

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, AUGUST 21, 2006.

Mayor Benton called the meeting to order.

Pastor Ron Engel, Trinity Lutheran Church 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.

The next item on the Agenda was Approve Minutes of the Regular Meeting on August 7, 2006.

Motion was made by Commissioner Coke, seconded by Commissioner Alexander, to approve the Minutes of the Regular Meeting on August 7, 2006.

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

Mayor Benton proclaimed September 11, 2006 as "St. Lucie County Fire Fighter Appreciation Day." Al Votinelli and Nancy Norton were present to receive the proclamation.

Mayor Benton said he thanks Mr. Votinelli and all the fire fighters. Every year he sees him out there on the streets collecting for this. It is a great thing they do.

Mr. Al Votinelli said he would like to share on behalf of the men and women of this fine Fire District, it is a tremendous pleasure to serve the community in fire rescue, but also to serve in such a way that they have betterment for the community. The Muscular Dystrophy Association happens to provide a tremendous amount of inspiration and hope for the children as well as adults who suffer from neuromuscular diseases. They also provide many benefits, medically necessary equipment. They feel a great sense of pride to be able to pitch in and help in their great effort. There is one variable. Although the fire fighters have worked very hard to raise this money, the variable still exists that the wonderful people of the community of the City of Fort Pierce as well as countywide have certainly stepped up to the plate and offered a tremendous effort themselves in offering money at the various intersections. On behalf of the men and women, he is proud to accept this proclamation.

The next item on the Agenda was Mr. Jim Freitas, **Fort Pierce Billfish Derby**, to present trophy for public display to the City of Fort Pierce.

Mr. Chris Berkeley said he is standing in for Jim Freitas. He is the original founder and owner. Recently Mr. Freitas has taken over the tournament, but he can't be here tonight on a prior business engagement. They have had this tournament three years, coining the name Fort Pierce. This event takes place in January at the City Marina. It may be under the radar screen, but it really catches a lot of national attention, they are on FOX television. They have a website that captively entertains a million people a week during January, fortpiercebillfish.com. This is a very nice trophy. It is solid mahogany with a bronze trophy. The fish itself spirals, there is a motor underneath it. They have kept it

in his office, which kind of under serves its importance for visibility. They want to award it to the City and put it up in City Hall or the City Marina where it should be. And they want to work with the City in the future in putting on a better event. It is growing. It is different from most tournaments. It is a high dollar event. They paid out \$135,000 in cash last year. The average visitor has a \$2 million to \$4 million boat. They pump up 1,000 gallons of fuel a day. They know how much fuel is. This is a good tournament. It is not hamburgers and hot dogs. They appreciate everything the City has done for them. They hope they are making a positive impact themselves.

Mayor Benton said thank you. He knows how much effort Mr. Berkeley in the last three years has put into this personally. It couldn't have happened without all his effort and his committee's help. Also, it went from 13 or something boats the first year to last year they had a great turnout. Also the pay-outs, he hears from the captains, is probably the best pay out of any of the sailfish tournaments in the State of Florida.

Mr. Berkeley said there is a lot of good momentum with this tournament. They have visitors from as far north as the Viking Team from New Jersey, as far south as Venezuela. This is the master style tournament of fishing. They promote catch and release so the fish are not killed, they are let go safely. This happens to be the City logo, it is an Atlantic Sailfish. There are a lot of consistencies with the whole program. They are really excited about it. They have fished all over the world themselves and they wanted to bring some special attention to a great fishery here and try to show those guys in Stuart that they don't have it down there.

Mayor Benton said they can display that out in the lobby with pride.

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

Letter from Bransom Bean, Second Street Station LLC, in gratitude of the superlative service and exemplary professionalism received from Kara Wood, Urban Design Planner, and Kia Powers, Historic Preservation Officer.

Email from Linda Wilson expressing appreciation to Police Community Service Aide Tiera Lewis-Mimms for her generosity.

Letter from J.T. Gorman, Assistant State Attorney, commending Fort Pierce Police Officer Kristen Anderson for her diligence and cooperation.

Ordinance No. K-435 entitled, "AN ORDINANCE EXTENDING THE TERRITORIAL LIMITS OF THE CITY OF FORT PIERCE, FLORIDA, TO INCLUDE PROPERTY LOCATED AT **1901 PONCE DE LEON PRADO**; DIRECTING THE ST. LUCIE COUNTY PROPERTY APPRAISER TO ASSESS SAID PROPERTY AND PLACE IT ON THE CITY TAX ROLLS AS OF JANUARY 1, 2007; DIRECTING THE ST. LUCIE COUNTY TAX COLLECTOR TO COLLECT TAXES ON THE HEREIN DESCRIBED PROPERTY; CERTIFYING PUBLICATION OF THIS ORDINANCE; ZONING SAID LAND; ESTABLISHING THE FUTURE LAND USE DESIGNATION; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HERewith; AND PROVIDING FOR THE EFFECTIVE DATE HEREOF." was placed on first reading and read by title only. (Property Owner: Luis Couvertier)

Ordinance No. K-436 entitled, "AN ORDINANCE EXTENDING THE TERRITORIAL LIMITS OF THE CITY OF FORT PIERCE, FLORIDA, TO INCLUDE PROPERTY LOCATED AT **815 TUMBLIN KLING ROAD**; DIRECTING THE ST. LUCIE COUNTY PROPERTY APPRAISER TO ASSESS SAID PROPERTY AND PLACE IT ON THE CITY TAX ROLLS AS OF JANUARY 1, 2007; DIRECTING THE ST. LUCIE COUNTY TAX COLLECTOR TO COLLECT TAXES ON THE HEREIN DESCRIBED PROPERTY; CERTIFYING PUBLICATION OF THIS ORDINANCE; ZONING SAID LAND; ESTABLISHING THE FUTURE LAND USE DESIGNATION; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; AND PROVIDING FOR THE EFFECTIVE DATE HEREOF." was placed on first reading and read by title only. (Property Owner: WP Homes LLC)

Ordinance No. K-437 entitled, "AN ORDINANCE EXTENDING THE TERRITORIAL LIMITS OF THE CITY OF FORT PIERCE, FLORIDA, TO INCLUDE PROPERTY LOCATED ON THE WEST SIDE OF SOUTH U.S. HIGHWAY #1, SOUTH OF HIGH POINT BOULEVARD AND NORTH OF SOUTHLAND DRIVE, AT **3317 SOUTH U.S. #1**; DIRECTING THE ST. LUCIE COUNTY PROPERTY APPRAISER TO ASSESS SAID PROPERTY AND PLACE IT ON THE CITY TAX ROLLS AS OF JANUARY 1, 2007; DIRECTING THE ST. LUCIE COUNTY TAX COLLECTOR TO COLLECT TAXES ON THE HEREIN DESCRIBED PROPERTY; CERTIFYING PUBLICATION OF THIS ORDINANCE; ZONING SAID LAND; ESTABLISHING THE FUTURE LAND USE DESIGNATION; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; AND PROVIDING FOR THE EFFECTIVE DATE HEREOF." was placed on first reading and read by title only. (Property Owner: Fort Pierce SS LLC)

Ordinance No. K-438 entitled, "AN ORDINANCE EXTENDING THE TERRITORIAL LIMITS OF THE CITY OF FORT PIERCE, FLORIDA, TO INCLUDE PROPERTY LOCATED ON **THE WEST SIDE OF SOUTH OCEAN DRIVE, AND SOUTH OF JESSAMINE STREET, IN SURFSIDE HARBOR**; DIRECTING THE ST. LUCIE COUNTY PROPERTY APPRAISER TO ASSESS SAID PROPERTY AND PLACE IT ON THE CITY TAX ROLLS AS OF JANUARY 1, 2007; DIRECTING THE ST. LUCIE COUNTY TAX COLLECTOR TO COLLECT TAXES ON THE HEREIN DESCRIBED PROPERTY; CERTIFYING PUBLICATION OF THIS ORDINANCE; ZONING SAID LAND; ESTABLISHING THE FUTURE LAND USE DESIGNATION; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; AND PROVIDING FOR THE EFFECTIVE DATE HEREOF." was placed on first reading and read by title only. (Property Owner: Glenn & Barbara Enriquez)

Ordinance No. K-439 entitled, "AN ORDINANCE EXTENDING THE TERRITORIAL LIMITS OF THE CITY OF FORT PIERCE, FLORIDA, TO INCLUDE PROPERTY LOCATED AT **2591 MCNEIL ROAD**; DIRECTING THE ST. LUCIE COUNTY PROPERTY APPRAISER TO ASSESS SAID PROPERTY AND PLACE IT ON THE CITY TAX ROLLS AS OF JANUARY 1, 2007; DIRECTING THE ST. LUCIE COUNTY TAX COLLECTOR TO COLLECT TAXES ON THE HEREIN DESCRIBED PROPERTY; CERTIFYING PUBLICATION OF THIS ORDINANCE; ZONING SAID LAND; ESTABLISHING THE FUTURE LAND USE DESIGNATION; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; AND PROVIDING FOR THE EFFECTIVE DATE HEREOF." was placed on first reading and read by title only. (Property Owner: Kenneth Delevante, Jr.)

Ordinance No. K-440 entitled, "AN ORDINANCE EXTENDING THE TERRITORIAL LIMITS OF THE CITY OF FORT PIERCE, FLORIDA, TO INCLUDE PROPERTY LOCATED AT **3361 SOUTH U.S. HIGHWAY 1, AND ONE PARCEL ADJOINING TO THE NORTH OF THE PROPERTY**; DIRECTING THE ST. LUCIE COUNTY PROPERTY APPRAISER TO ASSESS SAID PROPERTY AND PLACE IT ON THE CITY TAX ROLLS AS OF JANUARY 1, 2007; DIRECTING THE ST. LUCIE COUNTY TAX COLLECTOR TO COLLECT TAXES ON THE HEREIN DESCRIBED PROPERTY; CERTIFYING PUBLICATION OF THIS

ORDINANCE; ZONING SAID LAND; ESTABLISHING THE FUTURE LAND USE DESIGNATION; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; AND PROVIDING FOR THE EFFECTIVE DATE HEREOF." was placed on first reading and read by title only. (Property Owner: Gray Fox Properties)

Mayor Benton declared a Public Hearing on Ordinance Nos. K-435, K-436, K-437, K-438, K-439, and K-440 in session and asked if anyone in the audience wished to be heard.

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

Motion was made by Commissioner Coke, seconded by Commissioner Nelson, that Ordinance Nos. K-435, K-436, K-437, K-438, K-439, and K-440 be passed on first reading.

Those voting in favor of the passage of Ordinance Nos. K-435, K-436, K-437, K-438, K-439, and K-440 on first reading were: Commissioners Alexander, Becht, Coke, Nelson, and Benton. Those opposed: None.

Ordinance No. K-441 entitled, "AN ORDINANCE BY THE CITY COMMISSION OF THE CITY OF FORT PIERCE, FLORIDA, AMENDING ARTICLE I, CHAPTER 22, IN GENERAL, AND ARTICLE II, CHAPTER 22, ESTABLISHMENT OF ZONES, TO AMEND SECTION 22-3 BY UPDATING DEFINITIONS, AND AMEND SECTION 22-15 BY DESIGNATING THE **SOUTH BEACH OVERLAY ZONING DISTRICT**; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH, PROVIDING FOR AN EFFECTIVE DATE." was placed on first reading and read by title only.

Mayor Benton said before he lets staff start, he would like to say something to the public. In Fort Pierce in the last few years, they have been trying to raise the bar. In their opinion, they had a workshop earlier this year and that is what they are looking to do with this Overlay District. There have been several things that have been done in the last 25 years. Number one was a non-binding referendum 25 years ago for four stories, eight units an acre, 45 feet which was never made law. After this ordinance is approved, it will make it law. So for once they won't have developers coming in and say they want to go six stories and wasting all of their time. The other thing is they are dealing with, what they have learned specifically in the last couple of years. A barrier island, they have to deal with evacuation issues, so they are talking about densities. They are rebuilding a two-lane road as a two-lane road. Please bear with them tonight. There might be some numbers that might have to be addressed and changed, but they had to start somewhere. They have had several Public Hearings. Just to address the inaccurate and misleading advertisement in the newspaper last week, he felt he should bring this out, that by no means are these numbers set in stone. That is why they are having the Public Hearing. They will be having a second Public Hearing in September. So with that, he will open it up to staff.

Mr. Matthew Margotta, Director of Planning, said Mr. Recor, who actually initiated this at the staff level, is going to follow it through. He is here for technical advice, should it be needed.

Mr. David Recor, Deputy City Manager, said staff is pleased to present the South Beach Overlay District for their consideration

this evening. Before they review the content of the ordinance, he would like to give them a little bit of background. This was a concept that was originally conceived in late 2005 as a means of implementing the 4,8,45 rule, as the Mayor indicated. About the turn of the year, the City was in a position to consider a condominium/hotel style development on South Beach. It was at the February 28th development workshop where they agreed to include standards to address the condominium/hotel style development as part of the South Beach Overlay District concept. They indicated in February that they could draft the South Beach Overlay District within 90 days. They indicated that they would report back at such time. On June 5th a draft of the overlay district was presented to the City Commission, where they provided further direction and feedback on the proposal before they scheduled it for Public Hearing before the Planning Board. The Planning Board had an advertised Public Hearing on June 13th; but the lack of a quorum, the discussion was continued until the following week on June 20th.

There was lengthy testimony provided at the Planning Board on June 20th that resulted in a request for the Planning Board continuing discussion until July 11th. There have not been any changes made to the South Beach Overlay District proposal since it was scheduled before Public Hearing before the Planning Board. There is however an addendum attached to the record this evening. That identifies and articulates the comments, suggestions, and concerns as they were identified by the Planning Board during its review. As far as the ordinance itself goes, he would first like to educate both the Commission as well as the public exactly what an Overlay District is. The City is not changing any property owner's underlying zoning designation. The overlay does not affect anyone's underlying zoning designation. These are a set of additional regulations that literally rest on top of or overlay the underlying district regulations. They are organized into three sections. The first section is the applicability and purpose section, the second is the delineation of the district itself, and the third section are the actual district regulations. As the Mayor indicated in his opening remarks, the significance of the South Beach Overlay District is because South Beach overlay is a barrier island and they need to preserve and protect that unique barrier island environment. The delineation of the district is identified by the overhead that is currently on display and it includes all properties on South Beach. As far as the District Regulations go, they are divided into a variety or a number of parts. Part (a) are the Supplemental Use Regulations that apply to condominium/hotel style development only, while parts (b) through (h) are additional regulations that apply district wide. The Supplemental Use Regulations are further divided into four parts. There are general requirements and there are 16 of them. He won't identify all 16 of them, he will simply respond to their questions regarding the general requirements, however they deal with a variety of issues ranging from a guarantee that a condominium/hotel sleeping unit is actually a sleeping unit or a hotel unit as opposed to a multi-family dwelling. There is a 30 day limitation on owner/occupancy, a 30 day limitation day per year, as well as a prohibition against homesteading as well as the requirement that utilities be singly metered. There is also a requirement for a uniform key entry system as well as the requirement for customary hospitality services. And finally, an affidavit of compliance is required to guarantee at the end of the year concurrent with the renewal of an occupational license to guarantee compliance with these general requirements. The second part (Part ii) deals with Architectural Standards and there are four. The first standard deals with addressing architectural integrity and compatibility, dealing with

issues like siding, massing, scale, fenestration, and other site features. Other requirements deal with architectural details that are designed to create visual interest at the street level. Finally, there is a provision that encourages a variety of architectural themes as demonstrated by local historic buildings and other architectural buildings of significance in the community.

Part (iii) identifies parking standards for condominium/hotel style development. It is very specific. And Part (iv) provides for the opportunity for the Commission to impose Conditions of Approval. Those are the District Regulations that apply to condominium/hotel style development. As he indicated previously, Parts (b) through (h) are additional regulations that rest on top of or overlay the underlying zoning district and apply district wide. Part (b) deals with minimum lot area and lot width in the district. It provides that lots that are either further subdivided or recombined after the effective date of the ordinance in the R-4A zoning district shall not be less than 5,000 square feet or 70 feet in lot width. It goes on to provide that lot width for duplexes, triplexes, and other multifamily housing developments shall be 75 feet. Part (c) deals with density. Multifamily residential density is limited to 8 dwelling units per acre in areas that permit such development in the district. Non-residential density is limited to 10,000 square feet per net acre or 35 sleeping units per net acre. So whereas the existing land development regulations do not provide for methodology for calculating density per se, the overlay district provides a mechanism for calculating density for both residential land uses as well as non-residential land uses. Part (e) deals with height and provides that single-family residential building heights shall be limited to 28 feet in height, while multifamily residential and/or non-residential building heights shall be limited to 45 feet and 4 stories in the district.

Parts (f) and (g) include provisions that the Commission provided a direction on at the February 28th development workshop. While they were not specific in regard to what their expectations were, these were performance or development standards that they have long been asking for. Part (f) is a requirement for a maximum impervious surface, which is identified as 55% for both residential and nonresidential uses in the district. Part (g) is minimum open space requirement. An open space is a minimum of 40% for residential land uses as well as 20% for nonresidential uses in the district. The last Part (h) deals with visual buffer. Part (h) requires a 20 foot visual buffer adjacent to all street rights-of-way, where the purpose of the minimum visual buffer is to preserve existing native vegetation as well as to protect and maintain what is there. If it is not there, there is a formula provided to encourage planting within the minimum visual buffer. Staff put a lot of effort in responding to the concerns of the South Beach residents as well as the concerns of the Commission and direction provided back in February. They believe that the South Beach Overlay District is consistent with the criteria for their consideration that are outlined in the Land Development Regulations. They have determined that the South Beach Overlay District is consistent with the City's existing Comprehensive Plan and it is not inconsistent with the various draft elements that they have of the City's proposed Comprehensive Plan. They have determined that the South Beach Overlay District will not have an adverse effect on the ability of the City to satisfy land and water use needs in the district, or meet transportation demands and provide community facilities and services. Finally, the amendment will promote and protect the public health, safety, and general welfare. These are the requirements for approval that are outlined in the Land Development Regulations. He would be glad to respond

to their questions as well as questions from the staff. He does see Commissioner Becht scratching his head as he is calling out sections. The draft that he has, it has been reformatted and re-codified as if it were going to be placed in the development regulations. So the numbering may very well be off when he is calling Part (a) and Part (b). The Commission has the strike-through/underline version in their packets of the actual ordinance.

