absolute. Under the proposed, it is whatever the applicant has told them, he believes it is doubled. So that is the legal constraints they are operating under tonight. It is simply within their discretion, based on the record that has been presented to them. The applicant has no entitlement to the rezoning. The applicant has the burden of proving to them, or at least bringing his case to the Commission, that the rezoning makes

planned sense and it would meet all the required code sections if rezoned.

Commissioner Nelson asked he can go four stories and eight units per acre now without any problem?

Mr. Trias said as a conditional use. So even that has to be approved by the Commission.

Commissioner Nelson asked in order to go to the four and 36, they have to go to PUR?

Mr. Trias said yes.

Commissioner Nelson asked the referendum in 1981 that was mentioned, was that binding or not binding?

City Attorney Schwerer said that was not binding. The Commissioner took it as an advisory referendum and subsequently adopted various different zoning and development restrictions on property consistent with that referendum.

Commissioner Nelson asked does that have any merit over and beyond advice and counsel they might get from the Planning Board or any other entity that advises this Commission?

City Attorney Schwerer said it has historical perspective to the extent that it has been in the codes and has been a long-standing policy of this Commission as well as previous Commissions in interpreting what may or may not be appropriate for that zoning district known as Hutchinson Island.

Commissioner Nelson asked would these people in the audience or their representative be willing to discuss with the developer the four and eight with conditions in modifying this plan, working out some kind of deal? (Members of the audience said no.) Even though the developer has the right to do that? (Members of the audience said no.)

Mayor Benton said they only have the right if the Commission rezones the property.

Motion was made by Commissioner Coke, to deny the Site Plan submitted by Beach Group Investments, LLC, for a mixed use project at 222 South Ocean Drive, and to deny passage of Ordinance No. K-284, Rezoning said property to PUR, Planned Unit Redevelopment.

Mayor Benton said if there is no second, he will pass the gavel.

Commissioner Becht said he will second the motion for discussion.

Mr. Klein asked can he interrupt? He realizes they are in a motion. He realizes there is some confusion.

Mayor Benton said he thinks the only confusion really is with his clients. And to continue this after five or six months...

Mr. Klein said he did reserve time to come up here and rebut. Given what he has heard and given the comments from this group, he has talked to his client, who is willing to sit down and work with these people. But he thinks they have heard a resounding negative

to that request. So in order to make everyone's life easy, they are going to withdraw this application. (Mr. Klein submitted a letter withdrawing the application to the City Clerk.)

Mayor Benton said he still thinks they should follow through with the motion anyway.

Commissioner Alexander said he just wants to make one comment. He loves this City and he was raised to respect all. He sees some people that are close to his heart are here. And they know he really resents people being resentful for other people's opinion about something. He is ready to do whatever the constituents of this community want. But he asks again, restrain from being disrespectful. He loves this community. He won't ever do anything to harm this community. He is telling them again, they have individuals coming to this community who want this community to be better. They have to worry about the revenue that is coming into this community because they can not bear all of this coming towards them in the future. Again, he hears the people, they have spoken. And when he hears of other PUR's, that it was said there was never ever one on the beach, he thought maybe it was just him. But then, they didn't have this turn out then. He applauds them. He does not care if they disagree with him, but he is telling them it is going to have to come to a time that they respect anyone's opinion; and if not, then they will find out he is a different person. He is serious. He was not raised that way.

Commissioner Becht said he would like some comment from Staff on where they are legally. They have a motion and a second. He would like some direction on where they are with this. Then he would like to know, if they did in fact allow the withdrawal, what happens? If they vote to deny it, how long before the applicant can re-file? If they don't vote and allow the applicant to withdraw it, when can he re-file?

Mayor Benton said six months, if they deny it.

Commissioner Becht said he would rather hear that from Mr. Trias.

Mr. Trias said the Mayor is correct, yes.

Commissioner Becht asked if they vote, he is blocked for six months?

City Clerk Steele said for substantially the same project, correct? He can bring back another project.

Mr. Trias said right.

City Attorney Schwerer said the six month time frame for substantially the same request, which would be the PUR rezoning request and the site plan with substantially the same density.

Mr. Trias said if the project is denied, another project could be submitted that is different than this one immediately.

City Attorney Schwerer said that is correct.

Commissioner Becht asked would Staff consider a lower density a different project?

Mr. Trias said yes.

Commissioner Becht said he knows there is a big movement in the audience to have it voted upon, but they may delay anything good happening on that piece of property. He is respectful of property rights. The owner has the right to do something; and if he came in with four and eight, he could do that whether they voted or not.

Mr. Trias said yes.

Commissioner Coke said point of order, but they had already closed the Public Hearing. So she thinks the motion should stand. She will call the question.

Mayor Benton said he agrees. A decision has to be made. The applicant came in knowing what their thoughts were or at least what they have supported in the past, four and eight. Knowing the referendum was 3 to 1 back in 1981, he thinks these people deserve... He and Commissioner Coke have made a substantial investment in the beach like everyone here, thinking it was four stories and eight units an acre and no highrises. For that to change, he thinks it would create some real problems. Because these are the people the Commission should be representing, not the developers from down south.

Commissioner Nelson asked can the developer withdraw his application at this time? Do they allow him to petition for a four and eight with conditions?

City Attorney Schwerer said he is struggling with the idea of terminating a developer's right to withdraw the application at any time up to the vote being taken. He is not aware of anything in the code that allows the developer to withdraw the application after a motion has been made that is on the floor. That is the problem. Ordinarily a developer has that right to withdraw any application that is before them, whether it is conditional use or rezoning or site plan. Whatever action they are going to take in their quasi-judicial capacity, unless he is cited to any specific provision of the code that allows that withdrawal to occur at any time, under Roberts Rules of Order... If he recalls correctly, there was a motion made to deny. There was a gavel passing to second. Then there was a subsequent statement by the applicant that the application would be withdrawn. Unfortunately, under Roberts Rules of Order, he thinks at that time it was too late.

Mayor Benton said what happened was, Commissioner Becht seconded the motion before he passed the gavel.

City Attorney Schwerer said he will have to rely upon the record. They cannot withdraw the application while that vote is pending, unless there is a provision of their code that someone can cite to him that says it can be withdrawn at any time, even while a motion is pending on the floor. He is unaware of a provision of their code that allows that.

Commissioner Becht said he would like for Mr. Klein to respond. It is not going to hurt them. It is fair play, that's all it is.

Mr. Klein said he believes he reserved the right to rebut the comments. He understands that a motion was made and apparently a second was made. But as a courtesy, he was expecting the

opportunity. There was a gentleman that spoke and told them what he thought he was saying, which was not correct. There was a gentleman that didn't understand that the entire City is a community redevelopment area and that has been passed by the City of Fort Pierce. He was going to resolve some of those issues. So he believed he had the opportunity to speak to them as he indicated and as the Mayor acknowledged. He understands Mr. Schwerer has made his ruling. He disagrees. He is not able to cite to anything now, but what he is asking is that his right to speak in rebuttal was denied. He would have been up here and would have had the opportunity to withdraw it at that point. The motion was made very quickly, the second was made. They saw the speed at which he approached the microphone. So he is asking as a courtesy that they allow his wishes for the withdrawal. That is what he is asking.

Mayor Benton said he is in charge of this meeting, so he is going to say call the roll.

Those voting in favor of the motion were: Commissioners Alexander, Becht, Coke, Nelson, and Benton. Those opposed: None.

Mayor Benton said he is sorry, but he felt they have been dealing with this for six months, it is time to put it to rest. To keep changing things as they go, in six months or sooner they can bring something else back.

MAYOR BENTON DECLARED A RECESS AT 9:15 P.M. AND THEN RECONVENED THE MEETING AT 9:25 P.M.

The next item on the Agenda was Application for **Conceptual Site Plan** submitted by John Boinis for **South Beach Jetty Park Mixed Use (condominiums, restaurant, and retail) at the northeast corner of Seaway Drive and South Ocean Drive; said property zoned C-5, Tourist Commercial Zone.** (Public Hearing held August 2, 2004 - Action on Application POSTPONED for 60 days.) (On October 4, 2004, applicant requested postponement to December 6th. On December 6th, applicant requested postponement to February 7th.)

City Clerk Steele said she has a letter signed by Clayton Yates requesting the City Commission to table consideration of his client's project and to hold it until they request it be resent within the next few months.

Commissioner Coke said she believes Mr. Yates actually would like them to postpone, rather than table.

Mayor Benton asked to postpone until when?

Mr. E. Clayton Yates, Yates & Mancini, LLC, said until they come up with a plan they think people might like.

City Attorney Schwerer said they need a date certain to postpone; otherwise they have to readvertise.

Mr. Yates asked could they move it to April?

City Clerk Steele said there are two meetings in April, the 4th and the 18th.

Mr. Yates asked what about May?

City Clerk Steele said that would be either May 2nd or May 16th.

Mr. Yates said May 16th.

Motion was made by Commissioner Alexander, seconded by Commissioner Coke, to postpone action on the Application for Conceptual Site Plan submitted by John Boinis for South Beach Jetty Park Mixed Use at the northeast corner of Seaway Drive and South Ocean Drive until the May 16th City Commission meeting.

Those voting in favor of the motion were: Commissioners Alexander, Becht, Coke, Nelson, and Benton. Those opposed: None.

The next item on the Agenda was Public Hearing on Application for Conditional Use & Site Plan Review submitted for Platts Creek Developers LLC, to construct 210 residential units on Platts Creek Development located a 4000 South U.S. #1; said property zoned C-3, General Commercial Zone. (Postponed from January 3, 2005.)

Mayor Benton declared a Public Hearing in session and asked if anyone in the audience wished to be heard.

Mr. Robert James Gorman said he is here on behalf of the applicant, Platts Creek Development. This is a Conditional Use and Site Plan Review and Comprehensive Plan amendment and Rezoning. They are rezoning approximately ten acres between Schultz Chevrolet and a church, a former two-story furniture store, from an R-2 zoning. When it was annexed into the City a little over a year ago, the front of it was zoned C-3 and the back acreage ended up with an R-2 single family zoning. So they are petitioning to have the zoning amended on the backside, changed to be consistent as a C-3; and then a Conditional Use of multi-family RM-5 standards with a total of 210 units and over 340 parking spaces with under-building parking in many of the areas. (Mr. Gorman displayed a drawing.) And out of a total of approximately 16 acres, six acres of open area and preserves, including a gopher tortoise preserve area, and maintaining many natural areas on the entire site to be basically within a natural preserve. Each of the units is favored with a view of trees, water vista, or both. It would be accessed off U.S. #1 with an entryway and exit out onto U.S. #1 with separate entry and exitway for aiding in any traffic flow and control. The matter has been presented to Staff. Initially there had been higher buildings proposed and higher density, but when working with Staff... The highest of the structures has a roof deck at 42 feet; and with architectural items above that, no more than 54 feet. Other structures would be three-story with a 30-foot elevation with approximately 10-foot of trellised architectural effects. Some of the units have balconies and balcony areas on the roofs that are part of the design. Present with him tonight is Mike Dalton of Platts Creek Development, Markus Frankel who is the applicant and architect on the project and who can present more information in detail and answer any questions they might have specifically on the design criteria. He would note that there is approximately 430 feet of frontage on U.S. #1 and 61% overall is open space and just over 50% pervious area. There are multiple type units ranging in square footage from approximately 1,200 square feet to about 1,750 square feet living area. The proposed Site Plan is with a private gate entrance as well.

Mr. Markus Frankel said he is with Frankel Benayoun Architects, Inc. and he represents Platts Creek Developers. Mr. Michael

Dalton, one of the principals, is here tonight. He also has a partner here, Ms. Benayoun. Also here is the chief engineering firm, Culpepper & Terpening, and Stefan Matthes is here tonight. Also Garrison Engineering Services, Inc. They are very pleased to be involved in this project. They are excited about the opportunities in that they always begin a project with a series of questions and choices. And in this case, usually they start with the owners questions, which are how do they build the best mousetrap and how do they attract a good market and how do they make the best product for the best money in terms of quality? Of course, as architects they often deal with things like how do they improve the environment, how do they create the most pleasing spaces that can make people proud of where they live? In this case, all of their questions seem to be answered by the nature of the site, so they were really fortunate and it became easy. The site is 16.1 acres, highly wooded. They are leaving 7 acres untouched as woodlands. There are oak hammocks as well as some large slash pines and a lot of sabal palms on the site. A lot of them are protected, they understand that. They have to move very few. There is about 630 trees on the site and he thinks they are only moving about 70 of the protected ones. There are so many other trees that it is not an issue in terms of where do they replant the ones that have to be moved, so they are already there. They hired an environmental planner, Tierra Consultants, Inc., who immediately told them that in addition to the protected species on the site, which they have to deal with and have dealt with, there is six or seven colonies of gopher tortoises. So the very first thing they did was ask how do they preserve these tortoises? They were told to relocate them. So that is why they hired these people. They have to preserve them in an area of a certain size and quantity, which happens to be about 1.8 acres. On the northeast side of the site it is all natural preserve areas wrapping around to the east side and coming back down to the south side, the natural forest. So the northeast side will be the tortoise preserve area. They literally create "green fencing" which would go down into the ground a certain depth to insure that the tortoises don't migrate back into the development areas. In the very center of the site it is very beautiful hammock type of oaks and slash pines. They are not touching that other than some nature paths in there. They have located two large water features on the site, which will become retention ponds and water will be standing there. They also have a few manmade water features which are fountain elements near the entrance. They had a lot of exchange with Staff and the project has been greatly enhanced by their involvement and input. They started out with 243 units and are now down to 210. Their six stories quickly dropped down to four stories. Only 16.1% of the site is covered by buildings. And 61% is permeable, which allows water to filter down into the land. So they made a special attempt to make sure that all this nature is preserved for the people that live in this community. There are no cars around the large nature areas. The roads meander around. They did that deliberately to avoid some of the important species of trees and the tortoise preserves. The only two buildings in the east side do not face the green area, but actually face fortunately a pasture to the east and a golf course, Gator Trace. So even those buildings will have delightful views looking eastward. The architecture, they like to think that it is rooted in nature and the Florida vernacular that they seen in the Keys and in the Panhandle of Florida seaside communities and places like that. It fits well with the natural setting. They are featuring rooftop gardens on all of the buildings, some are private gardens. There

are two buildings that are townhouse buildings, the first and the second buildings. The others are hybrids where they have townhouses in the first and second floor, and lofts or flats on the upper floors. But everybody gets to go up to the rooftop and enjoy some views of the nature of the site and the surrounding site. They are featuring open air trellis-type structures that are also de-mountable structures. Their maximum roof height is 42 feet. On twelve of the buildings, two of the buildings are at 30 feet. And they have two recreation buildings - one is a fitness center adjacent to the pool and tennis courts, and the other is a nature pavilion that reaches out into the wooded areas and waterway. So they hope the Commissioners like this. Staff also recommended that they put a significant buffer along U.S. #1, so their landscape plans call for royal palms and oak trees along U.S. #1. They have a secured entry pavilion for visitors and for the owners, and they have a separate private entry and exit only for the unit owners. There is a variety of unit types. They think this will be a peaceful community, one that is based on security, privacy, and nature. They are very pleased they have unanimous approvals along the way from Staff and from the Planning Board.

