



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, MAY 8, 2007, IN FORT PIERCE CITY HALL, COMMISSION CHAMBERS, 100 NORTH US HIGHWAY 1, FORT PIERCE, FLORIDA.

Chairman Bergman called the meeting to order.

The Pledge of Allegiance was recited

Upon Roll Call, those present were: Chairman Bergman, Irene Dixon, Charlie Harris, Charles Hayek, Jeremiah Johnson, Tom Knott, Leslie Olson, Edward Reilly, and Clay Yates. Those absent: Darryl Bey, Colin Lloyd and Robert Poitier.

Staff Present: James Walker, Assistant City Attorney; Matthew Margotta, Planning Director; Peter Buchwald, Zoning Administrator; Travis Gibbons, Planning Administrator; David Carlin, Development Review Planner; Paul Williams, Urban Forester/Acting Development Review Planner; Erica Ehly, Comprehensive Planner; Bob Frank, City Traffic Engineer; Diann Ploetz, Executive Assistant.

The next item considered - **#2 – Consideration of Absences.**

Mr. Johnson said did Mr. Poitier announce last meeting that he wasn't going to be here? I think he had a surgery coming up?

Mrs. Diann Ploetz said I didn't get it on the Minutes.

Chairman Bergman said we have a vacant seat, do we have the other Alternate here to fill in.

Mr. Margotta said the other Alternate is Darryl Bey and I don't see him in the audience.

Chairman Bergman said we have a quorum, so we are all set to go.

Motion was made by Mr. Knott, seconded by Mr. Johnson, to excuse those who called in.

Chairman Bergman said what do you want to do with Mr. Poitier?

Mr. Knott said we can wait until next week.

Chairman Bergman said next month?

Mr. Knott said that time too.

Chairman Bergman said still a second?

Mr. Johnson said yes.

Chairman Bergman said we have a motion to excuse Mr. Lloyd and we will give Mr. Poitier a month to come up with a good excuse.

Unanimously approved with voice vote.

The next item considered - **#4 – Approval of Minutes of April 10, 2007.**

Chairman Bergman said has everyone had a chance to read over the Minutes of April 10, 2007. Are there any comments or corrections that need to be made?

Motion was made by Mr. Johnson, seconded by Mr. Harris, to approve the Minutes of April 10, 2007.

Chairman Bergman said we have a motion and a second, any discussion?

Unanimously approved with voice vote.

The next item considered **#5 - Dock at 1031 South Indian River Drive** – Application for Conditional Use for the purpose of constructing a private dock at 1031 South Indian River Drive. The property is zoned E-1, Single-Family Estate Density Zone, and A-1, Aquatic Conservation Zone. The owner/applicant is Edward & Gayle A. Koch.

Mr. David Carlin said according to Section 22-38 of the City Code, dock/moorage facilities are permitted only by Conditional Use in the A-1 zoning district. Therefore, the applicants are requesting Conditional Use approval to construct a private dock which extends from his property located along the western shoreline of the Indian River. The applicants are proposing to construct an 800 square-foot dock with an access walkway that measures 4 feet wide and 170 feet long that will be situated toward the north portion of the property line. In addition, a terminal platform will also be constructed at the end the dock measuring 8 feet by 20 feet. The location of the dock was selected so the owners could retain an unobstructed view of the Indian River Lagoon. The pilings and decking will be constructed

primarily of treated wood similar to the dock that you see here in the photo, which is just to the north of the proposed location for this particular applicant.

The site and the adjoining properties located to the north and south of the site are zoned E-1, Single-Family Estate Density Zone, and are occupied by single-family homes. The adjoining property located to the west of the site is zoned I-1, Light Industrial, and is occupied by the Florida East Coast Railroad. The Indian River is zoned A-1, Aquatic Conservation Zone. The proposed Conditional Use is not inconsistent with the surrounding land uses. In addition, a permit exemption for the dock has been obtained from the FDEP, and a permit has been obtained from the U.S. Army Corps of Engineers. This slide represents where the dock will be constructed in relationship to the property lines and riparian rights. And since this slide is somewhat busy in terms of the lines and for simplification I have included some of the color coding. The red line that you see there represents the property line. The blue line represents the riparian right line that extends out into the Indian River and the yellow line represents where the dock will be constructed, as I said, towards the northern portion of the property. The line in green indicates the dock that is located just to the north by the other property owner. All affected Departments have reviewed the Conditional Use Application and have approved it based on it meeting the requirements of the City Code. As the proposed Conditional Use meets the requirements of the City Code, staff recommends that the Planning Board forwards a recommendation to the City Commission for approval of the Conditional Use.

Chairman Bergman said alright, thank you. Are there any questions of staff from the Board?

Mr. Yates said I have a question and I guess it relates to the dock north of them. It violates their riparian rights line, was that considered?

Mr. Carlin said that is correct. This permit has been approved by the Florida Department of Environmental Protection and the US Army Corps of Engineers. The dock to the north was constructed some time ago and how that slipped through the cracks, if you will, is something that took place much earlier. So the applicant wanted to construct the docks so that you would not have an unobstructed view of the Indian River Lagoon and based on that the best set up for him was to place that towards the northern riparian line, as you see there. And both permits have been approved based on the applicant's request.

Mr. Yates said thank you.

Chairman Bergman said is there an issue with access between these two docks, getting to the shoreline for any reason? The drawing says it is 7 feet from the neighbors dock. That is not enough for a boat by any means. I am just wondering if that is going to be an issue.

Mr. Carlin said our understanding from the applicant is that he will not be putting in a 44 foot yacht for this particular sized dock. But you do raise valid point, however based on the configuration there I would not be able to give you an expert opinion as to whether or not the separation is adequate. But the permits have been approved by both agencies. So, based on that, I would support that this dock go forward.

Chairman Bergman said I am actually wondering how they are even going to build this thing. Because they usually build those from those flat boats they have in there and how do they think they are going to get around to that side to even construct this.

Ms. Dixon said I have a question with regards to if the Army Corps of Engineers authorization is still valid. It says on here March 17, 2007. From the Army, it says that "Your project, as depicted on the enclosed drawings, is authorized by the Regional General Permit (GP) SAJ-20. This authorization is valid until March 17, 2007." I mean, I am not sure how that....

Mr. Carlin said which document are you referencing? The Army Corps or the...

Ms. Dixon said this one dated October 11, 2006. Unfortunately, it is not exhibit stamped or anything.

Mr. Carlin said the City Code does not have any prohibitions against moving this dock forward. We don't have any requirements in the City Code that mandates that Army Corps permitting or the Florida Department of Environmental Protection be granted prior to proceeding through with the Conditional Use application. There is nothing in the Code that indicates that they have to have that documentation. Of course, prior to being issued some type of building permit or something along those lines, if it was a Certificate of Occupancy for something like that, then yes, you would have to have that permitting. But for the purposes of going through the review process by the Planning Board and the City Commission, there is nothing in the Code that requires them to have that.

Ms. Dixon said thank you.

Mr. Buchwald said if I recall, David, there was an amended application upon after we did our pre-application meeting with the applicants and we identified where some of the...is that included in the packet that he provided prior to his formal submittal?

Mr. Carlin said Peter, the amended document that you are referencing, I believe, is from the Florida Department of Environmental Protection which is the most recent correspondence that we have. The only thing is that Mrs. Dixon is correct that it is valid until March 17, 2007. but as you know, this has been in house with those jurisdictional agencies some time for the review process based on just the review of putting a dock in the Lagoon in sensitive areas. That could very well be a reason why we passed that date and I am sure that Mr. Koch will be able to go back and get whatever final authorization he would need.

Mr. Reilly said just a quick question. It is an exemption, correct, from the DEP? I think they have a rule that if it is under so many square feet or something that it is an exemption you get?

Mr. Carlin said that appears to be correct, an exemption.

Mr. Reilly said one of their other requirements and I know this is...with the odd placing of the dock, I guess, it just kind of concerns me that it gets so close to the other dock. But I think

this may be a way to get around it is making your dock under the exemption category. But I think they require that you place your docks so many feet, I think you have to figure there is a calculation or something of so many feet from the property line based on the width of your lot or something. I guess I am just bringing up is is this way to skirt around that? Is that why we are getting so close here to the other guys dock?

Mr. Carlin said again, this is been approved conceptually through this exemption letter that has been provided by the DEP for this location. I don't know what the specific requirements are to...that would require this letter or not. But that has been furnished to the Planning Department.

Mr. Reilly said ok.

Mr. Yates said maybe the folks to the north don't have any right to complain since they are crossing his riparian boundary. But have they made any comments?

Mr. Carlin said my recollection when we met with the applicant some time ago there is a considerable legal process if the applicant wanted to try to fix the situation in terms of having that north dock moved back from the riparian line. So as a compromise, he has contacted that owner to the north and from what the applicant indicated to staff was that the property owner to the north was aware that this dock would be constructed in close proximity to the property owner to the north.

Mr. Yates said and they don't have any objections to it?

Mr. Carlin said my understanding is no.

Mr. Knott said before we open it up to the public on this. Find out if the adjacent landowner is here tonight. If you wouldn't mind asking that for me? I am just curious.

Chairman Bergman said if we get to that point, I am sure I can, but...

Mr. Knott said well, I would just like to know before I ask a question of staff. I don't want to waste time if we are going to be talking with him too.

Chairman Bergman said is it Follweiler? Anyone here?

Mr. Knott said there's nobody here. So as far as you know then, that adjacent landowner has objected to this? I mean, he can live with that 7 feet?

Mr. Carlin said that is my understanding when we met with the applicant some time ago and had this discussion why the dock would be constructed where it is and that is based on the view and based on his correspondence with the property owner to the north.

Chairman Bergman said they don't have a whole lot of grounds to complain.

Mr. Knott said well, I think the riparian right...his dock has been there for a long time and this applicant...it appears to me he could've shifted that thing down to the south and done his neighbor a favor there. But if he has been notified and he is not objecting, then we are not, as much as we are our brother's keeper, I can't see doing his battle if he doesn't object to it. I don't see why we should.

Chairman Bergman said any other comments for staff? Hearing none, is there anyone here that would like to speak for the Conditional Use permit for the dock? I don't see anybody moving. Is there anyone here to oppose the Conditional Use permit? I'll entertain a motion from the Board.

Motion was made by Mr. Hayek, seconded by Mr. Harris, to forward a recommendation to the City Commission for approval of the dock as proposed on the plan.

Chairman Bergman said we have a motion and a second, is there any discussion?

Those voting in favor of the motion were: Mrs. Dixon, Mr. Harris, Mr. Hayek, Mr. Johnson, Mr. Knott, Mrs. Olson, Mr. Reilly, Mr. Yates, and Chairman Bergman. Those opposed: None.

The next item considered **#6 – Interstate Business Park** - A request for approval of a Site Plan for a development that will consist of twelve buildings used for office, retail, and warehouse purposes. The property is located on the east side of Kings Highway, south of White Road. The owner/applicant is Kirco, and the representative is Gentile, Holloway, O'Mahoney & Associates.

Mr. Margotta said again, reporting for staff is David Carlin, but also with him is the County Engineer, Mike Powley.

Mr. Carlin said the applicant is proposing to construct a development that will consist of twelve buildings used for office, retail, and warehouse purposes. These buildings will contain a total of 263,352 square feet of floor space. The underdeveloped parcel, as seen on the screen, is located between Kings Highway and Peters Road, just south of White Road and contains 24.05 acres. The property is zoned C-3, General Commercial, with a Future Land Use of CG, Commercial General. The C-3 Zoning District does not allow warehouse establishments without Conditional Use permit. Therefore, the applicant is requesting a Conditional Use permit to allow the construction of four buildings within the development that will have storage capabilities. The property to the north is vacant and is zoned C-3, General Commercial. The property to the east is also vacant and located in unincorporated St. Lucie County. The property to the southeast of the subject property is zoned C-3, General Commercial, and occupied by a recreational vehicle park. The vacant parcel to the southwest is located in unincorporated St. Lucie County. Property on the west side of Kings Highway is zoned R-4, Medium Density Residential, and is also currently vacant. Access to the development will consist of two entrances: one located on Kings Highway and the other located on Peters Road. An internal roadway that extends east/west throughout the development will enable vehicles to access both roads for improved traffic

distribution. In addition, dedicated turning lanes will be constructed for vehicles heading north and south on Kings Highway to facilitate improved traffic flow into the development. Now, since the segment of Peters Road, near the proposed development is unimproved, the St. Lucie County Engineering Department has indicated that access will not be granted onto Peters Road unless the applicant will pave the portion of Peters Road from approximated Cracker Barrel restaurant to the northern property boundary. The applicant has not identified when Peters Road will be paved. The project will be constructed in four different phases each arranging from 50,300 square feet to 61,800 square feet of floor space. First phase, highlighted in blue, will consist of constructing five buildings. Four of these buildings will be situated at the southeast corner of the property, which is in the lower left screen, and the remaining building will be located at the southeast corner of the property. The buildings within these particular phases will range anywhere from 20 feet to 38 feet. Phase two will entail constructing four buildings located at the northwest portion of the property, also located along Kings Highway. These buildings will also have the same uses as previously identified in phase one with the exception of a warehouse building. These buildings will also extend to a height of 20 feet. One building will be constructed for phase three, which is the building in the center of the development and that will consist of an office/warehouse building. The height of this building will extend to 38 feet tall and the approximate square footage for this building is 37,800 square feet. The remaining two buildings will represent phase four and those are located in the northeast quadrant of the development and these buildings will have a total of 61,800 square feet. And those will primarily be used for office and warehouse, as well. This slide represents what the buildings will look like in terms of the styles, just to give you an idea. A traffic study conducted by Susan O'Rourke indicated that 3,578 daily trips will be generated by the proposed development. Of those trips, 368 AM peak hour trips and the traffic distribution consists of 35% of all traffic heading north, 25% to the south, 30% to the east, and 10% to the west. The traffic report also indicated that Kings Highway operates at a Level C north of Okeechobee Road and south of Orange Avenue. On the contrary, the St. Lucie County Growth Management Department has indicated that the proposed development will impact County and State roadways and intersections that are currently below the State and County's adopted Level of Service. The County has identified to the applicant and the City that failing intersection exists on Kings Highway. This is despite the fact that the traffic report specified that the project trips would not cause the capacity of the roadway to be exceeded and the analysis is deemed consistent with the transportation concurrency requirements. Now, these figures right here on this slide were provided by the St. Lucie County Engineering and Growth Management Departments to confirm the failing road conditions on the surrounding roadway networks. As you can see there is several of them indicated a Level F. The St. Lucie County Engineering and Growth Management Departments also identified right of way issues along Kings Highway that has not been satisfactorily resolved. County has identified that Kings Highway corridor is a constrained facility. As such, the County is currently working with the Florida Department of Transportation to widen the road. The County identified early on during the technical review process that additional right of way would be required to accommodate the future expansion of Kings Highway. The amount of right of way requested by the County is 110 feet along the west side of the site. The right of way requirement is derived from Section 7.0503 of the County's LDR's which specifies a minimum right of way width of 160 feet for a four-lane arterial road with swale drainage. This was under County right of way protection map, which states that Kings Highway will be

