



ZONING ADMINISTRATION
DEVELOPMENT REVIEW
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CITY OF FORT PIERCE

2005 Florida League of Cities "City of Excellence" Award Winner

DEPARTMENT OF PLANNING

"IMPROVING THE WAY WE DO BUSINESS"

Planning Board Minutes

OF THE REGULAR MEETING OF THE FORT PIERCE CITY PLANNING BOARD HELD ON TUESDAY, JANUARY 09, 2007, IN FORT PIERCE CITY HALL, COMMISSION CHAMBERS, 100 NORTH US HIGHWAY 1, FORT PIERCE, FLORIDA.

Vice Chair Gates called the meeting to order.

Upon Roll Call, those present were: Sunny Gates, Margaret Benton, Charlie Harris (came in at 7:35), Jeremiah Johnson, Colin Lloyd, Leslie Olson, Robert Poitier, and Edward Reilly. Those absent: Don Bergman and Tom Knott

Staff Present: James Walker, Assistant City Attorney; Matthew Margotta, Planning Director; Peter Buchwald, Zoning Administrator; Kara Wood, Urban Design Administrator; Paul Williams, Urban Forester; David Carlin, Development Review Planner; Robert Lane, Development Review Planner; Diann Ploetz, Administrative Secretary.

Vice Chair Gates said I know everybody has had a late night with the Gator's last night and I know everybody is happy about this so I am going to try to make this a short meeting. So remember that when you get up to speak. If you would not mind turning your cell phones off, I would appreciate it or at least put it on vibrate during the meeting. Thank you. And for my Board members, Item #7 has been postponed so we will not be hearing that tonight and we will be hearing that in the February meeting so you can not have to worry about that one tonight.

The next item considered **#3 - Approval of Minutes of meetings held November 15, 2006, November 29, 2006, and December 12, 2006.**

Vice Chair Gates said I hope you all have had a chance to read these minutes. There are three sets of minutes, as you can see. Are there any corrections or additions to any of these minutes?

Mr. Johnson said on the November 15 meeting, page 12. I think it was about 2/3 of the way down, I think it was Mr. Reilly who was saying that.

Mrs. Diann Ploetz said ok.

Mr. Johnson said because it kind of proceeds what Mr. Reilly was saying.

Vice Chair Gates said ok, are there any other corrections or additions to the minutes? If no, I entertain a motion.

Motion was made by Mr. Poitier, seconded by Mr. Johnson, to approve, with the correction, the Minutes of the meetings held November 15, 2006, November 29, 2006, and December 12, 2006.

Vice Chair Gates said there is a motion and a second to approve the Minutes.

Unanimously approved by voice vote.

The next item considered **#4 – Bent Creek** - Application for approval of Preliminary Plats for the remaining phase of the Bent Creek Subdivision. The property is approximately 268 acres and located on Peterson Road, west of Hartman Road. The property is zoned PUD, Planned Unit Development. The owner/applicant is Lennar Homes, Inc. and the representative is Michael LaCoursiere of Michael B. Schorah and Associates, Inc.

Mr. David Carlin said this evening the applicant, Lennar Homes, is proposing to subdivide parcels of land for the remaining phases of the Bent Creek development. To give you an understanding of the actual project location, as you can see on your screens, the area highlighted in blue illustrates the development boundaries. Generally located west of town, south of Orange Avenue, west of Hartman Road. Access to the development, actually two, one located along Orange Avenue and the other one is located off of Hartman Road, where it can be accessed down through roundabout at Peterson Road. The next slide gives you some satellite imagery of the development, although it is somewhat antiquated and was probably taken a few years ago. There are no homes, as you can see, that have been built on the subject parcel. However, it does give a good idea of the overall property boundaries for clarity purposes. The actual zoning is a PUD and as you can see the surrounding for the City is R-1 to the east-north-east, R-2 located further to the south and east and also there is a small quadrant of R-3 zoning. The overall property to the west of the PUD, as you can see, is a residential neighborhood, unincorporated St. Lucie County. The property to the east of Bent Creek, as you can see, another residential community, unincorporated St. Lucie County. The property to the north, that is Orange Avenue that you are looking at right there, and the property to the north is vacant land, unincorporated St. Lucie County. This is actually on Whiteway Dairy Road. As you can see, it is unimproved and the parcel to the south of Bent Creek is also undeveloped. Just to give you a little bit of a history of this, Bent Creek was actually approved by the St. Lucie County Board of Commissioners back on April 5, 2005. At that time, Plats A1 and B1 were recorded, which I will show you a little further on here on the slides where those parcels are located. But on November 8, 2005, annexation took place and the PUD is now within City limits of Fort Pierce. This evening, the applicant is requesting to subdivide the remaining portions of the development. The parcels are A2, B2, and C. The overall site contains 268 acres. There will 692 lots for the proposed development and a total density of 2.57 units per acre. Standard amenities that you would see with this type of establishment: clubhouse, pool,

