

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 6:30 P.M. ON MONDAY, DECEMBER 4, 2006.

Mayor Benton called the meeting to order.

Mayor Benton 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.

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The next item on the Agenda was Approval of Minutes of the Regular Meeting on November 20, 2006.

Motion was made by Commissioner Coke, seconded by Commissioner Alexander, and unanimously carried, to approve the Minutes of the Regular Meeting on November 20, 2006.

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

Letter from Pam Gillette, Mainstreet Fort Pierce thanking Public Works Director, Bob Hood and the Public Works employees for their help, assistance and support.

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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.**" was placed on first reading and read by title only.

Mr. David Recor, Deputy City Manager, said this has been a long time coming and he is excited to present and discuss the South Beach Overlay District. Dating back to January of this year, when they initially discussed a moratorium on the hotel condominium style of development, they committed to come back to the Commission in June with regulations intending to address that style of development. They attempted to kill two birds with one stone so to speak, legislating the 4/8/45 rule, while at the same time developing some standards intended to address the condominium hotel style of development. They had an initial discussion on the South Beach Overlay in August. At that time, there were a number of revisions that were suggested. Tonight they are prepared to present the revised Ordinance that includes, as noted in the cover memorandum, fifteen changes that were included, all intended to address the feedback they provided as well as some comments from the Planning Board. The revised Ordinance was reviewed by the Planning Board on October 10th. Due to the lack of majority of those present, they were not able to pass a motion; so it comes to the Commission without a recommendation from the Planning Board. So there is no requirement that they have a super majority, but rather simply three votes will pass the Ordinance tonight. He is prepared to answer any questions and he can go through the changes in more detail.

Commissioner Alexander said coming in he pulled a flyer out of his mailbox and what stuck out in his mind is it said, if it is not broke, don't fix it. Could Mr. Recor could give an explanation to the public for that comment to him?

Mr. Recor said if it ain't broke, don't fix it. He thinks this is an example where the City is trying to be proactive rather than reactive. He thinks given the special barrier island environment on South Beach, they have a real opportunity to preserve and protect what is there as well as regulate redevelopment on the island. For a long time, dating back to May 2005, they have talked about the 4/8/45 rule - 4 stories in height, 8 units an acre, and a

maximum of 45 feet in height - that is what 4/8/45 refers to. And he thinks that they have an opportunity to legislate 4/8/45 that will guide redevelopment on the island. So while he will agree that it ain't broke, they can always improve on what they have. He thinks that is what they have got here, they have an overlay district that will rest on top of the underlying zoning district that will legislate something they have been trying to achieve through the development review process for the last several years.

Commissioner Alexander asked along with that, along with the future growth concerns that they have about the non-conforming, Item #14.

Mr. Recor said that was one of the sections the Commission asked staff to attempt to address. They have included eight criteria by which the administrator would make a determination as to whether or not non-conforming uses and structures would be allowed to be replaced. And the idea - if they refer to Page 6 of the actual ordinance itself - the meat of the criteria is addressed in Paragraph #1, the very first criteria: The significance of the property owner's hardship is more compelling than, and reasonably overbalances, the public benefit resulting from not allowing the use or structure to be reestablished. Recall, the direction was to allow non-conforming uses or structures to be rebuilt if they were destroyed by natural disaster. The example he has been using on his speaking tour on the overlay is, they have a single family home, it is currently built 5-feet from the property line, whereas the underlying zoning district would require it to be located 15-feet from the property line. It is destroyed by a hurricane. The property owner wants to rebuild it at 5-feet. What impact is allowing the structure to be rebuilt at 5-feet going to have? Is it going to adversely affect the adjoining property owner? Is it going to have an adverse effect on the surrounding property in the vicinity? If the answer is no, if the significance of the hardship is more compelling than the public benefit of requiring that structure to be built at 15-feet, just because the ordinance says it has to, then they should issue the permit, that structure should be allowed to be rebuilt. And that is the guiding principle behind the criteria that staff drafted in allowing non-conforming uses and structures to be reestablished.

Commissioner Alexander said excellent.

Commissioner Becht said he does not have the Minutes from the Planning Board meeting where they took the time to discuss this. Are those not done; or is nobody in a position to give a summary of what was discussed there?

Mr. Recor said he is sure those are done, he doesn't know why they weren't included in the packet; but he could certainly provide a summary.

Commissioner Becht said he is just uncomfortable without that. Truly the Planning Board plays a key role in this and he doesn't have the benefit. He knows several of them read their Minutes and there are no Minutes to be read. He is anxious to hear what the public has to say.

Commissioner Coke said she has one quick question before they move on to public comment. For five years now she has expressed concerns about how they measured roof height. It was always her understanding that roof height should have been to the top of the roof; but for five years they have told her that it was to the base of the roof line. And now she sees that they have changed it to the top of the roof, which would have been her preference, except now she has concerns that there are people who have built based on the existing ruling that it was either to the median height of the roof or the top of the roof line, not the base of the roof. How is that going to affect their development should they need to come back in the future?

Mr. Recor said the overlay district does not change the definition of building height, but rather clarifies how it is determined through the graphic illustration. One of the significant

aspects features of the overlay district is the point at which they begin measuring height on the island. The island is comprised of a variety of flood zones. Under the overlay district, height will now begin to be measured at the base flood elevation. They haven't changed the height requirement in most instances, because there is an instance of a single family home that is located in the R-4A zoning district that actually has been reduced by 5-feet, although the number is technically the same. The base flood elevation that is demonstrated by the graphic that is included in the overlay is at the point that they begin measuring height.

Commissioner Coke said she understands that. She guesses she did not express her question properly. If he looks at the illustration on Page 4, it has the base flood elevation; and then the diagram goes to the top of the roof line, which she has been told for five years is an incorrect way to do that, because otherwise they would end up with people with flat roofs. For instance, the Harbor Isle development - four stories, 45-feet. However, the top of their roofline is 52-feet because of the pitch of the roof being considered an architectural enhancement. Her concern is with the way this is drawn is not the way they have been measuring it all along. And she thinks it might lead them to reason that they didn't measure it that way all along was explained to her it would leave them to have a lot of houses with flat roofs so that they can get the maximum height within that.

Mr. Recor said he would respectfully disagree. A prominent local architect in a reputable firm has prepared some graphic illustrations that would provide an elevation that would allow a sloped roof to be constructed within the 28-foot height requirement. Has she has seen that elevation?

Commissioner Coke said no, she has not. But her concern is, if they haven't been doing it to this point, she hesitates to change it to the measurements so dramatically in the future. But she will listen to what everybody else has to say; and if they are happy, then she will be happy.

Mayor Benton declared a Public Hearing on Ordinance No. K-441 in session and asked if anyone in the audience wished to be heard.

**Mr. Jack Cahill** said he lives at 801 South Ocean Drive. For almost the past 25 years, the residents of South Beach were under the impression that they had multi-family density that was limited to eight units per acre and 45-feet in height. However, as he explained to some local developers who had purchased acreage on South Beach that was residential multi-density over a year and a half ago. He was at an auction at Harbor Isle with Commissioner Nelson about a year and a half ago with Jeff Furst. A man came up to him who he had talked to about this. The man told him he is completely wrong, that he just got a density of eight stories high and 17 units per acre, this is easy city. He didn't know what to say. The next week he went into City Hall to the Planning Board and the man was right. It wasn't just one, there were quite a few of them. Some even had on-street parking, 16 or 14 of them. It was kind of a really strange situation. When he asked the Planning Department, they said these are PUD's or PUR's, and they can do this. He asked, what do the people say? They said, no one has complained. He went in and got some of the Minutes; and he saw at one of the meetings Commissioner Alexander had mentioned why these people never came back and had any comments? They said they don't really know. He found out they weren't sending letters out or they were sending out to addresses that were 15 years old or more and those people no longer were there. So that is why they had no comments. So they reconstituted something called the South Beach Association, which had laying dormant for awhile, to ask the people what they thought. And quite frankly, they weren't even aware these things were happening. They had a Charrette on May 7, 2005, and they had almost 300 people either here or outside looking in. At that time, the vote was 99%. There were just two people who were not in favor of eight units per acre, 45-feet high. They then took it to the City Commission and they approved it for that and now they are in the process trying to put this thing through. They know their roads are too narrow for any

what he calls concrete canyons. And they also know they have a problem getting on and off the beach. But as Commissioner Nelson knows, they both sat at the auction all day. The thing is, that it was the first inclination he had that these things were happening. As a result, the people that are here tonight are a few of the people that are definitely in favor of a quality of lifestyle on the beach that they thought they had, but they didn't have.

**Ms. Peg Norton** said she is a resident of South Beach. She would like to comment on Commissioner Coke's observation. It is something that she would like to speak to. Her understanding prior to the South Beach Overlay, when she built her house they said it was the median mark. So that if they have a pitch on the roof, more than likely it would be higher than 28-feet. She likes the idea of having the top of a roof as the number they are going to use. But being 28-feet would in her mind actually lower the height restriction, so that in effect she wouldn't be able to rebuild at that height. People are wanting taller roofs, they want 10 foot or 11 foot ceilings. So that having a height restriction of 28-feet, they didn't vote on lowering the actual height of the structure, they voted on having the top of the roof line as its definitive number. She would like to suggest that probably 28-feet being the median, she would say truly the roof line should be changed to at least 30-feet or 32-feet or 33-feet.

**Mr. Flip Gates** said he is President of Visions of Fort Pierce. He wants to commend the Mayor, the Commissioners, and the staff for their hard work during the past year on the South Beach Overlay. Although much progress has been made since they had instructed their staff to work on this project almost a year ago, he wants to reiterate some of the comments he has expressed at different times during the past few months. Although the ideas included in the overlay are generally desirable for their community, the actual document is not very well crafted and has lead to a lot of confusion at times and may lead to many unintended consequences in the future. He recommends they should continue their excellent work and make the following possible amendments. Changes in density should be addressed in the comp plan and not in the overlay. All the affected property owners should be notified individually, and he believes this may be a requirement of the law to avoid a takings issue. The overlay should have a separate and discrete neighborhoods and districts, and different appropriate regulations should apply to each. This would eliminate confusion for their citizens who may believe that commercial regulations can apply to their residential properties, when they should not. As drafted, the overlay has only one district; and they all know the South Beach is a diverse village by the sea and they all want to protect their village by the sea with residential and commercial areas that serve different needs. Architectural issues should be addressed in other documents. For example, architectural guidelines are pattern books. Again, different regulations may apply to each neighborhood and district, to avoid confusion and unintended consequences. He would like to thank the Commission tonight for the opportunity to speak before them and the citizens of Fort Pierce. As always, he and his associated neighborhoods are always available to work with them and their staff should they request their assistance.

**Ms. Carole Mushier** said speaking for the South Beach Association. Prior to the Planning Board meeting on October 10, 2006, the South Beach Association alerted its members by e-mail that the second draft and David Recor's memo to the Planning Board were on the SBA website. Members were encouraged to e-mail or call her with their comments. At the Planning Board meeting she reported that she had received no negative comments from their over 600 members. Contrary to what others have alleged - not tonight yet, but in the past - the South Beach Overlay was initiated to codify the 4/8/45 limitations on the beach. Other issues such as condo hotels and non-conforming situations were added as they became necessary. To say that the South Beach Overlay was developed to get the condo-hotel concept is simply not true. Draft #2 is very resident friendly. Yet it provides very generous, some might say too generous, non-resident densities; particularly if they take advantage of the ten extra sleeping units per acre incentive. While there are some provisions - height in excess of maximum, non-conforming situations - that allow for discretion by city staff or commission, these should be viewed as positive and not a

negative. The guidelines are there and the discretion allows for some individual considerations. There is always an appeal process should someone dispute a decision. It has been also suggested that some sections of the overlay can be pulled out and held for future consideration in order to pass the remaining sections. She would call this approach cherry picking and offer the following. One, since the original intent, and some would say the primary intent, of the overlay was to finally legislate the 4/8/45 limitations, then height and density sections must be addressed tonight. Two, since the commission charged staff with the task of developing regulations for condo hotels, this issue must be addressed to be fair to future developers. Three, since any changes in codes will create non-conforming situations, again in the spirit of fairness, this issue should be addressed remembering that they are only looking at uses in structures that exceed 50% in damage. What is left? Minimum lot areas and lot widths, design standards, visual buffers, additional definitions, and two amendments to the land development regulations - none of which have elicited any controversy to her knowledge. Therefore the task tonight, as they see it, is to first come to agreement with the provisions they can support, then tweak those they feel need some change. Hopefully they need not laboriously discuss each and every provision.

**Mr. Pat Murphy**, President of Hoyt C. Murphy Realtors, said he appreciates the time staff and everybody has put into this. He agrees, it is important that they get that four and eight into the record onto the ordinance, that is a big important item. But there are still some concerns he has and some of his clients have. One is on the hotel densities, and this is strictly on the C-5 area. Again, they are dealing primarily, at least with his clients, with smaller parcels. He thinks that is the one challenging thing in this ordinance is, if they are a small parcel owner, it is ultimately a devastating impact to their values. For example, if they have an acre on the inlet right now that allows them to basically to do 70 hotel units, that small parcel is never going to be a resort hotel. They are not going to get to that high level there if someone has an acre. The density is probably going to be reduced in the 30 to 40 unit category. No doubt, if they are reducing densities that drastic, it is going to have a drastic effect on the value of the property. They are not going to reduce the assessment for that property, but he is sure that those property owners will be knocking at Jeff Furst's door and that is going to ultimately have an effect on the ratables for the city. Again, that specific area, the C-5 area. The three habitable stories obviously having that in that column is a big issue, using Harbour Isle as a brand new project and it is all non-conforming right out of the box. So the four stories he thinks they all agree on. But having three habitable stories? In some areas, they are going to be able to do four habitable stories. So that was probably an issue that didn't make a lot of sense. The 28-feet, they are really making the most valuable property in the City of Fort Pierce... Trying to put a restriction on a size of the house. If they are going to pay a million dollars for a lot, he is not so sure that somebody is going to want to be reduced so severely on the size of the house. There has got to be a better number and it has got to be bigger than 28-feet. With all the accouterments that the new luxury homes are built on the water, 28-feet is probably not the right number. Some of the other issues, it has in there circular drives are a bad thing for some reason. He is not sure why that is the case. The non-conforming, it seems like a legal can of worms, but he will let the attorneys figure that one out. He will sure a specific example. He doesn't know all this for sure, he was told this, and quite frankly he is not smart enough to figure out the proposed ordinance how it truly affects his office building on the beach, but he likes to use specific examples. He thinks it is a good looking building he has there, well-maintained, great landscaping. By the way, he thanks them for eliminating the 10,000-foot per acre requirement, they all learned that it didn't make a lot of sense. But it still is non-conforming. He has 60% impervious. It is not far from the 55%, but it is 60%, so now it is non-conforming. Too wide a driveway. He has access point issues and supposedly he has an issue with the visual buffer. The visual buffer is probably a great idea, but it is difficult to implement on shallow lots. It probably is a lot easier if they have 200-foot or 300-foot deep lots. But when a majority of these lots are 125-feet, it can be an onerous regulation. He thinks there are a lot of good things they are trying to accomplish, but they are creating a lot of concerns, certainly for their clients.

**Mr. Mike Weiner** said he is here tonight on behalf of Island Village Hotels. As they know, there is a court case presently pending concerning Island Village Hotels, his client's project. Nothing he is saying here tonight waives or affects the pending litigation, he is talking about the overlay district. He also wants to bring to their attention, all the other meetings on this ordinance, including the meeting of October 10, 2006 by the board, are part of the record. Their position is that they should not recommend approval of this proposed overlay ordinance. They will note that almost all the regulations listed in the ordinance are directed solely to condo-hotel facilities, even after city staff has admitted on numerous occasions that there is no difference between operating a hotel and a condo-hotel. The only differences really relate to finance. This proposed ordinance exceeds the City's police powers as it does not rationally relate to any issue of public health, welfare, and safety. The difference between the operations of condo-hotels or hotels is not public health, welfare, or safety. The City has not produced an iota of evidence that condo-hotels are in any way more threatening than any other kind of hotel. Second, the City has stated that the main purpose is to ensure that condo-hotels are not a front for a residential structure. However, they have not shown any evidence that his client's hotel project or indeed any other hotel project has been built or used in a way to circumvent residential densities in the City or in the South Beach Overlay area, the evidence is simply not there. Their concern is based purely on conjecture and is not a legal foundation. Thus the basis of this ordinance is illegal and cannot be used to support it. In all events, the project this ordinance was intended to stop, mainly his client's project of Island Village. And he does point out the particular moratorium was passed almost immediately, in fact in the same meeting after Island Village was considered. With respect with this overlay ordinance, which was intended to stop his client's particular project, the proposed ordinance directly contradicts the City's Comprehensive Plan, including the Coastal Management Element and the Future Land Use Element, especially those that talk about encouraging the economic activity of tourism. There is no factual evidence the City must subject his client's project to standards that do not apply to all hotels in all districts. Therefore, the ordinance must be disapproved. There is no reason to distinguish based upon the operation of hotels. Additionally, the legislation is improper and is created solely to deny his client due process in proceeding with his particular plan. He understands that this meeting tonight is not about this particular project. However there has been no attempt at hiding the fact that this legislation is a direct attempt to prevent his client's specific plan for moving forward. This is not the kind of behavior they should participate in. Overall, even beyond the fact that they are relying on a difference between supposedly condo-hotels and hotels, and remembering that they probably began this only to stop one particular project, that particular project should be allowed to move forward. They do point out to them, in their zeal to attempt to do that, that they really are hurting the City citywide. They are impacting jobs, property values, they will multiply lawsuits for development rights. They are creating these non-conforming uses and they want to solve them through a procedure that quite honestly is probably the full employment lawyers act, in trying to make the distinctions between what is good for the public benefit and what is good for the private individual would be before this commission each and every time there is a request to rebuild. It is not a solution, it is just coming up with a new procedure for addressing this particularly thorny issue. Therefore, when they consider the fact that they designed this ordinance to try to get rid of one project and that in doing so they have not done any good for the City of Fort Pierce, they urge them not to pass an overlay.