a four-lane road. The site plan for the proposed development currently depicts Kings Highway with a 50 foot right of way. The applicant has proposed dedicating only 23 feet of right of way for a total of 73 feet. This slide represents right here what Kings Highway looks like if you facing north. That is the current right of way, 50 feet and the additional 23 feet that the applicant is proposing to dedicate. However the applicant's proposed dedication of the additional 23 feet is based on a study conducted by the FDOT back in the early 1990's which shows the future Kings Highway alignment on the western side of the road where Canal #40 is currently located. This plan would require Canal #40 to be relocated further to the west to accommodate the expansion of Kings Highway. As such, the applicant has based the right of way dedication on outdated FDOT plans. Again, this shows you the canal that runs north along the western side of Kings Highway. In addition, the North St. Lucie River Water Management District, the jurisdictional agency in charge of the canal has indicated that realigning the canal to the west is not a viable option due to the fact that other developments are currently in place in the vicinity of Kings Highway which will prevent this from occurring. As such, the County is requesting a right of way dedication from Kings Highway to come from the east side of Canal #40 and is not approving the project unless the applicant meets several conditions. Now, those conditions are to provide 37 feet of additional right of way and in addition, as I stated earlier, the applicant must pave Peters Road from approximately the Cracker Barrel restaurant to their property boundary. Now, if the right of way is not dedicated for the expansion of Kings Highway, Interstate Business Park will lose a significant number of parking spaces. As such, basically where phase one and phase two are being constructed right along Kings Highway, the first portion of this whole development they are going to lose that parking, if the road is expanded and we basically would be setting up a non-conforming situation for this development. Since the City supports the County is securing the requested right of way to allow the future expansion of Kings Highway and since the applicant has not provided the requested right of way to accommodate the necessary road improvements, staff recommends that the Planning Board forwards a recommendation to the City Commission for denial of the Site Plan in accordance with Section 22.58(g)(1) and (g)(2) of the City Code.

Chairman Bergman said alright, thank you. Have you gone over this with the applicant all these conditions? I imagine you probably have on the right of way?

Mr. Carlin said the applicant's representative has been provided with all the correspondence from the County from the very beginning of the technical review process for this, so yes.

Chairman Bergman said alright. Are there any questions of staff from the Board?

Mr. Reilly said has our Engineering Department, I mean it says that all Departments have reviewed it but if we have reviewed the traffic study and all that?

Mr. Carlin said if I understand you question correctly, has the City Engineering Department review this?

Mr. Reilly said I am just wondering what our opinion was.

Mr. Carlin said the City Engineering Department has reviewed this.

Mr. Reilly said our traffic study department?

Mr. Carlin said the City Traffic Engineer, Bob Frank, has reviewed this project and he is here also this evening to answer any questions that you have.

Mr. Reilly said but he has no problem with...even though it is County right of way?

Mr. Carlin said the City Traffic Engineer did have some initial concerns with the traffic and requested them to do an additional study and I believe that was called a T-Pak study. But without being an expert in that field, I would really defer those types of questions for him so he can give you more guidance in what T-Paks are.

Mr. Yates said has the applicant responded at all regarding to you regarding DOT's need for the additional right of way if they are going to four-lane of Kings Highway?

Mr. Carlin said yes, the applicant has responded. I mean, they are aware of the request that the County has made and the comments that Planning staff has also made on this subject matter. However, no resolution has come forward as of date. My understanding is that the applicant is not willing to give any additional right of way other than the 23 feet.

Mr. Knott said I am not sure who to direct this to, our legal counsel or just to staff in general. Where we have a situation like this where an applicant has a professional who has given us one set of facts and opinions and we have another agency who I guess has control over some of this situation, who do we listen to? Are we obligated to listen to our staff or do we listen to, in this case, St. Lucie County or to the developer's engineer?

Board Attorney Walker said the matter is ultimately left to the discretion of the Board to apply its common sense and its own background knowledge. In addition, the City is furnishing its own Traffic Engineer, I understand, to appear before the Board and to answer questions and to resolve any difficulties that the Board might have in determining which conflicting sets of data are the most reliable.

Mr. Knott said thank you.

Chairman Bergman said in other words, you are on your own.

Mr. Knott said I am on my own. Let me ask one other question, then. Based on that and what Mr. Reilly had asked earlier, does our staff and Mr. Frank agree with the St. Lucie County Growth Management Development traffic information, which is in direct contrast to what the applicant is saying?

Mr. Carlin said I would ask that Mr. Frank respond to that.

Mr. Knott said alright, thank you.

Mr. Bob Frank said basically we review the proposal. we review volume counts, conducted our own study in essence as far as relativity to traffic signal timings that we are responsible for. We have the traffic signal at Kings Highway and Okeechobee Road. The volumes that were submitted by the representative of the developer were consistent with the most recent MPO counts offered. In fact they are a little bit higher. We inquired and ascertained that the MPO had not published any counts since Spring of 2005. They have, however, conducted them and they are not published into a format that is readily available for those who wish to use it. So, we are obligated to go with the professional submittals of the traffic engineer for the developer and the counts they submitted which are consistent with MPO counts that are current and usable. So, we did not want to controvert their opinion, we do, however, admit that there is a Level of Service problem particularly at the intersection that I described and that is the only that we do maintain. It is also the access to the toll booth for the Turnpike, so it is quite a busy and very important, very active intersection. We asked for a study to be done to establish the Level of Service so that we can change some signal timings, do whatever we can do and we did that and we feel like we can keep the flow with that particularly volume addition through the intersection as it is. Unfortunately, it is not very good and there are other traffic proposals in the area, other traffic generators in the area coming in. we do, however, have funded projects in 2011 on Okeechobee Road and DOT will be widening that particular intersection will be addressed. There will be lane additions and this is the way we are approaching other proposals, other developers in the area that would generate traffic, contributing to the problem that is there. So, we tried to be as fair as possible considering all of those factors. However, St. Lucie County, also, keeping a very close watch on growth development and the problems that they are incurring. They are involved with the State in maintenance agreement or a proposal to widen and improve Kings Highway. We are not involved in that agreement, but we are certainly involved in the desire as the County is in to improve it as the growth continues. So, in our recommendations we accepted the timing submitted and the volumes submitted, but St. Lucie County has access to other more recent volumes and we respect that and also we did in our recommendation ask and encourage the developer and the client and their representatives to contact and convey their intentions to St. Lucie County as well as the Department of Transportation. I think, basically, what we are doing is being that we are not involved in any agreement for maintenance and joint participation improvements, I think that is now between the developer, their representation, and the County and the State Department of Transportation.

Mr. Knott said just to summarize what you just said. The traffic impact report that was submitted by the applicant, you are in agreement with? The City of Fort Pierce is in agreement?

Mr. Frank said we are in agreement with what they submitted and where they got it from as being acceptable. We are not in agreement that it is going to make things better out there for the motoring public.

Mr. Knott said for our purposes, we cannot deny or think of denying based on...

Mr. Frank said I think we should refer to the County's opinion in this case.

Mr. Knott said that is what I am trying to find out. First of all, we have to listen to our experts first.

Mr. Frank said I don't know the legal standpoint. I do not know how you are structured. I don't know which agency, DOT, County, City, I don't know what the interlocal agreements state.

Mr. Knott said before we listen to the County, let me ask you one more question and get off of this part of it and go to the right of way issue. Do you have a dog in that fight at all? Do we have to concern ourselves with our staff?

Mr. Frank said from the standpoint of traffic safety, we would want any improvements to be executed.

Mr. Knott said ok, so you do have an opinion on that.

Mr. Frank said that's my opinion.

Mr. Knott said I mean, is that Fort Pierce's opinion?

Mr. Frank said I don't know as far as the City and what they have adopted and what, I think we are here to establish something. Maybe we don't have anything that calls out specifically a legal opinion. I don't know.

Mr. Margotta said staff's collective opinion is that the application meets the requirements of the Code. Otherwise it wouldn't even be here. We obviously see a problem coming and something that has been dealt with and talked about some level of specificity that the amount of right of way that is going to be needed and coordination, it is just not in the proper format for us to require it from the get-go or else we wouldn't even be talking about this. But it would be long for staff to present something to you that didn't meet the Code but it would also be incorrect for us to not point out to you some obvious things that we see coming down the road. We would be in the wrong to do it that way.

Mr. Knott said in our deliberation, we should take this in and we have the authority to take this into consideration.

Mr. Margotta said staff believes you do based upon those two sections of the Code where the design does not take into count the existing situation on the ground.

Mr. Knott said very good, that's what I was trying to find out just to get the ground work on this thing.

Mr. Margotta said one other thing that I think I need to point out is the applicant has literally the letter of the law and that is important to consider. I am sure when they get a chance to talk they will talk about that. don't ever think that they don't have some standing. But staff get's the first crack at it and you have this many people lining up and how often we do this and so strongly recommend denial.

Board Attorney Walker said with your permission I would like to ask staff a question that might perhaps be of some use in helping to focus this particular issue. This question is addressed to either our Traffic Engineer or to other members of the staff. Section 22-58(g) provides as follows, "The city planning board shall consider whether the following standards have been met in its review of the application." (2) provides the following standard, "A suitable site layout will be used for access points, on-site drives, parking, loading..." and then it concludes by saying, "Suitability, in part, shall be determined by the potential impact of these facilities on safety, traffic flow and control and emergency vehicle movements." Is staff able to specifically frame its recommendation in a manner that specifically addresses that language in terms of the suitability of this site plan as to "safety" "traffic flow" "control" and "emergency vehicle movements"?

Mr. Buchwald said staff is recommending denial because without the proper right of way as required for future road improvements of Kings Highway, the site layout will be unsuitable with regards to safety, traffic flow and control, and emergency vehicle movements.

Board Attorney Walker said thank you.

Mr. Reilly said we had this, I think, a couple of months ago, maybe, something similar to this. If we approve something like this and the County doesn't approve, how does that affect...I mean, if we approve something and they won't allow them to do something...I think it came up with something off of US 1 or something, what happens in this situation? They still have to go through the County to get their and resolve that there, is that? I don't know who can answer that question.

Mr. Margotta said hopefully, Mr. Powley can answer some of this. But the basic situation is that we are trying not to set that up again to where the applicant is in the middle of that kind of fight. Staff happens to be right behind the County on what they are trying to accomplish here. The other situation, I believe, was much more up in the air and a complete speculation is to whether the County would agree to it or not. We are not trying to speculate. We are just saying denied. There is a difference.

Mr. Yates said do we know that DOT is planning to widen Kings Highway from the east side and do we know when that is going to happen?

Mr. Margotta said I am going to let Mr. Powley go ahead and start kind of explaining some of these pieces because it does get a little bit technical and the short answer is yes.

Mr. Mike Powley, St. Lucie County, County Engineer said I appreciate the opportunity to come and speak with you. I can speak to the DOT's efforts to widen Kings Highway. As you know, in 1994/1996 they prepared what's considered the 30% level of design for the widening of Kings Highway. In the ensuing years, though, that design has been deemed unbuildable and St. Lucie County requested recognizing that concurrency is an issue on Kings Highway that they update that 1994 study and they implemented what they called the Preferred Alternative Reevaluation. They hoped it would be an abbreviated PD & E,

the 30% level of plan. But the typical section changed, the right of way changed, the design changed to the extent that the Federal Highway Administration, who is a funding partner on all DOT work, said that it no longer met the intent of the original PD & E study and hence, they would have to go back out and complete another PD & E study. so they are going to have to redo the entire scope of work that they completed in 1994. Presently, as I understand it, I have had a number of meetings with FDOT on this topic and they are unable to go by any document other than that that has been approved already through FHWA and that is the 1994/1996 PD & E. We are working with them to widen Kings Highway and I would point out that it is highly unusual for me as a County representative to come to you and talk about a State road, but the situation that we find ourselves in is that unusual. The County currently has two intersections under design. These are State highway intersection. We have the one at Kings Highway and Orange Avenue and Kings Highway and Indrio. We have retained a consultant. We are paying the fees for that and we are implementing a six-lane design section at those two intersection. I anticipate by the end of the year that I will also have the St. Lucie Boulevard and Kings Highway intersection under design. We have an agreement with FDOT that at the conclusion of this design work we will form a joint participation agreement with them and they will assist in the design and funding of the remaining straight lengths of Kings Highway. We have also implemented a process whereby all development within a two-mile radius of Kings Highway is obligated to participate in a fair-share contribution for the cost of the construction of the widening and we have a number of developments that are on for that obligation to us. So there is a mechanism that FDOT has and we are following that closely. I hope that answers your questions, Mr. Yates.

Mr. Yates said I think it does. Is the problem that is changed that they were planning on taking out the C40 canal before and now they are not? That it is going to come from the east side of the road or the majority of the new work will be done on the east side?

Mr. Powley said yes, the 1994 design called for the Canal 40 on the west side of Kings Highway to be relocated 80 feet to the west, development particularly the gas station on the corner, if you recall the big Pilot/Marathon. Really, that prevented that scenario from playing out. The new plan is to take all the roadway from the east side and work it all the way up north and then come back across the C25 and then they will take it from the other side. But, again, that study has to be completely redone. So I have met with DOT and they are aware of this development. In fact, they are aware that I am here tonight speaking with you. We work closely with them. But the 1994 plan that called for the canal to be relocated is deemed unbuildable at this point.

Mr. Yates said thank you.

Chairman Bergman said any other questions?

Mr. Johnson said I am going to have to go back to the County's trips and level of service slide, if you could answer some questions. Where do we obtain these numbers and why such a large discrepancy between what the applicant is presenting and what the County has shown?