tennis courts, basketball courts, playground, and there is also a 31 acres public park located along Five Mile Creek. This map actually shows you where parcel A2, which is the first of three part of the development that will be subdivided. To the east of A2, that is where A1 was where the original plat was done in the County. This gives you an idea of how A2 will look with the total of 88 homes on the subject parcel. This gives an overall view of the actual site, coming down to earth here. And this is actually looking south from Five Mile Creek, as you can see on the right-hand side of your screen. Parcel B2 is identified in yellow there. It is located on the northern portion of the Bent Creek PUD and this will actually show you what B2 will look like when the homes are platted out, 121 total. Again coming down to earth, this is looking north with Five Mile Creek on the left-hand side. Parcel C, as you can see, is in the northwest quadrant of Bent Creek PUD. This will show you what the parcel will look like, 127 homes total. Again, that's looking on the western side of Five Mile Creek, where this parcel will be located. The street right of way widths through this development as approved by the County are 50 feet. As you can see by the red line it delineates where the boundaries are for that. although Section 18-12 of the City Code requires, here in the City, 60 foot right of ways, as part of the annexation agreement, the site plan in its entirety was accepted as part of the annexation, so 50 foot right of way is what you will have here. The sidewalks, as you can see, are, I think, four feet wide sidewalks for the development. Typically lot dimensions, as you can see, this is your standard layout, 50 feet wide by 125 feet. There are other lots that are somewhat, if you would call, larger. They range from 65 feet up to 135 feet in length. The overall ranges, as you can see, square footage wise 6,250 to 8,775 square feet. As far as utilities, the development is served by water and sanitary sewer from FPUA and electric service from FPL. Each quadrant has its own surface water management system, as you can see, it is typical Stormwater retention, which has already been permitted by South Florida Water Management District. As of today or as of the most recent data that I have, 145 homes for the whole development have been constructed and Certificate of Occupancy, 106 homes as of December 2006. And that's it.

Vice Chair Gates said thank you very much. Good presentation. Are there any questions for the staff from the Board?

Mrs. Olson said I just want to second that that was an excellent presentation. Thank you very much. That's all.

Vice Chair Gates said any questions for staff on this item? Ok, is there anyone here to speak in favor of this request?

Mr. Michael LaCoursiere of Michael B. Schorah and Associates, said representing Lennar Homes. First of all, I would like to thank staff for working so closely with us and helping us through this somewhat confusing process, taking this project over from St. Lucie County into the City of Fort Pierce. I, too, am a Florida Gator, was up late last night so I will just make myself available to answer your questions and not prepare a presentation at this time. Thank you.

Vice Chair Gates said are there questions for the applicant? No questions?

Mr. LaCoursiere said thank you.

Vice Chair Gates said thank you. Is there anyone here to speak against this request? I don't believe so. I will entertain a motion from the Board.

Motion was made by Mr. Johnson, seconded by Mr. Poitier, to recommend approval to the City Commission of the Preliminary Plats for remaining phase of Bent Creek subdivision.

Vice Chair Gates said so it has moved and seconded that we approve this request. Is there any further discussion on this item?

Those voting in favor of the motion were: Mrs. Benton, Mr. Johnson, Mr. Lloyd, Mrs. Olson, Mr. Poitier, Mr. Reilly, and Vice Chair Gates. Those opposed: None.

Vice Chair Gates said obviously, it has been approved and you will go to the City Commission and you will receive a notice of your time that you will be heard at the City Commission. Good luck. I was out that way today and happened to be out on Orange Avenue and I was kind of admiring what you were all doing out there. So it looks pretty good so far. Good luck. Thank you.

The next item considered **#5 - Deeken Plaza** - Application for approval of a Conceptual Development Plan for a 45-room hotel. The property is located at 400 Seaway Drive and is zoned C-5, Tourist Commercial. The owner is Hillcrest Development & Building and the applicant is Jerald Wurhman. (Recessed from November 29, 2006 meeting)

Mr. Robert Lane said in accordance with Section 22-58(6) of the City Code, the applicant is requesting the review and approval of the Conceptual Development Plan for a 45-room hotel located at 400 Seaway. At the November 29th meeting, staff presented a recommendation for denial of the Site Plan based on deficiencies in meeting the requirements of the Code. After discussion, the Planning Board tabled the item to allow staff additional time to review a revised submittal that the applicant stated would meet the deficiencies outlined in staff's report. Since that time, the applicant has submitted plans for Deeken Plaza for Site Plan Review to the Planning Department on December 27, 2006 and a resubmittal of the Conceptual Development plan on December 28, 2006. In relation to the prior submittal, staff has identified the following issues/concerns associated with the revised Conceptual Development Plan. The site has four access drives on two streets. The 48-foot spacing between the Hernando Street drives does not meet the design criteria of Section 22-61(2)(b) of the City Code for driveway spacing on a local street, which requires a minimum space of 50 feet between driveways, but it is something that can be fixed. A total of 47 spaces are required to park the proposed 47-room hotel. The 48 spaces provided meet the parking requirements in Section 22-60(c)(1) of the City Code. Two handicapped spaces are provided. However, the 12 x 33 foot loading space provided does not meet the design requirements of Section 22-60(c)(2) of the City Code that require a loading space be 12 x 35 feet. It is something that can also be fixed. While a statement to adhere to the required height restrictions is provided, no actual building elevations are provided that show the roofline of the structures to assess if the buildings on the Conceptual Development Plan meet the 45-foot height requirement defined for the C-5 zoning district in Section 22-33 of the City Code. No information

regarding Flood Hazard Zones were provided for this site located immediately to the west of South Ocean Drive and less than 420 feet from the Atlantic Ocean. A tree survey was not provided with the submittal. A recent aerial of the site shows several trees that should be accounted for to assess the need for tree mitigation and tree protection on the site. No dumpster locations are depicted on the Conceptual Development Plan. As the proposed South Beach Overlay District is currently in final revision, staff did not review the plan using the proposed overlay criteria. As the proposed use is consistent with the zoning and future land use of the property, staff recommends approval of the Conceptual Site Plan provided that the above-listed concerns are addressed.