Commissioner Becht asked while he disagrees with most if not all of what Mr. Weiner has said here tonight, did he provide any written comments to staff on suggested alternate language or anything like that in regard to the overlay?

Mr. Weiner said it is the position of his client that there really isn't an alternate. They should proceed with the good regulations they had in hand at the time the project was going forward.

Commission Becht said so that means no, he did not provide any alternative...

Mr. Weiner said he did not.

Commissioner Becht asked so during Mr. Weiner's most intimidating presentation or speech, he intimated that other communities don't have distinctions with condo-hotels?

Mr. Weiner said no. But they realize that there is in the staff report ordinances passed by other cities. Now whether or not it did those cities any good, and whether or not they were properly passed, that is a completely different question. There are cities throughout the State of Florida as well as every other state that pass ordinances all the time that are unconstitutional, deny due process, and are incorrect.

Commissioner Becht said he would concede that. But they have close to ten other communities that also think there is some nexus between public health and safety and welfare, and distinguishing a condo-hotel. So he just didn't want the rest of this Commission intimated too much by his verbiage tonight.

Mr. Wiener said he knows they have read their staff reports.

**Mr. Jerry Wuhrman** said he is a property owner on South Beach with two types of parcels that are dramatically affected by the proposed ordinance. One is a block of eight single family lots which are going to become non-conforming. They were originally purchased as 53-foot wide single family lots with the possibility of building that number of units on it. In April of this year, the Commission amended that to make them have to be 60-foot lots. They happen to have enough area that they could have had 60-foot lots and had eight of them. Now with the proposed ordinance becoming 70-foot lots, it is going to reduce it down to a potential of six lots. There doesn't seem to be any real value to the City to make this change. They wanted single family lots on the island, now they are curtailing it. They are going to force somebody like himself or somebody he might sell the land to to develop it as a multi-family, multi-story building rather than the eight individual lots. As some of them know who he has talked with personally about this, they had a perspective buyer that was willing to do the eight lots, was willing to improve Granada Street and Frances Street, and they got no support from anybody on it. So they are back in the stew of deciding what to do. And if the ordinance goes through with the overlay as is proposed, they won't be able to build single family lots there. The other parcel which he owns is five lots on the corner of what is probably the most strategic parcel of land in the City. It is on the corner of Ocean Drive and Seaway Drive on A1A. He had presented jointly with the owner of three of the lots - he owns five of the eight and the other gentleman owns three - a plan for a conceptual approval for a mixed use project there. They went through the exercise of submitting the formal application, they got the support of the Planning Board, they had the unanimous consent of the Commission to do this. Then all of a sudden the moratorium came on board which stalled this thing for almost six months. Then the overlay district. The other party that owns the three lots on the corner decided he couldn't trust the City as to what might happen if the overlay district comes about, so he didn't want to go ahead and submit a formal application for a site plan approval of the mixed use project which had been conceptually approved. He decided with his five lots, he wanted to. So he submitted an application on September 5th for conceptual approval of a hotel under the existing C-5 zoning ordinance and it was just last week that they had their first hearing on it. The Planning Board chose to delay it until January before they would exercise an opinion on it. In the meantime, he has proceeded with engineering on the site, with a traffic study on the site, all of which have supported the ability to construct a hotel under the existing ordinance of 45 units with sufficient parking place for it. The hotel was going to have accessory uses for the benefit only for the members of the hotel. It was going to have a small meeting room, a fitness center, a game room, some things of this type. Not inviting people from the public or off the street to utilize it. With that being the case, in the existing ordinance they didn't have to provide any additional parking for it. As part of the staff report at the recent submittal to the Planning Board, they showed how if they would be affected by the overlay

district that these 45 units, because of the density restrictions they imposed, would be reduced to 27 units. They also showed that of the 9,600 square feet of accessory space only for the benefit of the residents of the hotel would be reduced to 2,300 square feet on the basis of the parking requirements. So all of a sudden they have a project and a piece of property that they bought thinking they could do one thing, paying taxes on it with an assessment based on what could be done under that zoning, and now it is worth half as much, not only to himself but to the city. Obviously the bed taxes they are going to get off of it and the real estate taxes are going to be diminished appreciably. Aside from that, they are going to invite this litigation of this Burt Harris Act which is basically they are taking the property rights of something he thought he acquired when he bought the property. And it is inevitable there will be challenges to the actions they take. He just thinks it would be wise for the Commission to totally disregard this ordinance. Impose some benefits out of it. The possibility of qualifying condominium hotels, which aren't very well clarified under the existing zoning, certainly could be somewhat reinforced in present zoning. The memorializing of the four stories and 45-feet is something that should be done because it has never been put into formal form before, not anything that shouldn't be reasonable. But if they are going to try and adopt an ordinance like this, he thinks on the strength of the good work the staff has done and the Assistant City Manager has done, that it would be wise to bring in an outside consultant that would show the Commission the interrelationship of the problems that they are inviting versus what the benefits might be. The memo he sent to everybody, just enumerating what he told them, if something is not broken, why try and fix it?

Commissioner Nelson asked how long has he owned the property he has?

Mr. Wuhrman said three years. Both properties were bought the same time he purchased them.

**Ms. Arden Peck** said she is a South Beach resident. She would like to go back to what Carole Mushier said. The whole reason of the initial overlay was for density, height, etc. All these other extraneous things were tacked on. Why did she move to the beach? Whoever lives on the beach, why did they move on the beach? Because it was a village by the sea. Granted, all of them believe that developers have rights; but rights within reason and building within reason. They are certainly aware of that and it is fine. But she does not want to see her island absolutely destroyed by some of the antics that have gone on in the past by certain developers. She would like as much of her island protected as possible. Yes, there has to be development; but there also has to be citizen rights in terms of protecting their communities. She happens to live in Surfside. She loves the little quiet houses and whatever is in Surfside. And she knows that it probably will change. It will change a bit because of the flood plains, etc. But how much is she willing to let it change?

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

Commissioner Coke said she has one question to Mr. Recor. She is still not agreeing with the height calculation. She would like to see that changed to the median point of the roof rather than the highest point. Because although she respects all the work he has done here, that is how they did it prior to him coming. Her question to staff is when they are talking about maximum height and residential single, two-family, multi-family, and non-residential. Single and two-family, they have a maximum height of 28-feet with two stories of living space. And multi-family, they have 45-feet as with non-residential. But a multi-family, they are only showing three floors of living space. She would ask staff why, if it is going to be the same height as non-residential, would they not recommend they have four floors of living space on multi-family?

Mr. Recor said he was still caught on her comment about the way they did it before he got there. He is going to correct her again. He is sorry.

Commissioner Coke said he is not going to correct her, because they can go over to Harbour Isle now which was built theoretically to 45-feet and the top of that roof line is 52-feet.

Mr. Recor said he is going to clarify then however. He doesn't know where the term median is coming from. Because he is looking at the existing definition of how they calculate building height and what it says is the vertical distance from the grade to the highest point of the coping of a flat roof, the deck line of a mansard, or to the center height between the highest and lowest point of another type of roof. How they calculate height is depending on the type of roof. So he doesn't know where they are getting this median and half distance and whatnot.

Commissioner Coke said maybe that has been the problem. Because prior to David Recor, this part right here (Commissioner Coke pointed to a drawing) was considered where they measured the roof line to.

Mr. Recor said he thinks every South Beach resident out there, her included, would agree that the methodology, the manner in which they calculate height has always been a problem. And that was why they attempted to include the graphic illustration to demonstrate this is what they mean and this is how they do it. If the graphic illustration is not clear enough or, as Ms. Norton has suggested, that it does not allow sufficient innovativeness or creativity in terms of architectural styles or slopes, he thinks what they should do is rather than revisit the manner in which they calculate height as depicted by the illustration, let's look at the building height that is permitted. He thinks that is probably the better approach to do it. He thinks there is probably some merit to that. But he can them as staff, that is the holy grail, height on South Beach. 28-feet is what the ordinance currently provides. He was not going to initiate an effort to increase height on South Beach. However, if that is a discussion worth having, that is a discussion worth having, and he thinks that is what she really is driving at. He thinks there is some merit to what Ms. Norton has raised tonight.

Commissioner Coke asked what about part two of her question?

Mr. Recor said he didn't hear that part. Could she repeat it?

Commissioner Coke asked when they are talking about maximum height and living stories, they have two living stories for single family, two living stories for two family, both at a maximum height of 28-feet. When they get to multi-family and non-residential, the height goes to 45-feet, which is purely acceptable. Her question is, why do they have four stories of living space in non-residential and only three stories of living space in multi-family? Why would they not, if it is allowed to be 45-feet, go to the four stories of living space there also?

Mr. Recor said he believes, if they look at the finished floor elevations and the flood zone map, the idea was when they overlay the underlying zoning district that most of the properties that were affected in the R-4A property are going to end up with an area that is not habitable. So they are going to end up with, by virtue of where they begin measuring from base flood elevation, that is going to leave, depending on the flood zone they are in, anywhere from 5-feet to 11-feet of uninhabitable space. And so it was assumed that would be used for parking and the additional stories would be above parking. As someone pointed out tonight, at Harbour Isle there are areas of the island where if for example they bring in fill and fill the property to the FEMA flood elevation, then they could get the maximum number of stories.

Commissioner Coke said so staff would have no objection, were it all built properly, to raise that to four living stories on multi-family.

Mr. Recor said no. Again, as it has been pointed out, staff wouldn't have any objection to the elimination of that column entirely - two habitable for single, two family, multi-family, or non-residential.

Mayor Benton said he would like to add to that. He had asked at least on the single family that the two habitable stories be included and the 28-feet. But if they wanted to go higher than 28-feet, couldn't they have a conditional use? This stems from Thumb Point. When it comes to compatibility, when they have an existing neighborhood that has been there for years, and they come in because of a natural disaster and build a home that towers everyone else. And he does agree with Mr. Murphy that when somebody pays a million dollars for a piece of property, they probably are going to build a multi-million dollar home. But still, in this neighborhood compatibility should matter, it is a quality of life issue and they should think about that. That is why he had asked that the two habitable stories be included specifically in an R-1 zone.

Commissioner Coke said she agrees on those on single family and two-family. She just didn't understand, if multi-family was 45-feet and non-residential is 45-feet, why the number of habitable stories was not the same.

Commissioner Alexander said since this is the first reading right, it is going to have to come back before them anyway. What the Mayor has touched on about the million dollar pieces of property versus. They were speaking about the 20-foot visual buffers and so forth. Since they are coming back, do they have the opportunity to address these items?

Mr. Recor said he has identified every provision, in response to the feedback they received both at the Planning Board and this Commission, every provision that he thinks can be removed without sacrificing the intent of implementing 4/8/45.

Commissioner Alexander said okay. He has just one other question concerning #15 - the motel, hotel, resort. Is he suggesting that they include a semi-restricted use for that area? Is he suggesting a layer by itself, something that is going to be separate from the other zones?

Mr. Recor said what he is suggesting is other amendments to the land development regulations allow to motels, hotels, and resort hotels as semi-restricted uses in the C-5, Tourist Commercial zoning district.

Commissioner Alexander asked so they have pretty much a zoning district of their own?

Mr. Recor said no. There is an existing C-5 zoning district on the books today. Resort hotels are not permitted in the C-5 zoning district on the island. So this is in furtherance of a goal objective in their Comprehensive Plan to facilitate and encourage resort tourist-oriented development in that district. C-5 is only located on South Beach. But right now, resort hotels are not permitted in the C-5 district. They will note that they have also provided the same parking standard for a motel, hotel, or resort hotel. And they have removed that from the overlay and put that in the proper section of the Land Development Regulations.

Commissioner Becht said he has several things he would like to talk about. This overlay also includes the wastewater treatment plant for which he doesn't have any specific plans. But the overlay appears to eliminate some potential development that would exceed 45-feet and that does bother him. The lack of having Planning Board comments, that still bothers him. He does expect whatever they finally do will be a work in progress and they are going to tweak it and change it as they find out in the application it is not fair to somebody. He has had two people mention that this South Beach Overlay causes a problem with circular drives. Has anybody mentioned that to Mr. Recor? Because he didn't understand it. He has talked to a whole host of people, it would be easier for him to name the people on the

island he hasn't talked to than to name those he has talked to.

Mr. Recor said what it does is it limits driveway access on the front of the property to 24-feet in the buffer. So the argument is, if they only have 24-feet they only have one way in and only one way out. Visual buffer. They have had discussions about short term fixes to the Land Development Regulations while they are contemplating the RFP to rewrite the entire code. They have identified some short term fixes. A number of these things are short term fixes. Visual buffer is something he thinks they can take out from the overlay district if it is problematic.

Commissioner Becht said it is problematic for him, but he doesn't know if it is a problem for anybody else. On Item #5 of the summary, they had a wide ranging discussion on the number of days an owner can stay in what is supposed to be a hotel unit. So if it is in fact a hotel unit and doesn't need to be distinguished, then there should be no problem in limiting an owner of a condo-hotel to 14 days as Flagler Beach does. That would be his preference, because they have it up to 90 days; and he thinks as they talked about this, he had heard 14 days before.

Mr. Recor said that is entirely up to Commissioner Becht. The length of time that he would like to...

Commissioner Becht said if he can get two more along with him, then they will limit it to 14 days or something less than 90 days. The thought behind that is if they make it 90 days, people tend to stretch things. So if they say 90, it would be 120 in practice. If they say 14, he suspects it might be 30. But 30 he thinks is going to be liveable and is going to do what they want. And what they want is they don't want it to be a residence. What they want is they want it to be a real hotel with transients in it that go out and eat in the restaurants, they go to the museums, they go to the Sunrise Theatre, and do those things. That is what they are looking for in a condo hotel is a real hotel, not another dwelling unit where people go and they stay and they cook and they stay indoors. At the risk of making this a real long meeting, he needs to ask Mr. Schwerer to comment on the grandfathering issue. He is still uncomfortable with the grandfathering issue. Is Mr. Schwerer prepared to go on record and say that he is comfortable with the way it is drafted?

City Attorney Schwerer said no, they are never comfortable 100% with anything that is drafted because it is untested. But he believes staff has done a fine job trying to narrow it to a certain degree. He does want to point out that in some respects they somewhat disagree with staff in that this South Beach Overlay District does not, in their opinion, make certain structures non-conforming. There are certain regulations on the books right now that already provide for the non-conformity of those buildings. There is a glitch and perhaps a technical issue in the C-5 district only, which he does not want to go into detail. But if they are talking about grandfathering, technically they have existing codes that when they adopted previously their 4-story or 45-foot height restrictions, they apply island-wide, they apply to limit densities over there on the beach, and there are a vast number of building on the beach currently that are made non-conforming by that legislation which was enacted several years ago as opposed to this. His answer is he is never 100% comfortable, but he is comfortable with respect to this particular draft. If there is some language that Commissioner Becht wants him to consider and comment specifically on, he can.

Commissioner Becht said he would flip it around on him and ask is there is any language that he wants included that is not included?

City Attorney Schwerer asked specifically are they talking about...?

Commissioner Becht said anything in the South Beach Overlay, but he is talking specific to the issue of the grandfathering.

Mr. Schwerer said not at this point, no.

Mr. Recor said he would simply remind the Commission the reason why that entire section is in there is because they had asked for it.

Commissioner Becht said right. And Mr. Recor does have in the memo that he talked with various banks and he wants to put that in the record, because he was concerned that it may pose a problem on their residents as they went to refinance. But he has taken that issue up with the financial institutions and there should not be a problem with refinancing.

Mr. Recor said absolutely. He would be glad to summarize the context of those meetings if he is interested. Before he yields the floor, he hopes Commissioner Becht recognizes some of the positive responses that were made.

Commissioner Becht said he was going to do that under Commissioner comments, because everybody watches Commissioner comments. He had a disagreement with staff on how they calculate lot widths. That is not dealt specifically in this particular ordinance, it is dealt with elsewhere; but he would like to have Mr. Buchwald later review that with Mr. Recor and himself. Tonight is not the right time. But Mr. Buchwald and he had disagreed, and he thinks the County has a different interpretation of how they define lot width, and he would like to go over that with Mr. Recor. As Mr. Murphy said, he is uncomfortable with the 50 unit resort hotel. That is a compromise, so he thinks that is what they are going to end up with tonight. He is uncomfortable with the fact that they have a 70 unit hotel that would obviously become non-conforming in the event of a catastrophe. And as he pointed out, they are never going to be a resort hotel with the land mass that they have. The habitable stories, if somebody can get three habitable stories in 28-feet, he really doesn't have a problem with that. He has seen it with lofts, he guesses a loft is a habitable story, so they have eliminated a crow's nest there. The open space and impervious surface, he is confused here because there was one project that he saw on the island where they were trying to encourage the owner to move his buildings and his massing out to the street with walkways and breezeways and public space. If he has to put his parking behind that... The question specifically is consistent with urban design. Is all this open space consistent with an urban design?

Mr. Recor said he is not an urban designer.

Commissioner Becht asked is Kara Wood here? Because it seems to him that all the open space, which he loves, is going to run into an urban design. And there may be certain places on the beach where the urban design would be appropriate with the breezeways out to the curb.

Mr. Recor said again, he will remind them that the reason why this provision is in here is because they asked for it.

Commissioner Becht said he does not have a problem with that, but he is trying to put it all together so that it makes sense in the totality. In the calculation of open space, are they going to consider retention ponds?

Mr. Recor said that is a determination for their Zoning Administrator. He will tell him that this is his last official duty as their interim Planning Director.

Commissioner Becht said they have the design standards in here, he thought they were trying to do too much, but he appreciates him trying to get it done.