Commissioner Alexander said the request is for 210 units for residents. These are all for sale, right?

Mr. Frankel said yes, for ownership.

Commissioner Alexander said he is looking at a memo from the Planning Department saying an additional 102 residential units.

Mr. Ramon Trias, Director of Development, said what the Commissioner is looking at is a little confusing. What happened is, the total number of units is 210. The reason it says additional 102 is because that is the result of the rezoning they are requesting. It is confusing, but the total amount is 210.

Mr. Frankel said it is a total of 210. The rezoning portion resulted in an additional 102.

Commissioner Alexander asked they have ample space for their big fire truck units to get in and out of there?

Mr. Frankel said they have to. They went through this plan two times with Staff review and made sure that the radiuses were appropriate for that. It is continuous loop roads. And there are five truck pull-offs for refuse collection points, which are pretty much equally spaced around the site.

Commissioner Nelson asked is this a gated community?

Mr. Frankel said that is the intention of this concept, that there would be a entry gate. About 100 feet in from the U.S. #1 roadway would be a security gate which allows people to come in and go out. And on the north end of the property at U.S. #1 is another secured gate. The property has its own manmade barriers because there is a creek, thus the name Platts Creek. There is a creek on the east side of the property that borders the east and the south side; and then that creek actually goes under U.S. #1 and continues westward. So they didn't think they needed fencing around the entire facility, but they are contemplating some sort of a security gate at the U.S. #1 frontage.

Commissioner Becht said this is a beautiful project. The problem he has is, it is a beautiful contained project and the public benefit is all within their perimeter. Generally speaking, their Staff has frowned upon gated communities; but he guesses there is a time and place for everything. Is he in a position to commit tonight to no Certificates of Occupancy until all the amenities are built?

Mr. Frankel said that would be easy for him to do. He would think the answer is yes. But it might be a question for the developer.

Commissioner Becht said he is asking, because he needs to know. Is he willing to commit? The City will not issue any Certificates of Occupancy until all of the amenities are built.

Mr. Frankel said yes, absolutely. The entire concept here is one where they are providing an alternative lifestyle with a lot of recreation. The answer is yes.

Commissioner Becht said it is a beautiful design. He just wants to make sure that all of these things will be built before the units are occupied. The nature preserves, there are two of them. Can Mr. Frankel or Mr. Gorman elaborate on the mechanism that is in place so these don't become a problem for either the owners or for the City?

Mr. Gorman said as development goes on, there would be a homeowners organization that would be created to operate the amenities, including taking care of those preserves, and there would be covenants for enforcement.

Commissioner Becht asked they would be willing to commit that there will be covenants to make sure these areas are taken care of by a property owners association?

Mr. Gorman said right; so it doesn't have to fall into any type of public requirement, yes. He thinks it would be very similar, though not necessarily the same type of thing, for instance, with a South Florida Water Management District "Mandate of Maintenance" if the necessary water facilities. A similar concept.

Commissioner Becht said he thinks it is very simple, once they commit to it.

Mr. Gorman said yes.

Mr. Frankel said it is a very good suggestion.

Commissioner Becht asked what are the size of the units?

Mr. Frankel said there are 94 loft type units, single floor flats, two bedrooms with large open spaces, which are about 1,500 square feet. There are 18 units that are three-story townhomes with private garages and courtyards, terraces, and roof gardens; and there is 1,750 square feet plus another 300 square feet of garage and utility area. Then there is 94 small townhouses which are 1,250 square feet and they share common area garages and lobbies within their buildings. These also have private courtyards and terraces on the second floor.

Commissioner Becht said he thought he had seen somewhere where the

FDOT was moving forward with plans to widen U.S. #1. Does Mr. Arias know what the status of that is? Will it touch on this property in the near future?

Mr. Hector Arias, City Engineer, said he thinks the project is under design. How much widening, he does not know. But FDOT is working on it.

Commissioner Becht asked is he able to comment on whether FDOT will or will not take any of the frontage of this property?

Mr. Arias said no, he is not.

Mr. Frankel said they did a traffic study.

Commissioner Becht said that is not the same thing. Did they give any thought to either a deceleration lane on the north or south entrance to the property?

Mr. Arias said that will be what the traffic study will require. Once he gets the plans, they will talk about that to make sure they get what is required.

Commissioner Becht asked what are they doing tonight? He thought they were being asked to do a Site Plan approval tonight. This is conceptual?

Mr. Gorman said it is conceptual.

Commissioner Becht asked would they have a major problem with putting in a deceleration lane? It looks like they have room, particularly on the north entrance.

Mr. Frankel said he does not think they would have a problem, they have plenty of room. There is 100 feet of backup between...

Mr. Stephan Matthes said he is with Culpepper & Terpening, Inc., Civil Engineers. He is representing the developer. He does not think they would have a problem with the deceleration lane. But he would like to wait to see what FDOT requires. It is a State road. He is going to have to go through a permitting process for the entrances. FDOT will dictate whether or not he does deceleration lanes and stuff like that, or even whether FDOT will allow them. FDOT will take a look at what the six lanes provide in the future and coordinate this project with that.

Commissioner Becht asked does he think FDOT is going to need any additional right-of-way?

Mr. Matthes said he does not think so. When he saw he plans, it did not look like FDOT needed right-of-way. But they do have fair amount of frontage; so if FDOT does need to take a little, he believes they have the ability to accommodate that.

Commissioner Becht said he appreciates that and has a lot of respect for Mr. Matthes. But he is concerned that if FDOT does take any, that they are going to have traffic stacking out onto U.S. #1 from where they put their gatehouse. That is why he is asking the questions.

Mr. Matthes said FDOT will control that gatehouse also. FDOT will

mandate how far in the site he has to put it, because they have rules and requirements regarding controlled access.

Mr. Jay Martin said he lives on Tumblin Kling Road, next to Bill Schultz Chevrolet. He knows this isn't the actual piece of property he is here to talk about, that is coming up later; but this is going to be right next to it. Where this lays between Bill Schultz north to where that next project is, this does not fit it. They are all single family. Tumblin Kling is basically a dead end street. As is, if they try to come out off Tumblin Kling onto U.S. #1 and make a turn south, or even at Weatherbee Road, it is almost nearly impossible. As is, they get traffic that comes off of Weatherbee Road through their neighborhood onto Tumblin Kling to try and alleviate that. Not only that, but Bill Schultz uses their road a lot to test their vehicles. He is not sure what this layout has to do with the next project coming up that is going to be behind Bill Schultz. He has walked through those woods and been through there. There are not only gopher tortoises, but foxes and raccoons. He has even seen what could have been a panther out there, he can't say for sure, but it wasn't a cat. This canal or whatever, it is a ditch someone can walk across. So as far as boundaries and stuff, where are they going to stop? His is a single family community with nice homes. It is peaceful and quiet. A gated community stuck right in next to a car dealership back there, he does not think fits in with what is going on.

There being no further business, Mayor Benton declared the Public Hearing closed.

Mayor Benton asked what was Staff and Planning Board's recommendations?

Mr. Trias said Staff and Planning Board recommend approval.

Mayor Benton asked have they spoken to the County on this?

Mr. Trias said yes.

Mayor Benton asked what is the County's future land use for this property? It is surrounded by the County. What is the land use surrounding this property?

Mr. Trias said he does not recall. He thinks it is single family.

Commissioner Nelson said it indicates the utilities are going to be underground. Is that one of the conditions?

Mr. Arias said yes.

Commissioner Nelson asked the deceleration lane in coordination with FDOT? And the coordination with the County for the usage, is that also one of the conditions?

Mr. Trias asked what type of coordination is he thinking of?

Commissioner Nelson said they have embarked upon a plan to try to get the County involved in the land uses to complement each other. To what extent are they coordinating with the County on this project?

Mr. Trias said they are sending a lot of these Site Plans for staff

review. Whenever the County staff gives any input, they try to incorporate it into the process.

Commissioner Nelson asked this has been done with this project?

Mr. Trias said yes.

Commissioner Nelson said the idea of this gated community, they had some problems with that with the hurricanes. How are they addressing that to the developers to the extent they don't have problems with the gated communities in the future?

Mr. Trias said he tries to discourage gated communities as part of the comments that Staff provides. Sometimes the developer agrees, sometimes they don't.

Commissioner Nelson asked do they have a legal basis to exclude these?

Mr. Trias said no.

Commissioner Nelson said he thinks it is the wave of the future. People like to feel secure in their homes.

Mr. Trias said that is just a matter of opinion of the developer. When the developer wants to propose that, they propose that. And this is one of those cases.

Motion was made by Commissioner Nelson, seconded by Commissioner Alexander, to approve the Conditional Use and Site Plan for Platts Creek Development at 4000 South U.S. #1, subject to the conditions proposed: (1) Coordination with FDOT for a deceleration lane; (2) Underground utilities; (3) Covenants by Property Owners Association to maintain the nature preserves; and (4) No Certificates of Occupancy will be issued until all amenities are built.

Those voting in favor of the motion were: Commissioners Alexander, Becht, Coke, Nelson, and Benton. Those opposed: None.

Ordinance No. K-325, AN ORDINANCE AMENDING THE **FUTURE LAND USE** DESIGNATION OF PROPERTY LOCATED AT **4000 SOUTH US HIGHWAY #1**, FROM RL, LOW DENSITY RESIDENTIAL LAND USE, TO CG, GENERAL COMMERCIAL LAND USE; REPEALING ALL ORDINANCES OR PARTS THEREOF IN CONFLICT HERewith; AND PROVIDING FOR AN EFFECTIVE DATE." and Ordinance No. K-326, "AN ORDINANCE **REZONING** PROPERTY LOCATED AT **4000 SOUTH US HIGHWAY #1** IN FORT PIERCE, FLORIDA, FROM R-2, SINGLE FAMILY INTERMEDIATE DENSITY ZONE, TO C-3, GENERAL COMMERCIAL ZONE; REPEALING ALL ORDINANCES OR PARTS THEREOF IN CONFLICT HERewith; AND PROVIDING FOR AN EFFECTIVE DATE." were placed on first reading and read by title only. (Applicant: Platts Creek Developers, LLC)

Mayor Benton declared a Public Hearing on Ordinance No. K-325 and Ordinance No. K-326 in session and asked if anyone in the audience wished to be heard.

Ms. Susan Smith, 4425 Areca Palm Drive, said as an adjacent landowner to the Platts Creek area, she is just curious what the returns were that were mailed to adjacent landowners, one way or the other, the vote.

Mayor Benton said there were 28 mailed out.

Mr. Ramon Trias, Director of Development, said there were four in favor and five opposed.

Seeing no one further and hearing no one wishing to be heard, Mayor Benton declared the Public Hearing closed.

Motion was made by Commissioner Coke, seconded by Commissioner Alexander, that Ordinance No. K-325 and Ordinance No. K-326 be passed on first reading.

Commissioner Alexander said the letters that were sent out, on the report he has it does not show those in favor and opposed. It has blank spaces.

Mr. Trias asked Commissioner Alexander has blank spaces in the report? He apologizes.

Commissioner Alexander said he just wants to make sure he public has the input on this. It was done, right?

Mr. Trias said yes.

Those voting in favor of the passage of Ordinance No. K-325 and Ordinance No. K-326 on first reading were: Commissioners Alexander, Becht, Coke, Nelson, and Benton. Those opposed: None.

The next item on the Agenda was Public Hearing on Application for Site Plan Review submitted by David Gordon for a Final Planned Unit Redevelopment Plan for construction of a five story mixed use building to include office space and residential units, known as One Marina Place, generally located on the northwest corner of Avenue A and Indian River Drive; said property zoned PUR, Planned Unit Redevelopment Zone.

Mayor Benton declared a Public Hearing in session and asked if anyone in the audience wished to be heard.

Mr. Stephen Tierney said he is an attorney with the firm of Neill, Griffin, Tierney, Neill & Marquis, representing Location Development Corporation. They are here for final review. They have submitted revised plans. (Mr. Tierney displayed drawings.) The revised plans they submitted has the tower with the height the Commissioners requested. They have one plan with an alternative height. They prefer the higher one, they think it is more attractive; but they will accept whatever the Commissioners wish. He has also taken a stab at drafting up a Development Agreement that sets out some of the things they talked about before such as improving Avenue A and building parking spaces they were agreeable to on Avenue B. (Mr. Tierney gave copies of the Development Agreement to the Commissioners.) There are some other things in there. The terms and language is negotiable; but he thinks they are pretty much all in accord as to most of it as far as what they have agreed to do. Mr. Jacquin, the contractor, is here. Mr. Gordon, the developer, is here.

Commissioner Nelson asked on the ground floor where they indicate the parking areas and Avenue B there, they have the sidewalk and the ten spaces on the north side of that property away from the principal property and they did some realignment to the road itself. He is imagining that when people get out of their cars,

they have to cross the street. The parking primarily is for this facility.

Mr. Tierney said no, these spaces are for the public. Additional parking spaces could be for the retail or for Indian River Drive or for future development. These are available for the public who could be going up to 2nd Street. Those are public-designated spaces.

Commissioner Nelson said he agrees. But since they went to the extent of realigning that street, could it not have been just as easy to put the parking on the south side of the street as opposed to the north side?

Mr. Tierney said he does not think it would have fit as well. The way that entrance is into the development, it makes more sense to be on the other side, as far as getting ten spaces there.

