



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, AUGUST 08, 2006, IN FORT PIERCE CITY HALL, COMMISSION CHAMBERS, 100 NORTH US HIGHWAY 1, FORT PIERCE, FLORIDA.

Vice Chair Gates called the meeting to order.

Upon Roll Call, those present were: Sunny Gates (Vice Chair), Margaret Benton, Chuck Enns, Jeremiah Johnson, Tom Knott, Leslie Olson, Robert Poitier, and Edward Reilly; James Walker, Assistant City Attorney; Matthew Margotta, Planning Director; Peter Buchwald, Zoning Administrator; Travis Gibbons, Planning Administrator; Diann Ploetz, Administrative Secretary. Those absent: Don Bergman and Robert Poitier.

The next item considered - **#3- Approval of Minutes of Meeting held July 11, 2006.**

Vice Chair Gates asked are there any corrections or additions to these minutes?

Mrs. Olson said yes, on page 6 of the minutes, something attributed to me, the second statement was attributed to me and it should be attributed to Mrs. Gates. "Mrs. Olson said thank you." On then on page 50, the vote for Southland Villas, I voted against that. I did not vote in favor. Those are my only two changes.

Motion was made by Mr. Johnson, seconded by Mr. Enns, to approve the corrected Minutes of meeting held July 11, 2006. Unanimously approved by voice vote.

The next item considered - **#4 - American Legion Post #358** - Application for Conditional Use for the purpose of operating a non-profit club at 4350 Oleander Avenue. The property is zoned R-4, Medium Density Residential. The owner is American Legion Post #358.

Mr. Peter Buchwald said the applicant recently acquired a .69 acre property located at 4350 Oleander Avenue and wishes to convert the dwelling that is presently on the property into a lodge for the American Legion. The property is zoned R-4, Medium Density Residential. Non-profit clubs in the R-4 Zoning District are permitted as a Conditional Use; therefore the applicant is requesting Conditional Use permit to lobby operation of a non-profit club on this property. The Comprehensive Plan identifies the Future Land Use as RL, Single Family Low Density Zone, which allows for non-profit clubs; therefore the proposed Conditional

Use is consistent with the Comprehensive Plan. In addition to interior renovations, the conversion will include the construction of a paved parking lot outside the west side of the building with a storm water retention pond outside the north side of the building to accommodate the drainage from the parking lot. In addition to the preservation of the mature native trees, the applicant will be planting hedges between the parking lot and Oleander Avenue and between the parking lot and the north adjoining property. At the recommendation of the City's Urban Forester, the hedges will consist of 3 gallon cocoplum shrubs, planted on 18" centers. The irrigation system will be installed to establish the hedges and Bahia sod will be planted in all areas of exposed soil. The City's Urban Forester will continue to work with the applicant and inspect the property over the next two years to ensure that the new landscaping becomes established. The adjoining property located to the north of the site is vacant and heavily wooded, and the adjoining property located to the east of the site contains the Pineapple Playhouse. Both of these properties are zoned R-4, Medium Density Residential. The adjoining property located to the south of the site is unincorporated and is vacant, except for an FPL substation. The properties located on the west side of Oleander Avenue are occupied by single-family homes and are zoned R-1, Single Family Low Density. All affected Department have reviewed the proposed Conditional Use and have approved it based on it meeting the requirements of the Code. As the proposed Conditional Use is consistent with the Comprehensive Plan and meets the requirements of the City Code, staff recommends that the Planning Board forward a recommendation of approval to the City Commission for the Conditional Use.

Vice Chair Gates asked are there questions from the Board to staff?

Mr. Reilly asked currently how many parking spots do they have where they are located now and how many members?

Mr. Buchwald said currently there is no parking. There is just an asphalt driveway. So, they are adding the parking based on the formula from the City Code of one space for 200 square feet of gross floor area and there is just over 1,400, but you should factor out the utility area. So, they are providing the required seven spaces, one of which needs to be handicapped.

Mr. Reilly said so this is all they are required for this type of lodge?

Mr. Buchwald said according to City Code, yes.

Mr. Reilly asked how many members do they currently have, do you know?

Mr. Buchwald said I am not sure how many members. They are here to answer any questions that you may have.

Vice Chair Gates asked any further questions for staff?

Mr. Reilly said Mr. Buchwald, if the landscaping does not become established, what happens at that point?

Mr. Buchwald said according to City Code, they are required to provide a bond to ensure that is one of the mechanisms to ensure that it becomes established.

Mr. Reilly said ok, thank you.