Commissioner Becht said what he is looking at is Section (iv), Conditions of Approval, and Mr. Recor is calling out different letters in that section.

Mr. Recor said that is what he means. The copy that the Commission has is the actual strike-through/underline version that pursuant to their approval would be inserted into the City's Land Development Regulations.

Commissioner Becht said it doesn't make any sense to him because he has Paragraph (iv) Conditions of Approval and he has (a), (b), (c), (d), (e), (f), and (g); and Mr. Recor has an additional section somewhere in there that is not in the copy that he has. (Commissioner Becht showed Mr. Recor his paperwork.)

Mr. Recor said he thinks they can discuss the content of the ordinance if they can get beyond the lettering and formatting. They clearly have the content in front of them.

Commissioner Coke said she thanks Mr. Recor and staff and everyone on South Beach and throughout the City who worked on this. She thinks it is long overdue and it will help them plan their future more wisely. She has a couple of questions of staff. She appreciates all the efforts that the Planning Board put in here, especially Item (8) (of the South Beach Overlay District Addendum) which will be utilized to protect existing nonconforming uses. She thinks that they need to be very careful that if and when this passes that they go out of their way to inform all of the people that have existing nonconforming uses so they can apply for whatever means that they will need to protect their rights. She guesses then her question to staff becomes, when she looked at the addendums suggested by the Planning Board - and she sees staff suggests that they adopt Items (1) through (4), (6) and (8) - she has two questions there. First of all Item (2) deals with furniture, furnishings, and quite frankly it says a list approved by the City. She thinks that is delving way too into personal property rights. She is not about to get into picking out hotel furniture. She doesn't think it is something that the City should be involved in. That is her number one concern. Her question to staff would be why they recommended including that? Her second question on these addendums that staff recommended including is, increase the height limitation specified by Section 22-16 for single-family dwellings to 45 feet by conditional use in the R-4A zoning district. She for one can not and will not support that. She has been to many meetings on the beach when they had their Comp Plan meetings and they all discussed that residential height is 28 feet and it should remain as such. She doesn't know why... If staff knows something that she doesn't on both of these that they would consider it appropriate to include them, she would like to hear their version of why.

Mr. Recor said the first issue regarding the furniture. If they recall back on June 5th when they presented a draft of the proposal, he candidly told the Commission that this was an

exhaustive effort. If they recall he presented an attachment that identified the communities in which they surveyed and how they were addressing the condominium/hotel style development. The list is exhaustive. It is a multiple choice. There are 16 general requirements that they could choose some, all, or none of as a means to address condominium/hotel style development. With regard to the staff recommendation, he is going to defer to the Director of Planning and have him explain the recommendation from staff. But the response to Commissioner Coke's second question regarding the conditional use for residential above 28 feet, he believes that the Planning Board felt it was important to include that in for the Commission's consideration because of the possibility of there being duplexes constructed if single-family dwellings were limited to 28 feet in height. He thinks that is reflected in the Minutes.

Commissioner Coke said she is not quite sure she is still following him. Because single-family is not a duplex, correct?

Mr. Recor said he understands that, but if single families were limited...

Commissioner Coke said so they are talking about a single-family, four-story home.

Mr. Recor said if single families were limited, then they would in effect be forcing the construction or encouraging construction of bigger duplexes.

Commissioner Coke said so this is a recommendation from the Planning Board. Her question would be, at any point during the numerous Public Hearings they have had both on this and the Comprehensive Plan Rewrite for the South Beach area, has any citizen's initiative group suggested that they raise the height limit on single-family homes to 45 feet?

Mr. Recor said no. With regard to the recommendation from staff, he will let Mr. Margotta take over.

Mr. Margotta said the Planning Board came up with all those items on the Addendum after an exhausting discussion; and staff, when they included them in this, it was a good faith effort. The Planning Board, this is what they think should be going in. Staff looked at the items on that addendum; and the ones they crossed off or think should not be allowed are those that could be in serious conflict with their current ordinance, or unenforceable. The furniture one is pretty near unenforceable as it stands. But they were somewhere in the middle between trying to meet the wishes of the Planning Board. This one was not something that they could rule out by code and say they can't do this. So they left it on for the Commission's consideration. That is really what it comes down to. It came out of that public process and they let it continue.

Commissioner Coke asked is she correct in the assumption that the way the City code is written now, the single-family residence height on South Beach is limited to 28 feet?

Mr. Margotta said 28 feet, correct.

Commissioner Coke said so this Item (6) staff is recommending they include in this would change that.

Mr. Margotta said the rationale behind that is, properties of a certain size and a certain value, in order to get the investment back to the expectation out of the property, they likely would have to build a larger home with a more valuable construction and that requires more height. But there is even more to this rationale. That if they allow the buildings to go higher, it doesn't go flatter and wider; so they do not accidentally by causing their buildings to be lower, actually incur more impervious surface.

Commissioner Coke said in essence what they are then doing is increasing the height on the majority of what they will have built on South Beach, which she would assume is going to be single-family residences.

Mr. Margotta said he would too.

Commissioner Coke said and they are going to increase the height, cut off visual perceptions, and create that tunnel effect that they have all been talking for the last hundred years that they don't want to feel like they are driving down a tunnel. If they raise the height on single-family homes to meet multi-family structures or hotel structures, they are doing just that, they are creating a tunnel for them.

Mr. Recor said it does give the Commission the ability to consider site specific development proposals by conditional use.

Commissioner Coke said then that becomes a very political thing. She is just letting them know right up front, she is not going to support Item (6).

Commissioner Nelson said he has a couple of housekeeping issues. First, he refers to Page 12 (of Ordinance No. K-441). Let him commend them for defining the term, dwelling units. He thinks it has been adequately defined throughout the document. In the table inset (Section 22-15(a)), they have Office Commercial abbreviated designation as C-1, and on the following page they also have C-1 designation for Neighborhood Commercial. Are those the same and should they be bearing the same abbreviations?

Mr. Recor said this is text from the existing Land Development Regulations. He would have to go back and check. Because it is not underlined, it is existing, so it is not proposed for change. So he is going to suggest that is the way it reads today. It is not affected by this ordinance.

Commissioner Nelson asked so will they address it some kind of way?

Mr. Recor said he will.

Commissioner Nelson said the next item is on Page 17, Paragraph (d), the third line down. He is confused. He thinks they meant the word "this" instead of "the may include". Is that correct?

Mr. Recor said yes.

Commissioner Nelson said let him comment just briefly on something that Commissioner Coke mentioned about the 45 feet height limit on the single family. He is wondering whether or not they are in fact under her scenario would be addressing the size of a family as opposed to addressing the height of the building. He was in New York a few days ago and he saw where big people there had four,

five, six floors of space in some of those big buildings there. He doesn't see where it would be appropriate for them to say that Mr. Jones cannot have six or eight kids and have them all in his dwelling there. But as long as they in fact insist upon the maximum height of 45 feet, should they really care as to whether or not they have that? They don't have the vertical height, they don't have the foot print expansion to the size. He is not sure he can have too much objection to that because a single family can live in a 1,600 square foot facility as well as a single family can live in a 6,000 square foot facility. So he is not sure he is going to be supportive of that. The last thing that he mentions here is the fact it is implied here that they have made allowances for the people who have existing facilities over there - hotels, motels - if they were interrupted or destroyed by a catastrophe like a storm or hurricane or something, that they can build back to that same density they had beforehand. Is that correct?

Mr. Recor said no, that is not correct. This proposal does not make such allowance. During discussion, they have proposed an alternative to address that concern that came out during the discussion with the public, and it is called a categorical exemption. He can explain that further to them this evening if they are interested in including that provision.

Commissioner Nelson said he is very much interested, that is why he posed the question. These guys who have these motels over there existing today are dependant upon the constant turnover of people in their facilities. And if they are accustomed today with the 75 rooms for example, and all of a sudden it is destroyed by a hurricane, are they going to be able to build back to that same capacity? Because their livelihood depends on that.

Mr. Recor said they are faced with that issue today and they are faced with that issue all over the City. There is no question that the South Beach Overlay District will make uses and structures nonconforming. The idea behind something that is nonconforming is that it eventually converts to a use or structure that is permitted in the district. He is reminded back to 2002 when Hurricane Floyd came through Hilton Head and they were sitting in the auditorium wondering what is going to be left on the island when they return.

In the political reality of they are not going to require things to be rebuilt according to the code, there is going to be constant political pressure from the community to allow rebuilding of things to the way that they were. So that is part of where the idea of the categorical exemption comes from. The idea behind the categorical exemption would be... And again, it is not included in the text as it is written today, but it is something they can certainly come back and include. It is that they put the onus on the property owner to tell the City staff what they have; and they provide a purpose, a process, as well as mandatory findings from staff where they will allow property owners to make an application for a window of opportunity to document to them with an as-built site plan what they have on their site. Staff will then review that site plan, perform an analysis, and determine what aspects of a property, a use, or a structure are nonconforming. They would present that analysis to the Commission and they would note the Overlay District's effect and what made it nonconforming, and the Commission could determine what aspects of the use or development that they would allow to be rebuilt. Is it height, is it density, is it setbacks, is it parking? But the applicant has to provide an as-built site plan to them during that window of opportunity which they would define.

Commissioner Nelson said let him offer an alternative in that regard. Why can't they make a survey, an analysis of what they currently have, adequately document that? And if in the event they have a future catastrophe, they have a baseline where one can come in and say they had this in 2006 and whatever that date is, would they please let him come back to where he was? And they as a governing body can say, okay he had it on that date and he hasn't turned it over or sold it or flipped it or whatever the case may be, that is the base they are going to operate from, and he can in fact build back to that standard. In other words, it will be somewhat grandfathered in, so to speak.

Mr. Recor said he understands completely. And that is exactly what the as-built site plan will do. Because he suggests to the Commission that the extent of what is already nonconforming and what may be further made nonconforming by the South Beach Overlay District is such that they need to task the property owner with providing City staff with the as-built site plan. The extent of what is nonconforming is such that it would be almost an impossible task for the City to document what buildings exceed 45 feet in height, which exceed the density allowance, what setbacks are not met. But if property owners believe they are adversely affected, then they could make this application for the Categorical Exemption, provide an as-built plan, and staff would review that as-built plan and make written findings for the Commission's consideration.

Commissioner Nelson said he doesn't see that as an impossibility. But he doesn't want to belabor the point there. He thinks they will further discuss it as they move along. But he is not sure that is the way he wants to go on that one.

Commissioner Coke asked could she ask one question before they move off of that as-built site plan? Does the City not have records where they have approved everything that is already built on the beach?

Mr. Recor said he would say they have some records, but certainly not all.

Mayor Benton said he would like to address that. Because of half the beach being built back during the war, a lot of that is nonconforming to today's codes, but to codes 20 years ago. That is one thing they have learned with the hurricanes and FEMA codes, they couldn't rebuild a lot of what has been out there. When they come through and address flood elevations, they are going to have a lot more nonconforming structures. And do they say, okay if they can't rebuild their first floor, are they going to let them go up an additional floor? That could be over 45 feet. So it is something to take into consideration. They can't let them go above 45 feet.

Mr. Recor said as they consider this further, he strongly wants to encourage them to stick with the as-built plan and require the application. He believes that the public will tell them that they would much rather document what they have today than to rely on something that may have been approved or a City's analysis to document what is nonconforming on the site today.

Commissioner Alexander said pretty much, his questions have been

answered. But he just wants to address one of the definitions that he thought was non-existent in the City of Fort Pierce any more and that is with the roominghouse. He thought they no longer had roominghouses in the City of Fort Pierce.

Mayor Benton said they are illegal. There are a few.

Commissioner Alexander said there are a few but they are grandfathered-in.

Mr. Recor asked is Commissioner Alexander referring to the existing definitions?

Commissioner Alexander said on Page 2 at the bottom it is speaking about boardinghouse and rooming house. He is saying that they no longer have that in existence in Fort Pierce. Why are they giving a definition for it?

Mr. Recor said again, those are existing definitions that are not proposed to be changed.

Commissioner Alexander asked they are not to be changed?

Mr. Recor said no. They are existing in the code today. If it doesn't have an underline under it or it doesn't have a strike through, it is not affected by the overlay district. So the definitions of boardinghouse (rooming house) is an existing definition that is currently in the code. It is not included in this ordinance.

Commissioner Becht said he doesn't know where to start. First let him start with thanking all of staff for a very valiant effort to try to address a multitude of issues. He wants to thank the Planning Board for doing what they did. The rest of his comments may seem somewhat critical, but he will start with thanking them for trying to get them there. If he starts with the addendum that the Planning Board prepared, he shares Commissioner Coke's and other Commissioner's concerns about entering the interior decorating field which would have been the Planning Board's recommendation, Number (2). But he also have a problem with Number (3), which provided for one lockable storage closet up to 250 cubic feet. He thinks that is a step in the direction of making this back into a condo instead of making it a hotel. So he has a problem with that. Number (8), the categorical exemption process, is something that he thinks they have to work on; and he is not sure they are going to get it resolved tonight and he is not sure they are going to have it resolved in two weeks. But that one really creates a problem, because this Commission has been talking for several years about raising the bar and tonight that concept runs headlong into vested property rights. Everyone has been saying almost in a sense of a mantra 4 and 8, 4 and 8, 4 and 8. And tonight if they adopt the overlay without creating this categorical exemption process, that 4 and 8 may strike out anybody's home above 45 feet, because they would not be able to rebuild it. If somebody happens to live in a development that has a density higher than 8, they are not going to be able to rebuild.

So they have some very complex issues that have to be addressed and have to be balanced. He appreciates staff coming up with at least one avenue for trying to balance everything that needs to be balanced. He would have to give greater thought to staff's recommendation for single-family homes up to 45 feet. He has seen some homes that are that high. He appreciates that maybe it is

going to stop the canyon effect by letting people go up higher and preserving view corridors; but he is not sure, he just doesn't know yet. He had sent staff a couple of weeks ago, maybe a couple of months ago, his concerns of the definition of a sleeping unit. If they can turn to that for just a second, it is on Page 10. It says, one or more rooms. It bothers him where they allow one or more rooms, because now he can have a sleeping unit that might be four, five, six bedrooms. The other definitions that go back to sleeping units rely on the number of sleeping units as distinguished from the number of bedrooms. It is the number of bedrooms that are going to dictate the number of occupants. He took the sleeping unit definition and applied it to the parking requirements for condo/hotel facilities. If he recalls correctly, it is 1-1/2 parking spaces per sleeping unit. He doesn't want to get too technical, but they are here to talk about it. So if he applies that definition and he has a four bedroom condo/hotel, he is only going to have 1-1/2 spaces for that condo/hotel.

Mr. Recor said that is correct.

Commissioner Becht said they do have some ability for the Commission to restrict the design of the condo/hotel, so he guesses they could get into that where they restrict the number of four bedroom or five bedroom condo/hotel units in a particular development and address it that way. But he is still bothered by the parking requirement tied to sleeping units if they don't have a definition that talks about the number of occupants in a sleeping unit. He is also troubled by what the impact of the 10,000 square feet of commercial space per net acre. Can they tell him - he couldn't find a definition of net acre - but do they have a definition for net acre? He didn't see one in the section of the code that they gave them.

Mr. Recor said it very well may not be defined. He will check the existing development regulations. But the effect of determining the definition of net acre is to back out the areas that are either a title or non-title wetlands or aquatic areas.

Commissioner Becht said it seems appropriate to back those out. But where did the 10,000 square foot per net acre... Is that in somebody else's code or where did that come from?

Mr. Recor said the 10,000 square feet per net acre is, in staff's determination in looking at how other communities calculate allowable density, a reasonable starting point as the City begins to provide formulas for calculating density minus those formulas in the past. So they included 10,000 square feet per net acre for nonresidential land use in addition to and/or 35 sleeping units per net acre.

Commissioner Becht said what bothers him is that the application of this code to some properties that he would like to see developed as resort destinations, is that he thinks by putting these restrictions on it themselves, the 10,000 square feet of commercial and the 35 sleeping units, they effectively eliminate the option for a viable Hyatt or Marriott or upscale hotel coming in and operating within economic efficiencies.

Mr. Recor asked what would he propose as a more reasonable alternative?

Commissioner Becht said he knows they have hotels over there that

are pure hotels. They don't have to worry about, is it a real hotel or is it a condo? They have been confused by certain developers coming through and blurring the lines between those. But if it is a real hotel, in that sense it has very limited... It has a couple of beds in it, maybe a coffee pot, maybe a microwave; but not a dishwasher and not a cooktop and some of the other folks had talked about. But they have those on the Island he thinks are at 60 rooms to the acre.

Mr. Recor said up to 75.

Commissioner Becht said up to 75. Maybe 75 is too high, but 35 is too low.

Mr. Recor said the direction provided on February 28th was 20. And further clarified on June 5th was this very same comment, maybe it is not enough. It was changed to 35. Where would they like to start, 10,000 square feet or 35 units per acre? Because he would like to give them a scenario.