Vice Chair Gates said thank you very much. Are there questions on this conceptual plan for the staff from the Board members?

Mr. Reilly said I have a couple of questions. It is just so I can understand it again and I think we went it over this last time. What happens with a conceptual plan, if we approve it? I mean, are we tied to anything at that point or what?

Mr. Lane said with a conceptual site plan, you are not tied to approve the site plan when it does come through for approval to the Planning Board. This is simply an exercise that allows the applicant to receive feedback on the idea of the project that this concept is something that the Planning Board and the Commission are interested in, if it would be received favorably. So at this time, the conceptual site plan does not bind you to approving the actual site plan when it comes before you for review.

Mr. Reilly said ok, my next questions is on the note that you had there, the items that you had concerns about such as the flood hazard zone and the tree survey and the dumpster locations, are they required on a conceptual plan?

Mr. Lane said for a conceptual plan, no they are not necessarily required. Those were things that we did look at in the initial review and we didn't want to do a thorough review of it, but in the idea of a concept is, of course, looking at the overall idea of the hotel, the siting of it and those types of issues. So the applicant is encouraged to submit whatever information they can to give us a complete concept of the project, but those items would not necessarily required for a conceptual development review.

Mr. Reilly said but right now we have a concern or you all have a concern because we are squeezing a lot onto one piece of property and let's say the dumpster is one issue.

Mr. Lane said that could be an issue, but currently, as far as parking and the landscape strips and also providing the right of way that had not been previously provided on Binney Drive or Hernando, those issues were addressed in this plan.

Mr. Reilly said I know this probably isn't, I know we get them on waiver of distances, but we don't have any feedback from neighbors or anything like that on this type of thing, do we?

Mr. Lane said no, we have not received any feedback on this.

Mrs. Olson said I was wondering if I could take this question and address it to Mr. Walker. I remember looking at a different PUD out west and I recall their lawyers saying that because we approved them conceptually that if they didn't change anything we were required to approve them when it came to site plan. And I am wondering what your legal opinion is on the approval of conceptualls.

Board Attorney Walker said the answer is that it depends. It depends on the specific feature that the question is addressed to. When we put in the conceptual approval process, it was following the developer's submission of a site plan, the developer had gone to a great deal of time and expense to do that. however when it got before the Planning Board, he very quickly discovered that the conditional use that was provided for there would not fly with the Planning Board or the City Commission and the developer was very bitter and said "well, if I had known that in advance, I certainly wouldn't have gone to this expense." With that in mind, we put in the preliminary site plan approval which is a streamline, simplified process that allows the developer to get his concept out before the City to see whether, at least in concept, it is going to be acceptable. So that for instance if this site plan were approved conceptually and he subsequently submitted a final site plan, the Planning Board and the City Commission could not then take the position of pulling the rug out from under the developer and saying "we don't think a hotel in that location is a good idea." This is the developer assurance that that use will be acceptable for purposes of putting together the final plan and it is the developers' further assurance that in so doing the City will not subsequently take the position that the use they propose violates the Comprehensive Plan. so at least of those that extent it is a vehicle that gives the developer vested rights. However the more that you focus in on the details of the concept, the less likely it is that those details would be considered subsequently as binding in the event the same details were presented in the final plan and found as grounds for objection at that time by staff, the Planning Board, or the City Commission. Does that fairly respond to the question?

Mrs. Olson said yes, thank you.

Vice Chair Gates said are there any other questions for staff or Mr. Walker?

Mr. Reilly said one other question. You talked about this at the last go around on this, but if the South Beach Overlay passes, how does that affect this project in our approval or denial?

Mr. Lane said as I understand it, if the proposed Overlay District is enacted it would affect any project currently on review on beach. If I am wrong, somebody correct me.

Mr. Buchwald said we did review it, I reviewed it in general terms with regards to the proposed Overlay District as it is and it does not appear that the proposed Overlay District as it is currently being considered, would not dramatically affect the proposed design or development as it is currently proposed.

Mr. Reilly said ok, thank you.

Vice Chair Gates said any other questions?

Mr. Lloyd said I can't tell from the drawings, is there a sidewalk on Seaway Drive, the property abutting Seaway Drive?

Mr. Lane said it doesn't appear that they are provided, but I do know that the applicant has stated that he will be working with the State on the A1A improvement project and it would include sidewalks along that portion of the road and landscaping and the roundabout that is proposed for the intersection of Ocean Drive and Seaway Drive. So that may be why they weren't depicted on there. They would be required by Code, even if the project that the State is working on didn't go forward, sidewalks would be required.

Mr. Lloyd said ok, thank you.

Vice Chair Gates said any other questions of staff? If not, is there anyone here to speak in favor of this request?