Mr. Michael Jacquin, Paul Jacquin & Sons, said there is a lift station that has been of issue in regards to Avenue B. It is basically on the northeast corner of Avenue B and 2nd Street. If they align the road differently, it will cause interference with that. That is the reason for it.

Commissioner Nelson said he is familiar with it. But he is looking at the area... He does not want to redesign their project, but right there where they have the width of 20 feet by the property line there on the east side, is it not possible to have taken that area and put the sidewalk in there and curve the road around a little bit and still miss the lift station? Is it possible right over there in that area as opposed to where they have got it?

Mr. Jacquin said because of what he will call the "jazz building", they have limited setbacks from the road. There is only a minimal sidewalk to that particular building. So what they get in turn as opposed to a straight thoroughfare, they basically are going to have to get into some meandering.

Commissioner Nelson asked this area right here, if they take that area out right there and put parking in there and move the road on the other side, they could have done it, the north side? The area to the east of there, the same thing could have happened, and they would not have affected the lift station down by the jazz building. When somebody comes across the street to try to come to the condo, he will tell them to go see Mr. Tierney.

Commissioner Coke said she has a great deal of concern with this Development Agreement.

Mr. Tierney said it is all negotiable.

Commissioner Coke said she would certainly hope so, because she would not want to consider approving anything that the City Attorney has not had the opportunity to review. Also, they are talking more and more along the lines of things like the Building Department ought to support itself and the rest of the citizens should not be paying for inspections and things. She sees here they are being asked to waive all permit fees, all inspection fees, and impact fees will not be due until after final inspection. It also says the owner shall not have any responsibility for permits or fees associated with the Avenue B project, but that she can see.

But as far as the rest of it, a lot of this she has a big problem with because the developer is asking the citizens of Fort Pierce to fund his project. She knows everybody wants to tell her that they can't make money on it unless they have 40 units; but the truth of the matter is, like she told the developers earlier tonight, it is a good project but she is not here to make sure those guys make money, she is here to make sure they do what is right for the City. She cannot support that part of the Development Agreement.

City Attorney Schwerer said the Development Agreement is a fairly standard routine thing. The attorney simply needs to get it to him. He will get with Staff and they will make comments; then they will get it back to the Commission. Do not try to negotiate it here tonight. He hasn't had an opportunity to look at this. Just make any approvals subject to and conditioned upon the final entry of an acceptable Development Agreement. It is that simple.

Commissioner Alexander asked did they not go along with the developer about taking care of Avenue B that they would get some kind of concession from them? They are going to realign Avenue B, pave, parking. Is he missing something? The developer is going to take that upon themselves to do. He is just asking a question, if there is some kind of concession? He does not know what. But if they are going to re-do, realign that road with parking and paving and curbs and sidewalks, he thinks there needs to be some concession.

City Attorney Schwerer said Commissioner Alexander may be right. But his recollection of this project, at the last meeting when it was approved conceptually, it was conditioned upon them entering into a Development Agreement for all of these on-site and off-site improvements they were going to make. The reason that was imposed was so that they could get the extra density for the units they wanted. So it is in exchange for the extra density that they are doing these things. That was mandated by the PUR ordinance that says if they exceed 18 units an acre, they must have special considerations. So please recall that the developer negotiated with the City for those extra units and obligated himself to do all these things. So they have already negotiated that.

Mr. Tierney said one thing, as far as the tower height, that is fine the way they had it at the last meeting. But they did propose how it looks both ways. If they will take a look at that and tell them whichever way they like it, that is the way they will do it.

Mr. Jacquin said just for reference, what he is referring to is the Final PUR Site Plan in the Agenda package. If they will take a look at Plan Sheet A-1 and Plan Sheet A-14. Notice they have lowered the height; but they left as an alternate, because they felt like giving the Commissioners another look at this and give another opportunity to make comparisons before making a final decision. (Mr. Jacquin displayed drawings.)

Commissioner Coke asked what is the height to the top of that tower on Plan Sheet A-14?

Mr. Jacquin said 82 feet, 2 inches. The other one is 75 feet. He believes that is one of the things Staff was talking about, a variation of heights.

Seeing no one further and hearing no one wishing to be heard, Mayor

Benton declared the Public Hearing closed.

Mayor Benton said he guesses they have a choice, to go with 82 feet or 75 feet.

Commissioner Becht asked does Mr. Trias have anything to say about the two alternate proposals.

Mr. Trias asked which one is the 82 feet?

Commissioner Becht asked is he to understand from Mr. Trias question that he has not see this before now?

Mr. Trias said no, he has. He would go with the 82 feet.

Commissioner Becht said he would like a real clear understanding, because earlier this evening (on a previous Agenda item) there were some serious misrepresentations in a light favorable to the applicant about what can and cannot be done from the 75 feet to the 82 feet. It would be his preference that they build into this some kind of physical problem with people going up into that tower, so he doesn't have to worry about enforcing it. He wants a physical impediment to going into it. Mr. Jacquin is a builder, so he is sure he can figure out how to do that. So, how is he going to do that?

Mr. Jacquin said it is basically going to be a small turret. It is basically an architectural feature. There is not going to be a floor there. He swears they are not going to build anything that will go into that space. It is just for architectural embellishment.

Commissioner Alexander asked could it be a bird sanctuary?

Mr. Jacquin said no birds, no animals.

Commissioner Becht said seriously, he is looking for zero ability to access that, unless somebody gets a jackhammer and jackhammers a hole in the floor of that turret. He is not looking for any access to it at all. If Mr. Jacquin can represent to them that that is going to be done, he might be able to get three votes.

Mayor Benton asked is it something that is going to catch some wind in a hurricane and end up three blocks away?

Mr. Jacquin said no, that is not the case.

Commissioner Coke asked can he guarantee that is going to be the only spot that is going to be that high on that building? If they say okay, he can go to that height, then she is not going to walk down the street in two years and have the whole building at 85 feet?

Mr. Jacquin said no. They are very clear on what the Commissioners want. The reason they did this is, he thinks sometimes choice is good. They wanted to just give the Commissioners a before and after. He does not know if they have the previous plan, but this is actually about 3 feet less than what was proposed at preliminary. So they did even lower it down from where they started with the preliminary. But they still just went ahead and

put that architectural embellishment back on there. Did he answer Commissioner Becht's question? He tried.

Commissioner Becht said Mr. Jacquin is telling him it can be done, that he can make it such that nobody can access it, so he does not have to worry about enforcing it. Physically it will be done so nobody can access that.

Mr. Tierney said nobody will physically be able to be there. There is no loft, no floor, nothing.

Mr. Jacquin said there is not going to be any door to it. It is just architectural. It will be enclosed, but no door.

Seeing no one and hearing no one wishing to be heard, Mayor Benton declared the Public Hearing closed.

Commissioner Alexander asked do they want to approve it at 82 feet?

City Attorney Schwerer said that would be subject to the condition that they enter into an acceptable developers agreement, correct?

Motion was made by Commissioner Alexander, seconded by Commissioner Nelson, to approve the Site Plan submitted by David Gordon for a Final Planned Unit Redevelopment Plan for construction of a five story mixed use building known as One Marina Place, located on the northwest corner of Avenue A and Indian River Drive at 82 feet (Sheet A-14), subject to the condition that they enter into an acceptable Development Agreement.

Commissioner Becht asked could that Development Agreement contemplate the issue he was talking about?

City Attorney Schwerer said yes.

Those voting in favor of the motion were: Commissioners Alexander, Becht, Coke, Nelson, and Benton. Those opposed: None.

The next item on the Agenda was Public Hearing on Application for **Site Plan** Review submitted by Robert Miller for Seaside Housing Corporation, LLC, for a 28-unit residential project to be known as **Coconut Cove Marina** located at 443 Fernandina Street; said property zoned PUR, Planned Unit Redevelopment Zone.

City Clerk Steele said they have a written request by Robert Klein representing Seaside Housing Corporation that the Public Hearing be continued to the February 22, 2005, City Commission meeting.

Motion was made by Commissioner Coke, seconded by Commissioner Becht, to postpone the Public Hearing on the Application for Site Plan Review submitted by Seaside Housing Corporation, LLC, for Coconut Cove Marina located at 443 Fernandina Street until February 22, 2005.

Those voting in favor of the motion were: Commissioners Alexander, Becht, Coke, Nelson, and Benton. Those opposed: None.

The next item on the Agenda was Public Hearing on Application for Site Plan Review submitted by Max Ambach & Sons for a **Preliminary & Final Planned Unit Development** to be known as **Mayfair at Lawnwood**, consisting of 230 units generally located between North

Lawnwood Circle and Quincy Avenue; said property zoned PUD, Planned Unit Development Zone. (Oriole Homes Corporation - Rob Levey)

Mr. Clay Yates said he is with Yates & Mancini, here on behalf of Mayfair of Lawnwood, LLC, which is the developer. Jack Ambach with Max Ambach & Sons who owns the property is here. They may recall that this is a property that has been the subject of a couple of Public Hearings very much like the one they had earlier this evening. He is proud to say that shouldn't be the case this evening. The Mayfair at Lawnwood listened carefully to the comments of the neighbors. Mr. Harold Turner, who is the President of the Villages of Longwood Homeowners Association, is here tonight; and he thinks Mr. Turner would like to get up and speak about the project so he can go home. He would defer to him.

Mr. Harold Turner said he is President of the Villages of Longwood Homeowner's Association, Inc., which is 292 owner-occupied villas located on Nebraska Avenue. Their property is the east boundary of the proposed project. They also went before the Planning Board and they have had several meetings with the developer and his attorney, and they have come up with an agreement which is part of the approval of the Planning Board and they would also like it to be part of the City Commission's approval. (Mr. Turner gave a copy of a letter dated February 7, 2005, to the Commissioners.) He would like to talk a minute about the Villages of Longwood. They are proud of their community. They like to say they are the best thing they have in the City of Fort Pierce. To look at them after the hurricane, he thinks they would agree with them. They had a lot of damage and they are almost back to normal. After meeting with these folks, they gave him references and so forth. He traveled to where they build; and believe him, they are a first class operation. As they see in his letter here, they brought this before the Association, which unanimously welcomed these folks to come and they look forward to their being approved. That is all he has.

Commissioner Becht said he used to live in this neighborhood over there in The Pines. He had his son with him and they liked walking around. Occasionally there might be a football game or something over at the Lawnwood Stadium. There really was no easy way to get to it. He had seen this project before and recommended to the then developer that he create an access point to get to Quincy Avenue. He is wondering whether Mr. Turner thinks that is a good idea or a bad idea. What he was looking for is the ability for the people who live in the Villages of Longwood and also The Pines and then there is another development around the corner there, to be able to walk around and access out to Quincy Avenue. There is a church over there down the road a little bit too. Pedestrian access, did they all talk about that at all?

Mr. Turner said no, they didn't talk about it. Just to bring him up to date, about two years ago when the football games would let out, they were not fenced and it was a thoroughfare and everybody was walking through the Villages of Longwood. So they went to the City, got permission, and fenced the whole back side of it. They adjoin the softball field and then they run all the way down to... They don't go to Quincy Avenue. The Ambach property comes to Quincy Avenue. Longwood's stops and it is the back of the football field and ballfields. So they fenced it. They would not have any objection to an access from Quincy Avenue to the ballfield. They don't have any problem with that.

Commissioner Becht asked but the Villages of Longwood fenced their property because they didn't like the influx?

Mr. Turner said they have no access to Quincy Avenue. Their property is back to back to the softball field. They can't enter the softball field or the football field from their development. That is a vacant area. They have to walk across two City blocks to get to the back gate of the football field.

Commissioner Becht said okay.

Mr. Hector Arias, City Engineer, said on that letter agreement Mr. Turner just gave out, he sees Items #3 and #4 deal with the retention ponds in the Villages of Longwood. He is assuming then they are going to be using the same ponds for the drainage of this new project?

Mr. Turner said they presently own and maintain the ponds.

Mr. Arias said he understands that. But what he is saying is, when they build the new project, is it going to be draining to the same ponds?

Mr. Turner said it is going to be drained into their pond is his understanding.

Mr. Arias asked are they going to provide a Stormwater Management Plan so they can prove that everything is going to be incorporated into the existing ponds and everything is going to be okay?

Mr. Turner said it is his understanding that the permit presently belongs to Mr. Ambach and part of their agreement is that he puts the permit in the Villages of Longwood. They have been maintaining those ponds for 15 or 16 years. They maintain them according to the State's level and do everything they are supposed to do.

Mr. Arias said he understands. But when they build a new project, they are going to create more runoff into those ponds. He would like to know if those ponds are going to be enough to take care of the Villages of Longwood and also a new project.

City Manager Beach said that is a design question.

Mr. Arias said he knows it is, but he wants to make sure.

City Manager Beach said the Villages of Longwood is not building these complexes, someone else is building them.

Mr. John Donahue said he is with LBFH. This is Phase III of an existing PUD. The existing water management system already incorporated this Phase of construction; so yes, it will be incorporated into the same ponds. They will produce all the information...

Mr. Arias said so when they submit the drawings, they will submit the permit from the Water Management District saying that it includes this new project.

Mr. Donahue said absolutely.

Mr. Jon Schmidt said he is the Site Planner. He will take a few

minutes to explain and to answer any questions they may have about this project and briefly run them around the project. They have reduced the density from 272 units to 230 units. It is 23 ten-unit buildings, a mix of 1 bedroom with 1-1/2 baths, 2 bedroom and 2 baths, and 3 bedroom and 2 baths. Primarily the vehicle access points are from North Lawnwood Circle, Nebraska Avenue, and South Lawnwood Circle. (Mr. Schmidt displayed a map.) Although the vehicular access points come into the key points along the main road, the vehicular access does not cross through. There is pedestrian access that they can work all the way from this pod to the recreation area as well as from the Quincy Avenue side to the recreation area. Their meetings with the neighborhoods at the time they were in here once before did not want to encourage the pedestrian traffic from the adjacent park. Although they do have the pedestrian cross access between their pods, they also link into the current pedestrian system for the master plan. They have made some minor site plan adjustments with the tree survey, provided preservation of another 60 trees that are of fourteen inch caliper. And he thinks they are going to be able to incorporate a lot more native vegetation once some site clearing takes place and they can really get in there and look where the layout might be. If they have any questions, he would be happy to answer them.