Mr. Recor said at the time they included these general design standards, they had not made progress on their overall design guidelines. He is happy to report to them that the Planning Board did have a public hearing and move those on. Again, another provision that he thinks given the progress they have made on other initiatives can be removed if

they are inclined to do so.

Commissioner Becht said no, he would like to pass them; and if it becomes necessary, they will pull them out of that particular part of the ordinance. He has been three years fighting to get design standards.

Mr. Recor said several of the lenders actually recommended that the design standards apply to residential development and not just to the non-residential land users.

Commissioner Becht said design standards ought to apply to the entire city and should not be limited to South Beach. They are a good thing and they ought to apply to the entire city. They ought to apply to the City as well; and he was going to ask Mr. Recor, not tonight but maybe this week or next week, to see if these design standards, if their parking garage measures up to the design standards they have set for South Beach, and he thinks that would be an interesting analysis to see if they do. They have a visual buffer and the idea of imposing this in the residential area and the non-residential area, and he couldn't tell whether it applies to both or only applies to one.

Mr. Recor said it applies to both; and the idea is to supplement plantings within that visual buffer.

Commissioner Becht said on this particular issue, the visual buffer with landscaping seems to fly in the face of an urban design or an urban type development on the beach.

Mr. Recor said its not a one size fits all style of development though. He thinks they need to remain open to alternative styles of development and not get wrapped up around a particular style. He thinks the design guidelines give them the flexibility to work with architects and designers to make sure that development is compatible.

Commissioner Becht asked how does he have the flexibility to design around a visual buffer?

Mr. Recor asked he can't design around using the first 20-feet of a property to have a minimum planting size and trees within a minimum visual buffer?

Commissioner Becht asked if he is going to make the first 20-feet pedestrian friendly with pavers or what not, how can they have both the pavers and this landscaping buffer that he is looking for?

Mr. Recor said he has walked the streets of Savannah and has seen street trees inside brick pavers and many other communities. Why can't they do that here?

Commissioner Becht said then he is not reading it correctly; because it says the whole idea is to block the view of the structure with the landscaping, unless he has misinterpreted. It is called a visual buffer. It is not called a landscaping code, it is a visual buffer.

Mr. Recor said he wouldn't get too wrapped up on the semantics of what it is titled.

Commissioner Becht said okay. The non-conforming situations (Page 6, Paragraph I). Does anybody else see any benefit to adding the Coastal Construction Control setback guidelines? They have the Building Code of the City and FEMA regulations, but he was wondering if they wanted...?

Mayor Benton said it should be in there.

Commissioner Becht said he already told them about liking the 14 non-consecutive days

rather than the 90 days. That's all he has for the time being.

Mayor Benton said he would like to respond to the wastewater treatment plant as a piece of property that is owned by the public, by the City of Fort Pierce. And knowing the public initiated the 4-stories and 45-feet some years ago. To him, government in this county is too hypocritical. And he doesn't know how they can tell developers they can't and then they would. To him, it needs to be for the whole island including the wastewater treatment plant.

Commissioner Coke said she would agree with that.

Commissioner Nelson said he thinks it appropriate first of all that he give a brief explanation of why he is here as opposed to Reno, Nevada. He had gotten several phone calls regarding this meeting tonight. And he was advised he would be placing his mother, who was accompanying him on that trip, undue stress at this time of the year. And thought he might address the issue of local issues versus national issues that he would be attending to at that League of Cities conference in Reno. So here he is. But he does have some concerns and he thinks they are very important and he tried to allude to a portion of them when he asked the gentlemen how long he owned the property that he had there and he said only three years. He took note of a lady who lives in one of the highrises over there, she called him and said she lived on the 10th floor of that unit and she liked it the way it was and she didn't want it any higher than eight and four in the cases they are addressing here. He looks back and he sees the fact that the Colonnades and to a certain extent the Harbour Isle complex was subjected to severe damage during the recent hurricanes. The Harbour Isle complex was not as badly damaged as the Colonnades. The question immediately came to his mind about the Colonnades was whether or not they were going to be able to rebuild; and the initial response he got was no, they were going to be razed or torn down. As they all know, those were reconstructed and they got a fine facility again. He firmly believes that people have a right to use their properties for maximum economic usage, with consideration of those people who have been there for a long time and with consideration to those people who have expectations of what they want to have their properties developed into as time progresses. This non-conforming issue is very important to him and he doesn't feel they should do anything right now that is going to automatically place a whole host of these facilities in a non-conforming status. So therefore he is very much troubled by this ordinance in that initially it did in fact look at the eight and four issue, it did in fact look at the condo-hotel issue. And maybe at this particular juncture they have been somewhat deliberate, astute, and did a fine job in what they have done. But it might be that they have just gone just a little too far at this time. Maybe they need to pull out and segregate some of those portions that they were troubled by initially as opposed to having this overall comprehensive plan that they have here in this particular ordinance. As it stands now, he has difficulty supporting it because he has been convinced thoroughly that the property over there is quite valuable. It is in fact perhaps the most valuable property in the county and they have got to treat it in that fashion. But on the other hand they need to look at the fact that it should be for the benefit of all the people. And therefore, when they talk about the fact that it should be four stories, eight units per acre, they might be shooting themselves in the foot. Because when they go four stories with 948 units like in Harbour Isle, they are decreasing the ability of more people to see the land area because they got a more expansive footprint that is going to satisfy a base of people versus the vertical situation where if they were to go up higher - 8, 10, or 12 stories - they have more open space for people to get and see the thing that is real precious to all of them, i.e. that river or that ocean. So he is not sure he can support this at this juncture. He thinks they need some tweaking. And that's where he stops at this juncture until the vote comes along. He thinks will be doing more harm than good by enacting it as it presently is proposed.

Mayor Benton asked what is the pleasure of the Commission? This is the first reading, so a lot of the discussion they had tonight can be incorporated in the next reading.

Commissioner Coke said she doesn't know if they have a consensus; but on a personal note, she will summarize. She would like to see them take out the habitable stories column and just have the maximum height column.

Commissioner Becht said likewise.

Commissioner Alexander said likewise.

Mayor Benton said that is three.

Commissioner Coke said she would like to see them change the calculation - height limits to the base of the roof line - which is what they were utilizing prior to this, or to raise it to accommodate that pitch in the roof.

Commissioner Becht asked does Commissioner Coke want to finish or deal with them one by one?

Commissioner Coke said whichever they prefer.

Mayor Benton said lets do it one by one.

Commissioner Becht said they might make more progress that way. The Mayor mentioned a conditional use if they wanted to go above 28-feet. While that might be more burdensome, at least they would have more control over what they are shooting for. He had met with Mr. Cahill and had asked him, he doesn't know what can be designed in a 28-foot space. Interior ceiling heights are higher than they used to be and that means both the first floor and the second floor. Mr. Cahill was kind enough to obtain a letter from a local architect, Mr. Stebbins; and he has a brief simple schematic where he does show they can get two floors, with the first floor being a 12-foot ceiling and the second floor being a 10-foot ceiling, which he thinks is consistent with the multi-million dollar home. The roof design is unfortunately at a 4 to 12 pitch, and he thinks there is some limitations with that. He just thinks while a creative architect might be able to do a lot in a 4 to 12, if he had a conditional use it would allow him to go higher than that; then he thinks they can have more interesting roof lines, more interesting structures over there, and he thinks still accomplish what they are trying to do, which is make sure there is not a massive structure next to somebody's 1950's house.

Commissioner Coke said they had some discussion previously of allowing as a conditional use a certain percentage over the maximum roof height. Does he recall that?

Commissioner Becht said there was something with 20%, but in here that is for chimneys, turrets, and those kind of things. What he would suggest to get some discussion going on, is a conditional use to go from 28-feet to 32-feet or 35-feet, just a higher number. The goal being to have creative designs in the roofs. That is what he is shooting for.

Mayor Benton asked is that agreeable to three people?

Commissioner Alexander said agreeable.

Commissioner Coke said yes.

Mr. Recor said as the Commissioners contemplate this revision, he will mention to them that they just deleted the number of habitable stories. He thought it was Commissioner Becht earlier that recognized that folks are going to try and get creative with what they can do with that space. So don't be surprised if, as part of that creativeness with their slopes to the roof, that they try and get a loft or get a story out of it. If that doesn't bother them, then

that is fine.

Commissioner Alexander said it doesn't bother him.

Commissioner Coke asked what would be wrong with that?

Mayor Benton said he would prefer himself that in R-1 zone that it be two with maybe a conditional use to go over it, because somehow they have to deal with compatibility. Eventually things will change; but for right now, what do they say to a neighborhood that is 99% built out and then somebody comes in and builds a three story house next to mainly single story homes?

Commissioner Becht said that is where the conditional use would allow them to say no, the conditional use does not work in that neighborhood because that is 1950's single family.

Mayor Benton said but they can still squeeze three floors.

Commissioner Becht said only with a conditional use.

Commissioner Coke said its three floors with 28 feet.

Mayor Benton said they have three floors with 28 feet now and that is what has created the problem.

Mr. Recor said exactly, that is what it is right now, is 28 feet.

Mayor Benton said to him, if it is two floors and 28 feet. And if they go over that with a conditional use. Specifically in a R-1 zone, that's the only area. He has heard from the folks at Thumb Point, he doesn't know if they have or not, but heard loud and clear from them that they have some concerns.

Commissioner Nelson said he too has heard from the people in Thumb Point. He has reviewed the plans with the three houses that are being built over there and he sympathizes with the people who live there. He would prefer personally that they not be there, but he thinks they are within their rights to build there. They talked, the Mayor in particular indicated and Commissioner Becht always talks about raising the bar. Sometimes they try to raise the bar and they get out of step with what is around them. He was having lunch at Mangrove Matties one day; and as they came out there, he saw the little houses right in front of the area. One of the lunch party indicated all those low level one-story houses were underdeveloped and not making maximum economic utilization of that land, how valuable they were. And he knows those people are in fact very proud of their individual homes. But if they were to go in and raise the bar as Commissioner Becht always speaks and redevelop that area, those houses to the standards of today, as opposed to the standards of yesterday, he thinks they would all be proud of it to include the individual property owner. So somehow or another they will have to address a non-conformity, but allow for the improvements consistent with today's standards of architecture and height.

Mayor Benton asked as far as that item, are there three Commissioners that would like to see a conditional use to go more that 28-feet to 35-feet?

Commissioner Alexander said yes.

Mayor Benton asked how about habitable stories in R-1, is that okay with three folks?

Commissioner Alexander said as a conditional use.

Commissioner Coke asked can they redefine that? Because they kind of mixed the two discussions. She thought they had moved on from that. Can they go back and what exactly is the Mayor proposing?

Mayor Benton said in the area where is says the habitable not too exceed, in R-1 where it is 28 feet, he thinks it should be two habitable stories unless they go and ask for a conditional use, that way the neighbors have a say.

Commissioner Becht said he doesn't have a problem with that. It could be allowed to be a conditional use

Mayor Benton said right.

Commissioner Becht said because then they have got the control over all those variables.

Mayor Benton said that way it is up to the neighborhood, not up to this Commission.

Commissioner Becht said to try and summarize it, the 28-foot is the rule that is now simpler to apply, it doesn't matter if it is a mansard or a pitched or whatever, they now know how apply that.

Mr. Recor said yes, they will apply it as per the illustration.

Commissioner Becht said okay. What they have done in addition to that is to allow someone with creative design to come in and go from 28-feet to 35-feet. His primary goal is not to create a third floor there. His primary goal is to allow somebody architectural detail that is possible within 35-feet that is not possible within 28-feet.

Mr. Recor said they will provide the base standard and then a new table that will allow the ability by conditional use to exceed that standard for stories and height.

Commissioner Becht said he doesn't want to get into the minutia tonight, but he wouldn't want a whole another third floor. What he was looking for is an eagles nest or loft or one bedroom or something at that height.

Mr. Recor said the conditional use process would give them the ability to look at that. He thinks he has got it.

Mayor Benton asked they got three there?

Commissioner Coke said okay. The third point, and she appreciates Commissioner Becht because she was also not happy with the 90 days. She has concerns about 14 days, which is leaving themselves open. She thinks maybe someone purchases a unit as a hotel-condo, they may be looking to come down twice a year for two weeks. So she would like to see them reach a compromise at like a 28 day stay.

Mayor Benton asked is that acceptable?

Commissioner Alexander said his question and confusion now, he thought the 90 days was non-consecutive. Did he overlook that?

Commissioner Becht said it is non-consecutive, that is correct.

Commissioner Alexander asked so they would not be able to...? They can come down annually. They can at least come down twice a month for sixty days, is that what he is saying he wants to max it out now?

Mayor Benton said as long as they left for a day.

Commissioner Coke said no, what she was looking to do is to limit the number of days they could stay annually to 28 because as Commissioner Becht so aptly pointed out, they do want these places to be hotels where people come in and stay for a week and visit the restaurants and the theatre and then leave.

Commissioner Alexander said he was just trying to clear up the 90 days. That is non-consecutive.

Commissioner Coke said she didn't like the 90 days at all.

Mr. Recor said they will strike that and include a provision that will provide for a 28 day maximum stay in any calendar year.

Commissioner Alexander asked 28 days maximum stay?

Mr. Recor said that is what he is hearing.

Commissioner Becht said that is what he would like to see.

Commissioner Coke said that is what she would like to see.

Mayor Benton asked is that acceptable to three?

Commissioner Alexander said if that is what they say.

Mayor Benton said he will go along with it.

Commissioner Coke said her fourth item was she thinks they ought to take the visual buffer item out completely at this point and leave it to the land regulations. There is too much concern over visual buffer versus landscaping and she thinks it is very confusing.

Commissioner Becht said he is in accord with that. In his conversation with Paul Williams, he has told him that he has a landscaping revision that substantially raises the bar, God bless him, ready to go when they are ready to go.

Mr. Recor said they are ready to go, they will be bringing it forward.

Commissioner Becht said then they are dealing with what they really want to talk about, which is landscaping rather than visual buffers.

Mr. Recor said let's take out open space and impervious surface to while they are at it.

Commissioner Alexander said okay.

Commissioner Becht said okay.

Commissioner Coke said okay.

Mayor Benton said okay.

Commissioner Coke said the only other thing that she had that she would like to see prior to the second reading of this is that they could be sure to include the Minutes from the Planning Board meeting so they can all have everyone's input.

Mr. Recor said yes.

Commissioner Becht said the one thing that he knows she wanted to mention was the

Coastal Construction Control setback.

Commissioner Coke said yes.

Commissioner Becht said so they have that and that would be in Item (I) on Page 6.

Commissioner Alexander said they just want to be assured that they are addressing that non-conforming situation too, as Mr. Recor indicated when he was expressing a little bit. Make sure they address that matter too on the non-conforming.

Mayor Benton asked non-conforming, is that agreeable with three Commissioners?

Commissioner Becht asked what are they doing there?

Commissioner Alexander said Mr. Recor addressed some of the concerns they had concerning that. He just wanted to make sure it is within the non-conforming.

Mr. Recor asked does he want to keep the non-conforming section or does he want it taken out?

Commissioner Alexander said he is not saying take it out, but they can readdress that.

Commissioner Becht said he had specifically tried to put Mr. Schwerer on the spot; and as an attorney, Mr. Schwerer did one of the best dances he has seen in a while, although there was one earlier this evening. They heard from him that it is as tight legally as he thinks. And then he flipped it around and asked if he had any alternate language he cared to propose and he didn't have any alternate language he cared to propose. So he thinks they are okay with that. If he has a specific point...

Commissioner Alexander said not in particular. He asked Mr. Recor to give him some concerns about the non-conforming and he did.

Mr. Recor said the only issue that he would raise for their consideration is, they are treating non-conforming uses and structures differently on South Beach than they are in the rest of the community. As part of their LDR rewrite, if they would like to move forward with this, they may want to consider allowing the same opportunity in other areas of the city. That is an issue that he thinks they all discussed at one point or another. But he simply should point that out to them, that they are being treated differently on South Beach.

Commissioner Alexander said okay.

Commissioner Becht said to try to stay focused, but just a little bit off of this issue. When they do the LDR, when they are finally able to put out for bid, the non-conforming aspects he thinks they need to talk about whether that is appropriate and applicable for the entire community. And then there was the design guidelines. Why are they limiting design guidelines to South Beach?

Mayor Benton said design standards were approved by the Planning Board last Wednesday night and will be coming in front of them at the next meeting, for citywide. Mr. Recor said they will be very pleased. Ms. Wood and staff and company did a fantastic job. Can they revisit the density provisions? The base density and the incentive density. It doesn't seem there is a consensus on what is an appropriate level of density for a hotel/motel.

Commissioner Becht said he thinks he is the one that raised that. His concern is that with a viable international chain that comes to town, he doesn't know how they design things. So he is just concerned that they can design what they need to design in order to be

economical viable with the numbers they have provided for a resort hotel for instance.

Mr. Recor said they will see from the statistics he has provided them for various condo-hotel projects in the State of Florida, most of those projects are not restricted by a 45-foot height limitation. So the projects density-wise far exceed 50 units an acre. They are primarily South Florida projects that go 30 plus stories in the air.

Commissioner Becht said he does not know that they are going to solve that one tonight. The other concern he had, which he hopes they are going to address when they do the LDR rewrite, is he is really not so happy about the bonus density for public access to waterfront. He thinks that just ought to be mandatory. If they are going to invite the public on their property for any aspect of their operation, the mixed use or restaurant or the spa that would be at a resort hotel, if they are going to open the property to the public, then he would like to see that the waterfront aspect of that property is preserved for everybody to enjoy. So instead of giving them the 10 bonus densities, he would expect it. But he may be alone in that regard.

Mr. Recor asked any additional feedback on density? Is it enough?

Mayor Benton asked does everyone agree to the density they have here? He got to thinking when it comes to a resort hotel, he doesn't know how they can do more than 40 when a resort would provide tennis courts, all kind of amenities. So they are using up their land space unless they get really creative and put it on the building or on the structure, which then it would eliminate rooms. He just does not know how they could have any more than 40 an acre with providing the amenities needed to be called a resort.