Mr. Jerald Wurhman, applicant, said I appreciate the effort that staff has put into this at the first presentation and with the first staff report it was evident that there were several things of concern that we took into account from what they had given to us, such as the commitment of five feet on both Binney and Seaway Drive with a sidewalk supplied by myself. So that was a major concession. The purpose of the conceptual plan was really as what Attorney Walker stated to get the assurance or comfort level with the City that they, in fact, did feel a hotel was an acceptable use in this location and obviously we recognized it has to conform with the zoning requirements that they are pertinent at the time. We felt that we did in most respects, some of the nitty-gritty details which Robert has pointed out, we've corrected in the submittal package that we did for the final site plan approval, which you will be having the opportunity to see at a later date. And of course, as Mr. Buchwald pointed out, I felt and he sort of confirmed that we are not really in significant violation of any of the proposed Overlay consideration. In fact, there might be some beneficial point that come out of it after the City Commission talks more about the height consideration, what is 45 feet, where does it start, is it going to take into account the roof features are not in our final submittal. We did present some architectural elevations of the buildings which might or might not be of interest to you in whether you recommend this for approval to the Commission or not. But these are things that we will have to face when we go through the final hoops on this. I think the main things that we wanted to find out was does the City feel a hotel is appropriate for the site. Seemingly it does. We wanted to get a clear understanding of what the common space is in the hotel when it is only used for the guests of the hotel and not opened to the public, as far as parking is concerned. And in our case with the submittal that you are looking at, everything was for the use of just the residents and their guests and not for the public so we didn't require any additional parking. We might in the final analysis depending on what the Overlay decisions that are made come to be. All the issues which were pointed out here, we've been able to cope with and feel that when the plan does come back to you, it will be sufficient to assure you that we are not in the Coastal Construction Zone, we are west of that, and that the landscape plan that we've submitted will compensate for the couple of trees that are there. There are some Brazilian Peppers that will have to be removed, anyway. But in other respects, I think you will find

it will be an amenity to South Beach and hopefully an asset to the City. If there are any questions, I will be happy to answer them.

Vice Chair Gates said thank you. Any questions for Mr. Wurhman?

Mr. Lloyd said what style of hotel do you see it being architecturally? I am just curious.

Mr. Wurhman said it is sort of a beachy-look.

Mr. Lloyd said Key Westy, for lack of a better word.

Mr. Wurhman said Key West style look, standing C metal roofs and some siding on it, some stucco finish, but a combination of finishes. If you have that in that package, maybe you can show them?

Mr. Lloyd said I saw it in the plans; I just wanted to make sure that was the intent.

Mr. Wurhman said no, that is the intent. It is not going to be a Mediterranean style or Contemporary style or anything like that.

Mr. Lloyd said great.

Vice Chair Gates said any other questions for Mr. Wurhman?

Mr. Reilly said the question that Mr. Lloyd just asked was about what is it going to look like, I didn't actually notice it on the package, sorry. I am just a little concerned about how much, I hate to put it this way, how much we are cramming into one site and the massing what that is going to require and how that is going to look? Because that is, as you are aware, that is a pretty important corner. That is a nice corner to be on, right there.

Mr. Wurhman said a key corner.

Mr. Reilly said everybody that comes through goes to the South Beach is going to go by that hotel and I just wanted to make a couple notes of concern that I think has been brought up in our last package and also in this package is parking. Myself, architecturally, I just wanted to make sure that when it comes back through that it doesn't fall through in the massing of the hotel on the site looks nice.

Mr. Wurhman said not to interrupt you, we did go to the extent of doing a 3D massing model, which I think Robert displayed, which gives you a better feeling for what and how it is going to fit on the site. Basically it is two buildings tied together with a parking area.

Mr. Reilly said I saw that. It is a bunch of blocks stuck on a...

Mr. Wurhman said a massing model. That's the whole purpose of it.

Mr. Reilly said I am just worried about how, if you took that and stuck a tin roof on it, a galvalume roof, or whatever, 5-V crimp, it is just going to be...just when it comes through in the final architecture, I just want, if you would, take it all into concern because it is an important intersection. That was just really my only notes for you was that.

Mrs. Olson said along the same lines, Mr. Wurhman. I don't see, personally, any problems approving this conceptually at this point. Because we just don't have enough information to know what it is going to look like. But when it comes back before us as a site plan, I will tell you that I am going to be very concerned about how this looks. So I don't have a problem approving you tonight but it's got to be beautiful to be on that site for me to approve it. That's for future, but I just want to let you know that.

Vice Chair Gates said anybody else?

Mr. Lloyd said do you own the other parcel on that?

Mr. Wurhman said no. There were three parcels. There are eight lots on that block. I own five of them. The other party that owns three of them joined in with me in submitting to you for review of a mixed-use project long before this, which went through your channels and the City Commission with your approval for it. But when the City got into this discussion about hotel, motel, overlay districts, and things he decided he didn't want to forge ahead with the mixed-use project and not having enough of a comfort level of what the outcome was going to be. In my case, I decided I wanted to so we decided to go each in our own direction with me doing something on the five lots and him ultimately doing something on the three lots.

Mr. Lloyd said so he owns the rest of that.

Mr. Wurhman said he owns the three lots right on the corner.