Mr. Powley said that's an excellent question. Me not being a traffic engineer and being completely truthful with you in that regard, the way that the County is compartmentalized, if you will, the Growth Management handles concurrency evaluation and this work came through them with a consultant. I think it was possibly Kimley-Horn, but I can't speak truthfully to that right now. But they developed this slide. This slide came from a presentation that was presented to the Board of County Commissioners about a year ago, when we became aware that Kings Highway was a constrained corridor to us.

Mr. Johnson said I guess at this point that came from your consultant and that obviously they did their own evaluations and study at these intersections and/or these sections of roadway. Did they use projected numbers such as what the applicant maybe as presented or where they using factual information, do you know?

Mr. Powley said I was present in that meeting when this data was presented to the Board. This is as it says on the top, this is the existing and committed trips and I think perhaps some discrepancy that we see between the two consultants might be attributable to what they are considering committed trips. I mean, if they know of all the developments that the County has approved and which ones should be committed and which ones should not. Again, I am not a traffic engineer and really can't speak more than that on this issue.

Mr. Johnson said ok, thank you.

Mrs. Olson said I have a question for you regarding the Peters Road access. Can you address that?

Mr. Powley said Peters Road is a County Road. It is what we called a milled road, which is not a paved road. We have taken asphalt millings and it reduces our maintenance obligation on what would be otherwise a Coquina road. We place that on there per County standards, but it does not meet the all weather impervious surface that we require. We have since then in some areas where the millings unravel, if you will, it failed to bind, put a real quick course of asphalt on there again in the effort to minimize our maintenance. But that roadway is deemed equivalent to an unpaved road and before the applicant could obtain access to that, it would be required to construct a County standard roadway, which would include paved shoulders, 12 foot travel lanes and a sidewalk the full length of their property from the nearest paved access, which I believe, is to the south near where the Cracker Barrel and the hotel are.

Mrs. Olson said unless the applicant does that, not agrees to it, but unless they do that, they will not have access to Peters Road?

Mr. Powley said that is correct.

Mrs. Olson said however, their traffic impact study assumes that a lot of their traffic will be going out Peters Road, is that correct?

Mr. Carlin said that is correct. I believe the percentage was approximately 30% would be to the east.

Mrs. Olson said so, basically, unless this applicant agrees and I believe at this point, the applicant has not agreed to bring that up to County standards, Peters Road, unless the applicant agrees to do that, this traffic impact statement is completely invalid because they couldn't use that access anyway, correct? I mean, because it would totally eschew the numbers.

Mr. Carlin said if the applicant did not pave that portion of Peters Road, then the traffic distribution would certainly change and that would certainly influence where the trips were going to the north or to the south and the other surrounding roadway intersections, roadway links. I don't know what the affect would be with the redistribution with that scenario. That would have to be reevaluated, I guess.

Mrs. Olson said they would need a new impact statement.

Mr. Carlin said the City Traffic Engineer would have to review that.

Mrs. Olson said thank you.

Chairman Bergman said any other questions?

Mr. Knott said just one more if I could, Mr. Powley, did you say that Kings Highway is a DOT road or a County road?

Mr. Powley said that is a DOT, State Road 713.

Mr. Knott said David, based on that, normally when an application comes to us, the project gets this far where they are getting a driveway on a DOT road, they have evidence, I didn't see it, of a pre-application with the DOT for their driveway connection or their roadway connection. Would not the DOT step in at this point and say "fine, we will give you your connection but you have got to give us a 110, we have to fill out this right of way off of your property." Has this not happened?

Mr. Carlin said I do believe correspondence has been provided from FDOT for preliminary access to Kings Highway and I believe the representative, as of today, did send something over this afternoon. I did not get a chance to review that, but maybe he can shed some light on what that document entails.

Mr. Knott said if what Mr. Powley said is correct as far as they have now shifted to the east, I am sure at their pre-application meeting would bring this to their attention and say "we cannot..."

Mr. Powley said if I may again, FDOT is required to go by as guidance the only approved document that had related to Kings Highway which is the 1994 plan which indicates all the right of way would come on the west side which would require the relocation of Canal 40. That is not longer deemed buildable and they don't have a document other than that to go by.

Mr. Knott said where does that leave us?

Mr. Powley said they would utilize the document that they have which says no right of way is needed from him.

Mr. Knott said ok, thank you.

Chairman Bergman said any other questions?

Mr. Johnson said on Peters Road, do we know the distance that is requested of the applicant to be paved or improved? It says from their northern property down to roughly Cracker Barrel, you said?

Mr. Carlin said I believe that distance is approximately $\frac{1}{4}$ mile at the most at that, I think, $\frac{1}{3}$ of a mile, similar to that distance. I don't have specific measurement.

Mr. Johnson said that's fine. I guess I am leading up to this question is there a program that the County would have of a fair-share contribution to improve that right of way that this applicant would be privy to?

Mr. Powley said traffic is such that it would not qualify for the fair-share contribution, out right paving would be necessary.

Mr. Johnson said ok. I can't remember what it was called, what is the new regulation that went in through the State of Florida?

Mr. Margotta said I believe you are talking about our Concurrency Management/Proportionate Fair-Share and that is exactly what Mr. Powley is referring to except he is going the other step is because there is so much of a traffic volume expected from this you can't kind of proportionate fair-share. You have to do the improvement and that's basically it, right there.

Mr. Johnson said ok, thank you.

Chairman Bergman said any other questions? Is there anyone here like to speak on behalf of the site plan application?

Mr. Albert Moore said to my left is John Bruhn. We are attorneys representing the applicant tonight. Just to start off, we have quite a few people that are on our team. I am going to try and make this short for you. Tell you a little bit about what we have done before we came in front of you tonight and then try to address myself some of the issues that have been raised by the Board and their questionings and by the City staff and the County. And then if you have any other questions, we may have one or two of our consultant come up to speak to you. Just to start off on a positive note, one of the things that we hear a lot in Fort Pierce is that we don't have enough commercial space. We don't have enough really good commercial space here in the City of Fort Pierce. As you can

see from the drawing, this is going to be an absolute beautiful commercial center. Nobody is denying that. We are going to have beautiful landscaping. The buildings are going to be beautiful. The entire project is going to be a benefit to the City. One of the other things that the Board should consider is that the plan of the applicant is to have the buildings condominiumed so that way people are responsible for the maintenance and it is not going to be something where there is going to be one owner leasing it out and there is going to be all kinds of maintenance or code problems. So these are going to be owned by the people that are inside of the buildings and that is one of the other things that you should consider. Also, I would like to point out that there was a question as to whether or not the applicant had responded to some of the issues in regard to FDOT and in regard to traffic analysis and some of the concerns that the County had. Let me just start off by saying that when John and I were first retained on this project, we went to the Commissioners, we went and we talked to Mr. Schwerer, the City Attorney, and we basically said "look, this is the type of project that we want to bring into the City, what do you think?" It is not like we were just coming in and were we just try to ram this project down anybody's throats. We got input from the Commissioner. We got input from the City Attorney. We talked to them about storage issues. We talked to him about paving the interior roadway. We talked about the connection to Peters Road. We talked about the location of the reservoir or the retention pond. All those issues were discussed with the applicant. All those issues were discussed before we even came to the staff level. One of the things that I think is interesting is that we go back and forth with staff on any of these projects that we represent applicants on and we always hear the same mantra as is you have to meet Code, you have to meet Code. This is a project where as Mr. Margotta indicated to you, we have met with all conditions under your City Code before you tonight. This is not something where we said "well, we met 95%, but we are asking you to just to give on the other 5%." We have met with every condition of your City Code. I guess the two main issues that really we need to respond to that there are questions about: one is the traffic issue as you heard once you ferreted out with your questions, you have the City Engineer who says that he accepts our traffic expert's analysis, saying that it meets with City Code. You have the County Engineer, representative from the County Engineer, who says to you tonight that he is not an expert on traffic, but it is not in compliance with the County. However, he has not provided you any information to say why our expert has not indicated what the County would like to see. Additionally I just spoke to our traffic expert and she indicated to me that yesterday was the first day that she heard that the County had a problem with the traffic count and the City has approved our traffic count up until, I guess, yesterday. In regard to the right of way, what I would like to say about that is that really to me it is just mind boggling that you have the City is saying that their Code does not require the additional right of way that they are asking for. You have the County basically saying "we want it because FDOT may put it in another location than what it is currently designated," which was the 1994/1995 initiative. You have FDOT basically saying you are in compliance. We have the approval from the FDOT saying that you can come and pick up your permits because you are in compliance with our road. Now, I will be frank with you. the joint planning they have between the County and the City's, those can be very beneficial, but this is not what that was meant to be to say that we meet everything in your Code, the County has nothing contrary, other than them saying that "well, its failing, we don't have the number, but its failing." Then you have FDOT stating that we are in compliance. Additionally, FDOT, and our engineer is here and has the documentation from FDOT

stating that there were two ideas, neither one of those have been approved by MPO or codified. There are two ideas. One is to go ahead to have the right of way on the property which would be the east side of Kings Highway. The second is over on the canal. That is their second option and they haven't said that they are not going with that second option. Additionally in their report, it states that the option taking the right of way on our side of the property would be more expensive because of the acquisition costs. Now, to be quite frank with you, basically what we have here legally is you have a taking. You have taking the property away without any type of compensation and that is what I have a problem with. Mr. Margotta, and with all due respect to the City and to their position, Mr. Margotta said that what we are trying to do here is anticipate problems. The problem is that really there is no legal basis to deny the application nor should it be denied because it is a good project and we are in compliance. But that is really the high and low of it and I can tell you as I sit in front of you tonight, that I have been in front of the City, the County, other City Boards, other County Boards, and I come in and I try and fix things and we have bent over backwards on this project to try and fix things. This cannot be fixed. We cannot give that right of way or those two buildings to the east disappear and this is after we consulted with the Commissioners, we consulted with the City Attorney, and said "look, this is what we want to build." You have to understand, too, when the applicant bought this property and had this idea in mind, he has to do his due diligence. So he does his due diligence and he looks and he looks at the City Code, he looks at the County Code, he looks at the FDOT, then he comes in front of the City when he goes to plat this property, guess what? When it's platted, just like you see here, no mention of it. Nobody says at that point. So he has purchased the property. He has platted the property. We go to everybody to make this as nice as we can and then we are told we have to give on something that would completely ruin the project. That is why we haven't given, not because we are trying to be unreasonable or because we just don't care what staff says. But this is just this is a time when we just can't give nor should we. Nor should we. If you have any questions in regard to the eminent domain issue, unfortunately because of staff's position on this, my applicant has had to retain an attorney on eminent domain, which my partner and I are not experts and he is here as well tonight to basically tell you that this is a taking. So, if you have any questions for me...I don't know if you want to add anything, John?

Mr. John Bruhn said just on a lighter note, I would like to talk to you that we are agreeing to pave Peters Road all the way up to the property line and to extend it over the private property all the way to Peters Road at our own expense. So, that would address Mrs. Olson's question.

Mr. Reilly said back to the Peters Road. That's from the County recommendation from Cracker Barrel restaurant to...

Mr. Bruhn said to the far end of our property.

Mr. Reilly said ok, my second question is and I am going to ask you the same question I asked our staff, let's say we approve this thing, where does go if the County is not going to give you a right of way, where is it going from there with y'all?

Mr. Moore said I don't know how they can deny it. They don't have anything in their Code that says they can. Don West of the County wrote a letter to us saying "we don't have any jurisdiction". They don't have anything that requires us to put that in there and if they say "well, we are relying on DOT" Neither does DOT. They are ready to give us our permit.

Mr. Margotta said what Mr. Moore is telling you is true. That is staff's whole position. They meet our Code. Therefore they are before you. However staff has not going at this with blinders. We recognize and we see that this is going to be a potential problem and that the right of way is coming and I recognize the applicant's position. That's why I said "let's go before the Planning Board and the City Commission." They have the discretion to decide this, although all we are going to do is keep disagreeing and then staff is not going to agree with you. You get to make the sales job and prove to them why it is ok to build something because they have the right to build it.

Mr. Reilly said our City Traffic Engineer says and all the departments said they have to no problem with it. Isn't that what we said in here in the package, I think?

Mr. Margotta said they meet our Code, but the overall staff opinion is that we have a problem with it.

Mr. Reilly said County has a problem with it. County doesn't have any jurisdiction over it?

Mr. Margotta said County is maintaining the road. The joint local planning Mr. Moore was referencing, we have an interlocal agreement with the County that we consider their requirements. We are not obligated to enforce them; however, generally speaking they usually make sense. It all works out. We are at quite an impasse here and the discretion is the Board's. We are literally laying that in your laps.

Mr. Yates said is what you are saying, bottom line, you want to build this development and then require DOT to condemn the right of way they are going to need in a year or two, a few years, to widen Kings Highway?

Mr. Moore said I would understand a concern if FDOT was going ahead and had made a decision that they were going to widen on our side of the road. We just were saying there was nothing from the County that says we can't do this and we meet the City. The point is that FDOT has not decided that they are not going to put it on the other side of the road. We shouldn't have to wait with our application until FDOT decides and they are not telling us to wait. They are saying come pick them up. And there is a lot more development that they are going to have to take from our side of the road then from the other. FDOT has acknowledged and our engineer can come up and give you the documentation if you need it. They have acknowledged in their feasibility study that it is going to be more expensive if they do the right of way on our side of the properties as opposed to the other.

Mr. Yates said so DOT isn't indicating that they are going to go on the right side or the east side of the road?

Mr. Moore said that is one option.

Mr. Yates said or is that a disagreement between you and the County? You are saying DOT doesn't have plans to widen on the east side and the County is saying yeah they do have plans.

Mr. Moore said that is one option. But that is not the only option they found in the feasibility study. The other option is putting it on the other side of the road.

Mr. Yates said but what's their bottom line? Are they saying they are more likely to go on the east?

Mr. Moore said they haven't given us a bottom line. If we gave us a bottom line, then we would have to make a decision there, but they haven't given us one. Staff says give it on this side just in case. Ruin your project, just in case. That is the problem that we have.

Mr. Knott said I found your pre-app letter from the DOT when you all met about the driveway. Do you have a current one? This one is expired.

Mr. Margotta said I can answer that. I actually looked at it. David did not look at it, but I did. DOT is not specific about the right of way dedication. They just need to see proof that the right of way dedication is going to happen and that's the 23 feet. That was mentioned in the staff report.

Mr. Knott said for their right turn land or what have you.