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

Mr. Richard Vassar, present Commander of Legion #358, said I appreciate the assistance we have gotten, first of all. We have been a bit of a nuisance lately, but we were forced to relocate from our location we were at for 16 years. Basically, we went into this not knowing anything about it and we were directed very well by Mr. Buchwald, Engineering, and everybody else that got involved, including his administrator. We have about 300 active members, at this time, 30 or 40 are at the post at any given time.

Vice Chair Gates said I don't know if there are any question for you from the Board? Do you have any questions, Mr. Reilly, or did you get your question answered?

Mr. Reilly said yes. Parking, basically, with your 30 or 40 members, I guess they would park in the back in the grassy area in the back, correct? Is that what you are proposing?

Mr. Vassar said yes, sir. Up until such time as we are able to get the paving done. That is what we are working on right now.

Mr. Reilly said so there is a future plan of providing more.

Mr. Enns asked are you all moving out of the post on US 1? Is that what the necessity is?

Mr. Vassar said yes, sir. We terminated that relationship the first of last month. It was economically unfeasible, at that time. So we were able to purchase property and move into it.

Vice Chair Gates said anyone else?

Mrs. Olson said so the current parking that you have noted on your Site Plan, I think it is seven spaces, correct?

Mr. Vassar said yes, ma'am.

Mrs. Olson said you plan on putting more parking in?

Mr. Vassar said yes, ma'am.

Mrs. Olson said ok, when you do that, you have a lot of land in which to do that, have you been working with the Urban Forester on how to do that without taking out anymore of the trees?

Mr. Vassar said yes, we have. Paul Williams has been very instrumental on that with us and we are not cutting any trees down. That is why we bought the property.

Mrs. Olson said ok, sounds good, thank you.

Vice Chair Gates asked anyone else? Mr. Reilly

Mr. Reilly said the landscaping, currently right now this lot has a lot of landscaping on it, is that correct? As far as from the road, is this all kind of be hidden?

Mr. Vassar said I think the hedges up towards the forward of the property are going to do that. The one side, done by the FPL speaks for itself. The other side, there is development going on there and I would assume they are going to put a buffer up. But if not,, we are going to do bushes.

Vice Chair Gates asked is there anyone else that has questions for the applicant? (No response) Thank you very much.

Mr. Vassar said thank you very much for the opportunity to speak to you.

Vice Chair Gates asked is there anybody here to speak against this request? I don't think so. What are the Board's wishes on this item?

Motion was made by Mr. Enns, seconded by Mr. Reilly, to approve the Conditional Use permit for the operation of a non-profit club.

Vice Chair Gates asked is there any further discussion on the motion?

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

Vice Chair Gates said your request has been approved and you will be receiving an notice of when you will go before the City Commission. Thank you and good luck to you.

The next item considered - **#5 - Fire Station #2** - Application for a Site Plan for the construction of a fire station and an antenna located at 855 Seaway Drive. The property is zoned PUD, Planned Unit Development. The owner is St. Lucie County Fire District.

Mr. Peter Buchwald said the St. Lucie County Fire District is proposing a construction of a fire station and communication antenna on an undeveloped 1.18 acre outparcel on the Harbour Isle PUD. This fire station will replace the existing fire station on South Beach and is required to meet the demand of the new and proposed development on South Beach. The Comprehensive Plan identifies the Future Land Use to be RMHI-CG, which is Medium Density Residential Hutchinson Island Commercial General. The proposed project is consistent with the Comprehensive Plan. The new fire station will be 6,640 square feet in size and will contain offices for both fire and police personnel, garage area, dormitory, kitchen, and training and locker rooms. The exterior of the building will feature

Mediterranean design consistent with the adjoining Harbour Isle buildings. The communication antenna will be located outside the east side of the building and will be 120 feet in height and 4.5 feet in width at the base. The new antenna is necessary in order to provide a "line-of-sight" transmission to the Emergency Operation Center on Rock Road which is located approximately 6.25 miles to the west-southwest. A six foot high wooden fence will enclose the base of the antenna and the base will be further screened by landscaping along the property perimeter. The antenna at the existing fire station will be removed once the new antenna becomes operational. A gasoline station is located adjoining to the east of the site, and marine and commercial uses are located adjoining to the north of the site. These properties are zoned C-5, Tourist Commercial. The Harbour Isle PUD is located adjoining to the west and south of the site. 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 forward a recommendation to the City Commission for approval of the Site Plan.

Vice Chair Gates asked are there any questions for Mr. Buchwald on this item, please?

Mr. Enns asked what is going to happen to the old fire station, do you know?