Commissioner Becht said he thinks what Mr. Recor just told them is that they are doing that, but they are doing that by going higher.

Mayor Benton said right. He thinks they are agreeable to that.

Commissioner Nelson said he keeps mulling around something in his mind, he is just not sure how to phrase it. He will pass for now.

Mayor Benton asked with the conditions that three of them at least have agreed to, do they have a motion?

Motion was made by Commissioner Coke, seconded by Commissioner Becht, to approve passage of Ordinance No. K-441 on first reading with the listed agreed upon amendments they just reviewed.

Commissioner Becht said he seconded that because he is seconding the approval of this with all of the modifications that at least three of them have recommended.

Commissioner Coke said and presentation of Minutes of the Planning Board to all of them prior to the next meeting.

Commissioner Becht said Mr. Schwerer looks like he is ready to say something.

City Attorney Schwerer said he has concerns when they make these kind of editing changes and then move approval. What he would perhaps ask instead is a motion to postpone the first reading. Direct staff to come back with a revised edition that can be published and put before the public for the first reading at the next meeting, or for whenever they postpone it to be heard. He is more comfortable with that because they are making substantial modifications to this ordinance.

Commissioner Becht said he is very comfortable with that, so perhaps some of those that stood up and objected to this carte blanche would now take advantage of the democratic

process and give them their comments in writing.

Commissioner Coke said the motion is so amended.

Commissioner Becht said he agrees.

Motion was Amended by Commissioner Coke, seconded by Commissioner Becht, to postpone the first reading of Ordinance No. K-441 to December 18th.

Commissioner Nelson said this idea that the basic requirements be approved by the City Attorney cited under General Requirements, the City Attorney is not in the chain of command. He doesn't think and certainly would raise a question to him as to whether he should in fact be approving such actions as indicated in that Paragraph 1.a.i.

Mr. Recor said to form and content only. And he would be advising the city's staff, not the applicant. The applicant would provide that documentation to the city staff and they would ask their city attorney to review it for form and content.

City Attorney Schwerer said when he first reviewed the draft he was very unhappy with that provision as it was proposed. But the more he read it, what it is simply requiring. First of all, his office never signs off on their documents whatsoever, that is up to the private developer and their private counsel. What that provision is simply doing, as Mr. Recor points out, is requiring the city attorney's office to sign as to form and content so that they advise the staff that the documents do adequately disclose and ensure the condo-hotel facility will in all respects be permanently exclusively operate as a transient accommodation and will not be occupied as a multi-family dwelling. In other words, make sure it falls within the form and content of their ordinances governing how long people can stay there, what the length of stay is, etc. So that they are not technically approving condominium documents, but only that aspect of it.

Mayor Benton asked being they have had one public hearing and they are modifying this document, is it going to require two public hearings when it comes back? Or one for discussion by the Commission and the second reading as a public hearing?

Mr. Schwerer said he would prefer two public hearings in addition to this one because there are substantial modifications.

Mayor Benton said he just wanted it verified for the record.

Mr. Recor said the good news is they are going backwards though and it does not appear to necessitate reconsideration by the Planning Board and starting the process all over again.

Mayor Benton asked they will have that at the next meeting?

Mr. Recor said yes. And he will make sure they have the Minutes of the Planning Board.

Commissioner Becht said he wanted to thank Mr. Recor for a monumental amount of work. His comments earlier were not meant as criticism to anything Mr. Recor did. He just wanted to try to get them the best draft they could possibly get and it looks like they are headed in that direction. He thinks Mr. Recor and the rest of the staff for their efforts.

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

Mayor Benton said this will be brought back at their next meeting for public discussion.

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Ordinance No. K-464 entitled, "AN ORDINANCE OF THE CITY OF FORT PIERCE, FLORIDA, AMENDING THE CODE OF ORDINANCES; AMENDING SECTIONS 22-3, 22-27, 22-27.1, AND 22-28 TO PROVIDE FOR THE **PLATTING OF TOWNHOMES** IN THE R-4, R-4A AND R-5 ZONING DISTRICTS AS A SEMI-RESTRICTED USE CATEGORY WITH LAND USE REGULATIONS THAT GOVERN THIS TYPE OF RESIDENTIAL LAND USE; REPEALING ORDINANCES OR PARTS THEREOF IN CONFLICT; PROVIDING FOR AN EFFECTIVE DATE." was placed on first reading and read by title only.

Mr. Matt Margotta, Director of Planning, said this agenda item discusses townhomes. In general, the City of Fort Pierce has approved things that have been called townhomes, kind of anecdotally; but staff recognizes that the ordinance does not specifically call on townhomes as a use, and they have noticed a townhome fee simple situation is not allowed in their ordinance. With that as an impetus, staff looked at how to plat townhomes in the City. And in the motions of going through finding out if it is a problem at all or what the situation is, they noticed that there is a distinct difference between things that have been approved already and maybe what an ideal townhome situation may be in the future. This ordinance contemplates basically drawing a line whenever the approval date is of this ordinance, all multi-family or townhome developments that could comply with this ordinance prior to the date of this ordinance be enacted would be able to be platted. That is basically drawing an imaginary line around things that have already been approved. Henceforth, any townhomes within the R-4, R-4A, and R-5 zoning districts would have to meet the standards of this ordinance. That is the gist of why they are there today to talk about townhomes. He can go through some of the specific standards of the ordinance, just realize that the R-4 district is treated somewhat differently than the R-4A and R-5. The R-4 is the district where several developments like Sunrise Lakes have been approved and maybe this ordinance might be able to apply to them to be platted. The R-4A and R-5 zoning districts do not have that provision in it to go backwards for things that have already been approved because there just hasn't been anything approved in there that would apply.

Commissioner Becht asked for clarification, can he build a townhome development, as they are newly defining those, in any other zoning district other than R-4, R-4A, or R-5?

Mr. Margotta said anywhere where multi-family and attached single-family could be built, he could build a townhome. For platting, no. Platting is allowed in R-4, R-4A, and R-5.

Commissioner Becht asked is there any reason to limit the definition of a townhome to those zoning categories; or should they spread that definition across all zoning categories?

Mr. Margotta said it could be spread across all categories. It is just that townhome as a use is only mentioned in those three districts.

Commissioner Becht said he is asking Mr. Margotta if there is any benefit to the City in providing them with additional controls or design standards that they might have in the other zoning districts that they are giving up the opportunity to, because they have limited it to these three zoning districts?

Mr. Margotta said the other zoning districts are generally lower density and he does not believe that this fits the character of those. That is why they picked these zoning districts, they have a higher allowed density.

Commissioner Becht asked so he is comfortable in limiting it to these three zoning districts?

Mr. Margotta said absolutely.

Commissioner Becht said okay. The definition of a dwelling townhome, based on this definition, if he limits the common wall to 49% of the depth of the building, then he escapes

his definition. Is there any rational basis for limiting it to 50%?

Mr. Margotta said there is no rational basis for 50%. It is a number that has been picked. However, if they go much less than 50%, they end up with some very unique designs. They could end up with basically just corners touching on buildings. The townhomes, when they are successful in their research of other communities, is when they are in line. Actually they are probably closer to 90% if not 95% of their walls touching. It is more of a design thing than anything else.

Commissioner Becht asked so he is comfortable with it being 50%?

Mr. Margotta said quite honestly, if they wanted to propose a higher number, they would be okay with that.

Commissioner Becht said he was thinking of a lower number. That is all right. This says the townhome development shall be exempt from design standards. Why are they doing that?

Mr. Margotta said that particular section of design standards.

Commissioner Becht asked what is that particular design standard?

Mr. Margotta said those are street standards to be able to make a subdivision. Right now Section 18-11(e) discusses how lots are created for generally single-family homes. And they are not going to be able to create this situation with a townhome if they incorporate that particular section of the ordinance.

Commissioner Becht said so it has got something to do with the road.

Mr. Margotta said yes, lot frontage really.

Commissioner Becht said his final question is parking. They have had several developments come in where they are providing a single car garage. Are they ready to require they provide at least garage space for both of the cars?

Mr. Margotta said that is part of the beauty of this. A townhome is a single-family dwelling; and a single-family dwelling needs two parking spaces for it to be called a single-family.

Commissioner Becht said he read that, but what he is not reading is a requirement that there be a garage for two cars.

Mr. Margotta said there is not a requirement for a garage for two cars in this. He thinks staff is looking at some of the flexibility of design. Actually garages are certainly preferred and usually is a much better design.

Commissioner Becht said that was his thinking. He didn't know if Mr. Margotta was prepared to make a recommendation, that if this Commission is ready to jump up, that they are going to require a garage and maybe they are going to require a garage for both units. But he would like some feedback from staff if there is anybody else interested in that idea.

Commissioner Nelson said he is interested because he has a similar question.

Mr. Margotta said to allow Ms. Wood to chime on it, to him it is somewhat a design issue and is also obviously something that gets developed into a permissible state is something the city likes. It is aesthetics in some ways. He wants Ms. Wood's input on this himself as the Planning Director. The standard is going to be whatever the standard is. If two car garages are what is required, that is the requirement.

Commissioner Becht said he needs to know if it is a good idea or bad idea. He read recently where San Francisco is eliminating requiring parking for some of its developments to try and discourage automobiles.

Mr. Margotta said yes, they look at situations in the City, not R-4, but maybe closer to downtown they may look at on-street parking as a different way of calculating parking in some of these zones. It would be the first thing they can do if they have a one car garage is limit to one car per household.

Commissioner Nelson said the minimum lot sizes for single-family, 5,000 square feet. If one had a lot for several years, are very small lots precluded from building on those lots if they can't measure up to 5,000 square feet? For example, a lot 40-feet by 100-feet would be 4,000 square feet. And if they are going to have necessary setbacks 25 feet or 20 feet, they are going to detract from that. What can be done to these lots, which people have a lot of them today, that are not of sufficient size to warrant 5,000 square feet?

Mr. Margotta said first the provision of 5,000 square feet is for a single-family dwelling, that is already in their ordinance. A townhome dwelling shall have 1,500 square feet as its lot size. So if somebody has less than 5,000 square feet - for the sake of discussion say they have 4,500 square feet of lot - they will be able to fit two or three townhomes on that lot by re-subdividing, provided it meets all the other requirements. Some of it goes to the dimensions of the lot and where it is situated close to the street and so on. But all these provisions kind of play off each other as they go through. If they are talking about an existing lot, it is whether they can meet the standards or not.

Commissioner Nelson said they have a lot of them in the City of Fort Pierce, 40 feet wide and say 100 feet deep, that comes to 4,000 square feet. If they take back some setback - front and rear sides - 25 feet maybe and the property line on the side 6 feet or 10 feet, they are going to detract from that considerably. What provisions are being made to allow those people who have had these lots for x-number of years to build on them?

Mr. Margotta said the minimum depth of a front yard for a townhome is 10 feet. Any other use, it is 25 feet. So townhomes are being treated differently. They are allowing for the development or the redevelopment of some of the smaller lots. He literally doesn't know each and every single situation of the lots out there. But the site design standards, the setbacks for side yards and for front yards from the street are less for these townhomes than they are for a normal single-family dwelling.

Commissioner Nelson said he is concerned about that person who has had that lot for x-number of years, and they have a lot of them in Fort Pierce, they are very small lots and to a certain extent they can't be used to build a decent house on it, no way near 5,000 square feet. He can tell them one on the corner of North 23rd Street and Avenue E, a little house that isn't as big as a matchbox. Somehow or other in prior years, because those people had that lot for x-number of years, they were allowed to build on it. Are they going to be taking those people's property rights and not allow them to build on it in its present day?

Mr. Margotta said as he understands it, a lot of record is a lot of record; and they are allowed to use it for its intended purposes. There is a process to apply for a variance from the ordinance if there is a hardship. If over time a lot was created in the 1950's and the rules have changed over the years, he would say there is probably some standing for a hardship, for that lot owner to be able to state that he wants to redevelop his property to be able to put his house on it but their rules won't allow him. That's the method for it. The townhome ordinance is just trying fit townhomes on redevelopment lots or just around the city.

Commissioner Nelson said in the ordinance, Common Areas, they talk in terms of approval

in a form acceptable to the City Attorney. Why are they inserting that? Through staffing actions, they normally get approval of the various cognizant staff elements. Are they putting their City Attorney in an approval process or mode? What are they doing there? What are they proposing to do?

Mr. Margotta said he doesn't remember exactly how that was placed in here through all the different versions staff worked on it this, and he doesn't want to put the City Attorney's office on the spot, but he believes they inserted that in there. The initial brush was that there should be a POA (Property Owners Association) for common areas. He believes at the time when they were bringing up that notion it became quickly apparent that they don't want to just leave one staff member responsible for reviewing that.

Commissioner Nelson said he is at a disadvantage, because he knows that Mr. Margotta knows about proper staffing. Because someone renders chops on something to sign off on it, doesn't necessarily mean that he is the approval authority on it. But he is saying there, that the City Attorney is to approve something. There is such things such as coordination versus approving. The approval authority comes primarily with the City Manager, the Department Head, the City Commission. So he has some concern when the City Attorney is approving something.

Mr. Margotta said if he might clarify, the intent there is it is a review by the City Attorney's office just as any other department around the City has a review responsibility. It is to find these property owner covenants or something in form and content acceptable. It's not an approval.

Commissioner Becht said as much as he hates to say it, he agrees with Commissioner Nelson. Mr. Margotta as the Department Head for the Development Department and the Zoning Administrator all have to sign off on various aspects of any development that comes through and yet they don't put it in their code that the Zoning Administrator has to sign off on something. He thinks it is incumbent upon the City Attorney to review what is submitted; and if he has a problem with it, then he goes to the authority, the decision maker, and says he has a problem with it and tells them what his problem is. He thinks to insert it in this capacity is what Commissioner Nelson... He is troubled in the same fashion he is. He thinks it is dealt with by it is part of the development review process. The City Attorney will review it as he is supposed to; and if he has an objection, he will tell Mr. Margotta and the Commission what it is, and they will make a decision, not him.

Mr. Margotta said he could easily scratch that clause, everything after the word following, that says: ...in a form and manner acceptable to the City Attorney.

Commissioner Nelson said on Page 4, Paragraph (h), the last sentence in that paragraph, it talks in terms of the maximum combined projection between two (2) or more buildings shall be eight (8) feet. They talk about the distance between residential buildings. It says the maximum distance between the buildings. Is it talking the maximum or is it talking about the minimum?

Mr. Margotta said that is actually a passage that is already in their ordinance, that is not a proposed change in this ordinance, it is already on their books.

Commissioner Nelson said if it is wrong, they need to change it. They talk about separation and minimum distances in many cases; but here they talk about the maximum. If he has two buildings, are they going to say the building over here has got to be so far and the building over there has got to be so far? Or are they talking about the distance in between has to be a minimum of this amount?

Mr. Margotta said if they are looking down the sides of the buildings basically through the side yards and they are looking at a line of front porches, none of those front porches would stick out more than 8 feet beyond its next door neighbors.

Commissioner Nelson said it says between two buildings. This is a building over here, this is a building over there. Between is that area in here.

Commissioner Coke said they are saying nothing can stick out of the side of the building more than 8 feet towards the other building. Maximum combined projection. So they each can have a porch for 4 feet.

Commissioner Nelson asked does anybody else see what he is seeing?

Mayor Benton said he thinks it has been explained. He understands what Mr. Nelson has interpreted, but he is hearing it interpreted differently.

Commissioner Nelson asked what is the intent of that?

Mayor Benton asked does Mr. Margotta stick with his first explanation as far as porches sticking out?

Mr. Margotta said let Ms. Wood explain this one because he missed it.

Ms. Kara Wood, Urban Designer/Administrator, said it is simply allowing some interstitial space to occupy the minimum distance between buildings. So they can have a porch sticking out of one building and a porch sticking out of the other building and each of those can be 8 feet wide. But the main building wall has to be 20 feet from the building wall of the adjacent structure.

Commissioner Nelson said when he gets two neighbors fighting...

Mr. Margotta said if they have two back porches facing each other, those porches or decks couldn't come close to each other.

Commissioner Nelson said when he gets two neighbors fighting and when those people come complaining to him, he is going to look for Mr. Margotta and Ms. Wood.

Mr. Margotta said that's fine. That is the best way to deal with it.

Commissioner Coke asked could they readdress the parking spaces and garages, but let's do that with the professional.

Commissioner Nelson asked who is the professional?

Commissioner Coke said not Mr. Margotta, because he is going to throw the ball sideways.

Ms. Wood said in the additional requirements for the added definition of a townhome dwelling, they have tried to accommodate some of the requests they have heard from the Commissioners in the past. In townhome developments, where do they have places where people can grill hamburgers and not be in each other's way? How can they have two car garages? How can they have some private outdoor space? So in the construction of this, they looked at the ordinance for townhome developments from Coral Gables and taken a model townhome development from Coral Gables and tried to use this traditional townhome housing type as a model for the kind of development they are trying to encourage. (Ms. Wood displayed slides.) On the screen they can see a site plan for this model development that shows the building at the front with a small courtyard area in between and a two car garage in the back. This is the elevation of that particular development. And in this development they have managed to fit in a fairly compact lot size - which is comparable to the lot size they require in this ordinance - a four bedroom dwelling with four bathrooms, a private courtyard area, and a two-car garage accessed by the alley.

Commissioner Coke asked is it possible then for them under Paragraph 5(c) to require two car garages, not two parking spaces, per dwelling unit?

Ms. Wood said it is possible, if that is something they want.

Commissioner Coke said she knows they have reached this impasse before with developers that want to put one parking space and a one car garage, and then they are always left with who is going to back out so someone else can get out of the garage. Her preference would be, since they discussed that at least 100 times previously, if they could just require a two car garage in a townhome. She thinks it would make everybody's life easier.