Mr. Lloyd said did he mention to you any inclination of what he has planned for that?

Mr. Wurhman said I think he did some preliminary planning actually with Mr. Bergman, at one point in time, before we got together on it. A combination of a small restaurant and some residential condominiums. He became concerned about that because unfortunately the City hasn't taken the approach that in a commercial area like this it might be to their advantage to approve something of higher density residential rather than force everybody into commercial. The Code actually permits 15 to 18 residential units in there, but of course they have never been granted in previous submittals. But were it to do that, were the Code to be revised, and I know it has been discussed in the Overlay District, it hasn't been acted on yet, but were it to permit higher density residential in lieu of commercial in the C-5, you would probably find some of the people not wanting to build hotels and retail space and office space and would rather do high density residential, which would be a lesser impact on traffic and have a lot of benefits.

Mr. Lloyd said how many acres is his property? The three lots that you are talking about.

Mr. Wurhman said his lots are about 4/10th of an acre, plus he is the victim of the roundabout. Ultimately, the City or State is going to condemn the property.

Mr. Lloyd said that's what I am thinking about with your project is I also have to think about, you know, conceptually what down the road his property is going to be in conjunction with yours. I know that's out of your hands.

Mr. Wurhman said I would be the last one to say that we couldn't have done a better job jointly than doing in individually.

Mr. Lloyd said thank you.

Vice Chair Gates said are there any more questions for Mr. Wurhman?

Mr. Lane said I do just want to make a note of the fact in regards to our architectural review, the site plan was formally submitted before the design review guidelines had been enacted so it would be exempt from that ordinance.

Vice Chair Gates said it would be?

Mr. Lane said please be aware of that.

Vice Chair Gates said even in the final?

Mr. Lane said yes, it would be.

Vice Chair Gates said so it is from the time of submittal?

Mr. Lane said for the design review, it specifically stated that anything that had been submitted prior to the enactment of that ordinance would be exempt from the ordinance.

Vice Chair Gates said ok, gee I don't know how I feel about that.

Mr. Wurhman said that doesn't mean we won't take that into account and consider it.

Vice Chair Gates said Mr. Wurhman, we're still looking at you. Any other questions? Thank you very much. Is there anyone here to speak against this request? I don't believe so. What are the Board's wishes on this item?

Motion was made by Mr. Poitier, seconded by Mr. Lloyd, to forward a recommendation to the City Commission for approval of a Conceptual Development Plan for a 45-room hotel conditioned upon the comments made by staff.

Vice Chair Gates said it has been moved and seconded that we approve this conceptual site plan. Is there any other discussion on this issue?

Mr. Johnson said that motion encompasses staff's comments, is that correct?

Mr. Poitier said yes.

Vice Chair Gates said does the second stand?

Mr. Lloyd said yes.

Vice Chair Gates said Mr. Wurhman, you understand what we are doing? There were some questions as to some of the things that had not been addressed and so that is the motion with the conditions, ok?

Mr. Wurhman nodded.

Vice Chair Gates said any further discussion?

Those voting in favor of the motion were: Mr. Johnson, Mr. Lloyd, Mrs. Olson, Mr. Poitier, Mr. Reilly, Mrs. Benton, and Vice Chair Gates. Those opposed: None.

Vice Chair Gates said your request has been approved and I guess you will go to the City Commission soon and you will receive a notice as to when you will be going before them. Good luck.

The next item considered **#6 - Ocean Village Tiki Bar** - A request for approval of Waiver of Distance for a Club Alcoholic Beverage License in order to operate a tiki bar selling alcohol, beer, and wine for on-premises consumption. The property is located at 100 Mainsail in Ocean Village and is zoned R-4A, Hutchinson Island Medium Density Residential. The owner/applicant is Ocean Village Property Owners Association and the representative is William Smith.

Mr. Robert Lane said Section 3-7 of the City Code prohibits the City from granting approval for the sale of alcoholic beverages by retail for consumption on the premises where the establishment is located within 1,600 feet of other licensed establishments, churches, or schools, unless a Waiver of Distance is granted. The applicant is requesting an 11CB, Club Alcoholic Beverage License to serve liquor, beer and wine for consumption on premises. An existing licensed establishment, the Seafare at Ocean Village, is located within 1,600 feet. Therefore, in accordance with Section 3-9 of the City Code, the applicant is requesting a waiver of the minimum required distance of 1,600 feet between the applicant's establishment and other licensed establishments. All surrounding parcels are part of the Ocean Village development. The applicant intends to operate a Tiki Bar located by the pool for use by members of the Ocean Village POA and their guests only. During the last 25 years, the location for the proposed establishment was operated by the former restaurant owner. As specified by Section 3-9 of the City Code, a waiver of distance shall be granted only if it does not adversely affect community health, safety or general welfare and that the

following are considered: the location and size of the proposed establishment is not likely to create a public nuisance or traffic impediment. Approx. 1,566 s.f. of gross floor area for the Tiki bar and eating area is provided for with the 100 parking spaces are provided for the main building. The parking required for the existing restaurant, Tiki Bar, deck and eating area is 83 parking spaces. There is ample parking. A notification of the Waiver of Distance application was mailed to the owners of properties located within 500 feet of the establishment. A total of 294 notifications were mailed. As of January 9, 2007, a total of 122 responses were received, 121 of which approve of the Waiver of Distance, and one of which opposes the Waiver of Distance. As the proposed establishment does not appear to adversely affect community health, safety or general welfare and meets the above-summarized criteria, Staff recommends that the Planning Board forward a recommendation to the City Commission for approval of the Waiver of Distance for a 11CB Club Alcoholic Beverage License for the proposed establishment.