Mr. Buchwald said I am not sure about that. They are here to hopefully respond to that. I hear it is going to be used also for police operations, could be a simple reason as that. But they can answer your questions.

Vice Chair Gates said just for the record Mr. Harris is here. So we have voting members and we are on the Fire Station, Mr. Harris. Any further questions of staff?

Mr. Reilly said Mr. Buchwald, were there any that you are aware of, any neighbors objecting to the tower or anything like that? Like the size of the tower?

Mr. Buchwald said actually I received contact from both Charles Grande, the President of the South Beach Association and Jack Cahill who indicated to me that they would not be opposing it. I have a picture here of an example of a tower (picture was shown on the monitors) and how it would look like. An example of one at an existing fire station. So that is in terms of the width and the proportion of it in regards to the height.

Mrs. Olson said Mr. Buchwald, to clarify this is not something that you notified neighbors of, correct? You didn't send out letters about this situation because it is not a change of use or whatever?

Mr. Buchwald said that is correct. That does not require property owner notification in this case.

Mrs. Olson said so the fact that we haven't heard from neighbors is not necessarily indicative because we haven't officially notified them, correct?

Mr. Buchwald said that is correct. Upon your approval or disapproval, upon your recommendation to the City Commission, a sign will be posted that indicates the fire station and antenna and it will be advertised as such as a fire station and antenna so that the public is aware that this will be also along with the fire station.

Vice Chair Gates said I don't think, am I right, Mr. Walker, that we don't advertise for the Planning Board for that kind of...assigned to the Planning Board for them to do?

Board Attorney Walker said that is correct, Madam Chair.

Vice Chair Gates asked are there anymore questions of staff on the Fire Station? Ok. Is there anyone here to speak in favor of the request? I think I see some gentlemen.

Mr. Patrick Pecunia, Culpepper & Terpening, said we are the engineers working on this project.

Mr. Ron Parrish, Assistant Fire Chief, said if you have any questions, I will try to answer them the best that I can. The property is currently owned by the Fire District, but will revert back to the County upon our exiting of it. Other than that, if there are any questions, I will be glad to answer them.

Vice Chair Gates asked did you want to make any presentations or are you just waiting for questions?

Mr. Petunia said if you have any questions, I will be glad to answer them.

Vice Chair Gates said are there any question for the applicant from the Board?

Mr. Reilly said I have a couple of questions here. The reason for the new fire house is, basically, capacity or I don't know how you determine in fire fighting terms.

Mr. Parrish said the reason for the new fire station is because we need to put a ladder service-type operation in there. The current fire station is unable to hold that type of equipment. This station will be able to have ladder service for the high-rises.

Mr. Reilly said the next question I have is on the getting out of that area with all the traffic now from coming over from the beach and all that. Is there going to be a problem with that? I don't know if that is a question for the engineer. Is there a light that is going... Has there been a study on how to get out? Do you have a problem getting out with the other...

Mr. Parrish said actually, no sir. At this point in time we are not having any problems getting out.

Mr. Enns said isn't there a roundabout going in at Harbor Isle? Is that going to present a problem getting equipment...or are you going to make calls on the west side of the bridge from this fire house?

Mr. Parrish said of course, the St. Lucie County Fire District provides service to the entire County. If the need arises that we have to go west, we will. The roundabout actually would not impede us at this point in time or actually would where we are currently are located and that was also one of the reasons why we were moving from where we were at.

Mr. Enns said because of the roundabout. What are you planning on doing with the old fire house? Is it going to be taken out of service or ...

Mr. Parrish said at this point in time, we are not quite sure, because it does have training capabilities. We will most likely be turning it back over to the County.

Mrs. Benton said to what extent does the present facility come west. What is the percentage of your calls coming west, now?

Mr. Parrish said the percentage of our calls that go west?

Mrs. Benton said yes.

Mr. Parrish said I honestly can't answer that. I don't believe it is a large percentage of the calls currently out of Station 2.

Mrs. Benton said so you don't expect an increase, percentage wise.

Mr. Parrish said I don't believe it would change. No, ma'am.

Mrs. Benton said ok.

Mr. Knott said I have a question for either the applicant or maybe staff, I noticed that there is an existing overhead electric power pole in the easterly driveway that is going to have to be relocated. If my memory serves me correctly, I know that there is a part of the A1A improvement, there is a movement to put these utilities underground. Has there been an consideration given to, as part of your construction of that portion that is across your property to put that underground or will still be overhead?