Commissioner Becht said he knows Mr. Recor is talking about mixed development, because they are going to have to deal with both of these as they put these...

Mr. Recor said because they don't get to maximize both. They don't get to go to 10,000 square feet per acre plus 35. It all has to equal one.

Commissioner Becht said Mr. Recor has walked him through that. He likes the way that works. But if he has got the ability to put four floors up. And folks who don't understand, there are 43 plus square feet in an acre, so they are talking about only 10,000 square feet on their ground floor, and that is less than one-quarter of all the space he has. He thinks by the time they put in the parking, the landscaping, and everything else, they still have extra land at 10,000 square feet and he hasn't done anything on his second, third, or fourth floor.

Mr. Recor said they do have some. (Mr. Recor displayed slides.)

Commissioner Becht said Mr. Recor is ready for him. He didn't get a chance to see this before tonight.

Mr. Recor said no, he didn't; but he was anticipating his questions tonight. First of all, he would like to thank Kara Wood for using auto-cad and preparing these visual slides which demonstrate the effect of the open space requirement for both the residential part as well as the commercial part. Let's focus on the commercial since they are talking about 10,000 square feet per acre. This lot is not a lot they just created, but it is a very notable lot at 250-feet by 250-feet at a corner. It is bounded on four sides by four streets. The area that is hatched shows the required setbacks. The purpose of the illustration is to demonstrate that the existing setback requirements meet the minimum open space requirement that the overlay district provides. This is a 250-foot by 250-foot lot in the C-5 zoning district. It has streets on all sides.

Commissioner Becht said that is roughly an acre.

Mr. Recor said it is actually an acre and a half. It is 62,500 square feet or 1.44 acres. And the hatched area, the open space of

the required setbacks, is 16,300 square feet; or roughly 26% of the site is in open space by virtue of the setback requirements. Going to the next slide, they are going to use that same 250-foot by 250-foot lot. There is 43,560 square feet in an acre. They are going to assume that this site doesn't have any aquatic areas or anything that has to be backed out and they can use this site 100%. And in this case study they can as a matter of fact. At 10,000 square feet per net acre, that would allow 14,400 square feet of gross floor area. That is the amount of square footage that could be permitted on the property. But that represents one story, because they don't want to encourage developments to take the entire notable area on a site, they would like for them to build up. They discussed as an alternative a floor area ratio. But this represents a 7,200 square foot building pad or two stories, so a two-story building representing 14,400 square feet.

Commissioner Becht asked are they still working with the acre and a half lot or are they working with an acre lot?

Mr. Recor said it is an acre and a half. It is the same 250-foot by 250-foot lot. It has 14,400 square feet as permitted by the proposed South Beach Overlay District. Now the first thing they have to do is determine the parking requirements. Well, what is 14,400 square feet, how much parking is that going to generate? That is going to generate the shaded area on the top, roughly 17,280 square feet. What they base that on was a mixture between retail and office parking - one space per 250 square feet. Note that they know the minimum open space required by the South Beach Overlay District is met. They know that the setbacks met that requirement. So the other requirement in the Overlay District is a maximum impervious surface requirement of 55%. What this diagram shows them is that 55% of that site would represent 11,825 square feet. That is what is required. What is provided is actually 21,730 square feet. So there is additional area that is left that they could say, Mr. Recor made his point, they can increase the density. Yes they can, but they have to be careful, because there becomes a threshold where they don't meet the requirements of the ordinance any longer. Let's say they doubled it. Let's say they went to 25,000 square feet, which he has heard a number tossed around. They apply that same logic, that same building. At 25,000 square feet per net acre, they end up with a 36,000 square foot building. That is going to end up with 9,000 square feet on four floors, so they are going to get a four-story building, 9,000 square feet per floor, the same parking requirement at one per 250 square feet. They are going to need 43,200 square feet for parking. The second slide shows that there is only 37,200 square feet available. They meet the open space requirement but they don't have any area left to meet the maximum impervious surface. That wouldn't even be allowed under the ordinance today.

Commissioner Becht asked does that contemplate design that would have parking underneath the building?

Mr. Recor said that contemplates surface parking. But when they get to a building of that size, then they have to convert that 43,200 to an actual number; and they are not going to be able to meet that number purely on surface parking. So there inevitably is going to be some structured parking; but as they are well aware, that more than doubles or adds significantly to the cost. So the 25,000 square feet per acre would not even be permitted under the existing code today. Is 10,000 square feet the number? Don't know.

Commissioner Becht asked Mr. Recor said it would not be required?

Mr. Recor said it would not be permitted.

Commissioner Becht said but there is no limit on the number of square feet he can put in today. It is all design driven, if he understands it correctly.

Mr. Recor said no. There is a limit on the amount of square footage they can put in today and it is based on their ability to park it and meet the other requirements of the code.

Commissioner Becht said that is what he said differently, it is design driven. So if he has a creative designer who can make all these things happen inside an acre, then the limit is his ability to be creative and design it appropriately.

Mr. Recor said he is bound in the front, side, and rear, and he is bound at the top at 45 feet. They believed that the 45 foot height requirement was sacred, it was something that they couldn't deviate from. That is why they chose not to go the FAR (Floor Area Ratio) route. He hears what Commissioner Becht is saying, they get a creative designer. But the fact is they have a cube that they are working in, a three dimensional cube that they can look in and see this is their buildable area. And 25,000 square feet per net acre does not appear to be doable under the ordinance today. Now, is 10,000 square feet per net acre the number? Don't know. Can it be adjusted somewhat without revisiting the 20% open space and 55% impervious surface? You bet.

Commissioner Becht said they are going to let the public talk and if they can figure out how to do it or say a number they are more comfortable with, they can do that. He appreciates Mr. Recor walking him through this, albeit tonight. The bedrooms and sleeping units, did he create a little chart for him for that too?

Mr. Recor said no. But he is actually going to stand by his logic and suggest to them that looking at the existing proposal they had for a condominium/hotel, which did include more than one room, that the sleeping unit drives and is an integral part of the other definitions for hotels, for motels, and for resort hotels. And by design, anticipates that sleeping units may include more than one room, whether it is a library or a den or another bedroom. If they recall from the Island Village condominium/hotel Site Plan, he thinks there were some four-bedroom units. Now in terms of determining the number of parking... And he really hesitates to go here, because they have said no, it is not residential, it is commercial, it is a hotel. But the City doesn't require any less parking or more parking for a two-bedroom single-family home than they do for a four-bedroom home or a six bedroom home.

Commissioner Becht said he shouldn't have gone there.

Mr. Recor said it is two parking spaces per dwelling unit. It is a law of averages. If they recall from that same site plan, not every one of those 250 units, give or take, were four-bedroom units. As a matter of fact most of the units were one bedroom, maybe some two bedrooms. He thinks there were only nine. On average, the parking requirement is going to work itself out. He is going to try to persuade the Commission to not deviate from the

sleeping units because it drives the other definitions of hotels, motels, and resort hotels.

Commissioner Becht said the last point he wants to make and then they need to let the public speak before they get lynched. He talked to Mr. Recor about defining limited cooking facilities. He doesn't see that he attempted that. Is there a reason why he doesn't think that is a good idea?

Mr. Recor said the reason is not intentional, not intended as any disrespect to him or anyone else, but rather he will simply indicate to the Commission as he did to the Planning Board. They have not made any changes to the Public Hearing draft. Every recommended change has been indicated to them by way of an addendum. If the Commission decides that they would like staff to go back and revisit and make further revisions to the ordinance, they will determine whether or not it needs to go back to the Planning Board. They have not changed the ordinance since they advertised it for Public Hearing. They kept that Public Hearing draft complete. He wants to respond to that. What was Commissioner Becht's question?

Commissioner Becht said the limited cooking facilities.

Mr. Recor said again, by design. He had several questions from the public. He responded to one this afternoon. If they go back to the existing definitions, there is talk of some having cooking facilities, some having kitchens, if it has more than 25%. The new definitions, the proposed definitions clean all of that up and shift the focus from whether or not a hotel or motel has a kitchen to allowing limited kitchen facilities. But by design they don't allow kitchens. They allow limited... So it is easy to figure out what is permitted simply by determining what is not. Would limited cooking facilities include a sink, a refrigerator, maybe a dishwasher? Yes. Are limited cooking facilities a sink, a refrigerator, a stove, an oven? No, that is a kitchen. So kitchens are not permitted, only limited cooking facilities are permitted. And they don't care where they are permitted. They are permitted in hotels, they are permitted in motels, they are permitted in resort hotels. They are permitted in all three land use classifications with no maximum percentage. Every hotel room can have limited cooking facilities, but they can't have full.

Mayor Benton said he agrees with Commissioner Coke and Commissioner Becht when it comes to Item (2) on the addendum. He doesn't want to tell anybody what kind of furniture they have to furnish their hotel with. Also when it comes to the height limit, single-family has been 28 feet. All he can see is the minute people get a C.O. (Certificate of Occupancy), if they go to 45 feet and try to put four stories in, if it is a duplex it will be a triplex or four-plex as soon as they can get around to it and work on the weekends. So he has some concerns there.

Commissioner Coke said she reviewed her notes this morning from a year and a half ago when they started this concept at last year's City Commission workshop; and the discussion they had then was that they were going to define motel, hotel, resort hotel, and condo/hotel, and that they were going to have a variable density allowed for each of those categories. She is just letting them know that she did review her notes and that is what they said they were going to do.

Mayor Benton declared a Public Hearing in session and asked if

anyone in the audience wished to be heard.

Mr. Philip Gates, President of Visions of Fort Pierce, said on behalf of Visions of Fort Pierce and all other neighborhood associations that participate in the projects and the grass-root efforts sponsored by Visions of Fort Pierce, he wants to thank them for the opportunity to speak on the proposed beach overlay. The proposed beach overlay has been the source of concern and controversy for several months. The attempt to hammer out an acceptable compromise on the overlay by holding private meetings with a few long-term beach activists has not worked, as many questions and concerns remain. However, the public workshop sponsored by Visions of Fort Pierce provided the opportunity for the general public to be heard. Everyone, including City officials, had a chance to speak during the only public workshop held on the beach to date on the proposed beach overlay. The City, of course, has held Public Hearings as required by law. On the other hand, Visions has held a public workshop where everyone had the right to speak as many times as they wanted and with a detailed record kept and without actions taken or official recommendations made. They regret that Deputy City Manager Recor misread their statement about the workshop, as they also regret that his heartfelt but inaccurate comments expressed during the workshop and printed in the Tribune may have confused their citizens. The overlay applies to all parcels in the Fort Pierce Beach located within the City of Fort Pierce. As written, it is an ambitious document that attempts to change the rules for development on the island. These are serious changes and should be well done. Unfortunately the overlay as proposed does not do the job. The very brief text of the overlay includes one small map, four pages of requirements and conditions, and a few new or revised definitions. The major policy changes are as follows: Authorize condo/hotels, change residential densities, and sets up a process for architectural review. Although he believes that their City leaders may have the best of intentions, they are concerned about the unintended consequences of a poorly drafted document. Some professional planners who have reviewed the overlay believe that some of these issues are best addressed through the Comprehensive Plan. Other issues however require specific criteria to have a chance at success. A poorly drafted overlay will not accomplish its goals and may have terrible consequences on their quality of life. Some of those unintended consequences were brought up during the public workshop. And they hope that City staff, in addition to reading from the prepared statements, listened to the concerns of the public. He does wish to thank Mr. Recor for his participation during the public workshop. Although some of his comments were critical of Visions of Fort Pierce, and of him in particular, he believes that his words were the result from a misunderstanding on his part. They do not believe that Mr. Recor has attempted to deliberately mislead the public and/or the Commission. They simply believe that Mr. Recor is not fully familiar with the facts and may have devoted less time and effort to this project than the major policy changes requested by their citizens and ratified by their Mayor and Commissioners would require. In addition, they would hope that in the future that the information from City staff is accurate and helps to educate the public. For example, at some point during their workshop, Mr. Recor used the term, unequivocally no, when asked about the potential density increases related to condo/hotels, which were a concern of some residents and a clear unintended consequence of the poorly drafted overlay. Surely Mr. Recor understands that the zoning changes are up to the City

Commission and can be made to happen with a simple 3-2 vote. In fact, the overlay may be approved, rejected or altered today and in the future with a 3-2 vote from this Commission. There is nothing unequivocal about a 3-2 vote. Writing codes and zoning overlays requires professional skill. Many of the problems with the overlay can be fixed with better writing. Typically overlays are carefully prepared documents that include extensive planning and design criteria and detailed standards of review. The beach overlay, on the other hand, leaves too much discretion to City staff and/or elected officials and/or elected officials in the future. In an effort to provide further assistance, Visions of Fort Pierce will hire an independent professional planner to review the overlay. The City should follow the outstanding example of the County Commission. Just this last month St. Lucie County hired an independent planner to review the Land Stewardship Program to make sure that the new ordinance would do what the County Commission wanted it to do and that there were not any unintended consequences.

Mayor Benton said Mr. Gates five minutes are up.

Mr. Gates said the Visions of Fort Pierce has contacted the same planner, Mr. Jim Karas from MSCW, to review the City's ordinance and provide professional feedback to Visions of Fort Pierce, and to the City Commission should they choose to be interested in the findings.

Mayor Benton said others would like to speak.

Mr. Gates said this letter outlines the issues that were on the Overlay District. He plans to report to them during the second hearing on the adoption of the overlay. They will be glad to work with staff to improve the overlay. On behalf of the hundreds of neighbors who participate in Visions of Fort Pierce, he hopes they will have the opportunity to be heard. With this, they have a letter here from MSCW and Mr. Phoenix would like to speak about it while he distributes copies of it to them.

Mr. Jack Cahill said he is with the South Beach Association. He thinks most of them know him a long time now. Any time that they are doing something, he honestly feels they are much better off starting with the truth. Because when they don't tell the truth, they are destroying all area of credibility; and the fiduciary that they might have with the people that they are talking to represent, they are losing it. Quite frankly they were never invited, except to the one last Tuesday night he believes it was, as far as any meetings were concerned in the Visions of Fort Pierce. Those of them who know Mr. Recor, they thank God for him. Because Mr. Recor didn't say anything that he didn't say. In their packet they will all see comments they had regarding the advertising that appeared in the paper. These people, including Mr. Gates, were the ones who were in favor at the Charrette they had in May of 2005 for high density on the beach and high rise as high as 80 feet. They all started this because they felt that with a two-lane highway there was no way they could live with all that density. It just wasn't going to work in an area that barrier island. They are never going to have more than two lanes, not in his life time and perhaps not in most of theirs. Because of this, he sent Mr. Gates a letter he believes it was on Saturday: Mr. Philip Gates - This is to advise you that I have filed for and secured approval to use the fictitious name Visions of Fort Pierce, Confirmation No. so and so. I would appreciate effective immediately if you would cease and

desist from using Visions of Fort Pierce on any correspondence, advertising, bank accounts, or any other endeavor involving the name Visions of Fort Pierce. I would assume that any costs you have encountered under the name Visions of Fort Pierce will be totally satisfied by you or one of your organizations. Thank you for your kind attention to this matter. (Signed) John Cahill d/b/a Visions of Fort Pierce.

Mr. Cahill said he doesn't mind organizations working for a better quality of life. They have all done that. But they must learn to tell the truth, otherwise they lose total credibility and ultimately destroy any fiduciary they may have with the people they claim to represent. The things that Mr. Recor said last Tuesday night were completely and absolutely true. Those of them who were there know they were true. Quite frankly, those who have worked on this for 18 months he thinks can totally attest to the fact that they were true. They are only concerned about a quality of life for the people of Fort Pierce, not just the beach. For them to succeed in Fort Pierce, they must all succeed, every area of Fort Pierce. They are dedicated to that. But they are going to tell them the truth, they are not going to lie to them, and they are going to challenge people who do quite frankly sometimes tell untruths. With that he wants to thank the Commission very much.

Mr. Robert Phoenix, 3 Harbour Isle Drive East, Unit 202, said he has an analysis that was commissioned by, if he can use the title, Visions of Fort Pierce that actually looked at the proposed overlay. The analysis was developed by MSCW. Basically the analysis brings up a few questions which he would like to read aloud, not necessarily make available for response, just for content. Potential issues that were examined would include, but not limited to the following, with reference to the proposed overlay: (1) How does the proposed overlay code compare with similarly situated beach communities in Florida? A comparison with at least one or two experiences is suggested to offer comparative information. (2) Is this Overlay District consistent with relevant Goals, Policies, and Objectives of the City's Comprehensive Plan? (3) Since the Overlay District suggests an alteration of densities, would this be better addressed in the Comprehensive Plan, as is the standard procedure in Florida? (4) Are the definitions of new terms, such as Resort Hotel and Condo Hotel, consistent with their application in other communities? Are they thorough enough to prevent unintended consequences? (5) To assure that the suggested intensity of use is appropriate for a barrier island, issues such as the following may need further analysis: a. Are the drainage and impervious surface area guidelines adequate? b. Is the evacuation adequately addressed in the context of the zoning code and Comprehensive Plan? c. Does the proposal further the City's objectives for environmental protection unique to a barrier island? (6) Are clearly measurable objectives and requirements presented in the proposal? (7) Is site design adequately addressed to satisfy the community's desired goals for issues such as aesthetics, parking, lot area and setbacks, height, open space, and buffering requirements? (8) Are architectural standards adequately addressed to ensure desired building design and aesthetic considerations? Would the community desire a form-based code to further describe the anticipated building types?