Commissioner Becht asked what is the square footage of the units?

Mr. Schmidt said they run anywhere from 800 to 1,200 square feet.

Commissioner Becht asked they have 800 square foot units?

Mr. Schmidt said he can give them the whole breakdown. There are 46 units that are 800 square feet. There are 92 units at 1,000 square feet. And another 92 units at 1,200 square feet.

Commissioner Becht asked the 46 units at 800 square feet, they are what, one bedrooms?

Mr. Schmidt said they are one bedroom and one and a half baths, two bedrooms/two baths, and three bedroom/two baths.

Commissioner Becht asked has he done any market studies? Does he truly believe there is a demand for owner-occupied 800 square foot units?

Mr. Gregory DeJohn, President of GSD Contracting, Inc., Fort Lauderdale, said they teamed with Oriole Homes Corporation for this development; and those marketing decisions were really left to Oriole Homes who feels that there is a market for that product.

Commissioner Becht asked is he aware that The Pines average unit size is like 1,200 square feet? That is what most or all of them are except the three bedrooms. The Villages of Longwood, he thinks, is larger than that.

Mr. DeJohn said they feel there is a market for the product.

Mr. Yates said in his conversations with Oriole Homes as well as Mr. DeJohn, a real selling point for these is the close proximity to the hospital and the idea being that there are lots of single professionals who work at the hospital who would like to have a home in close proximity.

Seeing no one further and hearing no one wishing to be heard, Mayor Benton declared the Public Hearing closed.

Commissioner Coke said this Agenda item reads, "Public Hearing on Application for Site Plan Review... for a Preliminary & Final Planned Unit Development..." How are they voting on preliminary and final on the same evening?

Mr. Ramon Trias, Director of Development, said that was a request of the applicant and it was advertised as both a preliminary and final.

Commissioner Coke said then her question is to Mr. Schwerer, is it legal for the City Commission to do that?

City Attorney Schwerer said he is going to have to defer to Mr. Trias. He always understood they had to have them separate, preliminary and final. He doesn't know any code provision that allows the applicant to combine the two of them because they always have the preliminary review and then a final.

Mr. Trias said he thinks they do not expect any changes on this site plan and this site plan has been approved in the past or at least reviewed by the City Commission several times. And it was the view of the applicant that this was something that was legally possible. And frankly, he doesn't see any practical need to separate the two any further than tonight's meeting.

Commissioner Coke said she will tell them she has some concerns about it, not necessarily with this project; but once again they open a can of worms when they change the rules for one person, everybody else is going to come along and ask why do they have to have a preliminary hearing and wait two weeks and have a final hearing? That becomes a big concern for her, because a lot of times things that come back on the final hearing are different from the preliminary hearing; and if they don't have that opportunity to digest things and make changes, if there was a problem this evening they would be forced to say yes or no, rather than saying okay they can change this and fix it by the time the final review comes.

Mr. Trias said it is certainly up to the discretion of the Commission to accept this request from the applicant or not, so it really is up to the Commission. All he is saying is he does not anticipate any major changes. That is staff's view on this.

Mayor Benton asked what about the Planning Board?

Mr. Trias said both Staff and Planning Board recommend approval.

Commissioner Coke said she does have a lot of concerns that this is preliminary and final. She is very happy to see that the people of the Villages of Lawnwood are happy. But she does have a concern that the units seem to be so small. They keep talking about raising the bar. She is living in a trailer now that she thinks has more than 800 square feet, not by choice by the way. And especially out by the hospital, she would think they would be looking to raise the bar every place and especially in that neighborhood. They have the hospital and they have the college. They can attract all kinds of professional people there that are going to look to spend a lot of money and not go home to the equivalent of a trailer at night. That is her comment.

Commissioner Nelson said they have had several people come before them wanting to develop that property over there and they have had considerable opposition from the residents of that area. It is pleasing to him this evening to have the group living over there supporting this effort. And it is consistent with their thoughts of trying to keep their neighbors happy and doing what is appropriate. He is going to vote for this project because it illustrates that the City is being responsive to the people who live in the area and doing what is appropriate and authorized by law.

Commissioner Becht said he has great difficulty with the size of the units. He thinks they have underestimated what the market of Fort Pierce will absorb. If they build a bigger unit, he thinks they can sell it for more money. And this is going to build a unit that now is only going to be 800 square feet for ever and ever and he will never be able to raise the bar on them again. He wants to thank them for working with the Villages of Longwood and the other folks over there to come to an accord. He thinks the Villages of Longwood have been good neighbors; and now he as a Commissioner can be a good Commissioner and extract a little bit more out of them so they have a better project. It is a plain vanilla project. They have rectangular buildings on top of rectangular buildings. They have 14-1/2 units to the acre. This is not what he was looking for on that property. But he will thank them for working with the neighbors.

City Attorney Schwerer said technically he believes any approval should be subject to the conditions set forth in the package of materials, being the letter from the Villages of Longwood (distributed by Mr. Turner). It sets forth five requirements: (1) Oriole Homes agrees to set back 25 feet from the west side of the Villages of Longwood property; (2) The Developer, Oriole Homes, will plant a vegetation buffer between the Villages of Longwood and Oriole Homes; (3) The Developer agrees to have Ambach transfer the retention pond permits from Ambach to the Villages of Longwood; (4) The Developer, Oriole Homes, agrees to pay to the Villages of Longwood, a fee annually for the maintenance and use of the retention ponds owned by the Villages of Lawnwood; and (5) The Developer agrees to create a covenant and by-laws governing Oriole Homes that the units be owner-occupied and that an owner cannot rent until the owner has occupied the unit for one year. Now technically, some of these conditions the City can deal with in their site plan approval for the 25 foot setback, but the Villages of Longwood attorney is going to have to follow up on this to make sure that they have the other conditions satisfied for them.

Commissioner Alexander asked they are putting these conditions per Longwood or the City of Fort Pierce?

City Attorney Schwerer said these are agreed upon by the Developer and the Villages of Longwood, so they are doing it technically for both, but they are at the request of the Villages of Longwood and the Developer has agreed to these conditions.

Motion was made by Commissioner Alexander, seconded by Commissioner Coke, to approve the Site Plan submitted by Max Ambach & Sons for a Preliminary & Final Planned Unit Development to be known as Mayfair at Lawnwood, consisting of 230 units generally located between North Lawnwood Circle and Quincy Avenue, subject to the conditions set out in the letter dated February 7, 2005, signed by

Harold Turner, President of the Villages of Longwood Homeowners Association.

Mayor Benton said he also wants to thank the Developer and Mr. Yates for meeting with the neighbors and the Homeowners Association and coming to the Commission with an agreed-upon project, instead of like some of the other ones they spend hours and hours on.

Those voting in favor of the motion were: Commissioners Alexander, Coke, Nelson, and Benton. Those opposed: Commissioner Becht.

The next item on the Agenda was Public Hearing on Applications for Conditional Use & Site Plan Review submitted by Michael & Mary Brown for extension of a Private Dock at 3117 South Indian River Drive; said property zoned E-1, Single Family Estate Density Zone.

Mayor Benton declared a Public Hearing in session and asked if anyone in the audience wished to be heard.

Mr. Michael Brown said he is the co-owner of the home at 3117 South Indian River Drive. He and his wife applied for permits and have received them from the Army Corps of Engineers and the DEP (Florida Department of Environmental Protection) as far as extending the dock so that the depth would be deep enough to bring in a very small 20 foot boat into the dock. He understands it was approved by the Planning Board. They would appreciate the Commission's concurrence.

Seeing no one further and hearing no one wishing to be heard, Mayor Benton declared the Public Hearing closed.

Motion was made by Commissioner Coke, seconded by Commissioner Alexander, to approve the Conditional Use and Site Plan submitted by Michael & Mary Brown for extension of a Private Dock at 3117 South Indian River Drive.

Those voting in favor of the motion were: Commissioners Alexander, Becht, Coke, Nelson, and Benton. Those opposed: None.

Commissioner Becht asked has Mr. Brown received word of the relocation of the **Civil Division of the Court** system down to St. Lucie West yet? Mr. Brown was out of town last week.

Mr. Michael Brown said yes, he has heard of that.

Commissioner Becht said he would like to talk to him about that later. He didn't know if he had heard about it yet or not.

Mayor Benton said they don't want to get off the subject here. County Commissioner Craft is in the audience. He thinks they can talk about that later. But he thinks that has been put to rest.

The next item on the Agenda was Public Hearing on Application for Site Plan Review submitted by Bill Orazi, KB Home, for construction of a residential community of 360 units to be known as Heritage Grande, generally located on the northeast corner of Jenkins Road and Edwards Road; said property zoned R-4, Medium Density Residential Zone.

City Clerk Steele said they have a letter from Attorney Johnathan

Ferguson requesting that the City Commission postpone the Public Hearing until after the comprehensive plan future land use map amendment has been reviewed by the State and returned to the City for adoption.

Motion was made by Commissioner Becht, seconded by Commissioner Nelson, to postpone the Public Hearing on the Site Plan for Heritage Grande until after the proposed comprehensive plan future land use map amendment has been reviewed by the State and returned to the City for final adoption.

Mayor Benton asked by any chance, do they know how long that normally takes? Is it something they will see soon?

Mr. Ramon Trias, Director of Development, said it will take several months. It is not coming soon, no.

Those voting in favor of the motion were: Commissioners Alexander, Becht, Coke, Nelson, and Benton. Those opposed: None.

Ordinance No. K-327 entitled, "AN ORDINANCE **AMENDING THE FUTURE LAND USE** DESIGNATION OF PROPERTY GENERALLY LOCATED ON THE NORTH SIDE OF TUMBLIN KLING ROAD EAST OF SOUTH HIGHWAY U.S. #1, FROM RL, LOW DENSITY RESIDENTIAL LAND USE TO CG, GENERAL COMMERCIAL LAND USE; REPEALING ALL ORDINANCES OR PARTS THEREOF IN CONFLICT HEREWITH; AND PROVIDING FOR AN EFFECTIVE DATE." and Ordinance No. K-328 entitled, "AN ORDINANCE **REZONING** PROPERTY GENERALLY LOCATED ON THE NORTH SIDE OF TUMBLIN KLING ROAD EAST OF SOUTH HIGHWAY U.S. #1 IN FORT PIERCE, FLORIDA FROM R-2, SINGLE FAMILY INTERMEDIATE DENSITY ZONE, TO C-3, GENERAL COMMERCIAL ZONE; REPEALING ALL ORDINANCES OR PARTS THEREOF IN CONFLICT HEREWITH; AND PROVIDING FOR AN EFFECTIVE DATE." were placed on first reading and read by title only. (Applicant: Ward Snyder of Leeward Homes, LLC)

Mayor Benton declared a Public Hearing on Ordinance No. K-327 and Ordinance No. K-328 in session and asked if anyone in the audience wished to be heard.

Mr. Ward Snyder, President of Leeward Homes, said he would just like to clear the misunderstanding possibly as far as what they are going for here. Actually the C-3 zoning does permit limited commercial usage here and that is not what there intent is to do. They were approved at the Planning Board meeting (January 11, 2005) for a townhome development, is what they intend to do here. He is here with Victor De Bellis, his State Licensed Contractor from Incom Restoration, Inc. and they intend to build a really nice community here. They feel it is a great area for doing that. They built some in Port St. Lucie. They annexed this property into this City because he thinks it is a favorable environment. They like it and they would like to build a nice project here.

Commissioner Becht asked what is the size of their units?

Mr. Snyder said they are anticipating anywhere from 1,200 to 1,800 square feet. They haven't put together their site plan, they have a tentative site plan at this juncture, but he doesn't think they are here for site plan approval tonight.

Commissioner Becht asked so they just want the Commission to rezone the property to CG without knowing what they are going to do?

Mr. Snyder said no, they know generally what they want to do. But they haven't done their site plan yet with the specific sizes at this juncture.

Mr. Jay Martin said he lives at 217 Tumblin Kling Road. They are talking about allowing the gated community to be built where it is, that leaves the only entrance, if they allow the zoning to be changed, they are going to have a set of townhomes where the only entrance could be off Tumblin Kling Road behind Bill Schultz. That road is barely wide enough for two cars to travel on now, let alone the added pressure of all the others. Again, they are talking single family. They have houses on quarter acre lots and they have houses on bigger lots that are single family homes. He can remember when he moved in and purchased his home, he had to have his survey redone because somehow his piece of land had two dwellings listed on it. So when he purchased his house so many years ago, he had to have the survey redone to actually have it as a single family zoning. He couldn't have two dwellings on a single lot. Here again, they are talking about allowing these townhomes and whatnot right in the middle. They are right in the middle. Behind Bill Schultz to where the next house is, is not that big. The acreage Mr. Snyder is talking about goes depth-wise, so they are talking about a small strip between the first house and behind Bill Schultz. That leaves very limited access to come in and out of there on a road that is not hardly wide enough for two vehicles. They have kids, dogs, and animals in a very quiet community. He does not think they should allow the zoning to be changed. If somebody wants to go in with the land as single family homes the way it is now, that is fine. But the amount of townhouses, Mr. Snyder didn't even say how many townhomes; but they couldn't handle on that street anything more than single family homes in his opinion.

Mr. John Carl Peterson said he lives at 4404 Areca Palm Drive. He is opposed to this. He thinks that land is environmentally sensitive. He thinks there is gopher tortoises on that land. He doesn't know about this particular piece of property, but he can tell them he lives about 300 feet to the southeast of this piece of property. He does know that his flood zone designation is an AB, which is undetermined, which means they are going to be building a project in a zone that is an undetermined flood zone. He does realize at Platts Creek and U.S. #1 it is 14 feet and at Gator Trace it is 16 feet, but in between their FEMA people say it is undetermined. So there is no telling what they are going to end up with there. Also, he believes it is going to create a lot of traffic of people leaving this place and going to Gator Trace down Areca Palm Drive where they have a lot of older people there who have their grandchildren there and all. They have a lot of traffic in there now because of Bill Schultz and because of Coggin Osteen, who drive in this area to test drive their cars and he believes they are going to add a lot more to that. Because in this area also they are going to find that it is hard to get out on U.S. #1 there and they are going to have people from this project cutting through their neighborhoods to work their way over to Midway Road to go to Winn Dixie and to Walgreen's Pharmacy over there because the older people don't like to get out on U.S. #1. So it is going to create a lot more traffic through their neighborhood. He hopes they would take that into consideration. He knows they are in the County, they are bordered on the City. But he has lived there all his life and he sure would hope they would take that into consideration of all the traffic that it is going to cause them in

their area.