Vice Chair Gates said thank you very much. Are there any questions for staff from the Board?

Mr. Reilly said the picture, the colorful building, this is an existing tiki bar?

Mr. Lane said yes, it is an existing structure that is at the pool deck at the Ocean Village Clubhouse.

Mr. Reilly said and it was run before by the company who you referenced earlier?

Mr. Lane said previously it had been operated through the restaurant establishment on the site. As I understand it, there has been a change of ownership there.

Mr. Reilly said but there was alcoholic beverage served then?

Mr. Poitier said yes, I have been there.

Mr. Lane said as I understand it, yes.

Vice Chair Gates said any other questions of staff?

Mrs. Benton said exactly what is the other entity that would be within 1,600 feet that would violate the ordinance?

Mr. Lane said that would be the Seafare Restaurant at Ocean Village, which is on the other side of the pool in the Club house establishment. Since this is a second establishment that is proposing an alcoholic beverage sales, they fell within the 1,600 feet of an existing establishment and that triggered a waiver of distance notification and application.

Mrs. Benton said did you get a response from them?

Mr. Lane said from the restaurant, itself?

Mrs. Benton said yes.

Mr. Lane said we have responses from 122 individuals on the site. We have received a response from each of the property owners association, but I am not specifically aware how the restaurant feels about that.

Mr. Buchwald said they would not receive a notification because the notifications were sent to the property owners and because they are just leasing the establishment from it, the operator the Seafare Restaurant would not have received an notification.

Mrs. Benton said would the owner have received one?

Mr. Buchwald said yes, the owner of the property would have received one, whether it is a POA or the other one. The only negative response wasn't the owner of that particular property.

Mr. Lane said the owner of the physical property at the restaurant is located on one of the POA's and it was an approval for the waiver of distance.

Vice Chair Gates said I have a question, Mr. Lane. The Seafare Restaurant, I just want to make sure I am clear on this, this is the old, formally Christies Restaurant?

Mr. Lane said that is correct.

Vice Chair Gates said so this is basically a different type of establishment. This is something that is very casual around the pool. I think the other restaurant, if I am not mistaken, is a much more formal restaurant, as far as people don't go in there in their bathing suits kind of thing.

Mr. Lane said that is correct and it is also open to the public, whereas the tiki bar is for the club members only and their guests.

Vice Chair Gates said ok, thank you. Any other questions? If not, is there any one here to speak in favor of this request?

Mr. William Smith, General Manager of the Ocean Village Property Owners Association said I am sure many of you are familiar with it over the years. It was established in 1974. More of our members would have been here tonight, but I am afraid a lot of them are grieving after the ballgame last night. So I do apologize for that, but hopefully we have Florida fans here tonight. just to clarify a few of the things, there are no problems with the present tenants that we have for the Seafare Restaurant. The restaurant has been in operation for many years under different lessee arrangements. We will be more than glad to provide a letter from the lessee, if that would help in that situation. They would have applied for an ABC Alcohol License with the exception that the tiki bar would have to be adjacent to or connected to the restaurant itself. That is impossible with the location of the tiki bar and the pool. That is the reason we are requesting a separate license, a club license, that will be held by the Property Owners Association, itself. If there is any additional questions, I will be more than glad to try to answer them.

Vice Chair Gates said are there any questions for the applicant? Thank you.

Mr. Smith said thank you.

Vice Chair Gates said I think you should convert them to Gators. Is there anyone here to speak against this request? No? What are the wishes of the Board on this item?

Motion was made by Mr. Reilly, seconded by Mrs. Olson, to forward a recommendation to the City Commission for approval of the Waiver of Distance for a Club Alcoholic Beverage License.

Vice Chair Gates said there has been a motion and a second to approve this request for a Waiver of Distance for an alcoholic beverage license. Is there any further discussion?

Those voting in favor of the motion were: Mr. Lloyd, Mrs. Olson, Mr. Poitier, Mr. Reilly, Mrs. Benton, Mr. Harris, Mr. Johnson, and Vice Chair Gates. Those opposed: None.

Vice Chair Gates said your request has been approved and it will go to the City Commission. Good luck. Thank you.

The next item considered **#8 - Ordinance Amendment** - Consideration of a proposed ordinance amending Section 22-58(j) of the City Code to specify the submittal process for site plan extension requests.

Mr. Peter Buchwald said because of the increase in proposed development and the number of approved site plans and due to the changing market conditions, the number of site plan extension request has increased dramatically. However the process for the submittal of the extension request is currently not specified in the City Code. This proposed ordinance will specify to whom and when an extension request must be submitted. The ordinance will require extension request be submitted to the Director of Planning no later than 30 days prior to the site plan expiration date so that they may be considered by the City Commission prior to its expiration in accordance with the Code.

Vice Chair Gates said thank you very much. Does anybody have questions for Mr. Buchwald or staff?