Mr. Phoenix said this company MSCW is a Florida-based firm which has excelled in community planning, design, and engineering for 30 years. In addition to projects involving beach redevelopment and in-fill, MSCW is going to offer the benefits of staff with decades

of experience implementing and writing local land development regulations in the public sector. Basically they are offering their services.

Mayor Benton said for the record, the City has a professional staff on board these days. Very competent folks.

Mr. Phoenix said yes, they are doing a commendable job.

Mayor Benton said he sees a lot of questions, but he doesn't see any answers in here. He doesn't know what information they were given. But to him, it is just another consultant company looking for a job. The City is updating their Comprehensive Plan. But he is very comfortable taking information from the public today and they might be updating this. But the point is he thinks their professional staff has done an excellent job.

Mr. Phoenix said as he does.

Ms. Marcia Baker said sitting here she has a feeling of deja vu. About 18 years ago when she first came to Fort Pierce - it wasn't the first time she had come here, because her in-laws who own the home they are in now, she had visited frequently - she attended several City Commission meetings, County Commission meetings. She was interested in the projection of the cement silos being built and later on when the shoreland zoning hearings were about, she attended all of those just after they had moved here. She doesn't really know what is going on with the political things right now, but it seems to her that it is similar to what they went through 18 years ago in the bad old days when vested interests seemed to be trying to get control of what was going on to the adverse interest of the residents. She had a conversation with somebody at the so-called Visions of Fort Pierce hearing last week and she asked him, what about those cement silos and the shoreland zoning hearings. She said, he was here. He said, no he didn't have time to attend those because he was busy with his citrus business. That's fine. If he now wishes to do what he is doing, that is his business. She was very, very disappointed. For someone like herself who has no influence, no power, and she comes and she tries to understand what is going on and participate and have since even before she actually physically moved here. It is very dismaying for her to see somebody stand up and confuse the issues who was not able to or didn't want to or didn't care about participating 17 or 18 years ago and all along until very recently. She is just going to have a couple of comments to make on the plan. As to the issue of a categorical exemption, she is concerned that might interfere with the requirements of the flood zones and the FEMA regulations. She thinks it would be counterproductive to have requirements that they have to build up above the flood zone and at the same time have a regulation, an exemption, telling people they could do the same thing. That was just one item. She knows if her house is completely destroyed it is going to have to be elevated probably 10 feet in order to be conforming. The other item she had a question on was... She has so many questions here. She had the kitchen facilities thing answered. She thanks Mr. Recor and she appreciates that, she appreciates all his help and assistance. He is the first person in years and years and years, well almost the first person, who has completely responded to everything that anybody has ever asked completely and absolutely and efficiently and accurately. The other thing she had to say was, there was a limitation of 30 days for residents, for owner residents, but no other limitation for renters in hotels. She is a little concerned about that. Because even though there is limited kitchen

facilities, what is limited to some might be a luxury to others, and it could turn into permanent residents. That is the only other thing she did want to say on that subject. The other thing was that - and she is going to stress it again - she would like to have nursing homes and congregate living facilities and things like that completely eliminated from the possibility of being included in any of the C-5 zones which they are presently in, on the beach.

Mr. Charles Grande, South Beach Association, said he also sits on the County Planning & Zoning Board. He wanted to comment on some of the things that Commissioner Becht brought up and be a little bit more specific in preparation for the next hearing. He thinks there is a lot of people who have a sense that the sewer plant property on the island at some point in time would be the ideal location for what Commissioner Becht was talking about with a destination hotel. He doesn't mean next year, but the sewer plant is going to move some day. That land is going to become something. It is ideally situated. He would suggest in the overlay that particular parcel be separated. He strongly supports the height limitations on the rest of the area; but he thinks to turn that area and if possible the old trailer park next to it into something that is a destination resort area, they may need to go higher on that specific site. He would suggest that site get either a separate zoning or a separate overlay classification so that some of the requirements may be relaxed for that one based on a master plan that is done for the kind of destination resort that the island deserves. The second thing he would bring up is the conditional use for residential going from 28 feet to 45 feet. He really is encouraged by the Commissioners seemingly unanimous comments that that shouldn't occur. They have lot coverage requirements and open space requirements in residential areas. So maintaining a 25 foot height limit certainly is not going to cause things to move out horizontally beyond what they require, so he thinks that is a red herring. He thinks if they are looking to build a house that has more square footage than can be fit within the 28 foot height limit and the open space requirements and setback requirements in residential, and they can't do it, what they are doing is trying to build too much house for the lot. He just can't see the justification for the recommendation that was made by the City Planning Board. He would hope that they don't support that one. He would also hope that the recommendations (2) and (3) that they have indicated they would not support, he would hope they would pass along instructions to their staff that when this comes back for the second and final hearing they should not have recommendations for approval for those and they should not have a recommendation for approval for the conditional use for the 45 feet in residential. He realizes this is a last minute subject, but he would hope they would consider making the sewer plant property a separate category to leave them with the flexibility to work on something in the future that is going to be an anchor for the Island and a draw for the City of Fort Pierce.

Ms. Arden Peck said she is a South Beach resident and South Beach Association Board Member. This is very brief. On behalf of their Association and virtually all South Beach residents, they applauded the original staff document which is before the Commission tonight.

A special thanks must go to the Planning Department and the Deputy City Manager, Mr. Recor, who have spent many hours preparing this overlay. The public input available to them in every step of the process was incredible. Thanks must go to the Planning Board who, after extensive discussion and public input, sent it on to the Commission with an 8 to 1 vote in favor. After all these years of

operating under a referendum, they ask that the Commission vote to approve this ordinance which finally and definitively regulates the height and density of new construction on their island.

Mr. Chris Dzadoovsky, President of Mariner Bay Association, said he does have a question he needs to raise in the public; and that is the issue of Mariner Bay possibly being turned into a condo/hotel down the road with the new beach overlay. They did discuss this with Mr. Recor at the workshop and so on and so forth. The question still bears itself. The residents are concerned because it is a Planned Unit Development that in essence makes it a commercial property. So that being said, with the beach overlay issue the possibility of it being rezoned is great. There are a large number of investors at their property at this time and the possibility that... There is a move afoot as it is to rent by the week in their townhouse community. So someone has raised the issue of a possibility that an investor could come in and purchase three-quarters of the units, because that is what it would take to change the documents from a six-month rental possibility, to possibly asking for a zoning change after that. He wants to raise the issue because he has a concern that it may happen down the road. He doesn't have a position one way or the other. It has been presented to him that some people are making \$2,500 a week renting their places out by the week. The only other place that may have the other issue is Ocean Village and they quite frankly have it in their documents that they can rent by the week or day. So it is a concern that the uniqueness of Mariner Bay could be in question. He just wants to raise that for the issue that hopefully maybe additional language can be placed in this document to protect the types of developments that is Mariner Bay.

Commissioner Coke asked before they proceed, could Mr. Recor please repeat his answer from last week's meeting on whether or not Mariner Bay would be eligible to be changed to a condo/hotel?

Mr. Recor said under today's regulations, it is an unequivocal no.

Mr. Stephen Tierney, Attorney with the firm of Neill, Griffin, Tierney, Neill, & Marquis, said they represent Belmont Avenue Property LLC, which is the owner of a parcel on South Beach on the inlet currently zoned C-5. They object to what they consider a new zoning classification. He knows technically it is not zoning, but it acts like zoning in that it has the same type of restrictions they see in zoning. Basically they are creating a new super-zoning district that significantly affects the property rights of a lot of people and he thinks a lot of people who don't understand their property rights are being affected. He thinks most of them would be most seriously impacted by the idea of being a nonconforming use. The categorical exemption situation seems a very cumbersome way to reach people who may not know that if their house is destroyed or something that their lot is now too small to ever rebuild and from now on their lot has no other function than holding the rest of the world together. He doesn't think that the board should be so dismissive as to the nonconforming rights issue as to say let's not allow them to be grandfathered in, or they have a certain window to come in and present plans they might not still have and try to obtain rights in the future which they may or may not give them to rebuild their house when their lot is no longer big enough. Obviously there are a lot of developments on the beach that are not now conforming. Some people who do not want highrises on the beach live in high rises on the beach and they would not be able to rebuild if there was a fire or hurricane. But the fact is that there are certain rights people have as far as when they

bought the property, when they paid for the property. It makes a very bad economic impact on them if these rights are taken away. He doesn't know, he hasn't talked to any lenders about it, but it seems like lenders who currently mortgage properties over there, if they knew that they were giving a mortgage on property if it was destroyed it couldn't be rebuilt would affect what they do there. So he doesn't think this is a procedure that should be entered into lightly. Actually he thinks that everyone should have to understand that as an owner on South Beach, how is that going to affect him in the future? What happens if his home is destroyed? What happens about what he can do with his property now when it is not what he thought he could do when he paid all that money for it?

Developers are not made of money. They invest in it expecting a return. When they invest in it and they find out something comes along and they can no longer do what they thought they could do, it is a matter of having certain rights when they bought the property and have them taken away. They are just asking that not be done too cavalierly.

Mr. Michael Weiner said on behalf of Island Village Developers LLC.

Considering time is short, let him first give to them a letter prepared by his firm with respect to Commissioner Coke and why she should recuse herself. Since time is short, the letter speaks for itself and he is sure they can have an opportunity to review it. It is a first reading anyway, so they know even if they vote in favor tonight, there will be other adequate time. As they also know there is a Writ of Mandamus that has been filed by his client as to a project within the proposed Overlay District. None of the comments made tonight on behalf of his client, Island Village Developers LLC, waives or affects the pending litigation and writ between the Commission and Island Village. He would also like to present a supplemental memorandum which includes the memorandums that they presented at the original planning and zoning hearings that were conducted.

City Attorney Schwerer said he just wanted to ask Mr. Weiner a question. The supplemental memorandum, is this for court purposes or was this for the record purposes?

Mr. Weiner said these are all for the record purposes tonight.

City Attorney Schwerer said because as Mr. Weiner is aware, for the record, they did not accept the filing made by Island Village at the earlier hearing. He doesn't recall the date of it. Perhaps Mr. Weiner has the date. So the filing of this supplement doesn't supplement anything because they don't have it in record. Madame Clerk, that was the stack of documents that were attempted to be introduced into the record; but they never had a hearing at the time and never had an opening of the hearing, it was simply pulled from the Agenda. So with that clarification, it would be appropriate to give Mr. Weiner a minute or more time, however long he spoke.

Mr. Weiner said as to the ordinance itself, as they know the ordinance has been previously reviewed by their Planning Board. Those proceedings are part of the public record and he is confirming that they are part of the City's files in this matter. For a moment, they understand there was a hearing with respect to the particular site that occurred earlier. They then began their overlay. All the things they have done on the Overlay District are part of this record here tonight. They had previously testified at those hearings on behalf of his client, Island Village Developers

LLC and they do so again tonight. They are confirming that the City characterizes this hearing as the first reading and public testimony is taken. And they are confirming that a second reading at which public testimony will be taken will in fact occur if a vote in favor of the ordinance occurs tonight. The reasons for passing the zoning ordinance... He has 2-1/2 minutes left and he has 17 reasons, so he will be quite quick, but those are in his memorandum. First of all is the Bert J. Harris, Jr. Private Property Rights Protection Act. They are placing an inordinate burden by governmental action on an individual with respect to vested rights. All of the elements are met. They are there. He can't dwell on it. He has so much else to cover. Interstate Commerce Clause, they are putting an inordinate burden on tourism.

They are in fact interfering with Interstate Commerce. Their own local procedures, look at Section 22-128, there was to be a report by the planning staff on compliance with their Code and their Comprehensive Plan. It is not in the record. The fiscal impacts, they haven't even taken a look at it. They haven't taken a look at it as a Commission nor as they sit as the CRA (Fort Pierce Redevelopment Agency). They don't know what is going to happen to them as a result of passing this. To do that to their voters, he thinks would be a great travesty. Exceeding their police powers. Look at how they are interfering with hotel operations. That is not what a government can do. The equal protection clause. They passed a hotel on the mainland, a condominium hotel - Marina Square - and yet somehow or another condominium hotels in a different geographic location have a completely different meaning. There has been no relationship between condominium hotels in geography. It makes no sense. They violated the equal protection clause. Their own Florida statutory laws. This affects more than ten acres. They haven't followed the right requirements for something this size. Their own Comprehensive Plan, again and again it talks about promoting tourism. They are killing tourism. Now let's talk a little bit about the practical issues. Mr. Recor at the other hearing called it a get out of jail free card for his exemption. It just doesn't work, it won't work, and it means that insurance won't be available for the nonconforming uses. It means that loans won't be available for the nonconforming uses. It means there will be a constant fight about the right to rebuild and it really doesn't duplicate what is happening there now, so they are taking away further rights. They are losing tax revenues. They haven't reviewed it as the CRA. They are undermining tourism. They mean that no hotels will ever be built there, there will be no new jobs there, they will have higher millage rates, there will be a multiplicity of lawsuits, they are going to increase blight. They are just turning South Beach into one big parking lot in order to get a few square feet on any commercial space. Consider their actions. Let's do something right for the City of Fort Pierce, not just a knee jerk reaction. He thinks that movie, Snakes on an Airplane. What is this, condominium hotels on Hutchinson Island? Why is there such a great fear of this. There just shouldn't be. There is no reason to. Don't pass it.

Mayor Benton said Mr. Weiner should have been there during the last two hurricanes and saw that 90% of that island was under several feet of water, maybe he would understand what a barrier island is for.

Mr. Pat Murphy said he is a 20 year resident of South Beach, also a business owner on South Beach. Actually he is for the 4 and 8 in the R-4A area. He thinks the concerns that he has are three. Number one, the impact of values in that C-5 District. Number two,

certainly the overlay makes a substantial part - and he will give them some good examples - of South Beach being nonconforming. And Number three, that 10,000 square feet for a business on an acre, he will give them some reasons why he thinks that is not adequate. Impact on values. The C-5 district along the inlet - just as a little interesting fact - that is the most valuable property in St. Lucie County, several million dollars per acre for that dirt there. They take anywhere in this County, it doesn't come close to approaching that. So they have a valuable asset for their tax base too. If they are going to reduce the density 50%, they are reducing the value very close to 50%. The 10,000 square feet per acre, that is a good rule of thumb they use all the time for commercial properties for a one-story structure. Again, he thinks Mr. Recor did a pretty good job. There is some proper number, he can't give it to them, when they start getting into two or three story building. But for example, his beach office building - he is proud to say he thinks it is one of the better looking structures on the beach - that would be nonconforming. He would have 17% too much building space if he got damaged more than 50%. Again, where that might lay, the right number, he is sure better minds can figure that out. Probably more importantly on the nonconforming structures, the six highrises on the beach certainly would be, if they were damaged more than 50%. And he is proud to say that he lives in one of those. He would beg or be concerned if those owners of those highrises knew if they were damaged over 50%, if they were above the fourth floor, he thinks they would be very concerned that they couldn't be rebuilt. The recently approved Kiwi Condominium hasn't even been built, it will be nonconforming. In Ocean Village - South Pointe - a beautiful single-family subdivision mostly on 60 foot lots would be nonconforming. There does present some financing difficulties for nonconforming properties, he can tell them that. Also insurance difficulties. He would like to see and would hope prior to the next meeting that wording for that categorical exemption certificate is shown to the public so they can have some comfort level moving forward. Because that is a very scary thing for hundreds and hundreds of residents on South Beach that they don't have to have their property blown down, burned down, but it is that 50% rule, now all of a sudden they have major issues. He appreciates what Mr. Recor said that they have to depend possibly on political pressure. He doesn't want to have to get to that point for residents to be able to build their structures back. The as-built site plan, he would just ask maybe Mr. Arias, because he thinks there are a lot of older structures there. He doesn't even know if he has an as-built site plan for his office building. But he knows that is not an inexpensive request, that could be a very expensive request, another burden put on property owners. So he doesn't know what the answer to that is to give some protection to a lot of the owners there, so just give that thought.

Mayor Benton asked that discussion they had the other day, did he ever come up with a number? They were talking about that 35 units an acre. Was he ever able to...?

Mr. Murphy said he doesn't have it in writing. He did find out from the gentleman who had originally built the Royal Inn. And they are hoping to get that in writing, because he has been out of town the last couple of days. He is building in St. Lucie West very quality hotels in the 50 unit per acre range. Again, he is not saying that is the magic number, but he is concerned that when they are dealing in the most expensive property in this County, they have to make the numbers work. Again, at 50 units an acre out

there - and this is more expensive property - they are going to be struggling to make it, certainly struggling at 35 an acre.

Mayor Benton said he would just hope that the rates are a lot higher out here on the water than they are next to I-95.

Mr. Murphy said amen to that and they should be. That is the way they drive economic value too.

Commissioner Coke said when he is talking about 50 units per acre, is he talking about 50 sleeping units with multiple bedrooms or 50 hotel rooms with one bedroom?

Mr. Murphy said he thinks they use it on a per-door basis, but purely what they know as a hotel room.