Mr. Jeff Iravani, Civil Engineer, said not only do we have the pre-application finding or approval from DOT, we also have a NOI, Notice of Intent to Issue Permit. Basically they have approved our project for construction. Also I want to elaborate on the right of way issue. Every road has a right of way and an ultimate right of way. The ultimate right of way is on the west side. This is the only approved ultimate right of way there is. When DOT goes through the process, they come up with the ultimate right of way and it goes in front of the County MPO. It gets approved. Then they go through a two-year process that they call PMD, public hearing, etc. In 1994/1996, it was approved on the west side. Now, lately, I think September of last year, DOT is looking for other options and they have come up with a couple of studies. One of them shows it on this side. They also have studies and a State feasibility that shows it on the other side, but a lesser of the right of way, they are trying to cut the cost. But this right of way that we are asked to give is not approved by DOT. It has not gone in front of your MPO for approval. It is just a feasibility study, that's all that is to it.

Mr. Knott said let me ask Mr. Powley, if I can. What is the County hanging their hat on? Because you said there were other projects on the hook for the right of way along Kings Highway, is that correct?

Mr. Powley said that is correct. I would point out for point of clarification listening to the discussion. St. Lucie County has a land development code requirement for right of ways. Kings Highway is on our long range transportation map and our right of way protection map.

It is indicated to have 160 feet of right of way for this straight land development code. We are not relying on DOT for this number, this is St. Lucie County. The canal on the west side is considered an impediment per St. Lucie County Land Development Code. That allows us to request the right of way on the other side of the road. So, when you hear the number 160 feet, I don't want you to be confused to think that's what DOT says they need. That is straight St. Lucie County Land Development Code. And the requirement to take it on the east side is based solely on the St. Lucie County Land Development Code recognizing that canal as an impediment. That being said, Mr. Knott, we have a number of developments along Kings Highway and we are requesting right of way in conformance to all of these requests we are making here. We have achieved it everywhere. This is the sole instance I am aware of where it is being contested.

Mr. Knott said you are asking for the full 110, is that correct? On these other projects?

Mr. Powley said for 160 feet. We are asking for 110 here because we have 50.

Mr. Knott said oh, I see. The 110 is in addition to the...your not even go off of...I thought you just wanted to...ok. That being said, though, the applicant is going to get their roadway connection permit from the DOT, which they are almost there. What say so do you have in stopping them or exercising this?

Mr. Powley said I don't believe I have any.

Mr. Knott said ok. Thank you.

Mrs. Olson said we are not here to determine whether or not this meets code, correct? Our board is not here to determine whether or not this project meets Code, that's staff's job. If it meets Code, it comes before us and then when it comes before us, we determine whether or not we take it to the next step. Are there public safety issues, traffic issues that are not necessarily covered by Code that we look at to determine whether or not this is the right project for our public? So, whether or not it meets Code is not necessarily the question we need to be asking ourselves. The question we need to be asking ourselves is are we creating a problem by approving this. And I don't know if we are. But whether or not it meets Code is not the whole question that we have to answer. Please don't think that we don't want this to be developed. This is not the issues. The issue is we need it to be developed right for what is going to be happening down the road in a few years. We have to be able to look beyond what legal conundrum we are in the middle of because studies are outdated. That is our job. Common sense tells me that we do have a problem coming down the road if we approve this as it stands. If, say, DOT comes down the road and says "well, we need the 110 feet," how far is that going to come in to your property line? Is it actually going to come into the offices?

Mr. Moore said yes. I mean, if they want it one day, they are going to come in and take it.

Mrs. Olson said yeah.

Mr. Iravani said first of all, DOT is not even asking for 110. DOT is considering 76 feet. DOT only wants 126 feet right of way. This is a DOT road. County is asking for 160 feet. DOT is asking for 76. They are not asking, this is one of the options that they have. Number two, we are not creating an unsafe or hazard. There is no reason for Kings Highway not to be built on the other side. The reason Kings Highway was not built, I was told by DOT, they went to MPO, they did not get the funding, and that is why the project did not go forward. If this project gets built, there is nothing from DOT from widening the road on the other side. Relocating the canal is not that difficult; takes a backhoe and some expense. It is a lot more expensive to acquire commercial property than to relocate a canal. I have seen it done before, they do it often enough. It is a cost, but not a big debit. It is not prohibited. Nothing is going to take the DOT from six-laning this road on the other side, if this project gets built.

Mr. Yates said I may have missed this and somebody may have already mentioned it, did the applicant and the City and the County have a sit-down with FDOT to try and determine what was going to happen?

Mr. Iravani said we have submitted our plans to DOT have gotten approval. DOT is going through the normal process they go through. They have the feasibility study. They are going to come up with an option. They are going to come before the County MPO. They are going to offer that option. The MPO at that time is going to decide what they want to do with the right of way. So that is an ongoing process. But that is something that DOT does. And after whatever MPO decides on the location of the right of way on our side or the other side, then it goes through a two-year P & D process, public hearings, etc. and then at that time it gets approved or denied. So, right now the process we are talking about is going forward. But the only approved right of way, I want to mention that, the only approved right of way for the Kings Highway is on the west side. That's what they have approved. There is nothing approved on the east side.

Mr. Yates said I understand that, but I think my question was did you sit down with FDOT and the City? I see a letter from Mr. West dated March 26th asking you to consider scheduling a meeting with FDOT and the City to discuss the issue further. Did that ever happen?

Mr. Nathan Nason of Nason, Yeager, Gerson, White & Lioce in West Palm Beach, said I think I can shed some light on your question. I was retained when it was initially brought up that DOT might be looking at relocating this particular right of way. When I was retained, I issued some public records requests to DOT and basically went back to them and said "listen, there is a specific statutory mechanism that you must use if you want to relocate a right of way. Once you do that public notice, public hearing, go through that then we can recognize that and we can deal with it. But you haven't done that here. DOT recognized that they did not have the ability, there is a Supreme Court case out there dealing with the FDOT saying "FDOT, you can't stop development plans in something that you don't know you are going to have as a transportation corridor. You've got to put it in there pursuant to that Statute." So DOT recognized that and FDOT, on Monday, today, I guess, issued a Notice of Intent to issue their permit to us. We got past FDOT. Then we heard that the County was bringing up some of these issues. So, we went to the County and we said "I

don't see where you have jurisdiction at all over these issues." Do you know what? The County wrote us back and said "indeed you are correct". Specifically in that letter, it is recognized that the property is located within the City of Fort Pierce city limits and therefore the County does not have jurisdiction to require dedication of the right of way. So we dealt with the County and we are left with the City. Respectfully, the County is asking this Board and the City to stick its neck out on something that it has no business doing. If the City wants to enact a right of way corridor, it can do it. But again, you have statutory requirements that you would have to follow in order to do that. Supreme Court says you can't stop development while all that is going on. you've got to issue the permits and in that case, for the record, is Joint Venture, Inc. versus the Department of Transportation, cited as 583 So. 2d 622. 1990 Supreme Court case, the FDOT recognized that it must live by that case. County by implication is recognizing that it's got to live by this case, and I respectfully submit that this Board, as well, must live by this case. This cannot be an issue for your consideration. It cannot stop this permit.

Board Attorney Walker said may I have an opportunity to briefly look at that case. (To Mr. Nason) Do you have that and do you have a copy of the County letter that I can look at?

Mr. Knott said while MR. Walker is looking at that, can I ask Mr. Powley another question? These other projects that the County...since you are that catalyst for this whole thing, it appears, these other projects you have...on the hook for the full 160 foot right of way, where are you with those projects? Have you actually reclaimed that property or do you have a contract with them to proceed with that knowledge?

Mr. Powley said at this point in time, some of those projects are still working their way through our growth management process and development review. They are also obligated, in addition to the donation of the right of way, to participate in the construction funding of that through a fair-share mechanism. The County Attorney has been reviewing the mechanism where by that would happen. I am not aware that we have finalized that. So a lot of folks are waiting for us to finalize our fair-share contribution so that we can step forward and donate the right of way and pay the money and they can go on with their development.

Mr. Knott said how many projects do you that are on hold because of this?

Mr. Powley said I would be reckless to guess to be truthful. I meet with a number of folk every week who are waiting on us to complete our review of the Kings Highway corridor.

Mr. Knott said but you do have applications that are...this is a pivotal question for them also, is that correct?

Mr. Powley said I do have applications and I have Kings Highway and Orange Avenue under design right now and all the money that we have been spending thus far has been developer donations. It is part of their fair-share contribution. If they pay too much, they will get money back. But they want to move forward such that they will write a check for intersection design to begin.

Mr. Knott said ok, thank you again.

Mr. Moore said if I could very briefly respond to that. One of the things that I think should be made clear is that we had a conversation with the County as far as fair-share contributions and we asked what contribution they were looking for and they told us that they did not know. So, we didn't know what we were supposed to do at that point and said "what formula are you basing it on? Well, we really don't have one." So you are asking us to go ahead and contribute before you sign off on this project, however, you are not giving us any figures or formula to come to a figure. I don't want you to think that we just disregarded the request for fair-share contribution. We were just never told what they were asking for.

Mr. Knott said would you be willing to...if they give you a number or have you closed the door or is it still open?

Mr. Moore said no, it depends on what the number is. The only door closed is the one on the right of way really.

Mr. Knott said if we condition our approval subject to you all working with either our staff or the County staff on this...

Mr. Moore said on the contribution?

Mr. Knott said yes.

Mr. Moore said yes, we would be fine with that.

Board Attorney Walker said respectfully. I have been given a copy of correspondence from the County dated March 26, 2007 from the Public Works Director and that includes the following provision language, it states "the Interstate Business Park is located within the City Limits of Fort Pierce and Kings Highway is a State Roadway, therefore County does not have jurisdiction to require dedication of the right-of-way for future Kings Highway widening." I have also been given this case of Joint Venture versus Department of Transportation and while I have not had an opportunity to independently review this issue, it does have language that the Board should be aware of and with your permission I will just read it, "In this case, DOT suggests that section 337.241 is a permissible regulatory exercise of the state's police power because it was necessary for various economic reasons. For example, without a development moratorium, land acquisition costs could become financially infeasible. If landowners were permitted to build in a transportation corridor during the period of DOT's preacquisition planning, the cost of acquisition might be increased. Rather than supporting a "regulatory" characterization, these circumstances expose the statutory scheme as a thinly veiled attempt to "acquire" land by avoiding the legislatively mandated procedural and substantive protections of Chapters 73 and 74." Mr. Chair, our Code provided at 22-58(g)(2) and this is what the Board itself needs to be looking at as a standard "A suitable layout will be used for access points, on-site drives, parking, loading and unloading..." and it defines "suitability" at least in part as something to be determined by the potential impact of these facilities on safety, traffic flow and control, and emergency vehicle movements. We do have staff testimony that in conclusively outline does support that factor. In other words, staff recommends that the site plan as submitted may potentially

impact safety, traffic flow and control, and emergency vehicle movements. However, I would recommend that the Board insist on a greater showing than a mere impact on a right of way option that apparently the County wishes to hold open as an option, but which has not yet been definitively resolved upon by the County and the State. In other words, this Board should insist on a showing by the City potential impact that goes beyond the mere fact that this may impact on an option that it still pretty...yes. Thank you.

Chairman Bergman said your welcome. Is there any other questions of the applicant from the Board?

Mrs. Dixon said I have one question with regards to something to the Peters Road aspect. I know that you said you had no problems with developing that part of the road, but you didn't say when you intended on doing that. What is the time frame on that, if this is approved? Phase I, phase II, Phase III, when are you going to do that?

Mr. Iravani said we have actually submitted plans to the County for a pyramid for a connection to Peters Road. As soon as we are moving forward with construction, we will complete our plans that include the improvement of Peters Road per County request. It will be part of our Phase I. Thank you.

Mrs. Olson said Mr. Walker, I am not sure I understood what you felt we should look for from our City staff. What are we supposed to be looking for from staff?

Board Attorney Walker said if you will allow me? This is an unusual situation for us and so perhaps I am not making myself as clear as I should. The Board has been told in a rather conclusory fashion that the development plan presents a potential impact on safety, traffic flow and control, and emergency vehicle movements. I, myself, did not really hear any factual basis for that conclusory recommendation beyond the fact that there is a potential right of way option on the east side of Kings Highway that the County would like to keep open for the time being. I would recommend to the Board that it insist on hearing more facts supporting the conclusion that this site plan impact on safety and that it impact on traffic flow and emergency vehicle movement over and above that mere expectancy that we are hearing for the east side of the road.

Mrs. Olson said so an example of the way that we may be able to approach that is to say we table this until next month until we can find out exactly what the details are.

Mr. Margotta said we have all the information here.

Board Attorney Walker said Section 22-143 does give the Board the option of tabling an application to a time certain when that is being done for the limited purpose of obtaining additional information.

Mr. Moore said I think that Mr. Margotta has indicated that we have what we have. There is not going to be any additional information. Just for the Board edification, the Fire Department has signed off on this, as well. So, there has been an independent entity that looks at the safety and welfare of the people in regard to traffic and they have signed off on

it as well. I don't know what other information...you have what's in front of you and the reason why Mr. Walker is asking for that...there is no response to it. There is nothing beyond the allegation that it impairs the safety because basically they want the right of way. And that is not enough based on the case that was submitted.

Chairman Bergman said any other questions of the applicant?

Mr. Johnson said I want to move on, but potential impact. I applaud staff for going into this in such detail and whether or not we are working with the County, which we are, which is very good. But from this stand point, emergency access, I would have to respond to that comments by saying yes, the Fire District has approved this site, but I bet if you were to ask them about Kings Highway, they are not going to be too happy. Because if they were to have an emergency on Kings Highway, there is a potential impact for this development to impact a rescue truck in a situation. But going beyond that, did you guys look at...I love the site, but I don't want you to remove the buildings, but why couldn't we make building 4, building 9 a two-story complex instead of having the two buildings on the front, just in case. I don't care about the right of way. I know the right of way is needed, because Kings Highway is at a very low grade, in my opinion. It might be a grade C, but I don't like a grade C either. So, what other options did you guys look at to just try to work at this and work forward?

Mr. Bruhn said we have the two turn lanes coming in off of Kings Highway. We are going through private property to extend the road to Peters Road so that people have a second access. We have done, I mean, everything we can to alleviate traffic on any one road.

Mr. Johnson said ok, I guess that's all I have for now. Thank you.

Chairman Bergman said I think the question that probably needs to be asked is have you done any design revisions in terms of relocating these buildings should FDOT down the road require this additional right of way so it doesn't impact your property or impact your buildings?

Mr. Moore said what I think you need to look at is that if that right of way comes over on the east, it is not just that it is going to cut into the buildings and you can put another floor on there, it is cutting into the parking. So then we are out of compliance with the City Code because we don't have enough parking to get the square footage...