Mr. Margotta said he realizes he is not a professional, but there could be situations with townhomes where they have a shared common parking lot, a parking lot easement or something like that between them. So they could work around requiring a garage on their lot. If it is on the lot itself, and if Fort Pierce wants it, yes, they could do that and make it part of their ordinance. He would suggest that there are other design opportunities out there that they would be precluding otherwise.

Commissioner Coke asked can they be more specific in this ordinance that if the parking were part of the unit itself, that it be required to have a two car garage versus if there were going to be a general lot, that the requirement would just be for two parking spaces? Is there a way to do that.

Mr. Margotta said certainly. Yes, there is.

Commissioner Nelson said at the last Commission meeting, he believes they had Greg Boggs and his crew. He was raising the issue of putting one car in the garage and one behind. Are they changing their tune here somewhat?

Mayor Benton said they would be if three of them decide it should be two car garages. They are changing the ordinance for townhomes, he is sure that is the case.

Mr. Margotta said he thinks what he is trying to recommend is that they would be painting themselves in a box by requiring a two car garage. They can do that and it is a good design option and it makes a lot of sense. But if it is the only way that they can have their parking, then that is what they are going to get.

Commissioner Becht asked can they get the language so they can do it so that there is? Because it is not a two car garage as he is looking at it. If it is a studio one-bedroom apartment, it is a one car garage. But if it is two bedrooms or higher, he thinks they need a two car garage, or they need to provide alternate innovative parking solutions. Is that vague enough where they can get away with it?

Mr. Margotta said what staff is using as far as a two car parking limit is normal standard throughout the rest of their ordinance. They are not trying to recreate the whole wheel with just the parking standards.

Commissioner Becht said all he is just saying, like with a PUD where they come up with innovative design features, they get to bend the code. They set a minimum code for the number garage spaces, but they provide the latitude Mr. Margotta is looking for. If they come up with something innovative, then they can do the innovative thing.

Mr. Margotta said yes, he will come up with language to that effect. He understand that there is a desire to have a two car garage. But there still needs to be the ability to plan for something different.

Commissioner Becht said actually he was looking for feedback from Mr. Margotta and Ms. Wood on whether they thought the garages were a good idea or a bad idea. He is not the professional as those two are. He was looking for them to give him guidance on whether the garages are a good idea. And there may be reasons why they are not a good idea. But he is looking to the two of them to tell him that.

Mr. Margotta said plan-wise in trying to be fair to all property owners, he thinks requiring a garage is not to be recommended. For planning administration to look at the development as it comes through and for property owners rights to be able to development their property, he thinks they have more flexibility if they do not require a garage. Design-wise, he would suspect that a garage makes a lot more sense and looks a lot better for the entire development and probably acts a lot better too.

Commissioner Coke asked is there a way to put in there that if it were to be designed with a garage, that it be a two car garage or an open parking lot.

Mr. Margotta said yes, there is.

Commissioner Coke asked does he think that is more palatable to people? Because what she wants to do is encourage them. If they are going to build something that has a garage, to have it a two car garage, so they don't end up with parking in front and in the garage.

Ms. Wood said perhaps one thing they can do is not allow tandem parking, because that seems to be the concern. One thing they could do is provide a one car garage and a one car parking space adjacent to that, both accessed from the alley. Another thing they can do is design the development so that there is a one car garage and a one car parking space behind the home and a parallel on-street parking space. That would be another way to address it. Both fine solutions. But it sounds like the problem they are really wrestling with is tandem parking. Perhaps they can just insert that language, disallow that.

Commissioner Nelson said that is what they did a couple of weeks ago, which he objected to, but they allowed it.

Mayor Benton declared a Public Hearing on Ordinance No. K-464 in session and asked if anyone in the audience wished to be heard.

**Ms. Maggie Stalhut**, Secretary for Plantation Manor, said she represents approximately 400 residents of Plantation Manor Mobile Home Park. They are affected by the R-4 zoning which has been discussed this evening. In the City of Fort Pierce, they are one of the few places that are offering affordable housing to seniors. They are not only worried about themselves, they are worried about the future of Fort Pierce. Affordable housing does mean many things to many people, but to them it means that they can afford to pay their monthly dwelling payment as well as continue to pay for their medical necessities and still have money left over at the end of the month to buy groceries. They have teachers, nurses, care givers, and community volunteers that reside in their park. However, they are also worried about police and fire officials, many other workers that reside in the city who also cannot afford the housing as it is increasing on a daily basis. Conservatively speaking they have approximately 66% of the people in their park that are still in the working force. Therefore, they are working and helping to contribute every day to an area they consider a beautiful place to live and one they love dearly. They love Fort Pierce, they care about their homes, and they care about each other as a family. The top rent in Plantation Manor is approximately \$450 per month. Where can any of them go and find monthly housing for that amount of money? They can't. Few if any of the people she has just spoken of can afford to call \$180,000 to \$200,000 a fair affordable market housing, they just can't. They are asking the Commission to consider all of the residents of Fort Pierce, not just them. They hope and pray they won't be forced to leave their area in order to afford to live. This is their home, all of their homes, not just the wealthy, all of them. They hope they will

continue to help them to come to an amicable solution for everyone, where they can all afford to live in this City.

**Ms. Stan Widing** said he lives on Manor Drive in Plantation Manor. He is not sure this is the correct point where they should be addressing this on, but he is going to bring it up here. They came here because they are concerned with the townhouses. How many townhouses and condos and multi-unit apartments can the City of Fort Pierce afford? What is the impact going to be on what they are going to have coming in here? Commissioner Nelson was saying a small home on a 4,000 square foot lot, being able to put on something. Yes, they need something where they can get these small lots and make them viable for people to develop. But they are talking about a little less than 100 acres. And if they are turning 100 acres into 12 units an acre, then they are now getting high density type. What is that going to do to them? Especially in their case, when they want to put in 988 townhomes. That is taking the place of roughly 400 homes that they have. They have roughly 500 vehicles in their park. When they put in the 988, and they turn it from senior citizen to family, now they are going to have well over 1,000 vehicles in that area. What is that going to do to U.S. #1, when they have between 6:00 a.m. and 9:00 a.m. and 3:00 p.m. and 6:00 p.m. about 1,200 to 1,500 vehicles trying to get in and out of there on U.S. #1, which is now a failing highway as they all know. What are they also going to do for school buses trying to go in and out of an area like that? When they turn rulings for townhouses and condos into, for small areas it may work out. But when they get these large developers coming in with only one mind, it is to make a lot of money. To get in, dump these homes in there, and get out. He has looked at the plans that is going where they are. And truthfully, he can't see how the City would want to approve it. They don't have sidewalks, they don't have a lot of things, they don't have room. What does the infrastructure bring into it? They need more sewer, they need more water. Are they going to be able address that? When they take all the homes that are just between Midway Road and Edwards Road, projects that they have approved or are going to be brought to them in the near future, and if they were to approve all these and put them through, they are approving almost 4,000 townhouses. That is between Selvitz Road and U.S. #1 and Midway Road and Edwards Road. That is a small area. Now they take out what is happening on the other side of Edwards Road and on the northern portion, how much is that going to affect the City? They are looking at not only what is good for them, but what is good for the whole City. It seems to him that the City is getting a little bit visionary in their planning, and not being reactionary. When he first got here, most of cities and towns he looked at around here, he thought they were reactionary management. And it is coming back to bite a couple of the cities south of them. He is hoping they are going to be looking forward and say how much can they do. That project they approved down south. What kind of problems are they having with that? How are they going to get in and out? Why is it just access one way out? Why is it not planned in, asking these developers to share in the cost of taking plans and helping relieve traffic from U.S. #1 and putting it out into other feeders? He thinks that the fire, police, schools, and hospitals, the whole City of Fort Pierce structures and departments will be affected greatly if they continue inputting these large high density projects. And basically they really are going to get themselves into a problem. Not only for daily use, but how are they going to get people out if they have evacuate? They are not going to be able to evacuate if they have right now in that one area 3,000 or 4,000 townhouses in there and they have three cars per family going out, how are they going to get them out of there? They are not going to get out because U.S. #1 is going to be a parking lot. He is just asking. He hopes that is the time to mention it; if it isn't, he is sorry, they should have waited for Public Comments later in the evening. But that was basically the questions that they wanted to get up to the Commission; and let them know they are not only considering themselves, they are considering Fort Pierce, because they are their neighbors. They are not as much as a draw to the community as what people would think. They don't put in as much in taxes, but they don't take from the community. They have people that work in the community, people that put into the community. They live here, they spend their money here. They don't think that just gives them a right, but at the same time they are part of it.

**Mr. Anthony Guettler** said he is an attorney with Weiss, Handler, Angelos & Cornwell. He thinks some of the concerns that have been raised here tonight are with regards to density and affordable housing. And he doesn't believe the changes in this ordinance or what they are proposing tonight would affect either of those, correct him if he is wrong. He is there tonight on behalf of the developers of Sunrise Lakes, a townhome project approved in January of this year. And they have since entered into a Developers Agreement with the City and pledged thousands of dollars in off-site improvements, including payment of cash directly to the City for sidewalks and other infrastructure improvements. They are in favor of this ordinance as it will help allow projects such as these to convey the previously approved lots and divisions of land via plat, rather than 167 legal descriptions which can be quite cumbersome and confusing.

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

Mayor Benton asked how would this proposed ordinance affect any kind of proposed redevelopment of the Plantation Manor area?

Mr. Margotta said he doesn't know. If the owner or owners decided to do a townhome development, then they would follow the guidelines in the ordinance to create a townhome development. Right now, the R-4 zoning district allows what the R-4 zoning district would permit.

Mayor Benton asked it wouldn't allow them to increase the density, almost double or more than double?

Mr. Margotta said the zoning district already exists. So if it was a redevelopment, that would certainly be taken into the stride. But they also have other provisions throughout their ordinance, development review and approval process, to make sure that if the proposed development impacts or negatively impacts the existing condition, that they somehow mitigate that impact. It could be off-site improvements or other access issues. Just a whole lot of things. They could be upgrading their stormwater and water and sewer infrastructure. All those things are already in place with just regular development review. The only difference is whether they decide to build a townhome development or a single family subdivision or redo it as a mobile home development.

City Manager Beach said he believes the answer to the Mayor's question is, this ordinance does not impact that. It does not draw any distinctions between what is currently permitted in that zoning category and the new method. Did he say that accurately?

Mr. Margotta said not only accurately, but a lot quicker than he did.

Commissioner Nelson said his question might be referred to the FPRD Director, Mr. Ward. At one juncture they were contemplating or have in fact consummated a deal where they are getting a certain number of lots, small lots in some cases, from the County. Their plan he thought was to in some way consolidate those lots and make them semi-standard. Could they in fact build townhouses on any or all of those lots?

Mr. Jon Ward, Director of Fort Pierce Redevelopment Agency, said he has not reviewed the ordinance and it is inappropriate that he address the Commission on the tenants of the ordinance since he has not reviewed it.

Commissioner Nelson said in general, they are talking about lots, he thinks this one calls for 1,500 square feet for a townhouse. Are they consolidating their lots? And it goes back to a previous question he asked about the small lots. To some extent, the people are grandfathered-in. What can they do, these people that have these properties now and

have had them for umteen years, are they allowed to build on those lots? He knows one there on North 23rd Street and Avenue E. At one time they were talking about they can build a house there if they own the property many years ago, but they have to have necessary setbacks. And it might be the same case with those townhouses. And if they take those lots which Mr. Ward has, can they in fact build on those lots?

Mr. Ward said again, repeating that he had not seen the ordinance, he will tell them that it is apparent to him that what they are looking for is to have the ability to use some of their lots for a more urban style of housing. Certainly this would be an appropriate use for that kind of thing. If it requires them to replat some of their lots, they will do that. They have already been discussing some townhome locations where it is appropriate around the Moore's Creek area, because that would allow folks to have a more affordable style and frankly they like that kind of new urbanist townhomes. They think is an appropriate use where it is appropriate. He would have to take it on a case by case basis. But again, he would like to demur from commenting on the ordinance, having never read it.

Mr. Margotta said he might be able to answer the question. Something that was missed from the conversation earlier was that the minimum lot width for these new townhome developments is 200 feet. They are going to have to have 200 feet in order to develop a townhome development.

Commissioner Coke said but that doesn't affect... The part that Commissioner Nelson is referring to is a portion of their ordinance that is not being changed. It is something that is existing on the books now. Which means that these people's rights to develop that property now is in existence, it is grandfathered-in because that is what their lots were platted at. And she certainly would think that it may be appropriate for those people that have non-conforming lots, if they have an interest in building a townhouse on it, that they can certainly look at that as a variance type issue. And if he would like staff regarding the Moore's Creek project to provide them with a report on where this would be applicable to that project, she thinks that would also be appropriate. But she doesn't think Mr. Ward has had the opportunity to review or plan for this.

Mayor Benton said he would ask Mr. Ward to take a look at that and respond before the next reading. Because if he recalls correctly, most of the properties in the Moore's Creek area are either single-family homes or duplexes. So he doesn't think that would be R-4 or R-4A or R-5 zoning, but probably R-3 or less.

Mr. Margotta said it is.

Commissioner Nelson said he agrees with that. But he is looking farther down the road. Look at Avenues E, F, and G, in that area. Around Snake Ditch, in that area. There are some very small lots in there. When Mr. Margotta, or was it Brian O'Connor, first came on board, they tried to address whether or not they could take those properties and build on them. Apparently higher ups in Tallahassee or Washington or someplace said no, they could not use their money for that purpose. He is very much concerned with using those properties and developing them into townhomes or single-family homes because they do need the housing. He will acquiesce to the comments made by the Mayor. If Mr. Ward can provide him with that information between now and the next reading, he would appreciate it. Make it part of his presentation.

Mr. Ward said he would be pleased to do that.

Commissioner Alexander asked have they requested some changes be made to that ordinance? Should they ask to come back on the two car garage?

Commissioner Coke said she thinks they were going to change that to no tandem parking.

Commissioner Nelson said they also talked about Page 4 where they said the attorney

approving some of those things.

Motion was made by Commissioner Becht, seconded by Commissioner Coke, that Ordinance No. K-464 be amended to not allow tandem parking and to delete the phrase - in a form and manner acceptable to the City Attorney; and that Ordinance No. K-464, as amended, be passed on first reading.

Those voting in favor of the passage of Ordinance No. K-464, as amended, on first reading were: Commissioners Alexander, Becht, Coke, Nelson, and Benton. Those opposed: None.

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Ordinance No. K-463 entitled, "AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF FORT PIERCE, FLORIDA, PURSUANT TO CHAPTER 205, FLORIDA STATUTES, AMENDING ARTICLE II, SECTION 9 OF THE FORT PIERCE CODE OF ORDINANCES PERTAINING TO THE OCCUPATIONAL LICENSE TAX BY CHANGING THE TERM "OCCUPATIONAL LICENSE TAX" TO "BUSINESS TAX" AND CHANGING THE TERM "LICENSE" TO "RECEIPT"; REPEALING ORDINANCES OR PARTS THEREOF IN CONFLICT HEREWITH; PROVIDING FOR AN EFFECTIVE DATE." was placed on first reading and read by title only.

Mayor Benton declared a Public Hearing on Ordinance No. K-463 in session and asked if any one in the audience wished to be heard.

**Ms. Marcia Baker** said she has an occupational license. Her insurance carrier that carries her business use and office in her home, which is permitted and in which she has an occupational license for, requires she have an occupational license for the business use to be covered. She is wondering whether this change in this ordinance is going to affect her insurance and other people like herself, protect their business uses in their homes.

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

City Manger Beach said he believes this is a change in state law that they are simply processing ordinances to comply with the state law as relating to what this license is now going to be called. It is going to be called a business tax. They may recall in the past some of the confusion that has been generated by businesses going to the City Clerk's Office and purchasing what is called an Occupational License. That tended to mislead people into thinking they had a right then to do business in the City of Fort Pierce. The Occupational License has never been a license, it is some form of tax that the Florida Legislature established for municipalities to implement.

Mayor Benton said call it what it is.

(Mayor Benton temporarily left the meeting room at 9:00 p.m.)

Commissioner Nelson said he wrestled with this about 20 minutes. What is appended to this is Florida Statute 205 that emanated from Tallahassee. They call it a receipt as opposed to a tax.

City Attorney Schwerer said the state law requires the city to adopt the ordinance. It is a nomenclature change that is now required by state law. They have appended the state statute showing where the changes are required by law and making their ordinance conform with the state law.

Commissioner Nelson asked so they don't have any complications with respect to imposing a tax?

Mr. Schwerer said no, they really don't have any choice either, because the state says that is what it is. It is a right that they have by state law, so they must adopt the ordinance.

Those voting in favor of the passage of Ordinance No. K-463 on second and final reading were: Commissioners Alexander, Coke, Nelson, and Becht. Those opposed: None.

(Mayor Benton returned to the meeting room at 9:02 p.m.)

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The next item on the Agenda was City Commission to discuss attendance records with invited **Planning Board** Members.

Mayor Benton said this item was put on the Agenda because some Commissioners asked if they could invite a few of the Planning Board members to the meeting tonight to respond to their absences. There was one response by letter. Does Mr. Poitier want to respond to the Commission's concerns? He was at the Planning Board meeting last Wednesday night and every member was there and he thinks they did an excellent job.

**Mr. Robert Poitier** said he can respond for himself. His absences, he was sick for the past two months. The rest he could not speak for.

Mayor Benton said he thanks Mr. Poitier for coming. The other night he thanked him for serving, he has done a great job, and hopefully he will be healthier. Nothing they can do about their health sometimes.

Mr. Matt Margotta, Director of Planning, said late this evening just before 5:00 o'clock he received a message from Mr. Don Bergman, the Planning Board Chairman, who explained that he was not able to be here tonight for personal reasons, being able to take care of his household; and in his explanation, he went into detail that was a similar reason why he had missed other Planning Board meetings. He knows they have Ms. Benton's reasons. Mr. Bergman likewise sent a message, but it got to him late. He provided that e-mail to each one of their boxes, in case they cared to peruse it, but the gist of the notice was just like he stated.