Board Attorney Walker said respectfully, under the heading of staff discussion I would like to respectfully offer as a suggestion that in the second line from the bottom following the word "submitted" "for an extension of a site plan must be submitted" that there be added the phrase "in writing." That is undoubtedly implied, but it would be nice...

Vice Chair Gates said but it would be very clear that way. Thank you. Any discussion or questions?

Mr. Johnson said that kind of related to my question, I guess that is checked into the Planning Department, it's stamped on a certain date. Is our Code always specify, maybe that's a question for staff, 30 days, does it need to say calendar days? Do we say that or no? I don't think we do, but I can't remember.

Mr. Margotta said if there is some situations, I am not really aware of them where it specifies calendar days, but generally speaking it just gives the number of days and then gives it in numerals so that is very typical language.

Mr. Johnson said I thought so, thank you.

Mrs. Olson said it means calendar, not business?

Mr. Margotta said it means calendar. In this case it means calendar. 30 days prior to the meeting date.

Vice Chair Gates said under (j) Site plan approval "it shall terminate twelve (12) months after approval by the city commission if..." Because of how long it takes sometimes to get through the process and because of how many we are seeing, is 12 months enough? Do we need to leave that where it is? Are we having any problems as far as...

Mr. Margotta said I think that is certainly a number that has been in our books for quite awhile. I am sure if you ask some of the developers that are coming up on their expiration date, they don't think it is enough time. You've got a whole bunch of different ways of looking at this. But generally speaking, if we don't hold their feet to the fire, it could be a couple of years before that plan comes through and the way that development goes certainly lately, those couple of years tend to be kind of critical. I think 12 months, keeping it on the books right now is a good idea. But we can relook at this as we update our Land Development Regulations.

Vice Chair Gates said I was questioning whether you feel like that is still a good number, a fair number.

Mr. Margotta said I think it is excellent.

Mr. Buchwald said I would ask that as an example of what can be done if a developer or building is serious about building is when we step out of City Hall and you look up into the sky, the big crane. The Renaissance is well under construction within the 12 months after site plan approval.

Vice Chair Gates said you're right.

Mr. Margotta said this one separates the mice from the men.

Vice Chair Gates said that's true.

Mr. Lloyd said the only thing that I can see in this that causes me a little bit of concern thinking as a

lawyer is the first sentence. Define the word “started.” It says “if construction of buildings or structures has not been started.” is pretty broad. Do you need it to be that broad?

Mr. Margotta said again, that language is not intended to be changed as part of this. Just for a matter of explanation, we have certain procedures that we operate under and a lot of things throughout the ordinance where there is discretion, but amongst ourselves we interpret that to mean have an inspection. The first inspection on a building permit. Typically that is the foundation permit.

Mr. Lloyd said why don't you say that?

Mr. Margotta said that is not always the foundation permit, it could be several other types of things. Again, it's another one that is worth looking at. It comes from time to time and people question it. but until someone tells us that it is not the way to interpret it, then we are going to interpret it as the first inspection.

Mr. Lloyd said do you seek, maybe the staff attorney's guidance when these are....? Ok

Mr. Margotta said that question has come up several times, already I have talked, I don't know if Mr. Walker and I specifically talked on this issue as we have dealt with a lot of things, including bonding issues and multiple project phases, PUD's, it does come up from time to time.

Mr. Lloyd said just to tell you, to a layperson who doesn't build buildings for a living, if I read that sentence on its face “starting the construction of a building” to me means start laying the blocks. Now, to someone who does construction, it may mean clearing the plat, it could mean a lot of different things. But as long as you guys have discussed it with staff.

Mr. Margotta said that is where we draw the line and this is yet another one to look at as we update our Land Development Regulations. If you would like to specify that more than...let's take the suggestion. I don't even know where to start with all the suggestions and where we could change our ordinances. This is an ordinance that is crying to be updated. We take it on advisement and we know that it is an issue that is out there, but we also feel very comfortable with our interpretation.

Mr. Buchwald said try a little, in terms of my experiences in the last year, in the terms of the application of this and again, the only addition that you are being asked to consider is the underlining portion of it. but certainly, nothing prevents an applicant from requesting an extension of a site plan from the City Commission. I don't think there has been any based on the 8 to 10 request that we process through the City Commission this past year, there hasn't been any issues with regards to if someone has started construction is that close from getting an inspection of the construction that the City Commission doesn't have any problems granting it. It is the other end of the spectrum when absolutely a building permit has not been even applied for within the year after the site plan has been granted and the reasons for why they need an extension are as indicated there: they are not showing of good cause so that's where the City Commission has rejected the extensions. It is not, Mr. Lloyd, being a layman or not, I think, the construction contractors

understand that the construction of structures actually does mean you are actually doing some sort of work rather than just site work. so it is the actual building or the structure to which the site plan is approved. If it is a residential site plan, townhome development, than it is the construction of one of those buildings. If it is a commercial development, it is the construction of one of those buildings.