Chairman Bergman said unless you address it in advance. If you were to address this site in advance of, for instance, if you were just to assume that they are going to take this additional right of way at some point in the life of these buildings, then you've made every effort to deal with the future expansion of Kings Highway should that ever happen. I mean, I think that is going to happen at some point with all the other things happening. But obviously, FDOT can't make up their mind what they are going to do. The County basically has in their Code that they would like 160 feet but they don't have the authority to request it. And yet, we all know that something virtually is going to happen to Kings Highway when FDOT decides to make up their mind. Obviously at this point, they are holding you guys up because they haven't made up their mind. But I know just from experience that this site

could probably be reworked to get the additional parking and maintain the square footage that you should have. We are only talking about 4% of your site, if you were to take 60 feet across the front of your property. It is like 41,000 square feet.

Mr. Moore said yeah, but that could apply to any road. Every road is going to have to be expanded. But the only thing that we've got from DOT is saying they are going to build it on the other side of the road. I mean, that's all we've got.

Chairman Bergman said I understand. Like I said, I am just throwing it out there to see if...because if, for instance, this is the devil's advocate here, if you came in and said "ok, this plan that we have has provided the additional right of way that they are going to need at some point, whenever that might be, and we have fully developed the site just as it stands, same number of square feet, same number of parking spaces, we may have a two-story building in there, but we have addressed all of these comments and if you guys need the right of way it could be an easement." Boom, it's there. Now there are no issues with your site. I am just wondering if that has ever been discussed.

Mr. Mark Reiker with Reiker & Associates said we are the project managers for the property. Actually, I want to make sure that the attorneys don't sit in the design meeting so I do want to weigh in.

Chairman Bergman said and that's a good thing.

Mr. Reiker said probably. But we did attempt several different alternatives that could have saved the development from the square footage basis perhaps and still accommodated the right of way. The fact of the matter is that is not really possible here. when you begin to look at the encroachment of the right of way into the property, it not only ends up residing upon parking and buildings, but then you have set back issues from the right of way required to the buildings and given, if you can imagine, a typical two-lane parking area is 60 feet wide. We are talking about almost 110 feet here. So you have virtually taking out two full parking lanes and imagine then pushing back into buildings. It is a far more substantial impact then it would initially appear if you are just going to override the roadway onto the plan. So, we did examine other options and really determined that there would be such a substantial impact on the property that they were not feasible.

Chairman Bergman said sorry to hear that. Were there any other questions of the applicant?

Mr. Yates said can I ask Mr. Walker if you had additional time to research the case that was provided to you to advise the Board on our situation?

Board Attorney Walker said allow me to respond to that question by asking another question of staff, please? Thank you. specifically, do you see any potential impact on the safety, traffic flow, and emergency vehicle movements on this site plan other than what has been discussed in terms of the right of way issue on the east side of the road, which according to this letter involves a matter that is not within County jurisdiction and where I understand the City's Comprehensive Plan does not speak to that and where DOT does not have a formal

right of way interest on the east side over and above what has been provided for in the plan? other than that, is there any thing else here with that site plan that is wrong in terms of this factor that I am trying to accommodate taking into account 22-58(g).

Mr. Margotta said all of the potential problems that staff foresees substantiated or not are all tied to the right of way expansion. Once you expand that right of way, it causes the redesign of the project and I am sure that they would design it in a safe manner then. But everything we have is tied to the potential right of way.

Board Attorney Walker said alright. Then I answer the question in these terms: if a site plan meets the municipality's Code of Ordinances, the City is required to approve that site plan subject to a certain amount of discretion that it is given to tweak the suitability of the site plan. if a building is poorly located, the City has the ability to require a modification of the site plan to move the building and that sort of thing, but the City does not have discretion to, in my opinion, deny a site plan merely because of a potential right of way that may exist at some point in the future that the County has an interest in, but concedes that it has no jurisdiction and where the State itself has not provided for that, Mr. Chair, I just can't recommend that the site plan be denied for that reason alone. And that apparently is the position that we are in here tonight.

Chairman Bergman said thank you.

Mr. Margotta said maybe it wasn't even clarified, but this is a conditional use. And conditional use basically opens up the door to a lot of subjectivity. Staff's pointing to those two sections and maybe we relied too heavily upon that, but we believe that it is reasonable to expect that this road is going to expand or the right of way is going to be needed and it is going to cause some problems why can't they just redesign it or at least allow for the fact that the right of way is going to be expanded and we are looking at it from a conditional use situation. So, regardless of the references, like I said before, the plan does meet our Code. It is a safe plan the way they have it for the next, I don't know, year, two years, before the actual right of way is needed and everything. And then we will have a situation where the public has to spend more money to go in there to move those building to acquire that property. It's just that we foresee that and we are wrestling with the same thing that you are wrestling with. All we are saying is that you do have the subjectivity.

Mr. Reilly said just a quick questions on that. We are basic all this on options that we don't know what the DOT is going to do with the road. So we are just kind of guesses and putting them in a predicament because they might go to the canal side. We don't know.

Mr. Margotta said that is absolutely correct. That is why I brought them forward, because they have the right, they have a plan that meets our Code, and there is no reason for us to hold them up. If certainly we are at an impasse and they are asking to bring it forward and they feel like they have the rights also, then I just told them "ok, the sales job is yours. I don't know if I am doing you any favors." This is the Planning Board and they still have the City Commission to try and convince.

Mr. Yates said may I ask Mr. Walker another question? Does the fact that this is a conditional use give us any more discretion without further articulated reasons from staff?

Board Attorney Walker said let me just point out that the meeting agenda item for requested action specifies approval of a site plan and that's what I have been looking at. Now, the conditional use section does give greater discretion in that regard to impose conditions that will make it more compatible with adjoining properties. I am looking for the section.

Mr. Margotta said the second page of your file is the Application for Conditional Use. It was incorrectly marked on the agenda. It is a conditional use.

Board Attorney Walker said I am looking at Section...

Mr. Buchwald said refer to Section 22-76, which details "Procedure for the review and approval of conditional uses."

Board Attorney Walker said thank you. Section 22-76(3) provides the following, "In permitting a conditional use or the modification of an existing conditional use, the city commission may impose, in addition to those standards and requirements expressly specified in this chapter, any condition which it finds to be necessary to protect the best interest of the surrounding property of the city." So, there is greater discretion in considering the question of approval as a conditional use as opposed to approving the site plan.

Chairman Bergman said ok, does that answer your question?

Mr. Yates said yes.

Chairman Bergman said did you guys have anything else you want to present? Alright, is there anyone else here that would like to speak on behalf of the conditional use/site plan? Is there anyone here that would like to speak against the conditional use/site plan? What is the pleasure of the Board?

Mr. Knott said I would just for discussion before we make a motion. Just to give my feelings on the situation. As much as I would like to take advantage of the situation that is before us to prepare for the future and get the right of way, I am not seeing anything here tonight in my estimation that says anybody has any real knowledge of what they need and where they need it. In my estimation, the DOT is notorious for talking out both side of their faces because they have an intent to issue a permit here for this without even batting an eye and they've got us squaring off with possible developers in our area to do their dirty work for them and yet they are not willing to give us anything to hang our hats on. I am not very comfortable...so, alright, they build it this way and they have to come back and have a taking on the thing, well, unfortunately, that's the way the DOT works a lot. I can't see, in my estimation, in my opinion, after an applicant or a developer meets with all the agencies and gives them all opportunity at this thing and they still can't give them, in writing, saying "here is what we want, here is what we are going to do, and here is how much it is going to cost you. We want you to pay for it." We don't have any of those. It is still up in the air.

Motion was made by Mr. Knott, seconded by Mr. Reilly, to forward a recommendation to the City Commission for approval of the application subject to two conditions: 1) the roadway improvements to Peters Road to be constructed to St. Lucie County standards as part of their Phase I construction; and 2) that they enter into an agreement with their fair-share contribution for the improvements to Kings Highway.

Mr. Johnson said I agree with all those statements, but than again I think that proper planning needs to take precedents to some degree because I really feel Kings Highway is a problem. There are issues on Kings Highway. There always have been and at this point, design or no design or changes that could have been made are a moot point, but I really think there are impacts that we need to look at. It is a beautiful project and I like everything about it. Design-wise, however, I just think there is a degree of property planning and potential impact that we need to take into account here. So, I can't vote for it at this point.

Mr. Reilly said as a business owner, small, very small business, but as a business owner I can't imagine that anybody would want to have the rules changed right...I mean there is nothing more irritating than going through and having the rules changed right in front of you after you have invested a large amount of money. It would be different if the DOT already, and this may be is a prompt for the government to move a little quicker on things, but if the DOT had already said we are really going to go on this one side of the road and that is the only option we are doing, then I could say yeah. But right now, you are telling someone that you can't sign off on their project because there is a potential that they might change the rule that they have had since 1996, but there is a couple options out there so they are not sure what they are going to do. And I agree, I know Kings Highway traffic really stinks on that road, but you can't change it midstream after they have come up with the design, they have gone through all these departments and our own traffic study says that they don't have a problem with it. It is the County that I guess has a problem with it. That's my whole thing on this.

Mr. Yates said Mr. Knott and Mr. Reilly stated a very good case and Mr. Johnson has set out the other side and I am really conflicted on this. I understand wanting to go forward with your project and I suspect that this Board will approve it. I don't know what the Commission will do that this plan will go forward and we will see in a year or so DOT is widening Kings Highway like we know that they are going to have to do and apparently the County thinks it is probably going to happen on the east side. The developer will be dealing with DOT's condemnation lawyers. It is going to cost a lot of money. I wish that staff or somebody could give us something more definite about what DOT has planned. But without that, I think it is hard to vote against it.

Chairman Bergman said any other discussion?

Those voting in favor of the motion were: Mr. Harris, Mr. Hayek, Mr. Knott, Mr. Reilly, Mr. Yates, and Mrs. Dixon. Those opposed: Mr. Johnson, Mrs. Olson, and Chairman Bergman.

Chairman Bergman said this will go to the City Commission with a positive recommendation. Good luck.

The next item considered **#7 – Coral Square** – A request for approval of a Site Plan to construct a retail shopping center located on the east side of U.S. Highway 1, north of Edwards Road. The owner is Coral Square Shoppes FLA, LLC, and the applicant/representative is Kast Construction.

Mr. David Carlin said the applicant is requesting Site Plan approval to construct a retail shopping center located on the east side of U.S. Highway 1, north of Edwards Road. The 15.69-acre parcel, previously known as Coral Square Plaza, sustained a significant amount of damage from the hurricanes in 2004. As a result, the buildings were demolished and 6 new buildings will be constructed totaling 165,577 square feet. Four of the buildings to be constructed will use the existing building footprints, while two new buildings will be situated toward the front of the property along U.S. Highway 1. The property is zoned C-3, General Commercial with a Future Land use of CG, Commercial General. The properties to the north are occupied by existing retail establishments, including ABC Liquor and a shopping center, which is known as Jefferson Plaza, which are both zoned C-3, General Commercial. The property to the east of the subject parcel is zoned R-4, Medium Density Residential and currently occupied by a multifamily housing development. The property directly to the south is zoned I-1 and contains a railroad track operated by Florida East Coast Railway which separates the C-3 parcel further to the south which is occupied by a mobile home community. The parcel to the west of U.S. Highway 1 is zoned C-3, General Commercial and occupied by various retail establishments. Access to the development consists of two entrances on the east side of U.S. Highway 1. The first entrance which is the southern project entrance will serve as a one-way entrance for traffic to enter the development which you can see here is located just north of the Edwards Road and the Railway crossing. The northern entrance will serve as the primary access point with full turning movements consisting of right-turn in, right-turn out, left-turn in, and left-turn out. This entrance is signalized and will contain a dedicated deceleration lane for vehicles heading north on U.S. Highway 1 to improve traffic flow. It should also be noted that an existing driveway entrance just south of ABC Liquors will be closed to improve traffic flow along U.S. Highway 1.

Two buildings will be situated at the front of the property which will be occupied by a bank and another retail establishment both totaling 9,200 square feet. The bank will consist of three dedicated drive-thru transaction areas with an additional break away lane to prevent unwarranted traffic stacking during peak hours. In addition, the building will extend to a height of 20 feet and the other retail building along U.S. Highway 1 will extend to 21 feet and contain 5,600 square feet of floor space. These renderings give you an idea of what these two buildings will look like. The remaining buildings in this shopping center will extend along the south and eastern portions of the property and contain 156,377 square feet. Those buildings will extend to a height of 29 feet and the tower features located to the ends of those buildings will extend to 38 feet. Adequate parking and loading areas have been provided in accordance with the City Code. A fountain plaza consisting of pavers will be located between these two buildings and will contain a sidewalk that connects to an existing sidewalk along U.S. Highway 1 and a brick paver pathway between the front and rear buildings will also be provided, as you can see on the screen there the

paver connectivity that has been incorporated. Landscaping will consist of providing 527 new trees for the entire development. In addition, all refuse collection areas, backflow restrictors, and lift stations will be screened in accordance with the landscaping regulations. In addition, an outfall pipe will connect to an existing ditch located at the south property boundary. Given the size of the property, they will be using exfiltration in lieu of any type of retention or detention ponds. A traffic impact statement conducted by Kimley-Horn and Associates indicated that 9,429 daily trips would be generated by the proposed development. Of those trips, 212 AM peak hour trips and 874 PM peak hour trips. The general traffic distribution indicates that 50 percent of all trips will be to the north and 50 percent to the south. It should be noted that because the proposed development is equal in size to the existing development, the net new trips are zero for the purposes of concurrency. The report also specified that the proposed development will not significantly impact the roadway network and no other mitigation efforts are anticipated or required for the redevelopment project. A Certificate of Concurrency has been obtained for the project. All affected Departments have reviewed the submittals and have approved the proposed Site Plan based on it meeting the requirements of the City Code. As the proposed Site Plan meets the requirements of the City Code, staff recommends that the Planning Board forwards a recommendation to the City Commission for approval of the Site Plan.

Chairman Bergman said thank you. Do we have any right of way issues with this?

Mr. Carlin said I am happy to say no.

Chairman Bergman said figured I would get that out of the way.

Mr. Buchwald said actually Martin County is asking for some right of way.

Chairman Bergman said are there any questions of staff from the Board?

Mr. Reilly said to get a little educated on this, it is actually better with this area to have just the one exit out of the place than having multiple? Is that what the reports are saying? Right now, you just have the one signalized exit, correct?