Mayor Benton asked is everybody okay with the response from the Board members?

Commissioner Becht said he is comfortable they got a response. He heard from someone today who said she had not been contacted to appear. He does not know how that works and he is less concerned about that. They heard from everybody that he thinks they were supposed to hear from. The problem he saw was in terms of making a quorum. Have they finalized the alternate process, do they have that in place now or not?

Mr. Recor said they approved it, he does not know if it has been implemented as of yet. They just approved it at the last Commission meeting.

City Attorney Schwerer said they have to appoint the members. They have created the positions for the alternates, the Commissioners need to put the names in there.

Commissioner Becht asked so that is the next step? They don't need an ordinance or resolution. They have already created the two alternate positions for the Planning Board, they just need to fill them.

City Attorney Schwerer said he believes so.

Commissioner Becht said they need two applicants for alternates.

Commissioner Alexander asked they need a replacement on the resignation, right?

Mayor Benton said that is coming up.

Commissioner Coke said along these lines while they are having this discussion, would it be possible to send a letter to the members of the Planning Board asking that when they know they are going to be absent from a meeting, to please contact Mr. Margotta's office 24 to 48 hours prior to the meeting so that alternates can be informed properly?

Mr. Margotta said yes, it is possible; and he believes one of the best ways to handle that is to have the Board amend their bylaws.

Commissioner Alexander asked wouldn't the alternates be present regardless whether someone did not show up?

Mr. Margotta said yes, he believes that is the intent.

Commissioner Alexanders said so that covers what they just...

Mr. Margotta said except he believes there is a distinction between if someone is absent, even an alternate, if they knew they were going to be absent sometime before the meeting, to contact his office so they are able to then notify all the other Planning Board members.

Commissioner Alexander said they still have such things as emergencies. So they are covered then.

Mr. Margotta said absolutely.

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The next item on the Agenda was City Commission discussion regarding use and development of Berths 1 and 2 in the **Port of Fort Pierce** by Fort Pierce Waterfront Terminals LLC.

Mayor Benton said let him explain, this is a discussion amongst the City Commission. There is not a public hearing. It was not advertised as a public hearing. There were some rough draft plans that were brought to the city and they are here to comment on them tonight. Before he starts, he would ask Mr. Margotta if they could bring up those pictures on the screen.

Mr. David Recor, Deputy City Manager, asked would the Mayor like him to provide some introductory remarks? He wanted to introduce this subject tonight with an explanation for the Commission as well as the public that is in the audience and any interested parties that may be watching at home. He first wants to dispel any suggestion or innuendo for that matter, that there were some sort of deal or agreement made in Tallahassee several weeks ago regarding use and development of the port. In fact, nothing could be further from the truth. What was actually discussed in Tallahassee can only be characterized as an opportunity. And that is what tonight is, an opportunity. This was a compromise that was encouraged by the Florida Department of Environmental Protection and initiated by the attorney that was representing Fort Pierce Waterfront Terminals, the applicant in this matter and the tenant on the affected property owned by Mr. Lloyd Bell. Although the City and the County stood united to argue against approval of the submerged land lease for Berth 4, they consented to what has amounted to an approximately 30 day extension or delay in consideration of that application in order to allow consideration of a conceptual development plan for use of Berth 1 at the Port. The primary difference between the two applications was that one berth would require an amendment to the City's comprehensive plan and the other may not depending on the nature and extent of the proposed use. So the idea behind the delay and consideration of the application for Berth 4 was that pursuant to discussion with their Planning Board and this evening with the Commission, if the applicant's conceptual plan was looked upon favorably by the City with input from the County, and the applicant was comfortable with the technical requirements and the

approval process that would be discussed, the applicant would agree by written agreement to withdrawal the application for Berth 4. In fact, the City received the conceptual review plan within a week of their meeting in Tallahassee and the property owner has since filed an owner authorization form allowing the plan to be reviewed by the City. A copy of the plan was provided to the County, and the County and the City have provided written feedback to the applicant, noting a number of technical deficiencies in the plan. He thinks they need to point out for purpose of the discussion tonight, this conceptual plan was never intended to meet the technical requirements of the code, but rather it was intended as a tool to facilitate discussion regarding use and development of a particular berth at the port. The conceptual plan they are looking at and they will be talking about tonight actually contemplates use of both Berth 1 and Berth 2 as opposed to just Berth 1. As noted in the written correspondence from city staff, this is problematic and an issue that warrants further discussion tonight. They will also note the applicant has provided a variety of horizontal infrastructure improvements, although there are no vertical construction contemplated as part of the development plan. At this point he thinks it is probably best to open the discussion, turn it over to the Commission and the Staff. He would be happy to jump in further, if and when necessary.

Mayor Benton said for the record, he has asked that this picture be brought up. This comes from the charrette they had several years ago. Just so they can help define what limited cargo meant, at least in his impression back then was, if they look closely they see facilities that are compatible to any kind of development to the north. His concern is, what they are looking at now isn't any kind of facilities, it's not building like they see there. And that was supposed to be refrigeration terminals, because at the time they were talking to Tropicana and Agralog, and that would be compatible. But what he is seeing on these plans are basically an open rock pit, which would be brought in by a conveyor belt, unloaded off a boat, and they would be just creating a rock pile. With hundreds of truck loads of rock that would be leaving that area every day, filling up city streets, he does not think it is in the City's best interest. And he does not think at the time that is what they were looking for on that property.

Commissioner Nelson asked was the developer notified or at least given an opportunity to be aware that they were going to be discussing this project? The developer, the owner of the property, has he been notified?

Mayor Benton said yes.

Commissioner Nelson asked is he present tonight?

Mayor Benton said they are here, yes.

Commissioner Becht said he is confused. They have before them, not a formal application for review, but an informal application for review. Their staff has reviewed it without requiring any permitting fees or anything like that or review fees.

Mr. Recor said no, that is incorrect.

Commissioner Becht asked they have been paid review fees?

Mr. Recor said yes, they have.

Commissioner Becht said okay. And this is for both Berth 1 and Berth 2, where there is currently a pending Submerged Land Lease application for Berth 4 with no corresponding uplands application for any site plan improvements. Is that correct?

Mr. Recor said that is correct.

Commissioner Becht said he is willing to follow staff's critique of the plans that were submitted and leave it at that and they can move on. They have a bunch more stuff...

Mr. Recor said the point that staff has emphasized with the applicant is that the level of feedback that they receive is based the level of information they provided. What is important here he thinks that they get out of this discussion, both for the Commission as well as the applicant, is an understanding regarding use and development of primarily Berth 1. He would suggest to them that he thinks Berth 2 is off the table. He thinks the Comprehensive Plan, the Port Sub-element is silent on the issue. He has indicated and he was candid and straight up with the applicant in Tallahassee that he thought the inclusion of Berth 2 complicated the discussion. He thinks it is up to the Commission tonight to determine the definition. And the Mayor has obviously put an interpretation on the floor of what exactly is meant by limited cargo, and whether or not the proposed use would in any way adversely affect future development in the port. Based on that feedback, the applicant will make a decision whether or not he will withdraw the application for Berth 4. They may never see this application submitted formally to the City.

Commissioner Becht said he will respond. He will adopt comments that both City staff has made and the County staff has made. He thinks those comments have been given to the Destin Beach group for at least a week or longer than that. He has great difficulty in balancing limited cargo with the expansion of cargo from Berth... Well, there is no cargo at all now; so they are going to go from no cargo to Berth 1 and Berth 2, which he is against. There are not enough details in the plans to allow him any comfort that what would be brought across that property would be concealed from all the development that they intend or hope to put north of the project, south of the project, and west of the project. So at this juncture, until the applicant can come to grips with he is not going to be able to... Well, he is not interested in giving any permits or concessions for use of Berth 2. If the applicant can't come to grips with that and he can't come to grips with whatever operation is there - aggregate, frozen orange juice, whatever - needs to be done inside buildings so that the rest of the property and the rest of the area can be developed, then they are at loggerheads. So that is where they are.

Commissioner Coke asked first of all, is it her understanding that they don't intend to allow for any comment?

Mayor Benton said no, this is discussion that was advertised just by the City Commission.

Commissioner Coke asked if it were ever to come back though, they would have public comment?

Mayor Benton said if this were to come back, it would go through a lengthy process like anybody else.

Commissioner Coke said she just wanted to be sure. She has major concerns, having worked with all of them and the County and many people for years on the Port Master Plan.

She thinks that these plans are diametrically opposed to what they all envisioned as part of the Port Master Plan. Limited cargo, they wrestled with that definition. She doesn't know that they ever actually came up the perfect solution to it, but she does know that their Port Master Plan called for limited cargo at Berth 1 only. They talked about clean industry. She does not know that aggregate falls under the heading of clean industry. She has a lot of concerns of environmental issues over there and what is going to happen to the Indian River Lagoon. And also in addition to the environmental issues of what will happen to their lagoon, if this Port is not developed in a manner that is acceptable, she thinks they are shooting themselves in the foot that they will never bring the large hotel chain there. They need to be careful that this part of their city is the tool that rises their city up to another level rather than becomes part of their city that drags them down.

Commissioner Nelson said they are having this discussion among themselves. And he is wondering if he understood the Mayor clearly that they certainly are not going to have input from the general public, but are they going to have comments from the petitioner?

Mayor Benton said that is up to this Commission if they would like to have someone come up, if there are specific questions that they might have of the applicant.

Commissioner Nelson said he is concerned as to whether or not he responded to the letter of November 17, 2006. And has he seen the comments submitted by the County on this issue?

Mayor Benton said he thinks Mr. Recor said that discussion took place at the Planning Board meeting.

Mr. Recor said it did. The applicant was provided a copy of the written feedback. They have since made some additional changes to the plan to show additional detail. But they are familiar with the feedback from both the City and the County.

Mayor Benton said staff has not had a chance to review those changes that have been made to the plans.

Mr. Recor said he believes staff may have looked at it. But his understanding is that the revisions were not of such a significant nature that it necessitated redistribution of the plans. He believes what they have in front of them is generally an accurate description of the use as it is proposed.

Commissioner Nelson asked to what extent does it appear this is amenable to the petitioner in this case.

Mr. Recor asked what is amenable?

Commissioner said these proposed changes, his agreeing to what is or what is not permitted.

Mr. Recor said obviously the petitioner would have a position of his own with regard to their interpretation of the use of Berth 2. However, he believes their position is clear, that is a problem and that it remains to be interpreted, the exact definition of limited cargo and what constitutes limited cargo for that portion of the property at Berth 1.

Commissioner Nelson said he finds it difficult to discuss something about somebody that is sitting in the audience and they don't hear their side of the issue. He would beg that they at least, with limits, hear some response from the Destin folks or their representative, not too be confrontational, but try to find some level of compromise that they can move forward on. It is important to recognize that it is going to take two bodies or two sources to get this issue resolved, unless they end up in the courts and have the judge decide and that doesn't work too well in his thought process.

Mr. Recor said he doesn't think this discussion needs to be long and drawn out. He thinks the applicant clearly has a plan in mind for the intended use of that property.

Commissioner Nelson said Mr. Recor has a pretty good sized head and mouth and eyes and everything, but he doesn't think if the applicant is sitting here that he can speak for him. He would like to know what the applicant is thinking.

Mr. Recor said he is not speaking for the applicant. He has participated in the discussions with the applicant, he has reviewed that plan. If the Commission wants to hear from the applicant, they are entitled to hear from him.

Commissioner Nelson said he begs that they give the petitioner at least five minutes to state whether or not he is amenable to some of these conditions or statements made by both their staff and the county.

City Attorney Schwerer said he just has a procedural issue.

Commissioner Coke said she would put it to them that if they are to open the floor, to hear from one person, then they need to hear from everyone. They have not advertised this as a public hearing. And although it may be very appropriate to hear from the applicant, she thinks it be more appropriate to postpone it and advertise it as a public hearing and allow everyone to get up and voice their opinion.

Commissioner Nelson said just like on the national scene, they don't want to talk to the guy they disagree with. He thinks they need to hear from him. They disagree with him, it isn't going to harm them to disagree with each other.

Commissioner Coke said no. But she thinks what will harm them is not having advertised. If the general public knew that this was going to be an open discussion, she thinks they would have found a lot more people here. Because although Mr. Bell and Destin Beach may own this property, the general public owns this City and they have a right to have an input into what is being said.

Commissioner Nelson said right now the general public is hearing their side only and they don't have to invite the general public in to hear his side any more than they are hearing their side.

Mayor Benton asked can Mr. Schwerer address this, the way it was advertised?

City Attorney Schwerer said yes. The matter is not advertised as a public hearing. There is in effect nothing really for them to either grant approval of or permit. What is before them is simply a conceptual plan that the applicant agreed to submit. Please understand that the applicant is seeking permission to get a state submerged land lease on Berth 4. Many of the same requirements, if not all the same requirements that are mentioned in the letter for the upland development activity, are applicable to Berth 4 as well as Berth 1. He believes what the applicant was simply requesting was an opportunity to submit something to them and have their comments on a conceptual plan. As such, it is not a public hearing, it is not a hearing on a petition, it is not a hearing on an application. He would caution that because it wasn't advertised for public input, if they have input from the applicant. He calls it an applicant, it's really not an applicant because there is no application before them. This is a conceptual plan. He understood from Mr. Recor in the discussion that took place that they were simply wanting to have comments from the Commission as to what type of activity would be allowed on Berth 1 and whether or not the Commission had any additional comments they would like to provide to them as opposed to the listed paragraphs that were sent to Destin Beach in the November 17th letter. Certainly they could have talked to them individually as Commissioners off the record between the date they received this letter and today. But if they place this in the public forum, there is some consideration that they may have to allow all individuals that are there tonight to talk, because it doesn't fit any of the public notice requirements they have for the City now.

Commissioner Nelson said this is not indicated as a registered return receipt requested type document. Do they know that they received this document?

Mr. Recor asked what document is he referring to?

Commissioner Nelson said his reference to a letter from their Planning Department dated November 17, 2006, signed by Matthew G. Margotta, AICP.

Mr. Recor said he knows in fact they have received it. The Planning Department has had further dialogue and follow up discussion with the recipient of the letter. And as he was attempting to explain a moment ago, there is no action required by them tonight.

Commissioner Nelson said there is action because it is triggering things in his mind. He doesn't have to make a decision, but he is gathering information so as to be able to make an intelligent decision based on the information he received. He doesn't know whether it is going to be based solely on what he says in combination with what they say. So he needs to get information so he can make a good decision. He doesn't want it one-sided. You say one thing and they say another. He just needs to have that balanced input, he thinks that is what they are dealing with. If they give them five minutes or so, he doesn't think it would hurt anything.

Mayor Benton said if he had specific questions that he would like to ask the applicant, he is sure that could be done. But does he have specific questions?

Commissioner Nelson said yes. One, did they receive the letter? Two, what was their response to the letter? Basically that is it and keep it within five minutes.

Mayor Benton said it is up to this Commission. Do they want to hear from the applicant?

Commissioner Alexander said whatever is fair to the public. The comment is that if it is open to the public, it is open to the public.

Commissioner Becht said the fairness question that Commissioner Nelson is hitting on, is misleading. The applicant had meetings at the County, he had letters from the County, he had letters from City staff, and he has had them for awhile. He doesn't think it was until yesterday that the applicant actually acknowledged that the plans that had been filed were his. There was correspondence earlier where Mr. Bell said he had not seen the plans that were filed. But that issue is now resolved. So Commissioner Nelson's statement that Mr. Bell has not had a chance to speak to them is wrong. He has filed a very comprehensive, a massive amount of paperwork. It does not have a great deal of detail in it. But it has enough detail for Mr. Bell to show what it is he wants to do if Commissioner Nelson has looked at it. There are no buildings on it. There is use of Berth 2 proposed. That is all he needs, coupled with Staff's response that was sent to Mr. Bell on November 17th - almost two weeks ago - and there is no response in writing from him. Had Mr. Bell responded in writing, then they would have the secondary comments he wants. But they have his statement. His statement is in the package they have had since last Thursday. Mr. Bell has had a chance to present it to them. Their Staff responded on November 17th. There is no response to those comments. So they have been fair with Mr. Bell.

Commissioner Nelson said okay. If that is the will of the Commission, he will acquiesce.

Mayor Benton said he did sit in on the Planning Board meeting the other night to hear a lengthy discussion. He just felt there were a lot of things that were brought up that, unless they had experts to understand what was brought up, it wouldn't be appropriate for that discussion to take place tonight.

Commissioner Becht said he is not interested in opening it up unless they are going to let the public, everybody talk. And Mr. Schwerer is kind of indicating...

Mayor Benton said with what they are trying to do over in that area, right now the City through the Fort Pierce Redevelopment Agency is in the process of purchasing several properties. That would ultimately affect the value of those lands, to allow a rock operation which would come in and be done outdoors. He just feels that if this Commission decides this was an acceptable operation, that they need to hold an FPRA meeting as soon as

possible and back off on those properties.

Commissioner Becht said just one final comment to Commissioner Nelson. The fairness thing, that usually bothers him. The fairness here is that City Staff has fast tracked, they moved this application - as weak as it was - void of a lot of material detail they needed, no traffic impact study, no environmental study, no landscaping plan. As void as it was of all those things, City Staff processed it through a Department Review Committee and got it to the Planning Board and then got it to the City Commission with a pretty comprehensive list of comments. So the fairness thing, Mr. Bell has been treated favorably, almost with some partiality, by the process they have given him. The County has done the same thing. So he is not interested in opening this up tonight. If they want to open it up, they could postpone it or do something with it. But he thinks all of that is inappropriate. They fast-tracked something so that Mr. Bell could get a read on the Commission. He thinks Mr. Bell has gotten his read on the Commission and he can make an intelligent decision on what he wants to do in Tallahassee. If Mr. Bell wants to file appropriate detailed plans for what he wants to do at Berth 1 or Berth 2 or Berth 3 or Berth 4, then he can do that. But he really got a fast-track read from this Commission, which was more than fair.