Mr. Robert Costigan said he lives at 4408 Areca Palm Drive. He was just wondering if they all had received any polling by the contractors from other neighbors? As far as he knows, they were the only ones in both neighborhoods to receive a letter.

Mayor Benton asked did Staff send letters out?

Mr. Ramon Trias, Director of Development, said yes. They sent 35 letters. They received back 2 in favor and 14 opposed.

Ms. Sylvia Albrecht said she lives at 208 Tumblin Kling Road. She is right next to this property. Platts Creek is right behind her. That is no creek, it is a ditch. She and her husband bought this property in 1982. Since then the Weatherbee School has gone up and the traffic past her house is ten-fold. God forbid they have an emergency, because they cannot go south. It is bumper to bumper on Regina Drive and bumper to bumper on Midway Road all the way to U.S. #1. She doesn't have to tell them what U. S. #1 is. She also wants them to consider, she has heard that the development behind Publix on St. James has the cops out there every night, so she is assuming the businesses along U.S. #1 are going to have problems also. She has petitioned Tumblin Kling Road and Areca Palm Drive and everyone she spoke to opposes this. She has two and a half acres front to back that are right next to this property and Platts Creek is behind. And they can't tell her that every kid in that development isn't going to be on her back acreage, which is wide open. As far as fencing it or posting it, that isn't going to help, it just will not work, she has raised four kids. She can only hope that the greed does not overwhelm common good sense.

Ms. Susan Smith, 4424 Areca Palm Drive, said she addressed a letter to the Mayor with a petition attached. It had, with the exception of just a few people, 100% of the entire community - homeowners and residents; and the few who had not signed have signed as of tonight, so she can add this to the petition if they would like.

Mayor Benton said please, because he did give that petition to the City Manager the other day before he received this packet.

Ms. Smith said she has lived in this neighborhood all her life. The streets aren't two-way streets, these are just wide spots in the road, formerly the canals that ran through the neighborhood that have been paved. The addition of several hundred people in an apartment complex would be not only out of character with the single family residential community, but they are adding the crime, the litter, the unsafe conditions, along with the traffic that is going to enter into the neighborhood. It is not a commercial area. The gentleman who came up who proposed the development, when he addressed the Commission earlier, she is confused now as to what zoning they want to make it. They are all here tonight based on the fact that they were requesting a change to commercial zoning and she is confused now as to what density they are looking for. That would be a question she would hope they would address.

Ms. Albrecht said they heard 69 townhouses, 14 per acre.

Mayor Benton said they are looking at 69 townhouses and that is 14 units an acre on a five acre parcel. That is this project right now.

Ms. Gail Stevens said she lives at 203 Tumblin Kling Road. She has been there eight years. The traffic coming through there is increasing every year. Weatherbee School has gone in. Weatherbee Road is impossible to get out and turn south. She has checked several times, she has not been able to get any kind of an update if there is ever going to be a traffic light there. The last time she spoke on it, it wasn't in the works in the next several years. Now they have approved the community just north of them which is going to be a lot of traffic going on and off of U.S. #1. Now they are proposing another one on her street. That is three very busy intersections within a very short space of the road. They get a lot of people come up Weatherbee Road, they cut over Areca Palm Drive and out Tumblin Kling Road to try to get out, because they can forget getting out at Weatherbee Road. People cut through and come in from the dealership, go down Areca Palm Drive to Weatherbee Road and then over to Regina Drive and down to Midway Road, because they just cannot get out. She cannot fathom the possibility of adding more residents in there. It is all just a single family neighborhood ranging from small quarter acre lots up at the start of the street. She has an acre and a quarter. There is an acre and a quarter up her side. The other side of the road has ten or twenty acre parcels. They have a beautiful little piece of the country and they want to keep it.

Mayor Benton said he does understand the problems at Weatherbee Road because the City and the County both have been on record for some time trying to get a signal light there, not a flashing light.

Ms. Stevens said there has been very many bad accidents there.

Mayor Benton said they had a specific number last year when they dealt with this and they have been asking or maybe demanding in the future... But he knows that little neighborhood. He used to take care of several lots and one home in that neighborhood. He knows it is usually pretty quiet after the dealerships close.

Ms. Stevens said yes. They test drive up and down the road.

Ms. Arlene Goodman said for the time being she lives temporarily at 4901 Oleander Avenue, but within the next couple of months she will be living at 4410 Areca Palm Drive. She has also been residing in that area off and on for the last 18 years. There are quite a few questions that have not been brought up yet and she is hoping she can get some kind of an answer tonight. For one, she has a very hard problem of accepting low density residential land use to what they all call general commercial C-3 as a land base for residential properties. If the City gives the gentleman this tonight, he has no preliminary site plan for them to look at and he has absolutely nothing to assure the Commissioners or her that he is even going to put townhouses in there. If he decides to sell this or walk away from it the day after the City gives it to him, he can then continue to keep his commercial general land use base and it would be a wonderful opportunity for Schultz Chevrolet to go in there and buy it from him and expand their business services over there. That is one of the difficulties she is having with it in that under general commercial zone C-3, some of the semi-restricted permitted uses are a repair service establishment which facilitates light repair work including auto repair such as tune-ups, transmissions, and truck repair. These are things that would be something that could possibly put out there. Some of the others just don't make sense that anybody would want to put them in there.

Under the Conditional Uses permitted underneath there, there are from one to twelve, quite a few of them - repair establishments, wholesale trade, contractor construction, dog kennels, bus depots, etc. One is the expansion of a structure with a non-conforming commercial or industrial use if the structure is not enlarged any more than 20%. That could happen in that particular area. Then one is a multi-family housing development which satisfies the standards for multi-family housing developments in an R-5 zone. One of her questions to the Commission is, is there any other zoning that this gentleman could put something like this in? Can they require him to come in with a PUD?

Mayor Benton said he would think so.

Ms. Goodman said forget the PUR, this is not redevelopment. A PUD, would that be a requirement if they are bent on allowing him to do this tonight? She doesn't like it. There are too many non-comparable uses allowed surrounding this area. She doesn't know how many homes are in Cardinal Estates. She didn't find out about what exactly was going on with this until this past week when her sister who lives on Areca Palm Drive called her to let her know what was going on. So she has not been able to count the number of single family homes in Cardinal Estates which has been there for very many years. As they can tell by their maps, it is Areca Palm Drive, Pressler Lane, Jeffrey Lane, and Plumosa Lane. It kind of makes a horseshoe or an A with a line down the middle which are other houses. It is fairly built out. Two problems she sees concerning all of this. Talking only about Tumblin Kling Road for the moment, it is not a standard road, it is not up to grade. Who is going to foot the bill bringing it up to grade? How many ingresses and egresses would there be into this development if it were allowed? She thinks they heard the majority of the people over there in that general area that absolutely don't want multi-family dwellings in this area right now. The way it is zoned, he could bring in something else, a single family perhaps, which would be compatible with what is already there. Tumblin Kling Road at the moment is a dead end street. It backs up to Gator Trace but does not go into Gator Trace. The traffic light at Tumblin Kling Road, she won't live long enough to see that one; but she is hoping that with continued effort with the City and with the County and with the State that they can get one up at Weatherbee Road. Not too long ago - and she is not yelling at the Commission - it was permitted on the west side of Weatherbee Road to put in apartment complexes. To this date the County nor herself had any idea what was extracted from that developer to make improvements on that road as it goes out east to U.S. #1 or goes west onto Oleander Avenue to take care of the traffic in there. The fact that he has nothing to bring to the table to them tonight makes her ask the Commission to turn this down until he has something in his hand that he can talk to them about. She liked some of the questions the Commissioners have asked tonight, she thinks those have been pointed, and she would like to see some of that pointedness and deliberateness also applied to this small piece of property at the southernmost point of where she thinks the City limits are right now. Hold their feet to the fire if they are going to approve it, but she is requesting that they do not. It is not compatible with what they have in there right now and she doesn't think it should be allowed at this particular juncture. As he has brought nothing with him to tell them he is going to put in 69 townhouse units on less than five acres also makes her wonder why would the City be willing to go to the expense of changing the comprehensive plan for five acres or

less? That is an expensive proposition. As she has just heard one man earlier withdrew his request until the comp plan comes back, maybe this would be a good time to ask him to pull back until the comp plan comes back to see what they all decide to do with that particular area. There are too many questions now tonight that have no answers and she doesn't think the Commission has enough information to make an intelligent decision this evening in favor of this petitioner. She asks the Commission to deny both the rezoning and the comp plan request.

Mr. Snyder said he thinks he made a mistake. He does have a site plan. He is not here for site plan approval tonight, but he does have a site plan that the engineers put together. He does value what all these people are talking about in their neighborhood. They don't know who he is. He manages shopping centers, redo them. He takes a lot of pride in what they have done and he would take pride in whatever they do in this neighborhood, he can assure them. He hasn't discussed the plan with them. But they purchased this property with the development in mind consistent with what is going on north with the Platts Creek property and they feel this would be right for this area. As a matter of fact, two things, he would like to show them, the site plan he has and some pictures of some of the households in the area.

Mayor Benton said they have the site plan.

Mr. Snyder said also he has some pictures they took of his properties to show them the general idea. (Mr. Snyder showed pictures to the Commissioners.)

Mayor Benton said unlike the other one, they don't have a clue what he wants to build.

Mr. Snyder said again, he is not here for site plan approval, he is here for the rezoning.

Mayor Benton said in his opinion - and he doesn't know about the rest of the Commission - before he was to go from one extreme in zoning to another extreme, he wants to know what Mr. Snyder is going to do and as many details as he can get. And he is not getting that tonight in what Mr. Snyder has presented. His question also would be like what Ms. Goodman asked, why wouldn't Mr. Snyder ask for a Planned Unit Development instead of going to Commercial?

Mr. Trias said because there is a minimum requirement of five acres for a PUD. Clearly and in his view, this is not a very good way to go around doing a residential neighborhood either.

Commissioner Coke said Tumblin Kling Road is residential and it will be the only entrance into this newly zoned commercial property. Is that allowed, to have the only entrance into a commercial piece of property run through a residential neighborhood?

Mr. Trias said yes, that would be allowed. It is a public street.

Commissioner Coke said she doesn't think she would like that.

Mr. Trias said right. This is clearly not meant to be a commercial parcel, at least in the representation of the applicant. And the

process they are going through is not the best. Frankly, he thinks he would prefer to see some other approach to this.

Commissioner Becht said to follow up on that, Staff has recommended approval of this. Is Mr. Trias reversing his...?

Mr. Trias said he has changed his mind.

Commissioner Becht said then staff is recommending denial of this?

Mr. Trias said tonight he has to recommend that this is not a good idea.

Commissioner Becht asked what is the consequence of 14 letters opposed? This is the first time since he has been on the Commission that they have had this occur. They have more than 20% apparently responding in opposition to the proposal. What happened with this?

City Attorney Schwerer said it takes 4/5ths vote to approve.

]Commissioner Becht said which he doesn't think Mr. Snyder is going to get tonight.

Mr. Snyder said they certainly have no desire to do anything commercial and he welcomes their suggestions. They purchased this and they would like to develop it. And if they can't get that kind of density, he asks what would the Commissioners recommend? He wants to please the neighborhood. He is happy to table this and talk to the neighbors. Again, he wants to do something that is compatible with what they would like; but also of course, what meets their needs too. That is what he would like to propose tonight.

Mayor Benton said his suggestion, the other project they approved tonight had a lot of details to it. They know what is going to be put in. He thinks it is going to be a quality project. But this one, because there is the big unknown... He doesn't know how the rest of the Commissioners feel, but maybe Mr. Snyder meeting with the neighbors would be something. If he came back with their blessing, it would be a whole new ballgame he is sure. But he doesn't think he has enough to make an educated decision on this right now. He could not support it.

Mr. Snyder said he can understand that. He thanks them all for their comments and he thanks the neighborhood. He would like to have the opportunity to talk to the neighborhood and see if they could agree on something. And he thinks then revisit this issue. That is what he would like to do. He thanks everyone very much.

Commissioner Alexander said he is in agreement with Mr. Snyder speaking with the neighbors on this. But his question is, of these 35 property owners, are these City citizens?

Mr. Trias said not all of them. Some of them are in the County.

City Attorney Schwerer said they are in areas proposed for annexation though.

Commissioner Alexander said when he sees 14 opposing, he agrees with the gentleman, go back to the neighborhood and find out what

they want.

City Attorney Schwerer said the gentleman is asking for tabling, but he can't really technically do that. He can only ask to withdraw. Unlike Mr. Klein earlier tonight, he can do that at this point in time because they haven't scheduled it for vote. So if he wishes to withdraw his application, he can; and then it is a dead issue. Otherwise, he can't technically request to table it. That is only an action the Commission can do. To formally withdraw, he has the option to do that.

Mayor Benton asked is this how he would like to go with this?

Mr. Snyder said yes, he would like to withdraw at this time.

Seeing no one further and hearing no one wishing to be heard, Mayor Benton declared the Public Hearing closed.

Commissioner Becht asked does somebody out there in the audience want to give Mr. Snyder their name and address so he can contact them? He doesn't know if they have had the pleasure of meeting one another yet.

Mayor Benton said he would ask that Mr. Snyder speak to Ms. Arlene Goodman in the audience.

Mr. Snyder said thank you very much.

The next item on the Agenda was Mr. Charles Jackson request Code Enforcement Board fine or lien against **1143 Avenue D** in the amount of \$14,200 be rescinded.

Motion was made by Commissioner Coke, seconded by Commissioner Nelson, that fine or lien against 1143 Avenue D be rescinded upon payment of administrative costs of \$540.37 within six months.

Commissioner Nelson asked does Mr. Jackson agree to pay \$540.37 within six months if they withdraw the lien?

Mr. Charles Jackson said yes.