Mr. Pecunia said we are working with FPUA electric and that will be plans of the existing transformer that is located were the driveway will go will be relocated and will be relocated by FPUA themselves and that is a cost that will be incurred by the Fire District.

Mr. Knott said but that is still the overhead, is that correct or is it going to be put underground, do you know?

Mr. Pecunia said directly in front of the Fire Station, I don't know.

Mr. Knott said thank you.

Vice Chair Gates said any other questions?

Mrs. Olson said I have some questions regarding the antenna. On sheet 8A in the large packet, there is an aerial photo and it has the Site Plan overlaid on it. I took a straight edge and drew site lines from the eastern most Harbor Isle buildings to the 120 foot antenna and some of the Washingtonian Palms that you have provided on the Site Plan do screen one of the buildings. But the two eastern most buildings aren't really screened at all and I was wondering if you would be willing to work with staff to come up with a way, come up with a right kind of landscape screening along the dry retention pond, between the dry retention and the antenna to provide for visual screening.

Mr. Parrish said we are willing to work with you all in any way that we can.

Mrs. Olson said ok, great. I have another, kind of basic question, before I get down to my big ones. Do you plan to paint the antenna?

Mr. Parrish said no.

Mrs. Olson said the air obstructing lights that you will be providing on the top, they will be only operated only at night? It is on the Culpepper & Terpening thing and it says yes, but I was just verifying.

Mr. Buchwald said yes, my understanding with the documentation they provided to me they will only be on at night.

Mrs. Olson said and only one will be on at a time?

Mr. Pecunia said right.

Mrs. Olson said and one will point north and one south, correct? Yes, that's what it says. But the thing that I didn't see, are they going to blink?

Mr. Pecunia said I don't believe so.

Mr. Parrish said I don't know. Our tower on Milner Road does. I do not recall at Central Fire Station, I don't believe it does blink. I am sorry. My IT gentleman that would have been here, he had a death in the family, technically some of these answers I don't know the answer to, I apologize.

Mrs. Olson said do you have someone here that can answer some antenna questions for me tonight? Will you be able to answer some technical questions for me?

Mr. Parrish said I will certainly try.

Mrs. Olson said ok, I need to understand better how this antenna works. I see that you have an antenna at your Station #2, currently and it is about 2-stories tall, correct?

Mr. Parrish said currently, that pole is an 80 foot pole.

Mrs. Olson said so that is about 3...

Mr. Parrish said and about 5 feet of it is in the ground. So you are looking at about 75 feet above the ground.

Mr. Matthew Margotta said about 7 floors.

Mrs. Olson said 7 floors?

Mr. Enns said 10 foot per floor.

Mrs. Olson said wow, it doesn't look that tall. Ok, and does that antenna receive different information than you will receive on this new antenna? Will you be able to receive difference information to this new antenna than the old one?

Mr. Parrish said yes, we will be able to receive additional emergency communications with the new tower. We are currently in the process of enhancing our emergency communications process through what they call AVL or Automatic Vehicle Location, which is one of the main reasons why we need this particular height. At the height that we are currently requesting, we have about a 12 foot leeway with the circumference of the earth and where we've got to hit. That is all we have. The space we need, we only have a 12 foot of a leeway.

Mrs. Olson said so primarily, the new communications that you will be receiving at this antenna will be the AVL communications? That's what will be different?

Mr. Parrish said no that will be in addition, yes. We will also have 800 MHZ, 450 MHZ, which is our AVL frequency, our 4.9, which is the public safety frequency...

Mrs. Olson said and what does that do?

Mr. Parrish said actually, the Fire District is the sole, for lack of a term, owner of this particular public safety frequency. It can be used by Fire and EMS, Law Enforcement, FDLE, Secret Service, but for them to come and used that particular frequency in this County; they would have to come through the Fire District to get those capabilities.

Mrs. Olson said ok and that is the public safety frequency and you currently aren't using that, right now?

Mr. Parrish said actually we are using that in parts of the County.

Mrs. Olson said ok, just not at this Station?

Mr. Parrish said that is correct.

Mrs. Olson said from what I read, I understood that you have to have line-of-sight between this antenna and the EOC on Rock Road, correct?

Mr. Parrish said yes, ma'am.

Mrs. Olson said what happens if there is an obstruction between the EOC and this antenna?

Mr. Parrish said to best of my knowledge you will loose the strength of the signal, which will break up the communications process.

Mrs. Olson said ok. Is it correct to call this system the WLAN network? Is that...I saw it called a couple of different things in my documentation.

Mr. Parrish said the Fire District does have its own communications network, as well.