Mr. Carlin said that is correct. The north access point indicated here on the screen will be the full access where they will have turning movement. It is signalized. It is directly across from Emil Avenue or Street. The south project entrance is an existing driveway cut and it doesn't function as a signal because you have the FEC Railroad which is adjacent just to the south. So, that would not be a viable option to provide any type of signalization. So that is strictly a one-way in. You wouldn't have the appropriate turning movements coming south on US 1 to make provide a full access at that particular entrance.

Mr. Margotta said I just want to add something. Maybe this will help Mr. Reilly. This is a signalized intersection. This particular development is also co-located and cross access to another retail type operation to the north, which has two entrances or two access points along US 1. Think of Sabal Palm, there is no traffic signals for that whole development, however it operates. What we tried to do by eliminating some of the

entrances is eliminated some of the opportunities for conflicting traffic and just people trying to slow down and fewer opportunities for that and smoother the traffic runs. That's the logic behind it.

Mr. Reilly said right now with this one entrance/exit, the one is just a back road that it is going to run smoother than having multiple...it is going to run smoother for US 1 is really just what the point is.

Chairman Bergman said there is two driveways in the adjacent to the property to the north that exit out.

Mr. Carlin said that is correct and I was just going to pull up the slide for that. If you look at this picture right here, what you see in the upper portion of your screen is the ABC Liquor establishment. Right in this area, right here. And this driveway entrance and the driveway entrance here and the driveway entrance here, those two yellow areas, do not meet the minimum separation requirements as defined in the City Code. So, that is a non-conforming type of driveway spacing and to improve access an US Highway 1, which we all know is a constrained type road. When we had the pre-application meetings with the applicants, one of the ways to improve upon this site, to improve US Highway 1, was to close off this particular entrance and improve the overall flow for the road.

Mr. Reilly said but we are referencing the National City or Riverside that is in the next plaza up. Is that what we are referencing and we also have access through? Isn't there a set of buildings that you also can get out of this place?

Chairman Bergman said yes, this driveway that goes along the front eastern most building, that driveway right there in front. Right where his arrow is continues north. I think there is a landscape drive currently that goes through there that connect to that point.

Mr. Margotta said do you know where Out of Bounds is?

Mr. Reilly said I know the site well. I am just saying when you study this and we say the best in and out of the site is going to be at this one exit to be signalized...

Mr. Carlin said given the fact that 50% of the traffic will be going north and 50% south, having traffic exit the development at a signalized location would certainly be preferable as opposed to traffic making a left hand turn at an unsignalized location, just from a safety standpoint and from a traffic flow standpoint. The other thing to think about here is that there is a rail line that is just to the south of this development and there are signalization timing coordination with those signals when FEC has a train going across. It does prevent certain left-hand turn movements at the signal. So that is an important component to that access point.

Mr. Buchwald said to provide further clarification, one of the problems of US 1 going through the City is the number of driveway or curb cuts and this closes up one of those

curb cuts. So, you cannot build a shopping center with these driveway cuts as currently maintained. We are starting from scratch because they do not meet the requirements of Code. So, this project is correcting a non-conforming condition and improving, at least for that small portion of US 1.

Mr. Reilly said ok.

Chairman Bergman said any other questions of staff? If not, is there anyone here that would like to speak on behalf of the site plan application?

Mr. Ryan Thomas said I am representing Kast Construction and the owner of Coral Square Shoppes. We have our entire Kast design team here today to answer any questions that you may have regarding the project.

Chairman Bergman said alright, thank you.

Mr. Thomas said I can introduce those design professionals, if you would like.

Chairman Bergman said sure.

Mr. Thomas said we have Mr. Greg Boggs with Lucido & Associates; Jason Gunther with Craven Thompson & Associates, they are our Civil Engineer; Mr. Ken McGee is our Architect, specializing in commercial architecture; and Shaun MacKenzie with Kimley-Horn, our traffic consultant.

Chairman Bergman said did you have a presentation that you wanted to go through?

Mr. Thomas said no, we are just here to answer questions. We think that David, we worked with staff for several months, and we feel he did a phenomenal job presenting the project for us.

Chairman Bergman said Matt, did this go through the Design standards?

Mr. Margotta said this one squeaked under and what the applicant, when we were working with the applicants, they were willing to move those two front buildings a little further out onto US 1. So that was one of the, in fact, the only design change that we really affected, I believe, on the whole site. So, we were pretty happy with the ability of the applicant to change that.

Chairman Bergman said ok. Are there any questions of the applicant?

Mr. Knott said just one question. I may have missed it in David's presentation, who are your tenants?

Chairman Bergman said that's none of your business.

Mr. Knott said I want the important stuff. I want to know.

Mr. Thomas said at this time, I can let the owner speak to that. But as of right now I am not sure.

Mr. Knott said if they have a contract with them?

Mr. Thomas said well, I don't even want to speak of that. At this time, we are working with several different typical Type-A retail developers.

Mr. Knott said like grocery store?

Mr. Thomas said I think it is more retail commercial.

Mr. Knott said ok.

Chairman Bergman said any other questions?

Mrs. Olson said I saw in your application the project narrative that this site is intended to be designed to a Spanish-Eclectic-Mission Style. First of all before I go there, I would like to say that I really appreciate bringing the outparcels up closer to the road. I really appreciate the fountain. I really appreciate the innerconnectiveness from the outparcels into the main project. I like the pergolas. I like the park benches. That's all good. I commend you for that and I appreciate it. This is a very significant new development on our US 1 corridor. This is the first large scale redevelopment we have in our old town US 1 corridor that we have had for quite some time. And as such, it sets the tone for future development. I am concerned about the lack of detail in design I see on the main building. I do not see the reflection of Spanish eclectic or Mission style in this project in a significant way. And I know that you got in before Design Review Guidelines. So, I cannot vote against this project, because I am not exceedingly happy with the design. However, I would ask you before you go to City Commission to consider taking a look at some design elements to improve that. Because I couldn't assure you that the City Commission will have the same concerns. And they maybe more cagey about getting them out of you than I am. Some things that are reflective of Mission or Spanish eclectic would be on your veranda would be arches, heavy detailed columns, it would be raised curved parapets, it would be characterized by exposed beams and rafters, it would be characterized by ornamental tile set into the stucco exterior. These are things that I would request that you consider taking a look at in your design because this is pivotal for us and I do not want it to be reflective simply of a late 20th Century strip mall architectural style. That's what I have to say.

Chairman Bergman said any other questions of the applicant? Ok, thank you. Is there anyone else here that would like to speak on behalf of the site plan? Ok. Is there anyone here to speak in opposition of the site plan application? What is the pleasure of the Board?

Mr. Reilly said can I ask another question? Just real quick. Back to this entrance and egress and all that, the Fire Department doesn't have any problems with the one entrance?

Mr. Carlin said we have received Department approvals from all Departments, including the Fire District.

Mr. Reilly said ok and then the next question is just on the, I guess this may go back to the applicant, on Kimley-Horn on their traffic study figure 5, I think they take into account that second driveway is a in and out, is that...does that make any difference to anything? The south driveway?

Mr. Carlin said I would have to evaluate that. I did not observe that notation.

Mr. Reilly said I am not sure I am reading...I am not very good with traffic studies. I don't have a problem with it. I didn't know if that was a concern.

Mr. Carlin said the City Engineering Department has approved this project, as well. The City Traffic Engineer has reviewed this information. A Certificate of Concurrency was provided to the Planning Department as well, which outlines the number of trips and Level of Service capacity and things of that nature.

Mr. Knott said going back to what Mrs. Olson was speaking of...

Chairman Bergman said we are supposed to be making a motion.

Mr. Knott said that's what I am trying to do. I want to push it that way, though. I don't know because this was not under the Design standards and I don't know the applicants willingness to try to work with the City staff on this because City staff worked very hard to set up these standards and what Mrs. Olson said is very correct. This is a pivotal project, major project and I can see the City Commission raising the bar and if they think the bar hasn't been raised, they will raise it and they can do it, we can't. My feeling is whatever Leslie would like to include in her motion as a recommendation or what we can do. I am not sure what we are allowed to do, but I would like to see something in there.

Chairman Bergman said I don't know that you can make a recommendation, because it really wasn't in place at the time. But I think the comments you are making on the record are probably good enough that they will pick up on it. And you are right; they are going to hold them to a higher standard.

Mr. Knott said I hope. They have done really good job on this. It's great. I would hate through more money to the project but for them to do that. Really, this part of town, with US 1 being upgraded now and what's coming through here now, this could be a real show place to set the whole tone for that whole corridor, especially with your little gazebo and what have you and fountains and everything. It's nice and we do appreciate that. Thank you.

Chairman Bergman said anyone willing to make a motion?

Motion was made by Mr. Johnson, seconded by Mr. Hayek, to forward to the City Commission a recommendation of approval of the Site Plan.

Chairman Bergman said we have a motion and a second, do we have discussion?

Mr. Yates said I would just like to echo what Mrs. Olson and what Mr. Knott said.

Mrs. Dixon said I would like to echo that and I like to say personally to you, thank you very much for coming with the project and I just hope that you really take the comments that the Board has made into strong consideration.

Chairman Bergman said we have a motion and a second, is there any other discussion?

Those voting in favor of the motion were: Mr. Hayek, Mr. Johnson, Mr. Knott, Mrs. Olson, Mr. Reilly, Mr. Yates, Mrs. Dixon, Mr. Harris, and Chairman Bergman. Those opposed: None.

Chairman Bergman said good luck. You will be notified by the Clerk when that is scheduled for the City Commission meeting.

Mr. Thomas said thank you (from the audience).

The next item considered **#8 – Eckle’s Restaurant** - A request for approval of a Waiver of Distance for a 2COP Alcoholic Beverage License in order to operate a restaurant selling beer and wine for on-premises consumption. The property is located at 1701 North 25th Street and is zoned C-3, General Commercial. The owner/applicant is Dave McDonald.

Mr. Peter Buchwald said Section 3-7 of the City Code prohibits the City from granting approval for the sale of beer and/or wine by retail for consumption on the premises where the establishment is located within 1,600 feet of other licensed restaurants, bars, liquor stores, churches, or schools, unless a Waiver of Distance is granted. The applicant acquired the property and business in June 2006 and has been operating a restaurant at the property since that time. For the third time, the applicant is requesting a 2COP license to serve beer and wine for consumption on premises in the restaurant. However, three churches and Garden City Elementary School are located within 1,600 feet of the establishment. 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 churches or schools. The applicant previously submitted a request for a Waiver of Distance which was approved by the Planning Board on June 20, 2006. However, the City Commission subsequently denied the request on August 7, 2006. During that City Commission discussion, there was a question raised as to whether the parking area located behind the establishment and also individuals testified as to their

objection to the Waiver of Distance. After that City Commission meeting, the applicant reapplied with a legal description and boundary survey which indicates that the applicant owns the parking area located behind the establishment. In addition, the applicant had circulated a petition to the surrounding neighbors for them to complete if they did not oppose the Waiver of Distance. A second application for the Waiver of Distance was approved by the Planning Board on November 29, 2006, and subsequently denied again by the City Commission on January 2, 2007. During this City Commission discussion, there were questions raised with regard to landscaping, parking, the drive-up window, and a bar and pool table inside the establishment. In addition, several individuals again testified as to their objection to the Waiver of Distance. Since this City Commission meeting, the applicant has added additional landscaping, has agreed to close the drive-up window and install additional parking with curb stops in the drive-through lane, and has removed the bar and pool table from inside the establishment. The proposed establishment meets the requirements for a bona fide restaurant as specified by the City Code and has such for the past year. According to the Fort Pierce Police Department, there have been no calls for service to them for this location in the past year. Beer and wine sales will be limited to restaurant patrons for the purposes of ordering and consuming food and the applicant proposes to limit beer and wine sales to after school hours. No existing licensed restaurants, bars, or liquor stores are located within 1,600 feet of the proposed establishment. The proposed establishment meets the criteria specified in Section 3-9 of the City Code for consideration of a waiver of distance. A total of 78 notifications were mailed to the owners of properties located within 500 feet of the establishment. As of today, a total of 15 responses have been received, 3 of which approve of the waiver of distance and 12 of which oppose the Waiver of Distance. In addition, 59 signatures of opposition have been received from Ms. Bernard from the House of God. The distribution of responses are indicated on this slide with the green dots representing the positive responses and the red dots representing the negative responses. In addition to the House of God, the negative responses included negative responses from the School District, the owners of a parking lot parcel and three vacant parcels, three absentee owners, and two owner/residents. Only two of the responders consistently have objected to all three Waiver of Distance applications for this establishment. As the proposed establishment does not appear to adversely affect community health, safety or general welfare according to the criteria specified by the City Code, staff recommends that the Planning Board forward a recommendation to the City Commission for approval of the Waiver of Distance for a 2COP Alcoholic Beverage License for the proposed establishment.

Chairman Bergman said thank you. Are there any questions of staff from the Board?

Mr. Reilly said when you send out these letters to the property owners, is there a standard of how many you expect to get back or what tells you what a real negative response is?

Mr. Buchwald said no there is not in the alcohol beverage ordinance. But I think the appropriate judge would be is written in the City Code for conditional uses and when other type of notification are required and that is 20%. If 20% of the respondents disapprove of the request, then that requires the City Commission to do a supermajority. That could be an appropriate standard to go by in terms of how many negative responses are significant.

Mr. Reilly said ok.

Mrs. Dixon said can you just show me the screen, again, that has the red and green dots, that approve and disapprove and where they are located?

Chairman Bergman said Mr. Margotta, I have a question that I have been bringing up for as long as we have been doing distance waivers for these kinds of things. The Code outlines that you can't build or you can't place an establishment that serves alcoholic beverages within 1,600 feet of a school or church, but it is not the other way around.

Mr. Margotta said if I can address that, something that we're going to consider as we update our LDR's. We are working on the RFQ for that, as a matter of fact. So we do want to keep that in mind. It is amazing to me.

Chairman Bergman said it has been coming up for years and it has always amazed me that...anyway, just something to consider. Mrs. Dixon, did you have a question regarding that?

Mrs. Dixon said no, I just wanted to see where the approvals and disapprovals were.

Chairman Bergman said where there any other questions of staff?

Mr. Reilly said the applicant, I guess, has gone around and around for this is round three. This might be for Mr. Williams, but he went through round one and gave the information about the survey, this, that and some other information that the City Commission requested and now he has removed the pool table to make it less of a bar and then he did landscaping. I saw the picture of the landscaping. Did you go through a pretty good expense to do that?