Commissioner Nelson said he respects Commissioner Becht's and the rest of the Commission's thought process. Pardon him for sort of being concerned with everybody having their day in court, equal opportunity and all that. That is part of his heritage and he gets worried about it when he sees there might be some discrepancy or disparity in those areas. If that is the will of the Commission, they don't want to hear any more, let's move on to the next item.

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The next item on the Agenda was City Commission discussion on proposed **Model Sidewalk Ordinance**.

City Manager Beach said this item is being presented for discussion. If the Commission finds it acceptable or if they propose changes to it they would like Staff to consider, it would be their intention to bring it back to them for action as an ordinance in the near future. This was generated by the difficulty they ran into with a downtown restaurant wanting to do something that their ordinances do not provide for. This ordinance is intended to make that a permissible activity and to set some guidelines for how that activity would be permitted and conducted.

Mr. Matt Margotta, Director of Planning, said it was a Planning Staff authorship. There was quite a few fingers in this pie.

Commissioner Alexander asked when he was looking at the scale as far as the width of the sidewalks, do they have 8-foot sidewalks from here to 2nd Street?

Mr. Margotta said there are all sorts of widths all throughout the City. That is kind of a minimum standard they are going to need to be able to allow activity...

Commissioner Alexander said but they don't have that.

Mr. Margotta said in some areas. In some areas they have more than 8-feet.

Commissioner Alexander asked on 2nd Street they have 10-feet 4-inches sidewalks to the curb?

Mr. Margotta said yes.

Commissioner Alexander asked so what they require, they have that in this City of Fort Pierce, is that what he is saying?

Mr. Margotta said yes. There are situations where, with a redesign of the street, they might be able to create a bigger sidewalk.

Commissioner Alexander asked a redesign of what street?

Mr. Margotta said 20 years from now, they may decide to...

Commissioner Alexander said he is talking about existing streets now.

Mr. Margotta said in their existing streets, there is the ability to create a couple of locations that would allow 8-feet of sidewalk.

Commissioner Alexander said what he is trying to say is, the restaurants that they have, the little fast food restaurants in between here, Mr. Margotta is telling him that sidewalk is 8-feet wide on Orange Avenue.

Mr. Travis Gibbons, Planning Administrator, said it varies in width. Along Orange Avenue they have 8-foot widths. There are also areas where it is below 8-feet. They actually went out and measured with a tape measure along Orange Avenue, 2nd Street, and Avenue A. There is going to be places where it works and there are places where under these guidelines and this criteria it would be prohibited at the current time. But like Mr. Margotta said, maybe in twenty years. They never know what came happen twenty years from now where these regulations would fit for everywhere for redevelopment purposes as well.

Commissioner Alexander said he thinks they should be asking Mr. Arias, because they redesigned that with 8-feet sidewalks. They just redid Orange Avenue with all these pavers. Those sidewalks are 8-feet minimum?

Mr. Hector Arias, City Engineer, said yes, in some areas.

Commissioner Alexander said he is just a big person walking down the sidewalk. He just does not see it. But okay.

Commissioner Becht asked was this proposed ordinance provided to anyone else - the DBA (Downtown Business Association)?

Mr. Margotta said he believes they have sent it out to the DBA, but have not got a response back yet. There is an intent to get some guidance from the Commission tonight so that they could contact the community and also other departments.

Commissioner Becht said it has a lot of detail in it. Obviously a lot of thought went into it. He is very proud that Staff was able to put this together. This is a wonderful document. All he would ask is they get it out to the DBA and perhaps one or two local restaurants that may have an opportunity to benefit from it.

Mr. Margotta said the Chamber of Commerce and Lincoln Park Business Association.

Mayor Benton said this ordinance does provide for sidewalks cafes, right? That is one of the intents of this?

Mr. Margotta said yes. It will distinguish that from somebody that has a bookstore or a clothing store. He thinks they were looking for more of an activity like sitting down and eating.

Commissioner Coke said she is glad to hear they are going to distribute it throughout the City, because she thinks there are other places where this is applicable. She has some concerns with it only in that there are some businesses, for instance driving up and down

U.S. #1, that pretty much most of their merchandise is out on the street on a daily basis. Although they may not like that, they can almost understand it, it does attract people and let them know they are there. Years ago the downtown organizations would get together and have a semi-annual sidewalk sale. Would that then need to be a special permitted event? For years they have been doing it and it is just a matter of the merchants getting together and deciding next Saturday they are all going to put a table out and mark everything down half price.

Mr. Margotta said he does not know if they addressed that properly in this ordinance. But it is intended that there be a special permitting option for that special event, things other than daily operations.

Commissioner Coke said they are going to make life a little more difficult downtown.

Mr. Margotta said maybe a planned event, as opposed to a spur of the moment event.

Commissioner Coke said her concern is they are making life easier and legal for... In the last two months if they walk around downtown every restaurant has tables and chairs out, where there is room for them or not. Not only restaurants, but now every beauty parlor has tables and chairs out front. Pretty soon all of 2nd Street is going to be tables and chairs. So they are writing an ordinance to legalize what all the restaurants are doing to help them promote their business and she thinks it is a fine thing. However, she has concerns that if the art gallery across the street wants to go out on a Wednesday afternoon and hang some pictures outside in an effort to draw people that are sitting outside in restaurants into their gallery, that they are promoting one type of business and limiting another. She does not know any way around it. But she does have concerns that they are showing favoritism to one type of business.

Commissioner Nelson said let him ask a question before he makes similar assertions. In examples given here - Orange Avenue, 2nd Street, and Avenue A - to what extent does this apply to the rest of the City?

Mr. Gibbons said it has been contemplated that it would apply to all commercial zoning districts, except for the C-1, Office Commercial Zoning District. But it would be applied to C-2 through C-6 throughout the entire City.

Commissioner Nelson said he knows they have businesses on U.S. #1, up and down Avenue D, and to some extent down Indian River Drive. So he wants an ordinance that is going to cover virtually everybody on an equitable and fair basis. He is fearful that once they continue to allow people to place chairs and flowers and bandstands on the sidewalks, they are going to have people walking out in the streets. And their Risk Manager is going to be on the City Manager's and the City Attorney's doorsteps saying they shouldn't do that. So are they bracing themselves if they allow these types of things to happen on their sidewalks which are there for the purpose of walking as opposed to sitting and selling merchandise.

Mr. Margotta said it is intended that as they review this ordinance they will certainly go through an assessment of how it affects their liability, the City Attorney and Risk Management, just to see what that feedback gives to them. They already have streets and they already have the public realm. Taking what Mr. Nelson's input is, is that they are maybe exacerbating that, making the situation more likely that there might be a problem with liability.

Commissioner Nelson said just this past weekend, he was glad to see all the businesses operating downtown with the parade and all. He saw somebody had taken part of Avenue A and put a canopy - not on the sidewalk - in the street and doing their thing out there with a band and all this business. Of course, to have that multitude of people going by there,

subjecting them to some degree of hazards, he is sure... Did the City Attorney or the City Manager go down that way, did they see that?

City Manager Beach said he saw that. By the way, that was not a permitted activity. The inclination of the merchants is to appropriate whatever they can appropriate in order to market what they are marketing. A lot of times these things occur in a time frame that there is no one around to put an end to it. A lot of times their code enforcement staff responds to complaints, as opposed to going out and actively looking for any violations that exist. Some time ago they had a real dilemma with Avenue D merchants coming out on the sidewalks on Friday evenings, starting to prepare and sell their food and so on. Those things happen constantly without permits. Those are unpermitted activities.

Commissioner Nelson said he proposed an ordinance a long time ago about having sidewalks in residential areas just like they do in commercial areas. He thought when he looked at this initially that here they were going back to making sidewalk requirements for single individual homes, which he still thinks they should do. But he is in the minority on that and won't raise the issue again until...

Commissioner Alexander said one question concerning what activity was going on during parade time. They are telling him they are not going to allow the public to sit on the sidewalks in chairs and so forth when they have an area designated and blocked off with that event with the canvas in the middle of the street? Because there was no through traffic going through there. The other day at the parade, is Mr. Nelson saying there was people out in the street. There was no traffic allowed to go east and west on there, right? When they have such things as parades, even the Martin Luther King parade, they are going to have people going up and down 25th Street. They are going to be sitting not only on the sidewalks but anywhere else they feel like sitting.

City Manager Beach said that event is permitted.

Commissioner Alexander asked are they trying to put something in place...?

City Manager Beach said no, those events are permitted.

Commissioner Alexander said he just wants to be sure, because he does not have it come up later that someone received some kind of ticket or complaint. One other question, where it says about the permittee, concerning workman compensation for a sidewalk. What is with that? Any business will have their own workman comp, right?

Mr. Margotta said he thinks that particular section of the ordinance is part of the submission requirements to be able to prove it is an adequate business properly prepared for sidewalk activity. They are trying to put the onus on them for liability.

Commissioner Alexander said so the liability is the \$500,000 per occurrence. What are they speaking of? Are they speaking of a business that does a daily business there, that they are going to be allowed an annual insurance policy that would cover whatever their needs are?

Mr. Margotta said yes.

Commissioner Alexander asked where would the workman comp come involved in that?

Mr. Margotta said the workmen's comp is for the employer and the employee. Liability for the customers and the general public is...

Commissioner Alexander said but that is required for any employer to have workman comp on his employees, right? So they are not reinventing the wheel here, are they?

Mr. Margotta said no, the intention is not to reinvent the wheel, but to further strengthen it.

Commissioner Becht asked has anybody given any thought to what they are going to charge for the annual fee and permit?

Mr. Margotta said no, they left that up to the Commission.

Mayor Benton asked does everyone agree to have this brought back in ordinance form? (The Commissioners agreed.) Bring it back as soon as possible.

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The next item on the Agenda was Appointment of a Member to the **City Planning Board** (to fill the vacancy of Chuck Enns).

City Clerk Steele said in order to present this Resolution, she will need to have a name suggested and someone else to agree with that suggestion; then she will read the Resolution with that name in it for a motion.

Commissioner Becht said he would suggest Colin Lloyd.

Commissioner Coke said she agrees.

Mayor Benton said Mr. Lloyd is in the audience.

City Clerk Steele introduced the following Resolution by title only:

RESOLUTION NO. 06-55

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF FORT PIERCE, FLORIDA, APPOINTING **COLIN V. LLOYD** TO THE **CITY PLANNING BOARD**; PROVIDING FOR AN EFFECTIVE DATE.

Motion was made by Commissioner Coke, seconded by Commissioner Becht, that Resolution No. 06-55 be adopted.

Those voting in favor of the adoption of Resolution No. 06-55 were: Commissioners Alexander, Becht, Coke, Nelson, and Benton. Those opposed: None.

Commissioner Alexander asked are they going to use these other applicants for the upcoming...?

Mayor Benton said yes. And there should be some more applications coming. He has spoken to several people who are putting in applications.

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The next item on the Agenda was Appoint or reappoint one City Commissioner to the Fort Pierce **Harbor Advisory Committee**.

Motion was made by Commissioner Alexander, seconded by Commissioner Coke, to reappoint Commissioner Becht to the Fort Pierce Harbor Advisory Committee.

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

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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 15a (Professional Services Agreement with

AGCR Group LLC) and Item 15b (Interlocal Agreement for South 26th Street) removed for discussion.

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

c. Approve Florida Inland Navigation District Project Agreement for **FIND Grant** in the amount of \$18,000 for design and permitting for the dredging of the City Marina **Internal Basin**.

d. Approve Florida Inland Navigation District Project Agreement for **FIND Grant** in the amount of \$205,000 to share cost of replacing the **Fuel Tanks** at the City Marina.

e. Approve Rental Agreement proposal from **Dollar Rent A Car** for Police Department unmarked undercover vehicles for covert and surveillance operations in an amount not to exceed \$41,000.

f. Award equal three contracts to perform **Lot Clearing** throughout the City Limits to Tim E. Heafner, Dunn's Tractor Service, and Distinguished Lawn Care, in the amount of \$.007 per square foot and \$50.00 per hour for additional labor.

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The next item considered was Item 15a, which has previously been removed from the Consent Agenda: Approve Professional Services Agreement between the City and **AGCR Group LLC** for creation of the Fort Pierce Public Economic Development Agency in the amount of \$50,000.

Commissioner Nelson said he couldn't exactly find it in the text of the Agreement, but in the summary he noted that the Professional Services Agreement to contract is to be reviewed and approved by the City Attorney. Is the Agreement going to be approved by the City Attorney?

City Attorney Schwerer said yes, as to form and content, as the Charter requires.

Commissioner Nelson said but it doesn't say that, the verbiage on that memorandum.

City Attorney Schwerer said that is not his verbiage, he did not draw that memo.

Commissioner Nelson said one other question he has is in the area of these deliverables. He noticed that initial payment was invoiced on 11-20-06. That has been done already?

Mr. Matt Margotta, Director of Planning, said the intention was for this Agreement to come to the Commission on their November 20th meeting. They have not updated that section on payment (Paragraph 6.1 of the Agreement) in this latest version. It is intended to begin after the contract is approved.

Motion was made by Commissioner Becht, seconded by Commissioner Coke, to approve the Professional Services Agreement between the City and AGCR Group LLC for creation of the Fort Pierce Public Economic Development Agency in the amount of \$50,000.

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

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The next item considered was Item 15b, which has previously been removed from the

Consent Agenda: Approve First Amendment to Interlocal Agreement between the City, St. Lucie County, and the Fort Pierce Utilities Authority for the **South 26th Street Area Improvements Community Development Block Grant (CDBG) Project**, to provide for an increase in funding responsibilities for the County and the City.

Commissioner Nelson said put up Exhibit A of the Agreement on the screen, because he is very much concerned about the fact that their CDBG money is being spent outside of their area. (Mr. O'Connor displayed a map.) Explain for him the City boundary and the CDBG area.

Mr. Brian O'Connor, Director of Community Development, said he believes the whole area actually qualifies as a CDBG area. This is a joint project between the County, the City, and the Fort Pierce Utilities Authority.

Commissioner Nelson said he is concerned that their CDBG monies are being spent outside of their City limits and outside their area in general.

Mr. O'Connor said this is not their normal CDBG allocation they get from HUD on an annual basis. This is a grant they wrote. Because of the hurricanes two years ago, they received Disaster Recovery Initiative Funds. It is a different form of CDBG funds. They received \$3 million. They committed those funds for the South 26th Street project. And then \$2 million for the Human Development & Resources Centre. So this is different from what the Community Services Department annually gets, which is about \$700,000. These are different CDBG funds. What was required for them to get the full \$10.3 million from the State was that they do a collaborative infrastructure project with the County. That is the project that is before them tonight.

Commissioner Nelson asked they had to have this collaborative effort?

Mr. O'Connor said they had to have it to be able to score the additional points to max out the dollars on the grant.

Commissioner Nelson asked did the County have a similar requirement? He can't imagine only the City being offered these types of monies. The County has a CDBG program and the City has a CDBG program. He has had the fortune of serving on both those boards during his tenure in public life.

Mr. O'Connor said St. Lucie County, the City of Port St. Lucie, and the City of Fort Pierce made a joint application on this. They received over \$30 million and split it three ways, which each entity receiving in total \$10.3 million. The County has got approximately \$1.5 million into this project and the City has \$1 million into it. It involves both the incorporated and the unincorporated area.

Commissioner Nelson asked how much of the area outside of the City limits are they dwelling in? He is not sure he understands it.

City Manager Beach said he is assuming they have an annexation agreement on all of this as part of this project, so this will all be in the City limits eventually.

Mr. O'Connor said he believes they do.

Commissioner Nelson said he has talked a great amount about some sewage lines there on Avenue Q. He has asked that the County pave those roads in and around Fairlawn. And the response was, they can do it, but they don't want to do anything inside of the City. He is concerned about that. Here they are going outside of the City limits using CDBG money to do things outside of their boundaries. That doesn't fit too well with him.

Mayor Benton said at least a third of these properties are in the City limits now, so he is

sure they can consider it that the City is using their CDBG money on City properties and the County is footing the bill for their share.

Mr. O'Connor said the City's share is appropriate for the \$2.5 million project cost here.

Ms. Beth Ryder, St. Lucie County Community Services Director, said with all due respect to Commissioner Nelson, this is a totally different grant. This was as a result of Hurricanes Frances and Jeanne. It is called CDBG, but this is a Disaster Recovery Grant. It was \$9 million - \$3 million to the two cities and the county. They worked together to do an infrastructure project with health and safety involved. South 26th Street has been around forever. The late County Commissioner Trefelner was pushing for that back when they decided instead to do Harmony Heights and Paradise Park way back. So that is what Commissioner Nelson is remembering. But this is a totally different grant. They are just thrilled they got it. It is a win-win for all of the residents, the Utilities Authority, and the County, because this is a health and safety issue that is finally being taken care of. It is a win for the City because there are City residents there. The Grant would not allow them to spend that money unless it was on City residents - the portion they are spending - and on County residents. In the end, it is going to be annexed because they had to sign annexation agreements. So it is really and truly a winning situation. The worst part of it is and the reason this is before them now, they have already approved this, but this is an amendment because the bids came in way high.

Commissioner Nelson said the Mayor has always been a proponent for expanding the CDBG area to cover the entire City and he went along with him on that. Now it is a case where they are going out in the County and he has to say stop.

Ms. Ryder said no, the granting agency would not allow that.

Mayor Benton said they are just covering those properties within the City.

Ms. Ryder said they are going to annex anyway, so they come out way ahead.

Motion was made by Commissioner Coke, seconded by Commissioner Alexander, to approve the First Amendment to Interlocal Agreement between the City, St. Lucie County, and the Fort Pierce Utilities Authority for the South 26th Street Area Improvements Community Development Block Grant (CDBG) Project, to provide for an increase in funding responsibilities for the County and the City.