Mr. Robert Lochrie III said he is with the law firm of Ruden McClosky with offices at 145 N.W. Central Park Plaza in Port St. Lucie, on behalf of their clients, Blue Water LLC. He guesses they can tell when the lawyers come in, they are the ones all dressed up in suits for this part of it. Their client's property is located within the C-5 zoning district over on the beach. It is, as they all know, a subject of this Overlay District which is being considered tonight. The City staff has spent a great deal of time working on this ordinance and they certainly appreciate that and the time and effort they have put into it. They stand tonight to object to this proposed zoning overlay on behalf of their clients due to the effect it will have on the property or may have on the property, and due most importantly to a lot of unanswered questions which they think are still out there and in which they would encourage this Commission to consider before adopting and moving forward with an ordinance such as this. They have heard a lot of discussion at the Planning Board. Specifically some of those questions were addressed in their comments to this board and were raised and discussed earlier by members of the Commission. They think that those questions are very important that they get answers to those questions before someone could make the types of decisions that they are being asked to make tonight. The categorical exemption provision - which is an extremely creative attempt in order, they believe, to deal with what is a very difficult situation - is clearly at this point not defined enough to give anyone real assurance of where they would end up. Really when they look at what that provision does, what it says is and as it was described by City staff, have an individual property owner come in and explain or show the City how this proposed zoning ordinance will affect their property and then leave it to the Commission to make a decision. Depending on whether they go with that approach or not, he thinks the very concept that they would want to do that is appropriate in this sense. Before they adopt a new zoning ordinance and then allow people to go through that process, before they even get to that step, isn't it appropriate to determine what this zoning ordinance will do to pieces of property on the beach and to existing structures? It seems appropriate that type of analysis should be undertaken now rather than after the effect, so they all know exactly what it is that they will be doing by adopting this zoning ordinance. They believe that is the type of thing that needs to be done before the ordinance should be considered. There is also, at least in his mind, he is still unclear as to how these... And he thinks it was an excellent question that was brought up and he thinks City staff even indicated that it needs some work. And that is, how does this density provision work? Not only would he ask what is the right

number, but how do those numbers get applied? As it was described, it is a zero sum game, meaning they could do x-square feet per net acre or x-number of dwelling units or sleeping rooms per net acre.

And that somehow in between those two provisions, if he understood right, there would be a formula that they could undertake to maybe do less sleeping rooms per net acre, but do a larger percentage of restaurant use, for example, on a mixed-use provision. None of that is in this code. Those types of things are extremely important how this code gets adopted and they believe should be in the code as they move forward. At this point, they feel there are simply too many unanswered questions that need to be addressed before this ordinance can be adopted. They are very concerned that it affects their property. Although with so many unanswered questions, it still is a bit of an unknown.

Commissioner Becht said Mr. Lochrie started off saying this was a grave concern to his client. Where is the letter where he has reduced his questions or his client's questions to writing? Do they have that? Has that been presented to the City yet?

Mr. Lochrie said he doesn't believe that specific question has been addressed to the City.

Commissioner Becht said questions, because he said he had questions, not just a question. Is he prepared tonight to tell them specifically what the overlay does to his client's property?

Mr. Lochrie said no. Let him go through that because that is an excellent question to ask of him. They were able to obtain a copy of the draft ordinance today. He believes working with the City Clerk's office they were able to get it about 2:00 or 3:00. It was actually sent to him on a Blackberry and he had it faxed up to a single-family home over on the beach up here and read it on the way into this meeting. So no, they have not had the time to actually apply that to their property. It is a bigger issue they think than just their property, because as they all know their property is undeveloped.

Commissioner Becht said his concern is that if it is such a grave concern to him, why did he seek the ordinance this afternoon and why don't they have his questions before tonight? It just seems to him like... There is another way of looking at what he is doing and it is just he wants a delay. He would have hoped that somebody with such an interesting piece of property would have submitted the questions already, because they don't have those questions tonight; and would have - as Mr. Lochrie suggested - been able to go through how this overlay affects his client's property, which he is not prepared to do tonight either.

Mr. Lochrie said certainly they will reduce those questions to writing. He thinks it is a very good point. They did raise them at the Planning Board, these same questions. They didn't receive answers at that point, but certainly they will send a letter to the City or meet with City staff, whatever they would prefer.

Commissioner Becht said if he would get a copy to him, he would appreciate it.

Mr. Rick Reed said he has a couple of comments and questions. One of the main concerns that he is concerned about with regards to this is, the beach belongs to all of them. It doesn't affect just the people living on the beach. He believes that there is a

tremendous economic impact that has not been looked into this. He is very concerned about that. He can't understand. He has never met with the people who are trying to build the hotel, motel or whatever condo. But why would they not want jobs in this community? Is there some reason? He hears they are worried about density. Harbour Isle, some of them on the Commission own units in Harbour Isle. Not only do they live on the beach, they also bought units either for speculation or for whatever reason, and some of them have more than one. Where was their thinking when they allowed Harbour Isle to be built? His second point is, and he wants everybody to understand this, so there is no question because he keeps hearing it in the community. Commissioner Coke beat him fair and square. He wants her to understand that. But he wants to point out - he keeps hearing all of these reasons why he filed an ethics complaint - he is holding a document here where her father and her and Frederic Bernstein and Lloyd Bell borrowed \$554,691.45 on an unsecured loan for their participation. It has all of their signatures on it - her, her dad, Lloyd Bell and Fred Bernstein. So at one time Commissioner Coke thought it was a good project. And she didn't disclose this.

Mayor Benton said he hates to cut him off there, but early on it was a 27 unit project. He is not standing up for anybody here, but he doesn't think that is an issue tonight. But at that time early on what was approved for Mr. Bernstein was a 27 unit luxury condo. So needless to say, things have changed. But he doesn't think that is the issue tonight. Other comments were made, but they don't need to be attacking anybody tonight.

Mr. Reed said he is not attacking anybody. He is just saying that he believes - and he thinks it will be shown - that there probably again is a conflict of interest.

Commissioner Coke said she will tell him two things. Number one, should he bother to research and read the Minutes, when she had an interest in that project, she abstained from voting.

Mr. Reed said he read that.

Commissioner Coke said number two, Mr. Cahill told her a long time ago that to engage a fool in conversation makes one look foolish. So she will say nothing else.

Mr. Reed said she can call him a fool all she wants, but he will tell her what, she is playing to her crowd and these are her beach people. But don't forget, they live in the City of Fort Pierce and there are a lot more people. Commissioner Coke can call him a fool, but she has the scruples of an alley cat.

Mayor Benton said he thinks that is enough. So he knows, the 4 and 8 was voted on by the whole City, 3 to 1. So what they are starting with here, the whole City is concerned about that beach because they know it is a barrier island. They care about jobs. Whether they build 35 units an acre or 50 units an acre, the jobs are there. But attacking people is not what they are here for tonight.

Mr. Reed said there have been plenty of people attacked tonight.

Mayor Benton said his 5 minutes are up.

Mr. Reed said no, he has 2 minutes and 26 seconds. That is what

his clock says.

Mayor Benton said to speak on the issue at hand.

Mr. Reed said the other issue with regards to that is he does believe that it affects jobs. He is very worried. He can't understand. He heard what Mr. Murphy said. And it is the most valuable piece of property. He knows that Commissioner Becht is interested in trying to put a project there where the sewer plant is. Is that not going to affect the density?

Commissioner Becht said they are going to talk about it when they get ready, it is something that has to be thought through.

Mr. Reed said let's just have transparency.

Ms. Carole Mushier said she is a South Beach resident. First of all dealing with the water treatment plant, that is currently zoned OS-2 which is open space. The trailer park is currently zoned R-3 which is moderate density single family. There is going to have to be a lot of water over the dam and zoning changes and whatever before anything can go in there from what it is, because OS-2 is saying only unique individual properties can go in, so it has to be rezoned anyway. It's down the road, but they are talking what, five years hopefully, maybe? She would like to leave this on a more positive note. She is rankled by the nastiness that she has heard tonight. She doesn't think it has to be that way. Are they playing to the television screen or are they trying to do the City's business? She for one is very thankful to the Commission and the Mayor and Staff, they have been most cooperative. As developers surge into St. Lucie County usually from the south in search of cheap available land - and it is cheap up here compared to other areas - they use attorneys, engineers, and realtors in an effort to change present zoning, seek increases in densities, all to increase their profits. She is not against it. She is a capitalist from the word go. When this happens, nothing is more important than growth management. Without this, their quality of life is doomed. She would like to ask those realtors who constantly work to increase their densities in an effort to satisfy their newfound clients to look around, take a second look, see what they are doing to their Fort Pierce island by the sea. Yes, it does belong to all of Fort Pierce, not just those who are residents. Progressive greed isn't the answer, but good sustained growth management is. Please help them to protect their quality of life. In the long haul all of them will benefit.

Mr. Nathan Ohren said he has a partner in a company that bought property on the sand on the beach. His only issue is the height restriction on single-family homes. He thinks what they are doing by limiting the height restriction on single-family homes to 28 feet is going to cause him to change his development plans. He would rather build single-family homes on his lots. But with the fact that they have to be off the beach by 10 to 14 feet before they can even make habitable space, they are creating a one story home on a lot that may cost \$800,000 to \$900,000. By the time they put together a house big enough on that lot, with the fact that the flood zone has moved in, the high water line is moved in, they have very little space to build on it. They need to go up in order to build a single-family home. If he can't, then he has to change his plans and go with something more dense, something 45 feet tall that is going to block more view and make it more of a tunnel look than building single-family homes. He thinks they would be better off with single-family homes than they would with a duplex or a

quadraplex. It is just a thought. He hopes the Commission takes it into consideration.

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

Commissioner Nelson said a comment was made relative to the possibility of a separate zoning for the old trailer park area and the sewage treatment plant. Can they make a separate zoning effort?

City Attorney Schwerer said he would not advocate that the Commission do that through this process. Certainly at some point in time they might want to consider what is best for the Comprehensive Plan designation as well as the future zoning on those parcels. Those parcels are large significant contributors to what is going to be a full build-out over on the beach. But he would recommend not doing it through this process they are using for the South Beach Overlay and task staff to do that separately.

Commissioner Nelson said also a comment was made relative to the possibility of not permitting Congregate Assisted Living in the area. Can that be legally done?

City Attorney Schwerer said as they are aware, there are any number of statutes that require these Adult Congregate Care facilities and they mandate that they must be allowed in all residential districts. So to the extent that the zoning allows it, the Florida State Statute declares that it is unlawful for the City to prohibit it, the answer is no, they cannot prohibit it. He is not aware of instances where they have any pending applications for such uses. But obviously their Planning Department is well versed in the law in that respect.

Commissioner Coke said she is not quite sure where they proceed at this moment with this. When she reviews it, she is definitely in favor of the general policy of the South Beach Overlay District. She appreciates the Addendum Items (1) and (4) that the Planning Board submitted. She thinks they would definitely need a clear concise plan on Item (8) before they could move forward. Second, she has some concerns about the number of parking spaces being tied to sleeping units rather than bedrooms. And she would like to have a point of comparison with other places such as St. Augustine where this type of development is prevalent. Number three, she would like to see a very clear definition of limited cooking. Number four, when they are looking at density with hotel/motel, resort/hotel, condo/hotel, she thinks they need to have different density levels for each of those and she thinks they need to be sure they have an accommodation made so they can have a five star hotel come onto the beach. In that light, she would like some further information of what the density of hotels similar to five star hotels that are built on other beaches in their area. And number five, she would like to thank Marcia Baker, because one thing she didn't think of was she thinks also when they talk about limiting the number of days in a year, they also do need to limit the number of days anyone could rent one particular unit in a year.

Mayor Benton said he knows there has been some discussion on the wastewater treatment plant property. If they all could have been there during those two hurricanes, he can tell them he was there and he saw that property when they had eight hours of the tide going in at its worst. That water has to leave. That water leaves

with the backside of a hurricane, which is usually out of the southwest. And that property from the Causeway where it starts all the way to the Pelican Yacht Club basically was under many feet of water and even that wastewater treatment plant was only within four feet of being overcome. So to put - and he has heard from a certain Commissioner - possibly a ten-story building on that property. He says no way. That property, because it was submerged land and it was dredged up just like the property downtown, it reverts back into public hands. He has seen the documentation. The City owns that property. Some type of development for the best interest of the public, he would agree to. But ten-story condos or a ten-story hotel so the property next door where the trailer park was that property could work because the numbers he is asking for that, he doesn't agree with that. He sees it as a perfect place for a marina. He can't see that. But he does think there are some items they need to fine tune a little bit better, specifically the categorical exemption. He thinks they need to try to come up with some numbers there. He thinks also when it comes to the numbers as far as the commercial space, maybe 10,000 isn't good, maybe it should be 12,000, maybe it should be 15,000; so he is hoping for maybe a better workable number there. The 35 units is more than the 20. But he would like to look at - and he thinks they have been through this before though - a lot of barrier islands. What is a good number? He personally thinks 35 units is good. Also he wants to find out from their Property Appraiser. He doesn't think the property is going to be devalued, because he doesn't know anybody who has bought multi-million dollar property out there that is going to put it for sale for less than they paid for it. A lot of it is on hold right now because the price was a good price. The market is leveling off. But he doesn't see anybody selling it for less than they paid for it. But he would like to hear that from Jeff Furst. He just thinks there is a little bit of fine tuning they can do. And he wants to thank staff because they have come a long way and it is something they really need to do because it is a barrier island. If they haven't learned what these storms can do and will do, maybe the best place for that resort hotel is where the power plant is on the other side of the bridge.

Commissioner Alexander said just his input on this Overlay District. He heard a lot of questions and he has had a lot of questions answered, but his concern is with this he thinks it needs to come back to the Commission. There are too many questions unanswered even with the questions that were brought to the Commission by the public. He is not disagreeable with the Mayor about that sewer plant section there, but he thinks that is the ideal spot for what they need for this community is a hotel and he is going to be supporting that when it comes back to the Commission.

Commissioner Becht said there are several questions. He thinks staff has done a wonderful job of getting them as far as they are and the public has helped tremendously, some of the public has helped tremendously. He hopes some of those who spoke tonight will follow through and get them something in writing. He is concerned. As a Commissioner he has to leave it to Mr. Schwerer to work through the legal issues. But the process of converting some of their properties into nonconforming either structures or uses is of grave concern to him and ought to be a concern to them. The process that Mr. Recor has outlined for that may work, it may not work. He doesn't know if it has ever been tried in any other community. But they need to really get a grip on that before they take a step down that path. He would like to get some feedback

from some lenders. They heard a couple of comments tonight from some attorneys who said lenders might be concerned about this. If they can send the draft out to the local banks and ask them if it is going to impact on that. He doesn't know if it is worth sending it out to any insurance companies or not. That issue was raised, but he is not as worried about that one. He has already expressed his concerns about the square footage on the commercial space. He doesn't have a figure to give them. He was hoping that figure would come from the community. He did not hear a specific number from anybody tonight. He did hear from Mr. Murphy at least, who said 50 sleeping units would probably work. But he thinks they might be able to get a more concrete number before they vote on that. He just doesn't think 35 units is going to work. Lastly, with their permission he has worked very hard over the last couple of years with County Commissioner Craft to try to decommission the wastewater treatment plant. That has been the goal. It has to be accomplished through a variety of means that may or may not be palatable to all of them. But one of them involves converting the wastewater treatment property into some kind of private economic use. If they don't like that, then the process of decommissioning it is not going to work. He has not publicly and he does not believe County Commissioner Craft has publicly said that they intend to make this happen through one particular device. He thinks both of them have kept open minds and said the public needs to come back through a charrette and tell them what private/public use of that property is going to support it generating enough money to warrant the decommissioning of the wastewater treatment plant. He for one has not thrown out a height of ten stories. He hasn't heard County Commissioner Craft with him or any of the public meetings he has seen him in say ten stories. But maybe somebody said that to the Mayor, he doesn't know. But that isn't going to work. They are not going to tell them what to do. The public is going to tell the Commission what they want to happen. All he is asking them to do is keep an open mind with a public/private partnership use of that property so it can be decommissioned and it can be decommissioned in their lifetime. That is a very important issue to him. And because it is a very important issue to him, he could not vote for this ordinance tonight as it is currently drafted because he sees that the effect of the ordinance would be a real dampening on any private interest in that property. So he hasn't solved the problem. He will work with staff for the next couple of works to try to solve that problem. But tonight he couldn't support the ordinance because of that single issue.

Commissioner Nelson said he appreciates the work that Commissioner Becht has done in that area relative to the wastewater treatment plant. But he wants the public to know that just recently the Fort Pierce Utilities Authority was granted a little over \$7 million to facilitate relocating that plant, not that plant in particular, but a plant out on Glades Road area so that they could in fact in due time move that plant. It is going to take well over \$80 million or \$100 million to decommission that and move it and rebuild one out at that area. The Treasure Coast Legislative Delegation publicly said they definitely wanted that land to convert itself back to private use so they can maximize the return of their investment in the area. He says that because they are the ones who have the purse string and they are going to probably be influential with respect to getting monies necessary to move it, so they have to take those into consideration. He joins Commissioner Alexander with respect to trying to maximize the usage whether it is private or public. If it entails higher heights than they currently have under consideration, they ought to accommodate it. That is why he

asked earlier about the possibility of separating out the zoning for that area, so they will have the cumbersome process of saying no, it can't be done because on this date the City Commission in fact initiated a 4 and 8 situation. The need for a hotel five star category is going to be exacerbated as time goes on. If they are going to get the types of Marriott and Hyatt which this community really and truly deserves, they are going to have to make it attractive for them to make a return on their investment. So he is going to look at that very closely, he wants to review their options, and he doesn't think there is anything better than that piece of property as far as he is concerned within the immediate area.

Commissioner Coke said she thinks it has become rather obvious that each of the Commissioners as well as the development community have several questions that they need more of a point of clarification on prior to giving full endorsement to this. She is wondering if it would not be prudent of the Commission to postpone any decision on this this evening until they can get the answers that they have requested.

Motion was made by Commissioner Coke, seconded by Commissioner Becht, to postpone any decision on Ordinance No. K-441 (to the City Commission meeting on September 18th).