Commissioner Alexander said as he read through this, he doesn't have any problem with Mr. Jackson paying his fee; but again, when he is reading where one of their (Code Enforcement) board members having to speak to individuals as he reads here, he is telling them all, he is appalled at the attitudes of the way they are speaking to the public. When he reads things that say, "...hey stupid...", he frowns on this. and if they don't come to some kind of conclusion on the way people have been spoken to, he just hopes they don't approach him with these kinds of attitudes. He doesn't care who it is. He frowns on this and he doesn't like this. When a person on the Board said, "...you have a pink slip that sits in your mailbox that says, hey stupid, go down and pick it up at the mail." Again, he questions these individuals on these Boards because of their attitudes. If they don't have any problems in life, good. He feels good for them. But when he keeps seeing them speaking to individuals like this, he really doesn't like it.

Commissioner Nelson said he didn't see that. What did he say?

Commissioner Alexander said on Page 15 (of the Code Enforcement

Board Meeting Minutes dated January 12, 2005). It says, "If you're sent a certified letter and you don't sign for it, you have a pink slip that sits in your mailbox that says, hey stupid, go down and pick it up at the mail." Again, he doesn't care who it is. He read that and his whole taste in his mouth went bad. Because he is really serious about these boards and the way they treat people in the community. The man had a legal objection to what was done, but he agreed to paying for that and he goes along with that. But again, they need to do something about the attitude of the people who serve on their boards.

Commissioner Nelson said he has to agree with Commissioner Alexander; and he hopes that the City Manager and/or the City Attorney who advises that Board will caution these people in this regard. People are due proper respect. Can they take care of that?

Commissioner Alexander said if anyone doesn't find this offensive then...

Mayor Benton said he finds it offensive and he will speak to Mr. Frischkorn himself. He thinks everybody should. He thinks when it comes time to reappoint people to these Boards who make comments like that, they should remember who they were.

Mr. Jackson said the reason he agreed to pay the debt, he is beat, he worked all night; but the reason he is here and that he came here is because he opposed it. The lien itself was rescinded and then he went to the Code Enforcement hearing and they rescinded it, and he was still sent the bill for that \$540.37. So it is like he is being a ping pong ball here. He sat here all night listening to all the other stuff tonight. And the thing of it is, the money is really not the problem, he is able to pay the money; but it is just really unfair. If the lien was rescinded, then why should he be fined? Really he wasn't even served. He was improperly notified. He was notified by the Harcon Corporation, which is his mortgage holder, and this was like six months later after the City had put a lien on his property which he had no knowledge of. At the time he received knowledge of it, he had the property brought up to code with no problem. He has no problem with bringing his property up to code if he is notified.

Commissioner Nelson said obviously Mr. Jackson has been wrongly aggrieved by virtue of the fact that this name-calling is there. He would just like to withdraw this motion they have on the floor.

City Clerk Steele asked is he withdrawing his second?

Commissioner Nelson said yes.

COMMISSIONER NELSON WITHDREW HIS SECOND TO THE MOTION.

COMMISSIONER COKE WITHDREW HER MOTION.

Motion was made by Commissioner Nelson, seconded by Commissioner Coke, that the entire amount, including the lien and administrative costs against 1143 Avenue D, be forgiven.

Those voting in favor of the motion were: Commissioners Alexander, Becht, Coke, Nelson, and Benton. Those opposed: None.

Mayor Benton said his wish has been granted.

Mr. Jackson said thank you all very much.

Mayor Benton said he apologizes for those comments that were made. They were definitely out of order.

The next item on the Agenda was Ms. Clercia Damour request Code Enforcement Board fine or lien against **1306 Georgia Avenue** in the amount of \$38,050.00 be rescinded (upon payment of administrative costs of \$541.94 within six months).

Commissioner Nelson said Ms. Damour had to leave early and she approached him and asked that he, on her behalf, ask that this be waived. She indicated she is willing to pay the \$541.94 within six months.

Motion was made by Commissioner Nelson, seconded by Commissioner Coke, that lien of \$38,050.00 against 1306 Georgia Avenue be rescinded upon payment of administrative costs of \$541.94 within six months.

Those voting in favor of the motion were: Commissioners Alexander, Becht, Coke, Nelson, and Benton. Those opposed: None.

The next item on the Agenda was Ms. Leila Barnes request waiver of interest, penalties, and fees against **1233 McCray Court** in the amount of \$1,387.61 (upon payment of lot clearing lien in the amount of \$1,350.00 within twelve months).

Motion was made by Commissioner Alexander, seconded by Commissioner Coke, to waive interest, penalties, and fees against 1233 McCray Court in the amount of \$1,387.61 upon payment of lot clearing lien in the amount of \$1,350.00 within twelve months.

Those voting in favor of the motion were: Commissioners Alexander, Becht, Coke, Nelson, and Benton. Those opposed: None.

The next item on the Agenda was Request by Carlos Barrena, **Treasure Coast Opera Society**, for \$1,500 to augment their budget for the production of Italian Opera in the Treasure Coast community.

Commissioner Coke said she knows they went back and forth in the budget for the amount they were giving to the Opera Society this year. Can they tell her how much they did in fact give to them?

City Manager Beach said it was \$20,000.

Commissioner Coke said as much as she loves the Treasure Coast Opera Society, it is her understanding that they are not performing any operas within the City limits this year.

City Manager Beach said he thinks there was a problem with facilities for that purpose, she is correct.

Commissioner Coke asked can they legally give them advertising funds to advertise something that is not within the City?

Mayor Benton said he met with Mr. Barrena the other day. What they are looking for is the advertisement leading to next year. They are already made for this year; but he guesses they hand them out

for next year. They are looking to print them so people know that hopefully next year the Sunrise Theater will be the place where the opera will take place next year. They looked all over and they came to his office several times. They did everything they could do to try to find them a place.

Commissioner Coke said she understands. She has worked with the Opera Society since the year they started.

Mayor Benton said he is not a big fan of the opera, but they looked everywhere in St. Lucie County with no luck at all.

Commissioner Coke said she loves the opera. She has worked with the Opera Society for years. But one thing she can tell them is, they normally give them \$15,000. This year they gave them \$20,000. Now they are looking at another \$1,500. As much as she loves them, they do have other organizations. And her concern is, if they have got that much money, then they are going to spend that much more money. She can't make a motion on it.

Commissioner Alexander said he just wants to know from Mr. Beach, when do they expect the Sunrise Theater to be open?

City Manager Beach said the current schedule is August of this year.

Commissioner Coke said the only other point she wanted to make is, the opera season is January, February, and March, so it is like done for all intents and purposes.

Mayor Benton said right.

Commissioner Nelson asked is she suggesting they don't give them any money this year?

Commissioner Coke said she is not making a suggestion. She was voicing an opinion.

Motion was made by Commissioner Nelson, that the request by the Treasure Coast Opera Society for \$1,500 be denied.

MOTION DIED FOR LACK OF A SECOND.

Motion was made by Commissioner Nelson, seconded by Commissioner Coke, to give the Treasure Coast Opera Society \$500.00 to augment their budget for the production of Italian opera in the Treasure Coast community.

Those voting in favor of the motion were: Commissioners Alexander, Becht, Coke, Nelson, and Benton. Those opposed: None.

City Clerk Steele introduced the following resolution by title only:

RESOLUTION NO. 05-03

"A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF FORT PIERCE, FLORIDA, CERTIFYING THE MAYOR'S REAPPOINTMENT OF **THERESA CARTER AS A COMMISSIONER OF THE HOUSING AUTHORITY OF THE CITY OF FORT PIERCE; PROVIDING FOR AN EFFECTIVE DATE.**"

Motion was made by Commissioner Becht, seconded by Commissioner Nelson, that Resolution No. 05-03 be adopted.

Those voting in favor of the adoption of Resolution No. 05-03 were: Commissioners Alexander, Becht, Coke, Nelson, and Benton. Those opposed: None.

City Clerk Steele introduced the following resolution by title only:

RESOLUTION NO. 05-04

"A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF FORT PIERCE, FLORIDA, CERTIFYING THE APPOINTMENT OF **CINDY TODD** TO THE **COMMUNITYWIDE COUNCIL**; PROVIDING FOR AN EFFECTIVE DATE."

Motion was made by Commissioner Coke, seconded by Commissioner Alexander, that Resolution No. 05-04 be adopted.

Those voting in favor of the adoption of Resolution No. 05-04 were: Commissioners Alexander, Becht, Coke, Nelson, and Benton. Those opposed: None.

The next item on the Agenda was Resolution Nos. 05-05, 05-06, 05-07, 05-08, and 05-09, Designating **Historic Properties** and Locally Significant Sites.

City Manager Beach said the Commission has the option of putting these off until the next meeting if they choose to.

Motion was made by Commissioner Coke, seconded by Commissioner Nelson, to postpone adoption of Resolution Nos. 05-05, 05-06, 05-07, 05-08, and 05-09 until the February 22, 2005, City Commission meeting.

Commissioner Alexander asked for what reason?

City Manager Beach said just the lateness of the hour. They can consider these if they want to, but there is nothing urgent.

Commissioner Alexander said okay. He just thought he would ask the reason. They have been kept up later than this.

Mayor Benton said that clock is not working. It says 9:35.

City Manager Beach said he did want to point that out. That clock broke two hours ago.

City Attorney Schwerer said it is now 11:22 p.m.

Those voting in favor of the motion were: Commissioners Alexander, Becht, Coke, Nelson, and Benton. Those opposed: None.

The next item on the Agenda was Mayor Benton to discuss **referendum** to set direction on height and density on **Hutchinson Island**.

Mayor Benton said what he is looking for here is three votes to at least word something. They have been fighting with developers for many years.

Commissioner Coke said to have a binding referendum.

Mayor Benton said a binding referendum so people know not to waste their time and ask can they go to six stories. For 20 years they went by what the referendum was, or at least he did, and he has been involved with the City on the Planning Board or sitting here for 16 years; and up until the last six months, he doesn't think they have ever had anybody really question that referendum. Comments were made to him that maybe the community feels differently today. He doesn't think so. In fact, he thinks they feel stronger today and especially when they look at the densities and the height restrictions in the two counties on either side of St. Lucie County. So he wants to send a message that three votes can't change the density and the height at any time. There are too many of them who have made a substantial investment to think that could change overnight.

Commissioner Alexander said he doesn't want to be in difference with the Mayor, but his only question is, the fight he just said for the last 20 years. He would be the first one and he hates to say that Fort Pierce, Florida, is going to be 20 years behind the average municipalities in the State of Florida. He is not here to advocate any extraordinary height, but they need to consider from the point that they are. Because the citizens of this community are crying about the tax base that they have to pay. And the Commission may, because of the hurricanes, next year they won't be able to decrease the millage, but they might have to... He doesn't know. He is just saying just arbitrarily not going along with saying this is the height it is going to be because after this Commission here, the next Commission might have some Commissioners who want to consider it. That is the riches of this community right now - their port, their inlet, and their beaches. If Port St. Lucie had these things, they would be on top of the world. He is not advocating to making a great drastic change, but to consider. And if it is what the people as they have got tonight, he is understanding of that. But again, they have prominent areas out there that he just looks at it and he doesn't think anybody on this Commission here wants to see it go to waste for the next 20 years. That is just his opinion about something.

Mayor Benton said he just wants to explain a few things. First of all, it is a barrier island. Second of all, there is a reason for 20 years with that philosophy. Now the world has found out about Fort Pierce and they want to get out of Dade County, Broward County, and Palm Beach County. Their property values have risen in some cases 200% or 300% out there on the island, which is going to bring their millage rate down. But what they are coming here for... Look at Martin County in particular, they have had four stories and 40 feet for a long time, and they have the highest per capita income and some of the lowest taxes in the State of Florida. Building quantity does not lower taxes; it is quality and raising the price. He thinks they have heard that earlier tonight with these folks who were in here. So that is something they have to take into consideration.

Commissioner Coke said first of all, she thinks everybody knows how she feels - four stories, 45 feet, eight units per acre. She sounds like a broken record even to herself. They have adopted this, it is part of their ordinances; and yet at the same time, at any given moment, any three of them can override it. Her concern is, not that they put it out for a referendum to see what the citizens feel, because she thinks they made their feelings well known this evening. Her concern is, if they know what the citizens

want, is there a way to enforce that or insure that it remains in force? Because she would like to see their tax base grow. Personally, she thinks annexation is more the key to that than being sure they have highrise buildings going up and down the beach.

Mayor Benton said right. What he put their Agenda packet, this is the way Martin County did it with a resolution (Resolution No. 02-7.10) and it is in their Comprehensive Plan. They know what happened down there, when they went against their Comprehensive Plan, the judge ordered the condominiums taken down. So that might be the way to go. He just felt that there were people up here talking that maybe the interest has changed in the community. He personally doesn't think it has because he has been dealing with this issue for 20 years and he worked very hard on that first referendum signing petitions. But he just thought maybe that is what it would take to convince this Commission to take that step.

Commissioner Becht said the agenda item says "...to discuss a referendum..." And if he understands that correctly, the Mayor is talking about doing the same thing they did 20 years ago, which is to put out a referendum. The Mayor included the material in the package and he did the courtesy and did read it. Martin County put it in their Comprehensive Growth Management Policy Plan. Fort Pierce is moving forward with dealing with all of the issues, not just the issues where they live over on the island, but the whole City is going to get dealt with and they are not going to cherry-pick and say let's deal with this problem first. What he would like to do it deal with all of them through the five year planning that they talked about at the workshop where they are going to amend the Comprehensive Plan; and they are going to talk about South Hutchinson Island, they are going to talk about the northwest section, they are going to talk about I-95, they are going to talk about the industrial area that they are trying to annex down south of here, if they could ever get the County out of their business.

Commissioner Coke said good luck with that.

Commissioner Becht said but he thinks to cherry-pick this for something that is hot for all the people who came in here is not the right way to do this. They need to have a consultant come in and they need to have the consultant talk about what it really means to adjust these things the way they are talking about adjusting them. He doesn't think they have enough material, he knows he doesn't have enough material before him, to intelligently talk about where they are going to set them and now they are going to set them tonight.

Commissioner Nelson said he has to agree with Commissioner Becht on that issue. It would be much more productive he thinks if they were to defer his to a time when they can discuss all of the ramifications, all of the issues, at a workshop of sorts to further address this type of action. Because making it at this hour of the night, as comprehensive as it might include, is not the best thing to do.