Mr. Williams said yes, I meet with them and went into great detail on that. we talked about the plant species and as you know, we are in the middle of the worst drought ever and as you can see from the photograph, they have been watering it, taking care of it, and it has brought it up to Code.

Mr. Reilly said so he has gone through a lot.

Mr. Williams said yes, to bring it up to Code.

Mr. Reilly said that was it.

Chairman Bergman said any other questions of staff? Is there anyone here to speak on behalf of the waiver of distance? I don't see anyone willing to speak on behalf of it. Is there anyone here that would like to speak against the waiver of distance? Who all would like to speak? All of you? Let's keep it short.

Ms. Earlene Bernard said normally here, they have given us five minutes.

Chairman Bergman said I will give you three.

Ms. Earlene Bernard said I am one of the ministers at the House of God at 1601 Avenue P. What you are seeing on the screen is a little bit disillusioned there. First of all, my first thing is the safety of our children. Garden City school sits just adjacent to the place that he is trying to open there with beer and wine and it is a hazard to our kids. I know our Chief of Police is trying to clean the City up and we are trying to do the same. Not only that, on that street that he is talking there is the business that he is trying to get the license for and then there is four other residents on that side of the street there and I have talked to three of those residents and three of them say that they have sent in saying that they have disapproved. As a matter of fact, I talked to Mr. Bethel this afternoon who owns the third house there and he said that he picks every morning. He goes along and cleans...he is a retired school teacher, he cleans the street there every morning from the beer cans and things that is already there. Secondly, with our church. We have functions. We have teenagers that and we are trying to protect our City. We are trying to do better. It appears to me that all the rotten stuff is geared toward to taking it out that way. You know. They have one business that is out on Avenue Q and Angle Road. They live in Port St. Lucie, so why not take your business down to Port St. Lucie. As a matter of fact, I talked to someone and they said they cooked very good food. Let your food sell your business. As a matter of fact, if they cook that well food, we will patronize them, but not with beer and wine. Not to destruct our City. We here to improve the City, not to destruct. If the School Board and the church and the community says no, why are we constantly going through here to say, "oh, it's ok." Do I have to answer the question by asking the question too? Do church not represent anything anymore in the community? Do our schools not represent anything in the community anymore? As a matter of fact, on the south side of the street, there is a store right there that sells beer and wine. Secondly, the pastor that pastors St. Paul church and I spoke to him yesterday and he said that he had not gotten a letter. Other than that he would have said no. It is like where do the church stand in the community? Where do our kids stand in our community? Where do real citizens stand in the community? We are supposed to be a part of the community and not just an independent that says "oh, this is just what I wanted. This is the only way I can make business is to make people drunk and go out and kill my kids." That is not what we are here for. Thank you.

Mr. Robert McClain said age 77, a member of House of God Church Number 1. I have been a resident of St. Lucie County, Florida, for nearly a half a century. Was formerly from Ohio. I dearly love good old Florida. God Bless us in Ohio for any and all his creations and certainly He would have us to do what is pleasing in His sight and His sight a right thinking man. As a Christian man, I am very firmly opposed to alcoholic beverages or liquors in anyway shape or form. It is just not a good thing and so I have kind of advocated for other businesses, as well as myself. Praise God, Amen.

Chairman Bergman said is there anyone else that would like to speak?

Ms. Alberta Anderson said the only thing I would like to say, I am a mentor at Garden City Elementary. Garden City has children that are their parenting not too well. This morning

we spoke with the Superintendent and he was letting us know that this is a poverty stricken area. Garden City, out of the children that go there 9 out of 10 is poverty stricken. Garden City is so close to this restaurant. We are trying to change the social standards of those schools and this morning the Superintendent recommend that the churches, the community, and the school get behind and try to instill in our children another way of life. Because if we don't, we are going to loose them and instilling in them another way of life is not by them seeing beer and liquor sold everywhere on 25th Street, as they go home, as they leave the school, and everywhere. So, we are just trying to better our community.

Mr. Hayek said is the restaurant an asset to our neighborhood?

Ms. Anderson said I would say no.

Mr. Hayek said without the alcohol, is it an asset to your neighborhood? Is it a convenience to your neighborhood?

Ms. Anderson said it is a convenience. Before the owners that are occupying the building now, we had a restaurant there, Casarena, and the best food was cooked there and they operated and if it was a really a profit, she stayed there until she retired, she had to retire, the owner. And the food was very good. If this comes back again, we'll still it would be a profit for the community. But right now, they are not advertising the food, as such. If they sell good food, yes, it would be an asset.

Mr. Hayek said it is a problem for most restaurants, anymore, to be able to make ends meet without having alcoholic beverages sold in their premises.

Ms. Anderson said we have a restaurant on Avenue D, between 15th Street and 16th Street, and they sell very good food. Russ restaurant on 9th Street and Avenue D, the food is very good and they make a profit. They do not sell alcoholic beverages and the one between 15th and 16th they do not sell alcoholic beverages and they do well. So, they don't have to sell alcoholic beverages to make a profit.

Mr. Hayek said thank you.

Reverend James Gardner said I would just like to say ditto to everything that they have already said. We do after school programs at the church where we try to mentor the children through FCAT and different activities and so, like we said, we are just trying to bring up the area in the community and draw the kids away from these types of things. And they say they have gangs and different things, so we are trying to draw them away from the drugs, any kind of drugs, it doesn't matter if it is alcohol, marijuana, or cocaine. Whatever it is, we are trying to draw their minds aware from these types things and hopefully bring it to a more like family oriented. So, that is our goal as a church and helping the community and we just hoping and praying that the Board feels the same way.

Mr. Knott said one of the conditions that the applicant here stipulated to that "in addition, the applicant has agreed to limit the beer and wines sales to after school hours." Now, you just mentioned after school programs. How often do these go on and how late to they go?

Rev. Gardner said we meet on Thursdays and Tuesdays.

Mr. Knott said is there usually something at the school every night?

Rev. Gardner said it is at the church, down the street there.

Mr. Knott said it is at the church, not the school.

Mrs. Dixon said the school does have after school programs.

Rev. Gardner said at the school, my son, he is the PE Teacher at Garden City Elementary and he's there doing the after school program and plus, they have a baseball, he is out there with the baseball team where they are practicing at Garden City and that is after school, also.

Mr. Knott said the applicant may not have realized what he is agreeing to here, because he might not be able to sell anything until 7:00.

Chairman Bergman said it says "after school" It doesn't say after, after school.

Mr. Knott said after school hours and activities are part of the school, aren't they?

Mrs. Dixon said not all of them. 21st Century is part of the school.

Chairman Bergman said is there anyone else that would like to speak?

Ms. Desma Alexander, representative of the St. Lucie County School District said I know the position of the School District has been highlighted previously. Just to reiterate, the School District staff reviewed this project on two different occasions: first on October 10, 2006, and then again on April 20, 2007, and at both times staff recommended disapproval of the waiver of distance. Just to reiterate. Thank you.

Mrs. Olson said could you state your reasons for disapproval or asking for disapproval?

Ms. Alexander said proximity to Garden City Elementary.

Mrs. Olson said and in what way would it be a detriment to the children?

Ms. Alexander said due to the high pedestrian access in the area. A lot of the school children walk to and from school and the route they would take would be directly in front of the establishment.

Mrs. Olson said ok, thank you.

Ms. Alexander said thank you.

Chairman Bergman said anyone else like to speak?

Mr. Michael Williams said I am speaking on behalf of the McNights. Ladies and gentlemen, Members of the Board, if you could all recall 2006, Omega, when you all tried to stop his license, did you see the amount of support they got, young people. I don't see one of these church people come in and try to stop him. Do you know why? They can go to (indecipherable) and they were right here to support that man, try to help him get back his license. I ain't seen no reason why they try to stop them people. They could be anyone of you all up there to work so hard to retire, buy the place, try to better our lives, try to help out in college. I ain't see no reason. That place there ain't stop no church. Before these people come over that place, there was a restaurant there, that guy, named Richard, he had license. He had one in the back too. A bar was right there. These people ain't trying to run a bar. They just trying to get a restaurant and a lounge license. That's all they trying to do. Restaurant and lounge. That's all they trying to get to help. Do you understand what I am saying? This evening, before you all make a decision, you all just think about it. You all have the handle and they've got the blade. You all have the handle. The reason why...last year when we arrived here, this not like one of those of their same people having an argument and do you know what they say to her? "you should go back to Jamaica, where you are from." That's what they say to her, right there. Cross the water, where you are all from. You understand. I am from Jamaica. We have White, Black, Chinese with business there. We can't stop them from doing business there. But they have the ability to do it. but if they don't have the ability to do their business, we can't stop that. That's their problem. If they don't have the ability. In Jamaica, we can't stop who come there. We have Chinese, Asian, all different kinds of people right there. If anyone of you go to Jamaica, you will see all different people doing business there. We don't stop them from doing business. We don't try to fight against them. That's all these people do. Trying to fight. Do you know what? There are some people, and that's an outrage, come there, come take photographs of the people's place and try to lie on them for selling there. That's a lie. How could they could be at peace there and try to lie on people? That's where the Pastorman buys his food at. The Pastorman who is trying to fight against these people. The Pastorman come everyday and where he buy his food and sit down and try his food. I walk down that street I ain't seen no beer cans all over the road. They are just trying to make up something against these people. Just trying to. Because you know what, because they are firing them. Why don't they come in and try to fight against them, Omega? Why don't they come and just a couple of months ago 26th and D, them people just get license there. New owner there. Why don't they fight against those people?

Chairman Bergman said let's keep the comments directly towards this application, please.

Mr. Williams said thank you very much. I just saying that to say that. But in your heart, I just want you to consider and do what you must do. Thank you.

Mrs. Dixon said did he give his address with regards to where he is located in proximity or is he the applicant?

Chairman Bergman said no, he did not.

Ms. Denise said I am here to speak for Mrs. McNight. These church people just recently their pastor just leave from our country. They come to my house, like for the Christmas, we cook goat for them. They have same liquor they fighting over, we have something we call Sorrel, we have to have like a wine in it. they drink liquor wine. It don't hurt and now they come. They lady just have a liquor something for her restaurant. Nothing like big strong alcohol to having anybody out there in the road driving drunk or anything. Just something for when come and having your meal, you just have a beer or liquor wine cooler or something just to keep yourself relaxed for the afternoon. That's all the lady asking for. She ain't asking for nothing like no strong liquor or anything. Because the same thing they fighting off the lady not to get, they doing it, but nobody sees. So, I mean, you know, it is very hard to really look into it with the schools and the churches. We go to the same church. We are member of the church and they said they have something everyday, no they don't. Because even Sunday, I took somebody there to drop them off where they go no church keeper. So, it is like, you know, it is very hard to fight against the lady and come up here telling all kinds of stories not to get our business going. That's all I have to say on her behalf.

Mrs. Eckle-McDonald said I am the owner of the business, me and my husband. When we get the business, there was a license there. There was a beer and wine license. That's why we bought the property. We are trying to apply for the beer and wine license in our name. so, if we did know that there was going to be so much objection for us to get the beer and wine license, we wouldn't buy the property. What was there before, the restaurant and beer and wine. If I ran the restaurant alone, it cannot pay the mortgage for the building. The mortgage for the building is \$2,700 and we sell something like \$400, \$500, \$600 a days food. Sometimes, sometimes. So, right now, what my husband has in his savings he has to use everything. Right now this month I don't pay no mortgage because there is no money, but I am not giving up. I am still holding on. These church people used to come to my restaurant and eat my food, nice and everything, drinks and eat. I sell them beer there when I didn't have the license. I swear to God that I sell them beer. But I don't know why all of a sudden...(inaudible comments from the audience) I am not lying. I go to church. I am not lying.

Chairman Bergman said excuse me. Can you keep your comments quiet in the back, please and let her have a chance to speak?

Mrs. Eckle-McDonald said I am telling the truth. The Pastor go to Jamaica and build two churches in Jamaica. No one objecting, he goes down there to make money.

Chairman Bergman said let's don't talk about Jamaica, let's just talk about this project.

Mrs. Eckle-McDonald said I am here just trying to make a living, you see. My husband is 55 years old now and I am 36 years old. So we are trying to have something in the meantime when we are not doing anything, you understand. They fight against the beer and wine license. If I run the restaurant alone, it cannot pay the mortgage. Ok, the City tell me to do the landscape, I go ahead and do it. Them say I need 35 seats, I get 35 seats. When them say children walking from school, nothing like that. The bus go by and

pick up all the children. I don't see no children cross there. Them say they have things at the church, not every time, not all the time. I know them have church on Sunday, because sometime when I use to close on Sunday, them say to me "you need to open, we can get food to eat on Sunday." Sometime I skip church and open on Sunday, just for them to sell them food. And now they turn around and try to fight against me. I don't know why. That's what I have to say tonight. Thank you.

Chairman Bergman said alright, this will be the last one.

Theresa Gardner said I am the Assistant Pastor of the House of God Church. I do not patronize that restaurant not because of what they sell or ethnicity doesn't have anything to do with it. they are bringing in the card about Jamaica, it does not matter whether they are Jamaican, Haitian, White, Black, or whatever, it is just the fact that I am a school teacher at Chester A. Moore Elementary and what I am saying that the building, itself, it just close to schools. Right now, because of the zoning of the schools, we have so many people children that walk to school, whereas before, they did not walk to school. So, when I am on my way to CA Moore in the morning, I see children walking down 25th Street. When I am coming home from school, I see children walking home from school. Also, at Garden City they have everyday, Monday through Thursday, the 21st Century program which the teachers stay there until 6:00 pm. So, it is not so much as the church, but we are advocates for our children and we want the safety of our children. So, this is where we are coming from. It doesn't matter about ethnicity. It is just that they sell beer right at the store across from there and that is within so many distance that you don't want one on both sides of the street selling beer. I am not going to address them. All I am saying is that the proximity to the school and the proximity to the church, no, we don't have services everyday. We didn't say that. We have youth every other Tuesday and we have our tutorial program on Thursday. But that is not the problem, everyday at Garden City, Monday through Thursday, they have the after school program and also, school is everyday, Monday through Friday. So, if they say they are going to sell beer after hours, it is going to be like 7:00 or whatever. But it is just that right now because of the rezoning of the schools that you have so many children. Because we are back to what we call neighborhood schools, so you have more children walking to and from school then you had in the past and this is what we want you to consider. I am talking about from an educator's point of view.