Mr. Recor said he agrees. They have taken notes of their comments. They will also refer back to the Minutes. But he would like to ask that they be given the opportunity until the second meeting of September to allow them to respond to these issues. That may or may not be enough time. But if it is enough time and they are comfortable in that they have had an opportunity to get the input they need and report back to the Commission, Staff will report back to them nonetheless at the second meeting of September. He thinks the direction is clear. He thinks the discussion has been good. It is exactly what he anticipated. At a starting point, he would like to encourage them to look at the second meeting in September as opposed to in two weeks.

Commissioner Becht said he was fairly harsh on the Blue Water attorney, but hopefully he is going to provide them with written questions. Have they received anything from Mr. Bernstein's project attorney who had specific criticisms - not legal criticisms - but specific criticisms to the overlay?

Mr. Recor said no, he is not aware that they have.

Commissioner Becht said he would ask if they have specific criticisms... He doesn't need them giving legal criticisms to his planning staff. But he would ask if they have specific criticisms to the ordinance, he would ask that of them. They will do what they want to do.

Commissioner Coke said she would like to request too that maybe Mr. Recor could contact the members of the development community as well as Mr. Murphy and ask them if they can give him a written summary of their concerns. That way they are sure they are addressing everyone's issues. They can't always make everybody happy, but at least they can work toward that end.

Mayor Benton said he would ask that community contact Mr. Recor, it might be easier that way. Anybody who does have concerns, please give Mr. Recor a call.

City Attorney Schwerer said procedurally they are on first reading with this ordinance and they have heard a number of comments from the Commission as well as the public. What he is going to encourage them to do is develop a list of items that they have a consensus on to direct back to staff for potential redrafting of this ordinance. He is going to tell them that most likely, from what he has heard, most of these things that they want to see in it or want changed is probably going to send it back through the process - because there is substantial changes - to the Planning Board and then back up to the Commission. So there will be plenty of time for discussion. But they do need a list of what they believe to be the important considerations they want to see addressed and direct staff to take that.

Commissioner Coke said she believes Mr. Recor said he took a list of what each of them had to say.

City Attorney Schwerer said he did. He understood that.

City Manager Beach said all of them who have very specific concerns about this, in addition to their comments this evening and in addition to the Minutes, please draft those concerns and get them to Mr. Recor so they have a record of it and so they can follow through with it.

Commissioner Nelson asked they are going to look at the Minutes though and get a feel for it?

City Manager Beach said they will look at the Minutes when they do that. But at the same time - he is sure they have all listened to the discussion - they have conflicting direction coming out of the Commission. They have to blend that in to some coherent direction and the only way they can do that is if they get it all in front of them and start working with them individually to try to get some direction.

Commissioner Becht asked what fun would it be if Mr. Beach had clear direction from the Commission?

City Manager Beach said he understands.

Commissioner Becht said he would like some clarity. When this is brought back in the second meeting in September, it is being brought back incident to the first reading of the ordinance. That won't be the second reading of the ordinance.

Commissioner Coke said that is right, that was her motion.

Commissioner Becht said he just wanted clarity for both his benefit and the public's benefit that it will go through the first reading whatever they do at the next meeting. If they pass it at the next meeting, it will be the first reading.

Commissioner Coke said now they will have two more Public Hearings on this at minimum.

Commissioner Becht said yes, that is what he wanted to clarify.

City Clerk Steele asked did she understand the City Attorney to say it needed to go back to the Planning Board?

City Attorney Schwerer said if there are substantial changes to the ordinance. For instance, there are a few suggestions that he sees as substantial. Coming up with a nonconforming or catastrophic type of provision, that is certainly going to send this back because that is a major change. But if they are talking about a drafting change or striking something out, that is a little different. They need to wait and see what the nature of the changes are.

Commissioner Coke said but what if that change was suggested by the Planning Board?

City Attorney Schwerer said it was, but it is not in the draft of the ordinance. The language that is needed is not there. In other words, that is a suggestion to make a change and Mr. Recor has to develop certain criteria. Is that correct?

Mr. Recor said he agrees.

City Clerk Steele said she just wants to point out that if it does go back to the Planning Board which is September 12th, she will not have time to advertise for September 18th.

Mr. Recor said they won't be going back to the Planning Board in September. They will simply respond to the Commission the second meeting of September on the progress they have made on the issues they have identified. They fully expect that it will have to go back to the Planning Board. The comments are significant enough that it warrants a further review.

Those voting in favor of the postponement of Ordinance No. K-441 were: Commissioners Alexander, Becht, Coke, Nelson, and Benton. Those opposed: None.

The next item on the Agenda was Mr. Douglas Davis, Richard K. Davis Construction, request extension of approved **Site Plan** for **Citrus Avenue Professional Building** to October 16, 2006.

Mayor Benton asked is there anyone here representing Mr. Davis? He doesn't see him in the audience.

Motion was made by Commissioner Alexander, seconded by Commissioner Coke, to approve extension of an approved Site Plan for Citrus Avenue Professional Building to October 16, 2006.

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 Representative from Calvin, Giordano, & Associates to give update on the rewrite of the **Comprehensive Plan**.

Ms. Lorraine Tappen, Calvin, Giordano & Associates, said she just wants to give them a very brief update that the draft Comprehensive Plan work is going smoothly. They returned this last week the Conservation and Intergovernmental Coordination elements back to City staff and that is now ready for the Planning Board's review. This week they are turning in the Recreation and Open Space, Coastal Management, and Infrastructure elements for City staff for their review. The remaining elements - Future Land Use, Transportation, and others - will come next month in draft form for

the City Staff's review. Last month they addressed at the City Commission Workshop issues regarding Concurrency Management and Proportionate Fair Share Mitigation. The new State Regulations require that cities pass an ordinance with the proportionate Fair Share Mitigation Methodology by December 1, 2006. She wanted to let the Commission know that the ordinance will be coming their way. They expect it to go to the Planning Board in October and then to the Commission in November for first and second reading in order to meet that deadline.

Commissioner Becht said he heard they got good news back from DCA on the Port Sub-Element.

Ms. Tappen said that is correct. She heard from City staff that DCA had no objections, recommendations, or comments on the language. And they are going to take that exact language and put it into the Coastal Management element so that way it can move forward smoothly.

Commissioner Becht asked what is necessary to finalize that so it is all tied up and neat and done.

Mr. Matthew Margotta, Director of Planning, said the report from the DCA actually said yes, they did not require any further comments. The letter they sent said it satisfied the ORC (Objections, Recommendations, Comments) requirements so they don't have any of that going back and forth. However, DCA further specified they do need to adopt their updated Comprehensive Plan prior to adopting the Port Sub-Element. So why not do it at the same time is Staff's...

Mr. David Recor, Deputy City Manager, said there was some reference to the EAR-based amendments. What they are referring to are the 1999 issues.

Commissioner Becht said right. There might be other reasons for adopting the Port Sub-Element before the other issues.

Mr. Margotta said he agrees.

Commissioner Becht said if Mr. Margotta will discuss that with Mr. Recor, maybe they need to go ahead and advertise that and adopt it.

Mr. Margotta said he will definitely need some direction, because it would be counter to what the DCA directed. There is not a whole lot of wiggle room in their direction to them regarding requiring the EAR (Evaluation & Appraisal Report) to be accomplished prior to adopting the Port Sub-Element.

Commissioner Becht said if he and Mr. Recor could talk about that tomorrow.

Mr. Recor said they will.

City Clerk Steele introduced the following resolution by title only:

RESOLUTION NO. 06-42

"AN RESOLUTION OF THE CITY COMMISSION OF THE CITY OF FORT PIERCE, FLORIDA, AMENDING RESOLUTION NO. 05-53; AMENDING MEMBERSHIP REQUIREMENTS ON THE **KEEP FORT PIERCE BEAUTIFUL ADVISORY BOARD**.

Motion was made by Commissioner Nelson, seconded by Commissioner Becht, that Resolution No. 06-42 be adopted.

Commissioner Alexander asked concerning this Board, he knows that is something they look forward to working within their community. His concern is, is there a budget for this Keep Fort Pierce Beautiful?

City Manager Beach said he believes they have a person designated with that responsibility. He believes that within the Fort Pierce Redevelopment Agency there is a specific line item that is set up for Keep Fort Pierce Beautiful programming.

Commissioner Alexander asked if it is not, why is there not?

City Manager Beach said they have this active for about the last five years. The financing of it has simply been through the operational budgets of whatever department it was in, there wasn't a designated figure. But recently there was a suggestion made to come up with a specific pot of money that members of the community could compete for in doing Keep Fort Pierce Beautiful projects. That is what he is referring to.

Commissioner Alexander said he is just concerned about it because he did meet with one of those Community Development... It is under that when they were giving the reports. He is looking at where they have something like \$25,000 for Keep Fort Pierce Beautiful. He thinks that is a slap in someone's face.

City Manager Beach asked does Ms. Jenkins have anything to add to this? He knows it is under that at this point in time.

Ms. Dorina Jenkins, Assistant Director for Community Services, said the Keep Fort Pierce Beautiful funding is allocated from a grant received from FDOT.

Commissioner Alexander asked so the City of Fort Pierce does not contribute anything to this?

Ms. Jenkins said they contribute staff.

Commissioner Alexander asked that is something they are going to address during their budget hearings?

City Manager Beach said they certainly can.

Commissioner Alexander said if FDOT is giving \$25,000, what is that to Keep Fort Pierce Beautiful. They have an Advisory Board in this with a budget of \$25,000. He will work on that at budget time.

Commissioner Nelson said just recently the Florida League of Cities had its annual meeting in Jacksonville. He took the opportunity to look at the Keep St. Petersburg Beautiful program. It is fully funded. They even go so far as to have a Police Officer who writes citations to people who in fact dump in the city and they have a real aggressive campaign for advertising that. He will be sending something forward that perhaps both the Fort Pierce Police and Code Enforcement and possibly the Community Services people might use in this regard.

Those voting in favor of the adoption of Resolution No. 06-42 were: Commissioners Alexander, Becht, Coke, Nelson, and Benton. Those

opposed: None.

The next item on the Agenda was Consider proposed amendments to Section 2-27 and 2-29 of the Code: Changing City Commission meeting time and placement of items on the Agenda.

Mayor Benton said they have asked for information about items that are normally placed on Agendas and he sees on the second page of the memo what the County and Port St. Lucie does.

Commissioner Nelson said he spoke to the City Clerk today about this. He was concerned about the fact that the citizens should have a means by which they can in fact get their points across and on the Agenda. Also he is concerned about the Commissioners getting things on the Agenda. This doesn't really clarify for him how those two items would be addressed. What is their perception of what is proposed?

Mayor Benton said he thinks any time a Commissioner feels strongly enough to put an item on the Agenda, it should be up to that Commissioner. He doesn't think any Commissioner has ever been denied. If somebody in the public has something they want to bring to the Commission, if they try routing it through staff and they get nowhere, or if it is that important, they can come to one of the Commissioners and one of the Commissioners can put it on the Agenda. But unfortunately they are having a lot of presentations put in front of them that basically are, who knows how they are driven? But they need to get back to conducting business.

Commissioner Alexander said just speaking on what the Mayor just spoke about, people coming to the Commissioners. He has people who make comments to him about how staff treats them or comments to them when they speak about talking to a Commissioner like they are out of their league. That is the public. His door is open 24/7. If someone calls him at 5:00 a.m. he is going to answer, not because it is City business, he is just going to answer out of courtesy that someone took time to call him. When he hears people telling him that individuals asked them, why are they coming to a Commissioner, what the Commissioner has to do with it, he just wants them to give him a name so he can keep it in his little black book. He doesn't want anyone to deter anyone from coming to speak to this Commissioner.

Mayor Benton said in his opinion, that is their job to listen to their constituents and their door should be open and their telephones ready to be answered.

Commissioner Coke said she appreciates staff getting back to them on this. Certainly by the fact that everybody can see the Commissioners showing up at all the public workshops and forums that they are definitely a Commission that is interested in valid public input. She thinks the County has a good way of doing it, that it goes through the departments, because a lot of times issues can be resolved. She thinks they have five minute public comments at the end of every meeting. If the public gets up and they have something that is going to take them longer than five minutes and it is of genuine interest or a public concern to three Commissioners, there is no reason why they can't say this is a great thing and they would love to hear more about it, can they come back at the next meeting and they will give them 15 or 20 minutes to make their presentation. Her concern is the way they

have it right now, literally they could have somebody show up here and put themselves on the Agenda to give them a 45 minute floral arranging class. They have no controls over that type of thing. Not that she wants to cut the public off, however she also doesn't want John Q. Citizen to have to sit here and listen to 15 or 20 minutes that is not actual public business.

Commissioner Becht said he thinks Commissioner Nelson touched on the delicate balance between allowing the public access to this forum, and as Commissioner Coke intimated, letting the public hijack the meeting. Actually a floral arrangement class might be more interesting than some of the agendaed items they have had. But that being said, he doesn't have a problem with what Ms. Steele has recommended here. They are going to change the meeting time to 6:30 p.m. And they can play with the way the Agenda would get set the way Ms. Steele set it out. If it doesn't work, they can come back and change it after they have had some experience with it. So he can move approval of what she is recommending.

Motion was made by Commissioner Becht, seconded by Commissioner Alexander, to approve advertising the proposed Ordinance amending Sections 2-27 and 2-29 of the Code.

City Clerk Steele asked may she point out, when they were talking about someone might give a 45 minute dissertation, in the ordinance itself she did include: The Commission may impose a time limitation to five minutes or allow such additional time as may be necessary and appropriate. So they are protected by that.

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 Designation of a City Commissioner as an ex-officio board member of **Sustainable Treasure Coast, Inc..**

Commissioner Coke said she would like to nominate Commissioner Nelson because she believes he has been doing this already.

Motion was made by Commissioner Coke, seconded by Commissioner Becht, that Commissioner Nelson be designated as an ex-officio board member of Sustainable Treasure Coast, Inc..

Mayor Benton said Commissioner Nelson has been doing a good job. Why change things, right?

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 St. Lucie County for appointment of two members to the **Skate Board Committee.**

Commissioner Becht said Mayor Benton has pushed this quite a bit, so at a minimum they are going to nominate Mayor Benton.

Commissioner Nelson said the second person ought to be Commissioner Alexander.

Commissioner Becht said with all due respect to Commissioner Alexander, who he knows is dying to serve on another committee, he is wondering if they might appoint somebody from the public.

Mayor Benton said he thinks that is what they are looking for,

because there is some grant money out there through the Tony Hawke Foundation if they use public input and skateboarders to help design the park.

Commissioner Coke asked why don't they leave it to Mayor Benton to appoint that second person since he is more in touch with the skateboard people than the rest of them are?

Mayor Benton said he will have to check with the County, because he did give them names. He has had a lot of correspondence in the last several months with different folks. But he doesn't know if the County appointed them or not.

Commissioner Alexander said they asked for two from the City, right?

Mayor Benton said right.

Commissioner Alexander said the Mayor plus his designee.

Mayor Benton said either that or he can bring back a name at the next meeting.

Commissioner Becht said he can bring back a name. The only thing he would like Mayor Benton to consider is maybe looking at the YMCA or somebody who would have an interest in using the skateboard park. He doesn't know that the YMCA would, but an organization like that, where they could establish somebody on the Committee who is going to put people in it. He would defer to Mayor Benton absolutely.

Mayor Benton said he volunteered. He thought they were choosing a committee at their last meeting and then he got this letter from Doug Anderson the next day.

Commissioner Nelson said the guy that ran the skateboard shop down on U.S. #1, is he still there?

Mayor Benton said no. There are several folks who have been really actively pursuing this. He can either put a few names out at the next meeting or make a recommendation.

Motion was made by Commissioner Becht, seconded by Commissioner Alexander, to appoint Mayor Benton to the Skate Board Park Committee.

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 Commissioner Alexander to discuss the Urban Village community magazine.

Commissioner Alexander said he heard a young lady earlier - if she is still here - speak about the quality of life. That was his perfect words for this article they are speaking about tonight. He did put a couple of sheets in each of their packages. This young man on the front of this Urban Village community magazine is Russell Simmon. That is one of the most dynamic young black men in this American nation. And for them to belittle his name because they have misinterpretation. Now don't get him wrong. He is not picking and choosing or pointing fingers at anyone. They have trained officers who are out there trying to curtail these types of things, but he thinks they just need to do a different job and a

better job. He doesn't know why people as African American have to be defined. He doesn't mind because they need the police in this community, but they don't need to be profiled. He gave the Commission copies of this because when this incident first came out he took a back step on this because he didn't see the magazine. But when he had the opportunity last week to see the magazine, his concerns... And he knows they are all looking at the one with the two white young kids there. That is a peace sign. That is an okay sign. If it is depicted as a gang sign, then he is just as naive and he can't read the writing on the wall. He won't say that it is not, but he just says he and one hundred other people might perceive that to be a peace sign. That is okay sign, and if the young kids use it to fool the elderly people, then he just thinks they have been fooled 20 times over. He looks at the one with the young man has a Fort Pierce Central shirt and to him the hand sign is a C. He is looking at this as though whoever else had an opportunity to. He is just hoping that they all took a close look at it because he is not trying to promote anything. He just knows he met this young lady when she first came maybe a year ago about this magazine and he supported her then. And he took the back step because she never said anything to him. But he thinks she was really hurt about the comments that were made, that people took advantage. All he is saying to them tonight is that he doesn't depict these as being gang signs. These are just kids playing around. They are playing at Fort Pierce Central. If that is suppose to be a crip from Los Angeles or the west coast, the City of Fort Pierce is on the east coast. And if they have the crips here in Fort Pierce, he and 100 other people are just depicting the wrong thing. He brought this up because he wasn't upset. He just looks at this young man here who came to South Florida and he did a big huge thing for the kids. He wishes they could have gotten him here. He is an advocate for their young people. If they don't start today, they are going to suffer tomorrow. Again, the officer, he knows the gentleman. He knows him to be a well respectable person that he is. He would never ever comment against him. He just thinks they in life, everybody makes a mistake. He thinks it was a mistake made on behalf of this magazine. If he gets support from any of the Commissioners, he would just suggest that they reimburse this young lady. There weren't that many. There were 200 magazines. He just suggests they reimburse her for her money for this act here.