Mayor Benton said the reason he brought this up was, he was looking for a referendum; and also the wording would be, it would take a referendum to change it. Because first of all, Commissioner Becht's neighborhood is not being threatened by this, neither is Commissioner Nelson's. It is his neighborhood that has been

threatened with this.

Commissioner Nelson said his neighborhood has been threatened by it.

Mayor Benton said they are not going to build condominiums on Indian River Drive where Commissioner Becht lives.

Commissioner Becht said they just approved 85 feet tonight.

Mayor Benton said not on Indian River Drive and that will never happen. But the point being is, the pressure is not on their neighborhood or where they live. He has had to deal with this now for 16 years. And he just felt if the will of the people is to do this, then make it the will of the people to change it. It wasn't a binding referendum. If there is no interest to go further... But to him, he just felt it would save a heck of a lot of time. Because he reads about down south where they will change the density because they need the tax base from over there to spend over here.

Commissioner Becht said there is the momentum to move forward and they may end up exactly where the Mayor is talking about. But he would like to do it knowing all the ramifications of doing something like that.

Mayor Benton said okay. He was just looking to see if there was interest to go to the next step. To him, that is the next step.

Commissioner Becht said the next step to Mayor Benton is a referendum; but the next step to himself is to get the consultant here and he or she will tell them all of the ramifications of putting the lid on it, and this is how they can do it, or there is another way to do it. And the Commissioners get to pick and chose which one best serves the whole City and the barrier island.

Mayor Benton asked can they expect then that nasty word of "moratorium" or they will not approve anything over four stories on the island until they straighten that problem out? Because right now, if somebody comes in here and...

Commissioner Alexander said again, he is not in disagreement with Mayor Benton; but he is just saying, how they are going about doing it? Because they are talking about the pressure from on the beach. They are speaking about how many residents on the beach?

Mayor Benton said there will be several thousand soon.

Commissioner Alexander said but until then, 1,100 can't speak on behalf of the entire City. And again, he is not in disagreement with him. He just says let's level the playing field. Because maybe not there won't be any highrises in the northwest section, but at least...

Mayor Benton said one day there might be.

Commissioner Alexander said they have to be considerate about it.

Commissioner Coke said one thing she would like to remind everyone is that several years back, not too long ago, there was a movement

on South Beach to become South Hutchinson Island and not be a part of the City of Fort Pierce any longer. She would hate to see the City of Fort Pierce lose that tax base. But she would venture to say that if they don't do something to protect that island, that movement to become their own little city over there will raise it's ugly head again.

Commissioner Alexander said again, it is a difference of opinion; and she has her opinion and he has his. He is not in disagreement with her. Again, he is asking to go to some type of workshop so they will all be abreast to what is going on.

Motion was made by Commissioner Nelson, seconded by Commissioner Alexander, that this be deferred until they have a workshop covering this subject.

Commissioner Coke asked does that include a moratorium on passing anything that is over four stories and eight units per acre?

Commissioner Nelson said it covers...

City Attorney Schwerer asked can he ask them to hold off on discussing any moratorium whatsoever? Please.

Commissioner Coke said no.

City Attorney Schwerer said they are going to have to.

Mayor Benton said if they were to have a moratorium, they would have to notify and publicize it.

City Attorney Schwerer said they would have to go through a whole different step. Their comments are on the record. If they can just hold off on that moratorium issue and deal with...

Mayor Benton said Mr. Klein has stayed this long, hopefully he got the message earlier. And also not just height but density. That density is a big issue.

Those voting in favor of the motion were: Commissioners Alexander, Becht, Coke, Nelson, and Benton. Those opposed: None.

The next item on the Agenda was Letter from Douglas Anderson, St. Lucie County Administrator, regarding issue of Regionalization of Water and Wastewater Systems.

City Manager Beach said they have as part of their Agenda packet a couple of letters from Doug Anderson, County Administrator, to Bud Boudreaux, Director of the Fort Pierce Utilities Authority. They also have a letter from Mr. Boudreaux to the City Manager and also to the FPUA Board outlining discussions they had in this regard. Just to kind of get everybody at the same level of thinking on this subject. They had a joint meeting with the Fort Pierce Utilities Authority and St. Lucie County and the City Commission on January 14th. During that meeting, there was some direction given to staff that in some people's opinion has - he thinks the word Mr. Boudreaux used was metamorphosis - into a different subject. They had a meeting to discuss what they thought was the regionalization of a wastewater treatment facility and that discussion somehow went from there to the concept of combining the Fort Pierce Utilities Authority facilities with County facilities and coming up with one

complete regional facility. On one on one discussions with City Commissioners, the feedback he was getting from them was that was not their intention. Their intention had to do with the regionalization of facilities as opposed to regionalization of ownership or anything of that nature. It is being brought to their attention tonight for clarification of that position. Mr. Boudreaux is here. County Commissioner Craft is here. Everybody should have whatever input they need to give them some direction.

County Commissioner Chris Craft said during the meeting back in January, there was something he had suggested early on or asked the question of both the City of Fort Pierce as well as the County Commissioners and also the FPUA Board members. He asked if they would be interested in entertaining discussion of the possibility of regionalizing their water as well as wastewater. He does believe that was a unanimous yes, that everyone would like to take a look at it. And after that conversation, he directed staff to move forward and find out what they could do. Could they do this in a way that the City is still guaranteed all the revenue plus the growth they have experienced over the past years and what they are expecting in the future? Can they do this in a way that guarantees the City's annexation boundaries as already outlined through a meeting back last year? Can they do this in a way that removes the wastewater facility from the island in a timely manner? Which he thinks they can all agree is of utmost importance. And in doing this and in order to answer those questions, the County Administrator put together a list of questions to the FPUA to see if it is something they can do, if it is something they would like to do. The County believes they can do this together, not the County take it over. They are asking to move forward in a manner that is equal representation somehow of the City and the County. He wants the City to maintain the amount of control they have over the utilities. He wants the County to maintain the amount of control they have over what their service area is. That was the direction given to staff. And if in any way it would negate or take anything away from the City, he wouldn't want to move forward. But he wants to see if there is the opportunity to move forward, to sit down with the City Commissioners and really work this out to see if it is something they can do. And if it requires an outside audit or an outside consultant to take a non-biased opinion and approach of doing this, then they need to do so. There are other funds that may be available to them that he has learned over the last week through the State or the Federal Government if they decide to merge their two utility companies. In doing so it gives them a much better position to move the wastewater facility from the island and help reduce the rate. He does believe Mr. Boudreaux stated in the paper he felt that merging the two utility companies would reduce the cost to the customers. And if they are able to do this, he thinks that is really the question they should be asking themselves. Can they reduce the charges, the fees to their customers? In asking that question, his answer is yes. Answering it yes, then he thinks they need to look to see if they can make this happen. He understands it is a complex issue. He understands there is a lot of work, a lot of effort that is going to have to go behind it. But he thinks they owe it to the citizens of Fort Pierce and to St. Lucie County to at least explore the opportunity. Also, there is another side of it. What comes of the site where the wastewater facility is? Is there something that would give greater economic impact to the City of Fort Pierce or to St. Lucie County? They need to explore this in a holistic fashion and not piecemeal it. There has been a lot of talk tonight by Commissioner

Alexander and others about, they need to do something about their tax base. Well, that property may be a nice key to help diversify the taxes and help generate some extra revenue for the City. That is kind of in a nutshell what he has been proposing.

Commissioner Becht said Mr. Boudreaux was present at this meeting; and he and Mr. Boudreaux have had other conversations where - and he doesn't want to put words in his mouth - but part of his willingness to go forward with this was Mr. Boudreaux's statements that it was time and it could work for regionalization. What did he mean when they were talking to each other about regionalization?

Mr. Elie Boudreaux, Director of the Fort Pierce Utilities Authority, said there is a huge difference between regionalizing a facility, be it a wastewater treatment facility or a water treatment plant, as opposed to regionalizing a utility. It is kind of like the difference between a lightning strike and a lightning bug. On one hand is the regionalization of a wastewater treatment facility, where they have two utilities sharing a facility, it is very economical. He has seen it work before. And it doesn't take the creation of a third utility to do that. It just takes an Interlocal Agreement on constructing it, operating it, maintaining it, etc.

Commissioner Becht said okay. Then walk him through something, because stepping back from this... He and County Commissioner Craft have talked about this before. He said to him, when they touch the City's water, they touch the holy grail, and they need to be real careful about talking about that. But stepping back, they see mergers all over the country in the private sector. Outside of the politics of merging the Fort Pierce Utilities Authority and the St. Lucie County Utilities Authority, he sees benefits in reduction of staff and perhaps lower cost to consumers. These folks up here will talk about the political problems all day long. What does Mr. Boudreaux see as being the fundamental problems with running that organization? What is wrong with that?

Mr. Boudreaux said when they talk about merging staffs and enjoying an economy of scale, the County has a very small utilities staff, he thinks on the order of maybe seven people or thereabouts. The Fort Pierce Utilities Authority water and wastewater staff, they have a total of 260 people, some of them are electric.

Commissioner Becht said so they are not going to experience the economy of scale with the employees.

Mr. Boudreaux said electric is not a part of this nor is gas a part of this.

City Manager Beach said one analogy he heard was merging FPUA and St. Lucie County utilities would be like merging Charlie's Dodge and General Motors. It is not much of a merge.

Mr. Boudreaux said there is an issue of control here. And they may not like the sound of that word because it sounds so strong. But the situation as it is right now, the City of Fort Pierce owns the water and wastewater utility. The City owns it and controls it through the Fort Pierce Utilities Authority and to a great extent the Commissioners decide where things are going to go. He says that reminding them that they approve the budget, they control the rates, and they appoint Board Members. He thinks they have found

that the Fort Pierce Utilities Authority as a group is very responsive to the needs and desires of this City Commission.

Commissioner Becht said right. Those are political reasons. He was looking from a management standpoint.

Mr. Boudreaux said he will finish this up real quick. When they talk about merging the St. Lucie County Utilities with Fort Pierce water and wastewater utilities, they are going to give control of that to a third party. The third party agency is going to be made up ostensibly of County people and City people. He doesn't know if it is going to be City Commissioners, County Commissioners, appointed members by the City Commission for Fort Pierce, or appointed members by the County, to comprise the governing board of this new utility. But the fact of the matter is, they have it all right now; and for the life of him he cannot figure how it would benefit this City to give up control of that utility.

Commissioner Becht said let him tell them what he sees. What he sees is they have the benefit of the box, but they are trapped inside the box. And if the City has the ability to pick up all of the unincorporated County...

Mr. Boudreaux said that is not what the County is proposing.

Commissioner Becht said the City can make counter-proposals and they can work something out. But to say there is no benefit in it, Mr. Beach told him the same thing. What he sees is they are trapped inside the box; and that may be five years, that may be fifteen years, it may be fifty years, he doesn't know. But if he had the ability to achieve something for the FPUA, which is they get to participate in everything in the unincorporated area, then there is some value to that, whether it is next year or five years from now he doesn't know, but there is some benefit in that.

Mr. Boudreaux said trust him, they would not be doing anything good for FPUA and he doubts that they would be doing anything good for the City. But that is a City Commission decision. When they talk about economies of scale of combining the two utilities in terms of manpower, he doesn't think he is going to see any great savings. The Fort Pierce Utilities Authority has a staff right now that can deal with a utility probably 50% larger than theirs simply by adding on maybe 10% more workers. They have enough supervisors, they have a going concern here. They can provide the wholesale services to St. Lucie County. If they are just interested in regionalizing utilities, the FPUA could buy the St. Lucie County utilities, pay them the book value for it, and operate the system as is laid out in that bulk agreement that they signed less than a year ago.

Commissioner Becht asked then where do they get the control? The same argument Mr. Boudreaux gives for not letting the County in, how does he respond to the County and make it fair and enticing to them?

Mr. Boudreaux said he refers them back to Mr. Beach's analogy.

Commissioner Becht said when it gets political, Mr. Boudreaux will defer it back to Mr. Beach.

Mr. Boudreaux asked they are talking about a merger?

Commissioner Becht said no, let's buy them out; but let's give the County the control that the City is so resentful about letting them participate in how it works.

Mr. Boudreaux asked how can they give the County control?

Commissioner Becht said hang on one second. He talked to Mr. Minton about this and he says it has been done in Okeechobee, if he is not mistaken. He doesn't know how to do it, but it just seems like a good idea that they ought not just to immediately scoff at it.

Mr. Boudreaux said if they want to turn control of their water and wastewater systems over to a third party, that is a City Commission decision.

Commissioner Becht said he wants to make sure he is getting something of value for it. What he perceived was, if he gets the right to participate in all the growth that is going to happen in the unincorporated area, if he had the ability to perhaps jointly with the County run lines that stop Port St. Lucie's cancerous growth north, then those are good things. Are they worth giving up the control? Well, that depends on how it is set up; and he doesn't know how to set it up yet.

Commissioner Coke said they already have an Interlocal Agreement with Port St. Lucie. They won't come north of Midway Road.

Commissioner Becht said no, Port St. Lucie is already north of Midway Road.

Commissioner Coke said east of I-95. That was the Interlocal Agreement.

Commissioner Nelson said he has something to say on where they are going here. He thought they were looking at providing regional services as opposed to instituting some type of merger. If they were to objectively look at providing regional services, then they can decide later on as to how they are going to staff or man those services. Why are they talking about merger now? He charged them some time ago to address whether or not they need to buy out the utilities from the County, but they came up with their service agreements and all that seemed to have gone away. It is a late hour and some of them get rather emotional about this time of night. But he is not talking about a merger. He doesn't even want to talk about a merger until he knows that consistent with what is going on throughout the state and perhaps the nation now, regional planning and regional services is the name of the game. They are doing it right now with the Committee for Sustainable Growth and this kind of business. They are trying to do it in the school system. They are doing it with the airports, these regional hubs and all this kind of business. So let's concentrate if they would please on the idea of providing the service; and then they will staff it, then they will man it, whatever the case may be.