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

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**Ms. Maxine Green** said she is here representing Concerned Citizens of St. Lucie County. She is here to talk about the high **utility rates** and to remind them they have had this on their agenda for quite a number of years. She did attend the joint meeting that was held between the City Commission and the FPUA Board (on November 9th). From that meeting she didn't seem to understand whether or not they have a Board that runs the Utilities Authority or whether they are being controlled by a consultant, and that concerns her. At that meeting they talked extensively about an increase. The rates now are astronomical and totally out of the reach of the families who are trying to decide whether to pay their utility bills or pay their mortgage. And it is still escalating. Many of the people who were here earlier tonight have talked about their utilities that were \$300 and \$400 two or three months ago, and now those bills are \$500 to \$600. The hearing tomorrow, they have invited the public, in fact it is the second time. After that joint meeting she was asked to come to that hearing in November and to ask the people to come. She was asked by the Chairman of the Utilities Authority Board. On the day they were supposed to be there, it was cancelled. She thinks that was totally disrespectful to the community to cancel that

meeting on the day that it was scheduled. So she is here to ask the Commission not to approve any increases for the utility rates. They are going to that hearing tomorrow and they wanted to know what their concerns are about an increase for the utility rates.

Mayor Benton said this is just for public comments. Tomorrow at 4:00 o'clock the Utilities Authority will have a Public Hearing. Ms. Green was at the workshop, she heard from some of the Commissioners how they feel about these rates. Tomorrow she will hear his opinion on these rates. She has heard it before and probably read it in the paper. But this Commission will make the ultimate decision after the U.A. Board does.

Ms. Green asked there will be no vote tomorrow?

Mayor Benton said just the Utilities Authority Board will be voting after the Public Hearing tomorrow. There will be public input and then the Board will vote on the proposed increases.

Ms. Green said that is the reason for her being here tonight, because there are some serious concerns. They can't afford the rates they are paying now.

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**Ms. Marsha Baker** said it is the holiday season and she thinks they should all give thanks that they have escaped any hurricanes this season. However, she thinks it might be wise to consider some probable approaching economic storms. Their budget plans are based on the assessed property taxes. However, with the increase of foreclosures and distress sales and the flip-floppers and an expected decrease in assessments, plus an expected increase of late or no-pay property taxes, there may be some very difficult adjustments that may have to be made. She has a suggestion that might help save some taxes and also help some other situations in their planning. Their current system of spending tax dollars for developers and speculators to promote their enterprises is sort of like the Las Vegas idea of comping the high rollers to free rooms, food, and drinks in the expectation that they will spend so much at the tables that the house will come out ahead. However, sometimes their high rollers have turned out to be litigious freeloaders. She thinks it is time to stop the freebies. She suggests that any **proposed development or construction plan** that requires approval of a change of zoning or a variance have a performance bond posted to insure that the project will be built within the time frame allowed. The bond should be proportionate to the costs of the Planning Board and City Commission time and effort, and should be required as a condition of any final approval. That way, if the project does not get built and is not approved for any continuance or extensions of time, the costs of litigation and rezoning and planning and public meetings will be borne by the developers and promoters, instead of by the taxpayers. Of course, the bond would be fully released as soon as the first real building permits would be issued.

Mayor Benton said as far as a performance bond for developers, they will be seeing something to that note coming in front of this Commission in January.

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**Ms. Marsha Baker** said several months ago, when they started the **televised meetings**, there was a suggestion made that along with the published agenda in the newspaper, that the information about the televising of the Commission meetings be printed with the agenda. She would suggest that should be done. Also, she would like to suggest that all meetings - Planning Board, Board of Adjustment, and even the Historic Preservation Board - be televised. That might cut down on some other problems they have been having and it would certainly inform the public and have them better prepared for what is happening.

Mayor Benton said they are negotiating with the County now on an agreement, so it should be very soon that most of the board meetings will be televised.

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**Ms. Arden Peck** said her comments are related to increasing citizen involvement in City business. She believes that if a citizen has presented a new idea for the betterment of their

City and it received general support from the Commission, that they should be involved in its implementation. To most people, City Commission meetings and the City workings are something extremely mysterious. It shouldn't be. This is their community, this is their City, and they should all be involved in it. Case in point, some time ago during public comments she put forth an idea that part of the **code enforcement fine** should go into a fund that would enable qualified residents to fix up their properties. Commissioner Becht spoke in favor of it and that was the last she has heard of it. She has no idea, no correspondence as to whether it was implemented, no atty-girl letter, no meeting with staff to help implement this, nothing. This does not give her, who is used to City Commissions and working with all of them, a warm and fuzzy feeling about the City, it's Staff, and the Commission. So they can imagine if she was just somebody else who was not known, how they would feel.

Ms. Peck said she realizes progress is being made in controlling monies given to non-profits and she totally supports it. But she believes they have embraced a welfare model of operation here in the City - she is a taxpayer, therefore she deserves a handout with no payback to her community or her city. It should be an expectation that if she receives **funds**, then her question to the City should be - What can I do to repay my City? It can't be money, but she has skills to donate. For example, could the Sunrise Theatre, which is probably one of their biggest fundees, put on some free shows for the public for those who can't afford the \$40-plus tickets? Surely the City would welcome some sort of community service by individuals or groups in return for the monies given to them. To her, this would be a way to more involve those who are residents and who already work with them in the betterment of this city.

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**Mr. Phil Rosenthal** said he is currently the President of Sea Pointe Towers Condominiums, 801 South Ocean Drive. He is here in that capacity, as well as a resident. First he would like to thank all of the Commissioners for their time, efforts, and diligence in supporting this community. They will never make everybody happy, but they are doing the job to make most of them happy. He just came back from Europe and was in Cannes, France, where they have no development on their water, they have ocean promenades that go the whole Mediterranean. He asked, how come? On this side of the street they can't build anything, on that side of the street they can build whatever they want as long as it doesn't exceed 45-feet in height. They get \$3,000 a square foot for a unit along the waterfront. It is very simple, there are no variances and no changes. If they can put 100 units in 45-feet, be my guest; but they can't go over that. Anyway, the reason he is here is he knows the Mayor serves on the **Utilities Authority** and he has a complaint. In the hurricanes of 2004, their properties suffered severe damage of which most of it was not covered by insurance, such as lighting in the parking lots. For six months they were without lighting until they came up with a great idea - what can the Fort Pierce Utilities Authority do for them? Low and behold the FPUA put in five concrete poles with city lights and they pay a monthly fee for the use of those lights and poles. They were guaranteed that, because it was city lights, that if the bulbs burn out they would be replaced, and any problem with the system, the FPUA would take care of it. For a year and a half, that has been true. Nine days ago the lights in the parking lot blew out. He called FPUA. The response he got was, they don't do lights on Sundays. That Sunday was nine days ago. He called on Monday and was told they would put it on the list for repairs. He called on Tuesday and was told they would put it on the list for repairs. He called on Wednesday and was told they would put it on the list for repairs. He asked, doesn't the City repair its lights? He was told no, they contract that out and they only work from 4:00 to midnight; so if they can't get it between 4:00 and midnight, he would get on tomorrow's list. It rained. The parking lot was dark. Of the five lights, two came on two nights ago. He called this morning again and told them if the lights don't come on tonight, he is going before the City Commission. The answer was, do what you got to do. So he is here. He needs the parking lot lights turned on. Those are not on their property electricly, they come in off of Gulfstream Avenue. Either a circuit breaker blew, a jack blew. But he can't get any response from Dispatch. When he called his representative that sold them the lights, his response was quite simple -

I can't do anything, call Dispatch. Somewhere there is a breakdown. Prior to the retirements they had in the U.A., there would be an instant response. He thinks nine days without parking lot lights they are paying for is not an acceptable standard. He would ask the Commissioners who have some control over utilities. Because obviously he nor the residents that call don't. That is why he is here tonight. Normally he would have called Mr. Beach and he would have done it like that. However, he tried to let the system its way, he tried to be very patient. But nine days without lights in a parking lot is not acceptable. And without a response. If they blew the whole system and it is going to take two weeks to get it repaired, he can buy that. But 4:00 to midnight subcontractors, they have no control over them - that is not an answer.

Mayor Benton said he will address that at 8:00 o'clock tomorrow morning.

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**Reverend Felton**, 2614 Avenue I, said somehow they have been sidetracked on this meeting. The community thought that some of the Commissioners would be out of town on an issue. But he needs to know, are they going to be on the agenda for the next meeting for the resignation of the **City Manager**, Mr. Beach?

Mayor Benton said that item is amongst the Commission for discussion.

Commissioner Coke asked is there three of them that have an interest in that?

Mayor Benton said they had that discussion at their last meeting.

Rev. Felton said after talking to a very dear friend of his, who brought some things to his attention, some of the good things that Mr. Beach has done for this community. He would not doubt that. But they have a problem that it took so long for him to respond to an allegation that really damaged their community. It really affected them. It seems like for some reason they can't shake it off. Prayer? Okay, fine. But it seems as if it is stuck in their minds and they have a problem with that. He talked to some of the elderly who said, forgive and forget. But at the same token, it was said and it was done, and they just can't get it out of their system. They have some hurting people and people that are affected by that. He does not know if an apology would do any good. He is just coming before this Commission and the Mayor to tell them that the people are very affected by it, they are hurt, they don't know what to do, they are delirious. He prays. He does not have anything against Mr. Beach, he doesn't even know him that well. But the people are so damaged by that. He can't describe the words of how the people are affected by that. It seems like it is bringing back the old days. They don't want the old days. They want the old days to go away. They want to work together. He remembers Mr. Martin Luther King made a very important statement when he said that they all should come together as one family, live together, enjoy this life. This life is an enjoyable life, providing that they just do away with all the garbage. That is what they want in this city, they want their city back.

Mayor Benton said Rev. Felton had an appointment with him last week. If he would make an appointment, they can have this discussion. There is one thing that is very frustrating with government, it can't act like the private sector, they can't make decisions in a snap like the private sector. Full investigations have to be done and it is rather time-consuming. Everything government does can be very frustrating with the timeliness of it.

Rev. Felton said he and some of the ministers would be more than happy to come to his office and discuss this, try to find some type of solution to it. He does not know what it is going to take. But he is sure with the Commission's expertise, they can come to some reasonable solution where everyone is happy. That is what they want.

Commissioner Alexander said he thinks it is great that they would come and sit down with the Mayor. But as he tells the whole community, the Mayor is just a Commissioner as he is. He thinks Mr. Beach would welcome anyone to his office. He thinks it would be a blessing done there if they take it to Mr. Beach. Fine, take it to the Mayor and take it to

each one of the Commissioners. But they need to go to the horse's mouth. If they have a problem with Mr. Beach, then let's resolve it.

City Manager Beach said he would be happy to meet with the Ministerial Alliance and go through this to whatever degree they need to in order to put everybody's mind at rest.

Rev. Felton said it sounds good to him. He appreciates it.

**Mr. Jack Cahill** said Commissioner Alexander must have a master's degree in common sense, because what he said made a great deal of sense. This town is not going to get by on looking at one section or another section of town. He has been in both sections. He built a shopping center in a changeable area, as Commissioner Nelson knows; and he was told by a mayor of this town at one time that it is never going to work, they are not going to mix cultures. It took them about seven or eight years, but that shopping center now is a viable part of the community. At the last meeting Commissioner Nelson mentioned increasing the salaries to Planning Board members. He found out that the County does not pay their Planning & Zoning Board members. They go to all of the Planning Board meetings, the FPRA meetings, to all the meetings they possibly can and talk to all of them. How much money are they paid? Nothing. All of their expenses come out of their own pockets - gas, telephone, clerical. They truly love this community. They look at what it can be, because he saw what it was. He does not want to later on say, look what it could have been, but they didn't do it. If they work together, this community can be great. If they are against each other, they deserve what they get. He can recall a city manager one time who said they were going to move the police station because they can't afford to defend it; and who also made another comment and said Fort Pierce is the crack cocaine capital of the world on Good Morning America. He can go back as far as Frank Blackwell. They have come a long way and they can go a lot further if they all work together. But not if they are going to have this constant nonsense that goes on. They all deserve better than that.

**Reverend Harry Shaw**, 402 North 30th Street, said he is a Pastor of Good News Missionary Baptist Church. He is a life long resident here. He has a great commitment to this City and to his Commissioners and to the Mayor. A couple of weeks ago there was a statement made on behalf of the Afro Council of Ministers against Mr. Beach. He wants to clarify that the Afro Council of Ministers is not asking for Mr. Beach's resignation. He has no problem - and neither does the President of the Afro Council of Ministers, nor does the Vice-President. He is here on his behalf and on their behalf to speak concerning this issue. He did speak to Mr. Felton prior to coming in tonight concerning the matter he spoke about. He told him that any time he can go to Mr. Beach's office and sit down and talk with him, his door has always been open to any of them if they have an issue. They have Fort Pierce's finest, especially in their black community. They have Commissioner Alexander and Commissioner Nelson. If there is a problem with Mr. Beach, he is quite sure that would come to them and say they have a problem and they need them to come to the Commission and rectify the problem. So he finds no problem with Mr. Beach for their wanting his resignation. Mr. Beach has his support. He hopes they can come to a conclusion that he can continue to do the great work that he has done over the years. To the Commissioners, he prays for them. He knows the job they have over the City, they have a great responsibility. They can't satisfy everybody. He is a Pastor of the church, he can't please everybody that he pastors. He tries to do his best with what he has. That is all he can say to them tonight - do their best, do what is right.

Commissioner Alexander said he will just have to say what is on his mind. He and Mr. Shaw come up from the dirt and all. But the comments that came about Mr. Beach were not really about Mr. Beach, it was about what was done or said to employees in this City Hall. Mr. Beach should not have taken that responsibility on himself. It should have been the responsibility of all of them, all the way from the City Attorney, because he knows him from being in dirt with him. He means dirt as they got dirty playing football every day at a young age. So when things are done or said, he looks at him; and he knows when he looks

at him, it is not about whether they are friends or not, they will always be friends. But what is right is right, and what is wrong is wrong. Anyone that calls someone out of their name or degrades them, then he has zero tolerance. He won't stand back and let no one take that responsibility. But if it is a person in charge, then believe him, they have to step up to the carpet.

Commissioner Becht said he would like for that entire matter to be resolved. He would like for it to be addressed and he would like it be brought to a conclusion. He is here to comment through rose colored glasses as some great things that are happening down here. Not everything is perfect. But let's get whatever the issue is behind them. Yesterday they had a wonderful opportunity and parade and a gathering of people in downtown Fort Pierce. South Indian River Drive is open now, which is a wonderful thing. The trolley had a great many passengers on it yesterday, the Commissioners were on it. He does not know who decorated it, but it looked very Christmasy. Start the holiday season with the rose colored glasses. Things aren't all perfect, but they are not all bad.

Commissioner Coke said she wants to thank Reverend Shaw. She appreciates so much his leadership this evening in doing what they need to do, leading everyone to heal and move forward and unite their community. It is too easy to fall into a downward spiral and focus on the negative. At some juncture in time people have been hurt, people have paid a dear price for that, many on both sides. And it is time to move forward and unit their community. Yesterday she walked through Marina Square with the Christmas music and she kind of thought she was in the old movie, It's A Wonderful Life. She looked around at her community, children playing, puppies running, 90-year-old people snuggling together on the benches. It was just heart-warming to be here. But it is heart-warming to be here because they as a community can join together and do things together. They have worked together to build what they have downtown. They have worked together to build what they have throughout this city. Now they can come together to enjoy the fruits of their labor. It is not this Commission that has done it alone or Mr. Beach, it is the citizens of this city. With the holidays rapidly approaching, she would hope they would all take a very Christian attitude, put forgiveness in their hearts, move forward, and enjoy what this season is meant to be. Thanks to Reverend Shaw for bringing his leadership to them this evening.

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Commissioner Nelson said he is very pleased to see the progress being made on their **resurfacing**. The people he runs into are ecstatic about the progress and the quality of work. Everybody who is responsible for that should be applauded.

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Commissioner Nelson said he got some negative calls regarding the **Confederate Flag** displayed down at the Veteran's Park at Friday Fest. He got at least four calls on that. They need to clearly establish their policy regarding displaying the Confederate flag on public properties. They don't allow the Cross to be displayed on public property. They don't allow certain Christmas decorations. Believe it or not, displaying that flag in public places not only offends black people but it offends a lot of white people as well. So they need to fully adopt a policy saying they do not allow that flag or any other thing that is intimidating or offensive to another sect of people to be displayed on public property. He would encourage staff to come back with some type of ordinance or something that justifies this from a legal standpoint.

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Commissioner Nelson said out at the AIDS clinic at **Pioneer Park** he had the pleasure of seeing it was well-attended and all. But he went in the bathrooms. Their maintenance on those bathroom facilities leave a lot to be desired. Even if they went in there and repainted some of the things that people... They have those stainless steel toilets in there. They put paint all over and didn't even clean it up. Of course, at least two of the toilets were overstuffed with filth and all that and could not be used in a sanitary fashion.

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Mayor Benton said he has a letter from Representative Gayle Harrell. The **Legislative Delegation** meeting is coming up on January 4th. They would like any items submitted by

December 28th with background material. He would ask any members who have items they would like to put on that list, please get it to the City Manager so the Commissioners can have it in front of them at the next meeting and prioritize some of those items.

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There will be a Special Meeting of the City Commission on beginning at 12:00 Noon on Wednesday, December 13, 2006, in the City Hall Commission Chambers, 100 North U.S. #1, Fort Pierce, Florida, for the purpose of holding a Public Hearing and adopting a Resolution transmitting the proposed Comprehensive Plan to the State Land Planning Agency.

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There being no further business, Mayor Benton declared the meeting adjourned at 10:35 p.m.

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Adjournment.

ATTEST:

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CITY CLERK

MAYOR COMMISSIONER