Mayor Benton asked does Chief Baldwin have anything he would like to add to this discussion?

Assistant Chief of Police Sean Baldwin said the only thing he would like to add right now is, this is a matter that is under investigation. An investigation will be completed. Actually he made contact with Mr. Matthews from the NAACP last week, and Ms. Oliver, the publisher of the magazine. It seems to him that the situation could be resolved by simply just sitting down at the table and discussing the issue. He thinks all the parties involved in this are agreeable to that. That will take place over the next couple of days.

Commissioner Alexander said because it came to him at the last 12:00 o'clock hour. And he is not blaming staff, but he thinks staff should have stepped up on this. If it wasn't, he thought he got a report that it was resolved as far as comments made to the Chief or from the Chief. Did Mr. Beach not send him a memo from the Chief about this?

City Manager Beach said he is sure he received a memo. He doesn't recall sending it to Commissioner Alexander. But when he says resolved, he doesn't recall a resolution of this taking place. Commissioner Alexander said just to prolong this and dragging this on, he put it on because when he looked at it, this is a beautiful magazine and they should have more support of the community as such for a minimum cost of a magazine. Again, his request is that they... If Chief Baldwin is going to see to it that it has been taken care of, he doesn't want to have to revisit this.

Commissioner Becht said what concerns him, is this a matter that is in litigation? He had heard something that a lawsuit or claims are going to be filed. Because if there is, then he would prefer not to talk about it, if there are legal proceedings pending.

City Attorney Schwerer said it is probably best that they not discuss it because there were some issues that were raised and there is always in today's times a possibility of claims. Of course, there is a statute on that.

Commissioner Becht asked has anything been filed yet?

City Attorney Schwerer said he doesn't have anything in writing, but he read something.

Commissioner Becht said Ms. Oliver is here, so she can tell them whether she intends to do that or not.

Mayor Benton said he was there that day. He doesn't know how many folks were there, but they had a good time. This must have been handed out after he left. But he doesn't see a problem with it. From his asking the next day what happened, what was wrong? He thinks maybe it was a knee-jerk reaction because literature was handed out without the sponsor's knowledge, whether it was Weed & Seed. He doesn't understand. To him, it was just a knee-jerk reaction, they made a mistake. If they need to reimburse her for what was taken...

City Attorney Schwerer said he wouldn't advise that at this time. That is an area the Commission shouldn't go into until... If they want to ask for a complete investigation of it and a recommendation, then yes. But from the dias tonight he wouldn't recommend reimbursing anybody for anything, because they have no idea what that is and there has been no claim presented and no request and no documentation. They are dealing with public funds.

Commissioner Becht said he would like to thank Ms. Oliver for what the clear message was, because her clear message was an educated village is an empowered village. That is a very powerful statement and that is what he reads clearly. Any subtle messages that may have been in here, he missed. He likes her clear message and he hopes that is the real message. And he would ask staff to work with her in any way they can.

Ms. Jauhnisha Oliver, 3608 Swann Road, said right here on the front page and the opening pages are contact information. She has taken every photo, so she knows the background of every photo. She placed every word in here, that is why there are some typos. What she copied, what she put in here, these three pages. The first one is showing their thumbs up and that has come from one of their 501(c)(3) here in this County. That is a hand gesture. Then on the second page is something that appeared in the same newspaper

that she spent two days with this issue on the front page of their Tribune here on that Tuesday and Wednesday, the 1st and 2nd of August. On that Monday, the second page that they see is from the Luminaries. That was in there. This is some other entity with the Weed & Seed which is of the Police Department here. They are doing a sign. If they look on Page 10 she thinks it is, with the young man on the top, they have the sign up. She was told that meant bloods. She doesn't know. She is willing to take that and not have anybody do that again. But when she looks in the newspaper and see that someone else is doing it. They say they set an example for their kids. These are adults who are doing that. But when the kids are doing it, it is not okay. She doesn't appreciate them being singled out and labeled. That was her problem. She has no problem with working with anyone in the community. That is why she was there on hand. She came when she was called to speak with the gentleman. As far as legal matters or whatever, everybody blows things out of proportion. The City Attorney doesn't have anything on his desk because she has not submitted anything to anyone. She did file a complaint with the NAACP office because they are open. Their Fort Pierce Police Department is not there on the weekends and she doesn't understand that. But she didn't think of that until this situation happened. They need to look into that. The third page there, they have their President Ben Franklin, holding up some signs too. Not the real Ben Franklin, but someone thought it was cute to do. And that was printed today. So they continuously have people holding signs up and doing things.

Where do they draw the line? She was told that she shouldn't have anybody doing that. It is a community magazine and it represents the community. The kids, if they are criminals, they should be arrested. But she will not put those people in the magazine, just like she would not put other people in the magazine. If they say they want to be photographed, that is fine. She is trying to touch people and she is not singling anybody out. If they will look through there, there is a church in there, there are clubs in there, there is everything because they are all people. Regardless of what they are doing, that is none of her business. She doesn't feel comfortable with asking them if they are a criminal. And then would they tell her? She totally went off from what she was going to say here, but she knows what she is trying to do. And if they will take the time to look at the other pictures, not the ones that she mistakenly put in because she did not know, but the rest of the pictures - there are old people, little babies, middle aged, her age, and all different types of things in there. Look at the articles. They even discuss games in there.

Mayor Benton said it appears to be a very positive magazine from what he has seen tonight. He will take it home and read it. But he thinks it is a lot more positive than a certain yearbook that went out last year. He is going to apologize. He doesn't feel it should have been picked up. He hopes it won't happen again.

Ms. Oliver said she wants to go on record by saying it was never her position to hold the Police Department at fault or whatever, because they all make slick judgments at some time. But if they are going to be a productive community, they need to be involved in what each other are doing, and that is why they all received the copy. The kids here in this community. She thinks the Police Department needs to... Their approach to them when they ride by and they look into these children's eyes - because they are still children, criminals or not, even the grown people - there shouldn't be the faces she sees all the time. She has never been arrested or on the other side of the law, but the look she gets sometimes when

officers pass her, that doesn't make her feel that they are approachable, to be totally honest. She thinks that if they have the sense, because she is thinking she is on the right track now, trying to be productive in the community and of positive use. She needs to check her approach first before she can check somebody else. So maybe they need to look into that. If they are supposed to be the ones that are setting the pace here, they need to look at how they are approaching people.

Commissioner Nelson asked what is Ms. Oliver's estimated cost for production of this magazine?

Ms. Oliver asked the whole book? They did 5,000. Or did he mean the 200 they had that day?

Commissioner Nelson said yes.

Ms. Oliver said she actually sat down and looked at that today. It was a little over \$300, like \$316 or something when she put the tax in.

The next item on the Agenda was Director of Planning to advise of his approval of a Minor Amendment to the **Site Plan** for **Dunkin' Donuts** and Office Building at 2102 South U.S. #1.

Mr. Peter Buchwald, Zoning Administrator, said this project consists of a Dunkin' Donuts franchise in a two-story office building located at the intersection of U.S. Highway #1 and Tennessee Avenue. The original Site Plan was approved by the City Commission on May 2, 2005, and the project is under construction. The Minor Amendment consists of the replacement of a cross access with two parking spaces and a modification to the dumpster enclosure. The cross access was proposed between the site and the gasoline station located adjoining to the south of the site. However, the owners of the properties have not come to terms with regard to the cross access at this time, therefore the cross access will be striped for two parking spaces and concrete bumper rails will be installed. The cross access may be opened in the future should the property owners come to terms. Access from both U.S. Highway #1 and Tennessee Avenue still remains to this project. The dumpster enclosure was revised to include a side opening for individual access. The proposed amendment meets the criteria specified in the City Code for a Minor Amendment. In addition, affected Departments have reviewed and approved the Minor Amendment. The Department of Planning has administratively approved the Minor Amendment to the Site Plan and is notifying the City Commission in accordance with Section 22-58 of the City Code.

Mayor Benton asked does that mean they will get a C.O. (Certificate of Occupancy) and they will be open very soon?

Mr. Buchwald said that is the intent. The as-built Site Plan needs to match the original Site Plan and these are the changes from that original Site Plan.

The next item on the Agenda was Director of Planning to advise of his approval of a Minor Amendment to the **Site Plan** for **Gator Trace Phase II** by Symphony builders (The Greens at Gator Trace).

Mr. Matthew Margotta, Director of Planning, said before the Commission is a Minor Amendment to Site Plan for Gator Trace Phase

II that he approved. The basic situation is that Gator Trace had a temporary construction entrance in the northwest corner of the property which was to be converted into a permanent secondary entrance from St. James Boulevard. This Minor Amendment moves that from St. James Boulevard to South Market Avenue. There is a relocation of a dumpster on the site. The amendment meets the criteria for a Minor Amendment as specified in Section 22-58 of the City Code. All affected Departments including the County Engineer have reviewed and approved the Minor Amendment, and the Planning Department has approved this Minor Amendment. Please understand that over the course of reviewing this, he knows there is a lot of interest in this case and there was a lot of public input, and that is why St. James Boulevard was initially looked at. When he reviewed the plans, he obviously went through the conditions of a Minor Amendment and felt that this qualifies as a Minor Amendment and he is advising the Commission tonight that this would be appropriate.

Mayor Benton said he would like to clarify some things. He doesn't know if everybody up here has met with the developer. He has met several times with him and members of the public. To explain how this got here, basically the County wouldn't give them a permit to use St. James Boulevard - first they said they would, then they said they wouldn't. There were meetings with the residents of St. James. And the County's alternative was, use this road and make the improvements to it.

Commissioner Coke said she thinks she spoke with everybody on staff regarding this matter today. She has some concerns about this being considered a Minor Amendment. She knows staff's position is that they just changed the secondary entrance. However, Ms. Steele was kind enough to pull the Minutes of the December 19, 2005 meeting where Mayor Pro Tem Coke asked does Commissioner Nelson's motion include Commissioner Becht's recommendation that there be a building permit for the St. James Boulevard right-of-way prior to Site Plan approval? Commissioner Nelson said yes. Her concern arises twofold. If they all remember, the residents in and around this development had a high level of concern of how this was going to affect their area and they showed up here. Her phone was ringing off the hook today with people expressing concern about it.

So they kind of promised them something and now they are changing without giving them the opportunity to come back and speak their mind again. And she begs to differ with staff that if something is made as a condition of approval by this Commission, she doesn't think changing it is a Minor Amendment. She thinks if this Commission had not conditioned approval on them utilizing this particular road because - she will tell them the truth - her attitude toward the development may or may not have been to vote yes or no if they had known this. Her concern is, first of all, they are not getting the public input on this from a very vocal public that they should. And secondly she has a major concern - probably even more than they are not getting the public input - that if this Commission has something as a condition of approval, she doesn't understand how staff can consider that as a Minor Amendment and override what five of the Commissioners voted for.

City Attorney Schwerer said if he can shed some light on this from a legal standpoint. He did talk to Commissioner Coke and also Planning Staff. The Commission has the ability at any time to determine that something is a Major Amendment and thus requires a Public Hearing process. If the Commission wishes to do that tonight, they must make very specific findings however. And before

they make those findings, let him recite what the code says. The code says that a change or modification to an approved Site Plan is a Minor Site Plan Amendment if it does not impact the following criteria: Such Minor Amendment shall not change the use or character of the development, increase the overall coverage or height of structures by more than 10%, reduce the approved open space or increase the impervious surface by more than 10%, or increase density or the total number of dwelling units. Absent those matters being affected, it is generally considered a Minor Amendment. However, if the Commission desires to determine it a Major Amendment, then they can simply make the finding as to why they feel it is and request that this matter be brought for public participation. He would assume it would have to go to the Planning Board first for their consideration and review, and then up to the Commission again. Before that happens, let him ask the Planning Director one question. Is there any other alternative road that can be used for the secondary access that the Commission required?

St. James Boulevard has been shut down by the County. Is there any other road besides South Market Avenue? He is asking that question because they have an impossibility of performance by the developer on St. James Boulevard; but if there are alternative routes, then that may be something the Commission wants to explore.

Rather than just pick South Market Avenue, they might want to explore another road.

Mr. Margotta said as far as a secondary route, yes they could probably route in several different directions, not knowing anything more than on the face of what has been given him so far. There is a possibility heading in just about any other direction.

City Attorney Schwerer said so if the Commission wanted to explore those other secondary routes and determine the impact on the neighborhood or determine the impact on the roads and what improvements, then that would certainly be open for discussion.

Mr. Margotta said he would think that would be best actually as opposed to naming a particular access.

Commissioner Nelson said he can understand and appreciate Commissioner Coke's concern. He generally doesn't like his decision as a body in this Commission reversed in any way. But in this case he thinks some positive things have happened. He thinks if this were adverse to the thinking of the people in that area, they would be here en masse. Contrary to that, he has talked with several of them. He talked to the developer. He has talked to the County on this issue. The fact that South Market Avenue was made available appears to have satisfied virtually everybody in the area, so he sees them having a happy situation here which he is willing to support at this juncture. Questions raised relative to an alternate route, he thinks perhaps Dickson Drive in the area might have been considered; but Gator Trace has in fact been ruled out. But there is another thing that he thinks the residents have been concerned about and that was in the area of the stop light at Weatherbee Road and U.S. #1 has been approved and is scheduled to start construction he thinks in August. Is that right?

Mr. Hector Arias, City Engineer, said yes, they have it in writing. They are going to start working on that he believes in March.

Commissioner Nelson said that makes a lot of residents happy. So he thinks they can move forward in this program and satisfy the basic requirements they have been faced with.

Commissioner Becht said he met with the developer and he talked to a couple of residents at Gator Trace on this issue as well as some residents on St. James Boulevard, as he is sure most of them received those calls. What the outcome is in terms of moving the ingress/egress point up to South Market Avenue, he thinks is an improvement over the original idea of St. Francis Drive. It still preserves a construction entrance, which was part of the Commission's concern and part of the residents of Gator Trace concern. And it also provides an alternate ingress and egress point for not only the residents of this development but for residents of all of Gator Trace. So it accomplishes everything that he intended when he raised the issue. He is very comfortable with the outcome. He thinks Mr. Margotta dances the line of not reversing their decision very well here.

Mr. Margotta said it is about as close as he ever cares to come.

Mayor Benton said there was a lot of input on this. St. James Boulevard he thinks was originally his idea of throwing it at the developers, but without contacting the County. And when the County says no, what do they do? They have two governments tying up somebody who really worked very hard with the City to put together a decent development. He thinks this improves probably one of the worse roads around. It is his understanding that Dickson Drive, now that the other Gator Trace has applied for a permit, they are going to get improvements to that road now. Isn't that true? So they are going to get both roads taken care of. He thinks it is a win/win. He just hates to tie these folks up with too much government. They don't have to vote on it unless there is a motion to send it back.

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

Commissioner Nelson said he would like Item 25a (Travel by City Manager to the ICMA Conference) removed for discussion.

Commissioner Alexander said he would like Item 25b (Lot Clearing by Heafner Tractor Service) removed for discussion.

Commissioner Coke said she would like Item 25f (Alcohol Beverage Permit for Sunrise City Summer Fest) 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:

c. Approve Change Order No. 2 to Contract with Burkhardt Construction, Inc. for **Riverwalk Reconstruction Project** in the amount of \$205,604.00 for structural changes to the bulkhead.

d. Approve Specific Authorization No. 5 for Additional Services by Tetra Tech EC, Inc. for seagrass survey of additional areas proposed for the **City Marina Protection Project**.

e. Approve ranking of proposals for **City Marina** Underground Fuel Storage Tanks and Equipment Replacement; and authorize negotiations begin with Petroleum Marine Consultants, LLC. RFP #5625

The next item considered was Item 25a, which had previously been

removed from the Consent Agenda: Approve travel and attendance by City Manager to the ICMA 92nd Annual Conference in San Antonio, Texas, on September 9-14, 2006.

Commissioner Nelson said he really feels that their City Manager should and does take advantage of his ability to go to these seminars and conferences. But his big concern is, is anybody else from City staff going?

City Manager Beach said not to this conference.

Commissioner Nelson said he doesn't want them to be in a position where they have the City Manager, the Deputy City Manager, the City Engineer, and a few other people out at the same time to go to these conferences.

City Manager Beach said he recognizes Commissioner Nelson's concern and those are staffing issues that he has to address on a regular basis.

Commissioner Nelson said they have several of their contracts with their top managers saying they go to these conferences.

City Manager Beach said he understands that. Again, these are management and staffing issues they address on a regular basis.

Commissioner Nelson said that is good.

Motion was made by Commissioner Nelson, seconded by Commissioner Coke, to approve travel and attendance by City Manager to the ICMA 92nd Annual Conference in San Antonio, Texas on September 9-14, 2006.

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

The next item considered was Item 25b, which had previously been removed from the Consent Agenda: Approve increase in Blanket Purchase Order No. 061142 for Lot Clearing to Tim E. Heafner Tractor Service, Inc. from \$10,000 to \$19,000.

Commissioner Alexander asked is Mr. Heafner the only contract worker they have with lot clearing? He doesn't have a problem with Mr. Heafner. He knows he is a hard working individual.

Mr. Tony Barnes, Director of Purchasing, said no. Mr. Heafner is actually their secondary contractor. Their primary contractor is John Cobb Enterprises. Mr. Heafner is their backup. He talked to Mr. Heafner this afternoon. From \$10,000 to \$19,000 is not going to be enough. They really need to go from \$10,000 to \$25,000. The City owes him another \$13,000.