Chairman Bergman said alright, thank you. You have heard it all. What is the pleasure of the Board?

Motion was made by Mrs. Dixon, seconded by Mr. Knott, to forward a recommendation to the City Commission of approval of the waiver of distance with the condition that the alcohol be sold after 7:00 pm.

Chairman Bergman said we have a motion and a second, do we have any discussion?

Those voting in favor of the motion were: Mr. Knott, Mrs. Olson, Mr. Reilly, Mr. Yates, Mrs. Dixon, Mr. Harris, Mr. Hayek, and Chairman Bergman. Those opposed: Mr. Johnson.

Chairman Bergman said good luck at the City Commission. You will be notified when this is scheduled for their meeting.

The next item considered **#9 - Non-Conforming Structure as Special Exception – Porch Addition** – Application for a special exception to allow a porch addition to a non-conforming structure. The property is located at 1909 Avenue O. The owner/applicant is Minerva Davis.

Mr. Peter Buchwald said in accordance with Section 22-102.1 of the City Code, the applicant is requesting approval for an expansion of a nonconforming structure as a special exception. The applicant proposes to construct a porch onto the front of a single-family residence. The house is situated on a 0.16-acre parcel, which is zoned R-3, Single Family Moderate Density, and is surrounded by R-3 zoning and single family homes. The setbacks for the R-3 zoning district are 25 feet for the front, 7 feet for the side, and 15 feet for the rear. However, the house is situated in a manner where the east side of the house extends one foot into the required side yard resulting in only a six-foot side yard on the east side. This encroachment into the required side yard results in the house being a nonconforming structure which requires the applicant to follow procedures set forth in Section 22-102.1 of the City Code for any enlargement or alteration of the nonconforming structure. The total size of the porch addition will be approximately 134 square feet and will encroach 3.3 feet into the required front yard. Construction of the addition mistakenly was started and has ceased pending the approval of the special exception. The existing house totals 1,020 square feet in size and the maximum increase allowed by City Code is 50% or 510 feet. The porch addition will only be 134 square feet, which is well below the maximum. Based on the limited size of the addition and the small size of the resulting encroachment, the enlargement is compatible with the surrounding properties. In addition, a petition was provided in your packets, which was signed by the neighboring residents that also believe the enlargement is compatible with the neighborhood. As the porch addition meets the criteria specified in the City Code for a non-conforming structure as a special exception, staff recommends that the proposed expansion of a non-conforming structure be permitted as a special exception.

Chairman Bergman said thank you. Are there any questions of staff from the Board?

Mr. Knott said if I could actually ask a quick question. It is actually the porch is not, it is because the house is non-conforming is why they have to do this?

Chairman Bergman said no, the front porch encroaches into it, too.

Mr. Buchwald said but the Code then provides if the encroachment is a result of the expansion that there is certain criterion – does it affect traffic, side yard, etc. I think I had that in your staff report that one criteria.

Mr. Knott said the 25 feet.

Mr. Buchwald said it says, "if the enlargement does not adversely affect traffic flow, safety control, pedestrian safety, convenience, visibility,..." And because it is only 3.3 of the 25 feet, that obviously meets that criterion in our opinion.

Mr. Knott said alright, very good. Thank you.

Chairman Bergman said any other questions of staff from the Board? Is there anyone here that would like to speak on behalf of the special exception? (to the applicant in the audience) You don't want to speak on it? You don't have to. Is there anyone to speak against the special exception? What is the pleasure of the Board?

Motion was made by Mr. Johnson, seconded by Mrs. Dixon, to forward a recommendation to the Board of Adjustment of approval of the special exception.

Chairman Bergman said we have a motion and a second, is there any discussion?

Those voting in favor of the motion were: Mr. Knott, Mrs. Olson, Mr. Reilly, Mr. Yates, Mrs. Dixon, Mr. Harris, Mr. Hayek, Mr. Johnson, and Chairman Bergman. Those opposed: None.

Chairman Bergman said sorry to keep you here all night.

(From the audience, applicant said thank you.)

Chairman Bergman said your welcome.

Mr. Buchwald said Board of Adjustment meeting.

Mr. Margotta said the 24th of May.

Mr. Buchwald said same place.

Chairman Bergman said if there is no objection, I am going to ask that we do Items 10, 11, 12, 13, and 14 as a...these are all voluntary annexations or contiguous properties, is that correct? Am I stealing all of your thunder?

Ms. Erica Ehly said there is one voluntary and the remaining four are via agreements.

Chairman Bergman said ok. Mr. Walker, can I do that?

Board Attorney Walker said yes.

Chairman Bergman said **Item #10** is a .5-acre property is identified as having contiguous boundaries to the municipal boundaries of Fort Pierce. The property is generally located in Oleander Park, Lots 12, 13, and 14. The owner is V. Boombotz, Inc. **Item #11** is approval of an annexation of properties identified as having recorded

Annexation Agreements and having contiguous municipal boundaries with Fort Pierce. The properties are located at 3146 and 3158 McNeil Road. The property owners are Harber and Van Rixel. **Item #12** is approval of an annexation of 15.98-acres identified as having recorded Annexation Agreements and having contiguous municipal boundaries with Fort Pierce. The properties are located south of Edwards Road, north of Midway Road, east of South 25th Street and west of Sunrise Blvd. The owner is Creekside IS, LLC. **Item #13** is an annexation of Group 34. This an approval of annexation of 92 pieces of properties identified as having recorded Annexation Agreements and having contiguous municipal boundaries with Fort Pierce. The properties are located in Palm Lake Gardens, which is north of Midway Road, south of Edwards Road, east of Selvitz Road, and west of 25th Street. There are various property owners. **Item #14** is an approval of an annexation of a 2.92-acre piece of property identified as having a recorded Annexation Agreement and having contiguous municipal boundaries with Fort Pierce. The property is located at 4305 South 25th Street. The owners are Rita B. Stikelether LLC & Margaret A. Ewan LLC. Is there anyone here to speak on behalf of the annexation agreements? I don't see anybody here at all that would like to speak. What is the pleasure of the Board?

Motion was made by Mr. Knott, seconded by Mr. Reilly, to forward a recommendation to the City Commission for approval of Items 10 through 14, as outlined on the agenda.

Chairman Bergman said we have a motion and a second, is there any discussion?

Those voting in favor of the motion were: Mrs. Olson, Mr. Reilly, Mr. Yates, Mrs. Dixon, Mr. Harris, Mr. Hayek, Mr. Johnson, Mr. Knott, and Chairman Bergman. Those opposed: None.

The next item considered **#15 - Changes in Rules and Procedures of Planning Board.**

Mr. Margotta said before you is some staff recommended changes to your Rules and Procedures. Certainly there is some logic behind each one of these. But these are your Rules and Procedures, so feel free to discuss as you would like. We are accomplishing basically three things. The first one is the first paragraph. You may not have known it, but your time was supposed to be 7:30 pm, somehow we started around 7:00. Staff is recommending that a 6:00 start time might be more appropriate. The Historic Preservation Board also uses this time. It seems ok for them, but there is usually some reasons why you might want to have it later for public participation or such. But generally, 6:00 doesn't seem to be cumbersome to people to still have dinner and get in. The next major item is just through out this document, we are recognizing the fact that we have our alternates appointed to the Board, plus the fact that the City Commission and the City Manager, by virtue of the positions, are ex officio members. So, we are trying to essentially assert those into your Rules and Procedures. If you notice paragraph #3, where it says "no member may serve more than two (2) full consecutive terms as chairman," that was simply lifted from later in the rules. We thought it more appropriate to put that under that section.

Chairman Bergman said that was already in there, right?

Mr. Margotta said yes, it was already in there. We just moved it around. Currently the deadline for filing for placement on your agenda is 30 days, that's 30 working days and that's kind of cumbersome. That's like a month and a half. We really only need about 15 working days to be able to accomplish this, which is about three week so staff feels that that is appropriate and clarifying that it is for placement on the agenda. One of the things that kind of happens is, and this gets confusing at staff level, just for conversation sake, is that the applicant will say "hey, I filed with your Planning Board." Well, yeah, you gave me a napkin with some drawings on it. That is not filing for our Planning Board. So, we need to get rid of that. that is a notion that we are talking about filing for the Planning Board, they have to have their application prepared and staff says its ready for them to come before you, so that's kind of alleviating some of that confusion. Item 9, we added some items and we spent some time considering the how we were going to put these on there. These are basically things you see on a very regular basis. The Other Business used to take on a lot of things, like this discussion right now. But it also was where we put the annexations, we put the some of these other things that are fairly simple. So, this is staff's recommendation. If you have some better way of doing it, you are more than welcome to change it. Finally, this was brought to my attention, I have even a change from what I handed to you. On Item 13, this is where we really got into some details about the alternates. Please look about the middle of the way down where the sentence starts "in case of absences" and then it reads "resulting in lack of quorum, the alternates will be blah, blah, blah" staff is actually recommending it to read "in case of absences, the alternates will be the first to fill the absences." So you are scratching "resulting in lack of quorum" that is not needed. That's not even appropriate. And the next sentence, "if the quorum is not met" just scratch out "still". So, that would read, "if a quorum is not met, then ex officio members will be contacted to fill absences..." One of the main keys we wanted to get across here is that we have ten Board members sitting up there, so that we have as many people voting as possible. The Chairman still has all the authority to chose who gets to make those votes, but once you accept them, the general idea, Mr. Chairman, is that they would be voting members. And that concludes staff's recommendations.

Chairman Bergman said well, I can tell you based on number 13, as long as I have been on this Board, I think there has only been probably three or four times that we have not had a quorum and that's generally because people were going out of town on vacation, June or July is usually when it would happen. But this is actually good, because we will have everybody here, regular members, and alternate members participating in these projects. So that is a good thing. And then I like the order that you've got the agenda items in. Because you will have these guys that take two hours with their presentation, they can just stick around and wait until every thing else is done, instead of making everybody else that is here for a five-minute presentation and these guys are sitting here for three-hours over something that is going to take all of two minutes to do. Normally, I would pull them to the front, but looking at what we had to do tonight, I really didn't think that the site plans were going to be dragged out as long as they were. Anyway, that's the case that it is. I think it looks good.

Mr. Margotta said Mr. Buchwald just whispered into my ear that underneath Roll Call, we probably ought to have an item along the lines of Certification of Alternates or Certification of Voting Members or something along those lines.

Mr. Buchwald said that's where the Chairman will then recognize the alternates and/or ex officio members.

Chairman Bergman said I am glad you added the Pledge, because we are doing that on most of these other Board with the City. The Contractors Board, especially, we are doing that and I don't know if it is a big hit, but I think everyone enjoys it.

Mrs. Olson said I do have a quick question on 4(c) because the Secretary is the custodian of Board records, as required?

Chairman Bergman said have you been keeping all the records?

Mrs. Olson said what exactly does that mean?

Mr. Margotta said that we are going to be moving some files over to your house. Actually it means that the Board, sitting as itself, expects you as a point of contact to know where the files are. Staff is doing that as a matter of our function, however, you are charged by this Board to make sure that staff is keeping our files. So, you can come in, check our files, and so on.

Mrs. Olson said so, if you guys have a filing problem, it's my fault?

Mr. Margotta said as far as I am concerned, yes.

Mr. Reilly said you better do sneak inspections.

Mrs. Olson said can we take that out? How am I supposed to keep an eye on that?

Mr. Margotta said come in and ask. There is no set procedure, right now. I don't know...

Chairman Bergman said you have pretty much free hand with calling staff on the carpet here just about any time and coming over and checking their files.

Mrs. Olson said that's sounds like a fun thing to do. Ok, alright. So, can you guys come up with something procedurally?

Mr. Margotta said yes, we will come up with something for you.

Chairman Bergman said they can put something in there that you are responsible for handwritten minutes during the meeting.

Mr. Johnson said I had a question on 15, just a real quick one, about the Vice Chairman. If he were elected because the Chairman vacated, is that going to count as one of the two consecutive terms or is that two full consecutive terms? Is that really what full means?

Mr. Margotta said I would interpret that two full consecutive terms to mean that the entire year. I don't think that is too much of a matter of interpretation. The intent was that if you were elected by everybody else to be the Chairman that you would serve a full term of year and if you were elected again and so on. Does anybody not get that point?

Mrs. Olson said what does 14 mean? It's not new, but I don't understand what it means.

Mr. Margotta said we don't have any committees of your Planning Board. But if you decide to have some sort of committee or committee system, then however you are divided up, the Chairman has the ability to enter any discussion.

Mrs. Olson said ok.

Chairman Bergman said a couple of years ago we had a discussion about a committee but nothing came about. I can't remember what it was about to be honest with you.

Mr. Margotta said a good way of going through a Comprehensive Plan sometime is by committee or something like that if we decided to do that or if we have some major effort like the LDR is coming up, you might decide that there is a couple of folks on here with some expertise that you want to tap into. That's good reasons for, I think, bringing up committees, ad hoc wise.

Mr. Knott said about number 11 about an agenda item, especially after 10:00 pm.

Chairman Bergman said I don't know that we have ever had a non-agenda item.

Mr. Knott said I don't either, especially with the time limit on it after 10:00.

Chairman Bergman said it could come up.

Mr. Knott said yeah, I suppose, if someone comes in and says they have to have this today or tonight.

Chairman Bergman said I don't know that it would really apply. There is no need to take it out.

Mr. Knott said I guess not. Pretty harmless.

Chairman Bergman said it is after 10:00 and we are not doing any non-agenda items. Anything else from anybody? Mr. Walker?

Board Attorney Walker said thank you for asking.

Chairman Bergman said always gotta check. Matt? Peter?

Mr. Margotta said thank you.

Mr. Buchwald said did you vote on the Rules?

Chairman Bergman said we need a motion on these revisions.

Motion was made by Mr. Johnson, seconded by Mr. Knott, to approve the revisions of the Rules and Procedures of the Planning Board as presented and corrected.

Chairman Bergman said we have a motion and a second, is there any discussion?

Unanimously voted in favor of the motion by voice vote.

Chairman Bergman said remember, don't forget – 6:00. Does this go into affect next meeting?

Mr. Margotta said next meeting. Next meeting you may very well be televised, also.

Chairman Bergman said that's not in there.

Mr. Reilly said does that mean we will get out of here earlier?

Mr. Buchwald said I am looking forward to Mr. Reilly's questions when we start to be televised next month.

There being no further business, the meeting adjourned at 10:25 pm.