Mr. Boudreaux said they are providing services right now. They signed an agreement with the County that they would provide the services outside of the box and that is a workable agreement. The services are going to be provided. They won't be provided any cheaper one way or the other. And he does want to comment on what County Commissioner Craft said; and that is, he never said that

they could enjoy economies of scale by merging the two utilities, because he never considered merging the two utilities. He thinks that is a bad idea for the City of Fort Pierce. He can assure them he never said that was a good idea economically. What he would have said and he will say it again, is having a joint facility to treat wastewater or to add a water production facility is a good idea economically, not so much right now with water, but with wastewater. It is a good idea. That is all he ever said.

Commissioner Becht said he didn't mean to imply that he said anything other than the one regional wastewater facility.

Mr. Boudreaux said no, County Commissioner Craft said he said that earlier.

County Commissioner Craft said that quote came out of the Tribune. It wasn't his quote. He is sorry. The quote said, "Yes, I believe it could reduce the rates to our customers, but I do not want to give up control." That was the exact quote. If it was taken out of context, he apologizes and he didn't talk to him about it. That was not his intention to come in and mis-represent him by any stretch of the imagination. The question was posed this evening and it was posed in the office when they had this conversation earlier. It was, what is the benefit to the City of Fort Pierce? Well as far as he is concerned, the City of Fort Pierce is the people, St. Lucie County is the people. It is not the Commission. It is the people. And if they have an opportunity and if they agree that they all think there may be an opportunity to save their customers, the taxpayers, the citizens of this community both the City and the County, he is just asking for the opportunity for them to sit down and explore it. To Commissioner Nelson's point, in order for them to move forward and find out if this is going to work, they have got to make the next step. The next step hasn't been made. It has been looking at other things, but they need to look at regionalizing their utilities in St. Lucie County with Fort Pierce. They need to look at this together. How can they make this work together? If they sit down collectively and have taken an honest look at it and decide that it won't work, then that is fine and he will settle for that. But until they take an opportunity to do exactly what he is asking, he is not going to be satisfied and he doesn't think the City Commission is either. Because they are all going to be sitting here and wondering if it would have worked? Well, he is tired of asking the question, "I wonder if." It is time for them to make action, to move forward, and see if they can't come up with a plan that is going to be better for the people and for the City and for the County.

Mayor Benton said the other day he spoke about this with Commissioner Craft. He and Mr. Beach met with the County. What Commissioner Craft was asking basically was maybe forming a panel, if there was interest from both Commissions. This hasn't been brought to the County Commission yet.

County Commissioner Craft said correct.

Mayor Benton said he was looking at possibly, if there was interest, forming a panel - maybe a couple of Commissioners from each Commission with staffs discussing the issue. Moving forward with a joint facility was something they agreed needs to be done now. But this other is something he just wants to look into.

County Commissioner Craft said absolutely, that is all he is asking.

Mayor Benton said he sees there was maybe possible interest in doing that here, so that is why they are discussing this tonight.

Commissioner Alexander said he won't hold them up on his comments, but his question is to staff and to the Commissioners. If they go into an Interlocal Agreement with the wastewater system, where is that going to place the County as far as the FPUA Board? Are they going to be a member of that Board? How are they going to do that? Again, when it comes down to ideas in this community, they can't challenge every idea that comes into this community. Again, they need to just sit down and make an effort at least so it won't ever be something hanging over their head. He remembers, he doesn't know whether it was Mr. Beach who gave Mr. Boudreaux a charge about going to the County to see if they want to buy FPUA, but he thought at the time it was a joke. Some things come back to haunt them.

Commissioner Coke said it was her understanding when they had this meeting and discussed a regional facility that they were discussing just that, a regional facility, one that would be operated jointly. The St. Lucie County Utilities would maintain their seven staff members, the Fort Pierce Utilities Authority would maintain their 200-plus. It kind of goes along the lines of, she doesn't think it would be fiduciarally responsible of her to take an organization that employs 230 citizens and generates "x" number of dollars of revenue a year and give half of it to the County.

(Commissioner Nelson left the meeting at 11:55 p.m.)

County Commissioner Craft said they are not asking the City to give anything to the County.

Commissioner Coke said she understands that. Her biggest problem, aside from the fact that it makes no sense to her to give away half of something that the citizens of this City owns, to let them share half of that with the entire County residents, everybody else is side stepping the issue. The issue here is, the only way the City of Fort Pierce might possibly be allowed to grow, after much litigation and lawsuits and mediation, is going to be through their annexation agreements. And if they join and merge - because the word keeps coming up, merge, not a joint facility - but if they merge with the County's Utilities Authority, that completely does away with their annexation agreements. Obviously they can't get the support from the County to grow and annex by legislation. The County is not going to support that and they have made that loud and clear. So where is the City going to expand their tax base? She would put it to them that the same as two years ago and the year before and last year, they discussed all these things that endangered their annexation policy, that it would in essence murder the City of Fort Pierce. They might as well take out a gun and shoot it, because if the City can't annex and can't grow, they are dead in the water. And if they give up their only means to do that, then they have killed the City.

Commissioner Becht said just to respond to that. His conversation with County Commissioner Craft was the annexation policy on whatever entity or entities evolve out of this discussion, the annexation policy inside the box is going to stay the same.

City Attorney Schwerer said it may not survive. He did not mean to interrupt. It is very late. He didn't understand this discussion was going to take place tonight. But he would like the opportunity to brief the Commission on some very serious legal issues. They have a lot on the plate when they are talking about that, because the only justification they have in creating that box is that they sell retail to those customers who are inside that box and all they did outside the box is put water into a bulk line and the County manages that entire system. They have a bulk agreement with the County and they had a retail service base and retail customers within that. If they conceptually merge and a company is now providing services, there is a substantial legal issue as to whether or not they could force those persons in the box, who are now buying the same water from the same company, to annex. He doesn't want to go into that in great detail, but that is a very real concern.

Commissioner Becht said he just believes there are solutions here. They are immediately saying no, it can't be done; and they are missing an opportunity. What seems to him might work regardless would be joint venturing with the County, maintaining their independent authority, and they joint venture outside in the unincorporated area. The other way of looking at this, and this is the way he had initially looked at it, is they take baby steps and see if they can do one facility and see how it works and kind of figure it out as they go. But he would ask the Commission to keep an open mind that there can be good things that come of this. Anytime they talk about change, it is going to be painful; but there can be good things that could come of this. He just thinks they just need to explore it a little bit more.

County Commissioner Craft said all he is asking is that they keep an open mind and they sit down and look at this before they close the door on it. He felt as if there were some parties wanting to have happen is just close the door and let's not have these conversations any more. He wants them to challenge him and he wants them to want him to challenge them. That is what is going to make them better. It is what is going to make them look into the future and see what is truly best for their people. He is here tonight, he stayed around until midnight because he believes in this and he believes that together they can do something that is greater than what they have. He made a statement at the joint meeting, he wants to make sure they are providing the highest quality product at the lowest possible cost to the customers, to the citizens, to the people of St. Lucie County, of Fort Pierce, and one day maybe even Port St. Lucie. That is what he is asking them to do is just take a look at it.

Mayor Benton said he thinks he agrees with Commissioner Becht, he thinks they are taking that first step. In their jobs they have to have an open mind, because if it does benefit the public one way or the other. It is going to be a long road getting there, but he thinks they definitely don't want to slam the door on it. At least they are going to be building a joint facility and he thinks that is heading down the right path and with that they will see how that goes. If that goes well, he doesn't want to close the door on this either.

County Commissioner Craft said if he may, if he could get maybe a consensus of the City Commission so he can take it back to the County Commission, they meet tomorrow. If they can have a couple

of members of the City Commission and maybe their staff that they could set up a meeting in the future to sit down and discuss these things to find out where they want to go and explore some different ideas and different avenues. He would really like to have that, if it is at all possible.

Commissioner Becht said why don't they take baby steps. Why don't they just go back to find one thing. The one thing Mr. Boudreaux told him was a wastewater facility makes sense. And if they can go back to that and maybe kind of get that done, then maybe they can see how to deal with all the host of other issues that are going to come up as they try to move forward.

City Manager Beach said this may lead them to the next step.

County Commissioner Craft said he can appreciate that. But what he is asking is if they can have a group of them to get together on a regular bi-monthly basis and just discuss what they think is happening, what they think of discussions that are taking place.

Commissioner Becht asked is he buying lunch? Because he will be there.

County Commissioner Craft said yes, he is, if it makes this go.

Mayor Benton said any time he calls him, he is there to listen. He knows they have a forum already where three of them get together, but they haven't lately and he hopes that is coming up very soon.

The next item on the Agenda was Report on property owners authorization for **Sprinkler System** in buildings adjacent to the proposed **City Parking Garage**.

City Manager Beach said he would like to make this just as brief as they possibly can, so if Mr. Trias would hold on for a second. They will go into this in whatever detail the Commissioners want to go into it, but it is after 12:00 midnight. They did talk with all of the adjacent property owners. The owners essentially agreed if the CRA would fund the sprinkler process, they would do it. Now, they also have answers to all those other questions that the Commission brought up at the last meeting; but if they are going to listen to that and talk about it, they are going to be here another 20 minutes. There is no action that has to be taken. They don't need any action taken at this point. It can be brought back to them for site plan approval either at the next meeting or the first meeting in March, and then they can go into these details of the questions they had the last time. Again, they are prepared to go into them tonight if they all want to devote another 30 minutes.

Commissioner Alexander asked seeing it is going to come out of the CRA budget, but what part of that budget are they going to find this money that has not been appropriated?

City Manager Beach said he is sorry, he does not understand.

Commissioner Coke asked where are they going to find the money in the CRA budget?

Commissioner Alexander asked where is he going to find the \$200,000?

City Manager Beach said it would come out of the CRA budget.

Commissioner Alexander said he is aware of that, but they already appropriated the monies.

City Manager Beach said they have appropriated the bulk of it. But just as an example, their anticipated revenue for next year is coming in at about \$250,000 higher than was in the original proposed budget, so they have that. Another issue is, they had budgeted \$1.3 million for debt service; but because they didn't sell the bonds last year, their debt service is only going to be about \$700,000, so they have more money to allocate there.

Commissioner Alexander asked so they balloon the budget to get to this point here now justified? Are they below the budget?

City Manager Beach said no, they did not. They got the final figures in from the tax appraiser that caused the revenue to go up \$250,000 and they simply did not get the bond issue sold that they anticipated having a debt service on for this year and they are not going to have it. Even without that, it would be a matter of re-prioritizing the expenses, if that is what it took to make it happen.

Commissioner Alexander said he understands all that and he looks at these figures that are coming in every year and all the monies and all the ideas are going still for downtown, and he has a problem with that. He won't go any further with this because it is what is best for the community; but then again, somewhere down the line they are going to get a nay from him. He is serious.

Mr. Ramon Trias, Director of Development, said he can describe three options in about 20 seconds. (Mr. Trias displayed drawings.) Option 1 is the one they all know about, the sprinklers, is \$180,000 or less. Option 2 is removing 15 feet from the parking garage; and maybe they can make it fit with the other 5 feet that are on the adjacent properties. That is going to be about \$1.38 million because it requires an extra floor. Option C, which is taking 20 feet and definitely having no problems meeting the code and so on, is about \$4.2 million because it requires three extra floors. The reason is that all of the parking that goes here is removed. Those are the three options and if they want any more detail he can give it.

City Manager Beach said no. They just had this discussion not to talk about this, now Mr. Trias brought it up, and now they are going to talk about it.

Commissioner Alexander said he is not going to talk about it. He wants to ask Mr. Trias how much time he spent on coming up with these three options?

Mr. Trias said the architect worked on it last week and these are fully designed and those are very realistic options. The reason he is bringing this up is that they need to continue with the construction documents and they cannot spend any more time wondering about what the final design is going to be, if they want to remain in the time frame they have demanded.

Mayor Benton asked do they have one that was without retail space?

Mr. Trias said that adds 10 spaces to the parking garage.

Commissioner Alexander said that is \$1.4 million.

Mr. Trias said here there are many utilities so it is not possible to construct the parking garage going that way.

City Manager Beach said these are all the issues they were going to discuss with them in detail when it comes back before them.

Commissioner Alexander asked how are they going to go forward with this process?

City Manager Beach said his understanding is that they are continuing to go forward with the existing design.

Commissioner Alexander said okay.

Commissioner Becht said he would hope that the \$180,000 could be brought before the CRA the next time they meet in some kind of format so they can move forward on that.

The next item on the Agenda was Director of Building & Community Response to discuss revision of **Building Permit Fees** to cover related permit and inspection costs.

City Manager Beach said if the Commission is agreeable to what is being proposed here by the Building Official, the Commissioners could state that and Staff would prepare the necessary ordinance to present to the Commission in the future. If they are not agreeable to it and they would like to discuss it, his suggestion would be that they postpone it to another meeting.

Commissioner Alexander said postpone it.

Commissioner Coke said she thinks it is a fine idea for the Building Department's permitting area to be paying for itself rather than the general citizens and she would support it.

Mayor Benton said he knows they haven't had a chance to decipher it. There was something in here. Is this the one where if somebody was going to rehab their home or if the property owner who has homestead exemption was to take out a permit, it wouldn't cost him anything, and then inspections also?

Mr. John Alcorn, Director of Building & Community Response, said that is right.

Mayor Benton said he has no problem with it. The rest of the details he hasn't looked at, but by the time it comes back in front of them he will have an opportunity to see it then.

City Manager Beach said if Staff proposes an ordinance to them, they still have the option of accepting it or rejecting it or revising it.

Commissioner Becht said he is in favor of it.

Mayor Benton said bring it back.

City Attorney Schwerer said as an ordinance for discussion.

Mayor Benton said right.

The next item on the Agenda was Direct or of Development to advise of his approval of a **Minor Replat** for property located on Metal Drive within Crossroads Park of Commerce, Parcel 1 (Comfort Suites) a Parcel 2 (Best Western).

Mr. Ramon Trias, Director of Development, said Staff has reviewed the application and he has approved it.

Monday, February 21, 2005, is President's Day Holiday in the City of Fort Pierce. All City administrative offices, with the exception of the Police Department Public Safety Services, will be closed. There will be regularly scheduled garbage and/or trash collection on that day. The City Commission meeting normally scheduled for Monday will be postponed to Tuesday, February 22, 2005.

There being no further business, Mayor Benton declared the meeting adjourned at 12:10 a.m.

Adjournment.

ATTEST:

CITY CLERK

MAYOR COMMISSIONER