Commissioner Alexander asked if he is not the only vendor, why are they just addressing him? They don't have to address the primary contractor?

Mr. Barnes said no. Mr. Cobb has money still left on his contract.

Commissioner Alexander asked how did they go over? Did he say \$25,000?

Mr. Barnes said yes. Mr. Heafner did some additional work from what he understands. Mr. Alcorn would probably have to answer that

for them. But in his conversation with him, he told him that he did some work post Hurricane Wilma that the City still has not paid him for yet and he has done other work besides that. Mr. Cobb has been sick from what he understands. He has a very serious case of the gout and has not been working as much.

Commissioner Alexander asked so they are not looking to go for \$19,000. They are looking to go up to \$25,000?

Mr. Barnes said he would like to go to \$25,000. That means they won't have to come back and ask for more.

Commissioner Alexander said he doesn't have a problem. He knows Mr. Heafner is one of the hardest working men he knows.

Motion was made by Commissioner Alexander, seconded by Commissioner Coke, to approve increase in Blanket Purchase Order No. 061142 for Lot Clearing to Tim E. Heafner Tractor Service, Inc. from \$10,000 to \$25,000.

Commissioner Coke said thank him for his patience if the City hasn't paid him since Hurricane Wilma.

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

The next item considered was item 25f, which had previously been removed from the Consent Agenda: Approve **Alcohol Beverage Permit** request by Jordan Kane, City Solutions Non-Profit, Inc., for **Sunrise City Summer Fest** to be held at the north end of Marina Square on September 2, 2006.

Commissioner Coke said first of all, she knows that those people at that Fort Pierce Redevelopment Agency approved supporting the fireworks show for this conditioned upon a letter of support from Main Street and the DBA (Downtown Business Association) being presented along with whatever other documentation the FPRA had for grant monies. Can Mr. Ward tell her if those conditions that the FPRA Board put on this have been met?

Mr. Jon Ward, Director of the Fort Pierce Redevelopment Agency, said they have received a support letter from the Downtown Business Association. They have not received anything from Main Street.

Commissioner Coke asked is there any other documentation they need for this group to proceed with this festival?

Mr. Ward said yes.

Commissioner Coke asked has anyone checked with the Explorer's Club? Because that is basically a youth organization and she understands they chose not to sell alcoholic beverages on the street with the premise being that there were two bars there open.

She has a concern about, if they have an event going that is catering to children, having alcohol vendors on the street, how that is going to affect them. Has Mr. Ward talked to them or has anybody on City staff checked with the Explorer's?

Mr. Ward said no. He was not aware that there was another event happening at the same venue.

Commissioner Alexander asked that is why they are going to have

Police in that area so they won't have to worry about their children having alcohol, right?

Commissioner Coke said she wasn't worried about the children drinking it, she was worried about adults consuming it.

Commissioner Alexander said a couple of years ago when they allowed events to go on down there under children's names for whatever, he can't recall, but he did question it. They are utilizing the children names and the benefits from that and there is alcohol being served. So as long as they keep an eye on their kids. They have very few bad or worse kids.

Commissioner Coke said she wasn't concerned about the children's behavior. She was concerned about the adult's behavior around the children.

Commissioner Alexander said they will take care of that too.

Commissioner Coke said if this was an event that was taking place at a different time frame from the children's Fishing Tournament, she would have less of a concern. But she would assume that the Police Department will be represented in full force?

Commissioner Alexander said he thinks they hear her loud and clear.

Assistant Police Chief Sean Baldwin said actually he has to tell them that he has a concern in that they haven't made arrangements to staff these events as far as he knows. He asked Captain Sandifer as their District Commander to get to work on making those arrangements. If he is not mistaken, he believes there is also a third event in that same location, which is a wedding that is going on. They are working through those issues now.

Commissioner Coke said maybe she better ask staff for some clarification. She should know the answer and she apologizes for not knowing it. But do they not have something in this permit that requires the people getting the liquor license to provide and make contact and arrangement and pay for Police Officers, depending upon the number of people they are expecting to draw?

City Clerk Steele said that is correct, there is. It is on the application. The conditions contained on the Alcohol Beverage permit application, which is on the back.

Commissioner Coke asked is Mr. Cheverie intending to get with the Police Department and hire whatever Police officers they need?

Motion was made by Commissioner Coke, seconded by Commissioner Alexander, to approve Alcohol Beverage Permit request by Jordan Kane, City Solutions Non-Profit, Inc., for Sunrise City Summer Fest to be held at the north end of Marina Square on September 2, 2006.

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

Ms. Arden Peck said she has a concern with the levied **finer** that are forgiven by the Code Enforcement Department. She has attended many Boards, Special Master Hearings, and Commission meetings where based upon the department's recommendations, final fine decisions were made. She has seen first hand how hard Code Officers work with landowners to bring their properties into compliance. To

allow so much forgiveness seems to make a mockery of the Department. Of course, extraordinary measures should be taken with folks who are really trying to come into compliance. She would ask that the Department and the Commission to take a real hard look at fines and cost before they are dismissed. In addition, she suggests the creation of a special fund with monies taken from either a percent of all levied fines/administrative costs, or by adding a surcharge to these funds. This fund would be available to any and all qualified City homeowners regardless of their compliant status who would like to paint their house, have lawn maintenance equipment to take care of their yard, or to make minor repairs to the exterior of their home, but who unfortunately have no monies to do so. Perhaps the City could even partner with home improvement stores willing to give healthy discounts and builders donating usable leftovers from job sites. She believes this would be a proactive win/win situation for the folks in the City and also for the City to instigate this. Of course, she would be more than willing to help.

Mr. Rick Reed said he bets the Mayor couldn't wait to hear from him again.

Mayor Benton said as long as he doesn't attack anybody.

Mr. Reed said he directs this to the Mayor. A few City Commission meetings ago, the Mayor made a promise to the City with regards to the race situation in the community. He has a letter dated here July 27, 2006, from John Alcorn to David Recor. He was called about this letter and didn't believe it existed so he asked for it.

It is quite lengthy. But it regards Shirley Kirby, the one that was referred to the monkey. He quotes the reasons that were given to justify the request to relieve Shirley Kirby were as follows. He won't read all of them, he will touch on a couple of them. "Lack of trust for reasons that she provided incorrect, false, and personal information about employees to Rick Reed."

Commissioner Becht asked if this is a letter out of her personnel file, can they really read it into the record?

Mr. Reed said it is not a letter out of her personnel file.

City Attorney Schwerer said it is public record. But where Mr. Reed is going with this... There is a pending request for appeal of certain actions taken by management by Ms. Kirby and they are involved in the hearing process. So he would just simply advise they can listen to this, but take no action whatsoever on this.

Commissioner Becht said he just didn't want to violate her rights if it was a letter in her file.

City Attorney Schwerer said he doesn't know what else Mr. Reed has in front of him, but that particular memo is public record.

Mr. Reed said he has never looked in her file. "Lack of trust for reason that she provided incorrect, false, and personal information about employees to Rick Reed who makes it public to the press. Used the City's issued mobile telephone for personal use during work hours. Proselytizes on a regular basis to other employees. On a personal note, I have been under tremendous emotional stress as a result of the inappropriate and damaging actions that she has spearheaded recently in which she engaged Rick Reed, who engaged Alexi Howk, a news reporter. Thus I cannot trust her as an

employee in my Department". He wants the Commission to know as far as his relationship with Shirley Kirby, the only thing that woman ever did was when he called and complained about Chuck Enns running his construction business, she was one of the Code Enforcement officers who came down. And she didn't settle the dispute, someone else did. He has never had a conversation with this woman about anything to do with her job, job problems, or discrimination with the City of Fort Pierce. He doesn't appreciate this. It further goes on to say: "Thus a grievance if she so desires from Shirley Kirby may not be taken through the grievance procedures. Further, it has been determined that Shirley Kirby may be disciplined for violating the City's code of conduct, Section 10.05 of the City's Personal Rules and Regulations. This is a Group Offense II under work related misconduct... which is an employee notice and two day work suspension for first violation. Employees will be suspended without pay for the following two days, August 3, 2006, and August 10, 2006." It also states that the employee does not have a right to file an appeal for her suspension. He doesn't know how he got involved in this thing. He has never spoken to this woman. He doesn't appreciate Mr. Alcorn involving him in any way in the problem of this woman. Now he finds that he is subpoenaed with regards to an EOC investigation to give testimony about something he does not even know because of some false accusation that her manager made. They said they were going to clean up this situation with the racial problems. This woman complained and she has been demoted.

Mayor Benton said just so he knows, when the legal issues are taken care of, he can do something; but he can't do anything until then.

Mr. Recor said that is not true, Ms. Kirby has not been demoted.

Mr. Reed asked is she a Code Enforcement Officer?

Mr. Recor said no, she is not. Ms. Kirby has not been demoted.

Mr. Reed asked was her badge, car, and keys...?

City Manager Beach said the green light is out.

Mr. Reed said it says one minute, and 42 seconds.

City Clerk Steele said she stopped the timer when somebody else started talking.

Mr. Reed said right. Mr. Beach doesn't control the clock.

City Manager Beach said staff is not going to sit here and debate these personnel issues with Mr. Reed.

Mr. Reed said let him tell Mr. Beach something. He should be ashamed of how he treats the employees. He has said it time and time again, these employees don't deserve to be treated this way. He has a letter that Mr. Beach wrote Mazella Smith. No human being should be talked to this way. The Commissioners all represent them. This needs to stop.

Mr. Bill Cheverie said he is wearing a little different hat as he stands here. When he is not doing fundraisers, he has a **Designated Driver** company. They are coming up on their third year anniversary. Nationally the year 2005 was the first year in eight

years that there has been an increase in alcohol related deaths on their highways - one every 30 minutes in the United States. So the Department of Transportation has taken it upon themselves to do an Over the Limit, Under Arrest heavy MADD campaign. His company personally in three years have done over 2,400 safe rides. They have gotten people and their vehicles home safe. They are very proud of that record, keeping people safe. He just wanted to bring to the Commission's attention that the National Department of Transportation is doing a real heavy advertising. Almost a 4% increase in deaths on their traffic highways is just unforgivable.

On top of police, they will have designated drivers on standby at the event (**Sunrise City Summer Fest**). He just wanted to bring up at the Commission meeting what is going on nationally and maybe they can think of some plans or something to implement it. He is proud that they started this program in Fort Pierce. They are in eight other cities in Florida and in six other states. He fully thinks that a designated driver for hire will be forthcoming throughout the United States.

Ms. Carole Mushier said she is sorry, she really didn't want to keep this going any longer. However, she has sat here tonight and heard three staff members now impugned. She has heard a Commissioner being called names. How do they inject civility into these meetings? It should not be permitted.

Mayor Benton said he would agree. She heard him try to get a grip on what can be brought in front of them. The public has to have their say. When they bring television into the picture, they are going to get anybody and everyone in here. He is afraid for the night when somebody says the wrong thing, because the City can be held liable if they use the wrong language.

Ms. Mushier said wrong language was used tonight in a number of cases. No, they weren't the usual four letter words that they are all used to that they know and she knows them as well as anybody. She does not want to sit and hear this again. It should be stopped. And when the five minutes is up, the five minutes is up.

Mayor Benton said he agrees.

Ms. Mushier asked can they get a switch on the microphone?

Mayor Benton said he has asked for a couple of things. Number one was to turn the microphone off and the other thing was a little hole in the floor there. He couldn't get either, yet.

Ms. Mushier said she would urge the Mayor as the Chair of these meetings, when someone is out of order and if necessary, there is a Sergeant at Arms to remove somebody.

Mr. Stan Widing, 26 Manor Drive, said the Commissioners mentioned earlier the moving of the sewer plant over to Glades Cut-Off Road and the cost was going to be... Has anyone ever looked at the idea of making a **regional sewer plant**? He happened to notice in the paper not too long ago that Vero Beach is also in the process and neighboring cities.

Mayor Benton said grant money that came from South Florida Water Management District specifically is tied to regionalization of the utilities. What they are looking at out on Glades Cut-Off Road and probably another facility out in the northern part of the County

near the Airport could be regional. That is why Commissioner Becht is sitting on this committee with a County Commissioner and several other folks trying to find a way to do this.

Mr. Widing said a thought came to him. Both cities are looking in the same direction. Why have two different projects?

Mayor Benton said they are working at it, because it would ease the pain, ease the cost, and it makes sense.

Commissioner Coke asked at the next meeting if Mr. Arias could please give them an update on his February 14th memo that said the FPRA (**Fort Pierce Redevelopment Agency**) area of the City's resurfacing project for 2006 would be done in the beginning of July, and on June 23rd the Commission got an updated memo that said the contractor will start work mid-July, and it appears that they are at the end of August and she hasn't heard anything about any roads being redone in the FPRA district. She would be anxious to hear that before their next fiscal year comes around that they spent that \$1 million.

Mr. Jon Ward, Director of the Fort Pierce Redevelopment Agency, said perhaps they can get an update at the FPRA meeting this week.

Commissioner Alexander said to follow up on what Commissioner Coke was speaking about concerning these roads. Thoroughfare roads leading to their schools, one in particular is Avenue O from U.S. #1. That is the most ridiculous road for a City to own that he has seen with the potholes in it. He can ride down there in a limousine and it would be almost bottomed out. It is a thoroughfare for the kid's parents to be dropping their kids off at school. It is ridiculous. He had to follow up on that because he just has concerns about these potholes in the City of Fort Pierce.

Commissioner Nelson said he talked during their workshop about the **four day work week** and an **internal auditor**. He hopes those two items have not fallen through the cracks and to bring them up again during the budget workshops in the near future.

Commissioner Nelson asked where do they stand with respect to the State Attorney's report on the discrimination charge that was levied against the City?

City Manager Beach said he has not received any report from the State Attorney on that subject as of yet.

Commissioner Becht said a point of clarification, the State Attorney is not investigating that. What they are investigating is the **document destruction**. There is a significant difference.

Commissioner Nelson said he stands corrected. Point well taken. But he just wonders whether or not they have any feedback from him regarding when he is going to do it and what he is going to do.

City Manager Beach said he believes they have completed their investigation and they are in the process of reporting on those findings. He can't tell the Commissioners when they will have it simply because they haven't advised the City.

Commissioner Nelson said maybe they ought to charge their legal beagle to put a fire under them.

City Attorney Schwerer said he can't do that with the State Attorney. They will just wait it out as usual.

Commissioner Alexander said he doesn't know if they are in a legal issue, but what is going on with this **Yellow Tail Grill** restaurant.

He reads things in the newspaper and he doesn't get any response from Staff because they don't have a response. Is it going to open up?

City Attorney Schwerer said Yellow Tail Grill has appealed the ruling that was made by the Building Official concerning the canopy. That matter was scheduled for a hearing tomorrow. However, due to another appeal that is being filed by the building owner, that matter will be rescheduled. They are trying to get it before the Board sooner than 30 days from tomorrow. So it is in legal, it is in an appeal. The Board is expected to rule concerning the legality of removing the canopy or allowing it to stay.

Commissioner Becht said he liked the Comments from the Public tonight (from Arden Peck) about recycling the Code Enforcement **lien** dollars. He doesn't know if that is viable or not. There may be some complications with it. But to take dollars from somebody who is not doing what they are supposed to do to help somebody else do the right thing sounds like a good idea. Staff ought to pick up the ball and see if they can do that.

Commissioner Becht said regardless of his comments tonight and the criticisms on the **South Beach Overlay District**, he does want to thank staff for a hard job in tackling a monstrous task. There were a lot of issues involved in that. He is going to be hopeful that they can punch through the remaining issues.

Commissioner Becht said he has bumped into people who don't know that the City of Fort Pierce is **televising the City Commission meetings** on Channel 27. He is wondering if anyone else is interested in perhaps taking out a few ads in the newspaper to let them know it is televised and get the information out? He would throw that out for consideration. He doesn't know if anybody else is interested in that or not. He sees one no down there.

Mayor Benton said maybe when they publish their Agenda, they could put a note at the bottom.

Mayor Benton said he wanted to say to Mr. Reed, tonight he went a little too far. He is going to warn him that they have a Police Chief sitting here. They are not here to call people names or attack people. And for everyone else, if it happens again, they will be asked to leave; and if they don't, they will be escorted out. They can do things without attacking and calling names to people. And if they can't handle themselves properly, they will be asked to leave.

Monday, September 4, 2006, is Labor Day Holiday in the City of Fort Pierce. All City administrative offices - with the exception of the Police Department Public Safety Services, the City Marina, and the Indian Hills Golf & Country Club - 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, September 5, beginning at 7:00 p.m. in the City Hall Commission Chambers, 100 North U.S. #1, Fort Pierce,

Florida.

There will be a Special Meeting on Wednesday, September 6, 2006, beginning at 5:05 p.m. in the City Hall Commission Chambers, 100 North U.S. #1, Fort Pierce, Florida, for the purpose of conducting the first Public Haring on the 2006-07 General Fund Budget.

City Commission Budget Workshops have been scheduled for Thursday, August 24th (9:00 a.m. to 12:00 noon); Friday, August 25th (1:00 p.m. to 4:00 p.m.); and Thursday, August 31st (9:00 a.m. to 5:00 p.m. if necessary). The Budget Workshops will be in the City Hall Commission Chambers, 100 North U.S. #1, Fort Pierce, Florida.

There being no further business, Mayor Benton declared the meeting adjourned at 10:45 p.m.

Adjournment.

ATTEST:

CITY CLERK

MAYOR COMMISSIONER