Mr. Lloyd said I just have one more question. It is also a little bit unclear, when I read this, the first sentence in (j) says "it shall terminate twelve (12) months after approval..." and then the change that is before us, it says they have to submit a request for an extension within 30 days prior to the expiration, but it doesn't say...for instance, on the 31st day I submit a request to extend the site plan, but for whatever reason, that matter doesn't get heard within the 12 month period, let's say it gets heard on the 13 month, there is going to be a month period there where it is unclear whether that site plan is still valid or whether it has expired because the first sentence says it expires. so you may want to put language in there that says that it is extended until a decision has been made. It is just a suggestion, but I can see you running into a problem there.

Mr. Margotta said if you all would like to make that suggestion and you are more than welcome to. I feel that the stronger language is the better course. If you want to allow for a situation like that, then really the amount of days doesn't really matter that we put on there. I'd say that you need to be very definite on 30 days prior and we will get it to the Commission.

Mr. Lloyd said I agree with you.

Mr. Margotta said then those situations where somebody doesn't, for a couple of days their site plan might expire.

Mr. Lloyd said I guess that's my question. What happens in the case where somebody timely files a...

Mr. Margotta said I am sure just the way things work with paperwork, we will just hold it until the City Commission approves it. We are not that draconian. It is not the way to go about this.

Mr. Lloyd said I am just trying to save you litigation.

Mr. Buchwald said the purpose of this was to...because we have had instances where it was submitted two days before the expiration date and there wasn't another Commission meeting before that expiration date. So this is actually the reverse to ensure that it will be heard by the Commission prior to the expiration date so that there is clarification and to whom it is to be submitted so it is properly placed on the agenda. This is to ensure and to protect the applicant so he has his hearing in front of the Commission.

Mr. Lloyd said I can just think of a million different reasons why it may not get heard within the 30 days. For instance there is a hurricane and we don't have a City Commission meeting for three weeks.

Mr. Margotta said I think if there is a hurricane, we've got a whole lot of other problems and this one will be flushed out.

Mr. Lloyd said that is just one example.

Mrs. Olson said I do have a question. So the intent of this 30 day issue is that it will be able to come before us and then it will also be able to come before the Commission or do we not have to hear it?

Mr. Margotta said the Planning Board does not see site plan extension. They go directly to the City Commission.

Mrs. Olson said alright, then I can see how the 30 days would pretty much work.

Mr. Reilly said but the intent was really just to give...so we didn't have this last minute rush, correct?

Mr. Margotta said the last several's is exactly what we've got before a meeting or a week before the expiration date they would drop off a bunch of items and say it is a site plan extension request and we haven't had a time to look at it. We need to have some sort of procedure. That is basically what this is.

Mr. Buchwald said because the City Commission will also ask us for staff recommendation in terms of whether or not the extension should be granted. So for us to do a proper review to, again, determine whether a good cause has been shown and whether it will promote public health, safety, and general welfare. We need a little bit of time to prepare that because we have to finish our review a week and a half before the Commission meeting. So it sets up parameters and specifies those parameters so that these things can be reviewed properly.

Mr. Reilly said does that mean they get their packages a week and a half prior to the meeting?

Mr. Buchwald said absolutely not. What that means is we send it up, they actually get their packages the Friday before the meeting, but we have to have everything upstairs a week and half before the meeting. Now it is Thursday. It used to be Friday.

Vice Chair Gates said anybody else? What are the Board's wishes on this item?

Motion was made by Mr. Johnson, seconded by Mrs. Olson, to recommend to the City Commission approval of the proposed ordinance with the comment "submitted in writing" that Mr. Walker stated.

Vice Chair Gates said it has been moved and seconded that we approve with the changes as were stated in the original motion. Is there any further discussion on this?

Those voting in favor of the motion were: Mrs. Olson, Mr. Poitier, Mr. Reilly, Mrs. Benton, Mr. Harris, Mr. Johnson, Mr. Lloyd, and Vice Chair Gates. Those opposed: None.

The next item considered **#9 – Discussions**.

Vice Chair Gates said is there any further discussion.

Mr. Margotta said before you, you should have a copy of an email that Karen Emerson, a member from our City Attorney's office, sent to me basically explaining that there is an opportunity for training at Indian River Community College for the subject of the Sunshine Law. I don't have any further information about this at this time, but I thought it would be worth while to show you that these kinds of opportunities come up from time to time and you are more than welcome to join this and I will pay for that. We have money in our budget to be able to send you to seminars like this. I think you would find it very useful. So just in an effort to pass the information along. If you are interested in, just let me know and we will make the arrangements.

Vice Chair Gates said will there be a deadline? There must be a deadline for people to call you to request to go.

Mr. Margotta said the meeting is at the end of the month obviously within a week, by next Tuesday. I am sure we will be able to get you in that day and pay for it. by next Tuesday, if you would, let me know.

Vice Chair Gates said I went to one of these concerning preservation at one of our conferences. It was very interesting and very informative. It is good to go to. Anybody else have anything?

Mrs. Benton said just like to ask Mr. Walker, are there any CLE credits attached to this particular symposium?

Board Attorney Walker said I'm sorry, I don't have the answer to that question. I do know that everyone in our office is planning to attend in the event there are no conflicts on individuals' calendars.

Vice Chair Gates said anything else?

Mr. Reilly said do we save Club Omega for next month or will it be new?

Mr. Buchwald said I would save it for now. There might be changes, but we will see.

There being no further business, Vice Chair Gates declared the meeting adjourned at 8:10 pm.