Mrs. Olson said ok.

Mr. Parrish said we have our own telephone system. We have our own computer network and this tower, part of its function will be for that. We send all of our fire reports, all of our EMS reports, and again, telephone communications, as well.

Mrs. Olson said and is that what the WLAN system is? That is what I am trying to get my mind.

Mr. Parrish said yes, ma'am. Called wlan, I believe.

Mrs. Olson said so this network that I have referenced in here that you need the line-of-sight for, is this intended to tie all the emergency responders together in the County, including the Police Department and Sheriff's Department?

Mr. Parrish said it does have that capability.

Mrs. Olson said but that is not necessarily what you are looking for at this point.

Mr. Parrish said the Fire District works with Law Enforcement on the 800 MHZ, which would be also on that tower. But the 450, which is our AVL and we are actually working with them at this point in time to bring them into the system, if they so chose. At this point in time, there is an interest, but we have not come together with that. But they will have that capability in the future, if they so chose.

Mrs. Olson said in order for all of your fire stations in the County to be on-line with the system, will they all have to have line-of-sight antenna?

Mr. Parrish said yes, ma'am.

Mrs. Olson said and how many fire stations are there in the County?

Mr. Parrish said currently there are 15.

Mrs. Olson said how many are there in the City of Fort Pierce? I think there are five, but I am not sure.

Mr. Parrish said ok, it's around that.

Mrs. Olson said how soon do you want to have all of these on-line? How soon would you like to have every one have their own line-of-sight antenna?

Mr. Parrish said we are currently in the process of doing that. Last year, we put in eight new towers and that is not including our Milner Road site, which is the 300 footer.

Mrs. Olson said ok. Is this new network that requires line-of-sight antenna at each station in the network and I noticed also in your documentation that not only does it need a line-of-sight antenna, but also that antenna has to be within 100 yards of the station it serves, is that correct? I should have outlined that.

Vice Chair Gates said Mrs. Olson, do you have other questions for them.

Mrs. Olson said yes, I do.

Vice Chair Gates said is there a purpose for the end result of why you are asking these questions of these gentlemen?

Mrs. Olson said yes and I am sorry there is so many, but I will just tell you what my concern is because I am almost at the end. I am wondering if this is the standard for connecting emergency responders, is this the new standard nation-wide for this line-of-sight antenna to connect a district together?

Mr. Parrish said it is probably the most frequently used standard for emergency communications for Fire and EMS. I am not sure about Law Enforcement. There are other means...

Mrs. Olson said can you tell me what those, like just generally, what those...

Mr. Parrish said fiber is a means that is extremely expensive and we do not have a network in St. Lucie County, at this point in time.

Mrs. Olson said and this why you chose to go with line-of-sight?

Mr. Parrish said yes, ma'am, economically it was the most feasible.

Mrs. Olson said my concern is that there is nothing of this size on South Beach currently and in my opinion, driving over from South Beach to Fort Pierce we have a beautiful city, but it is very marred by unsightly towers and antennas with blinking lights on top of them and I loathe the sight. I hate to think that we are on our way to create many, many more. And if we have 14 Fire Stations in the County and 5 in Fort Pierce and if the Police Department goes on-line, that's two more just in Fort Pierce. I hate having this here and

this why I wanted to know why it was so important to have this. It just seems like a very kind of archaic technology to me that everything has to be within line-of-sight. It is hard for me to believe that, especially up-scale municipalities, would agree to that and we're not. We don't have that capability to just through a lot of money into fiber optics. Thank you for answering my questions and I am sorry that I went on so long.

Vice Chair Gates said no, no, I just wanted to make sure there was a point at the end of the story because...

Mrs. Olson said it was long. Those are my questions. So we do not have the capability for you to go fiber optic to go on a network, at this point?

Mr. Parrish said no, ma'am.

Mrs. Olson said and if you had the option of going farther than 100 yards from your Station to your tower, would you be opposed to putting it on an existing building? A high building out on South Beach so that it didn't have to just stick up out of the middle of nowhere?

Mr. Parrish said I don't know that I can answer that. I am not sure how that would work, so I can't really answer that. I know that we are trying to do the best that we can for emergency communications with what we have available to us.

Mrs. Olson said thank you.

Vice Chair Gates said are there any other questions for the applicants?

Mr. Jeremiah Johnson said I understand the need for the tower. Was there any communication or any correspondence with Fort Pierce Utilities in regards to fiber optics? Because I know at one point they were in the process, if not already implementing fiber optic communication between plants, water plant, sewer plant and what not.

Mr. Parrish said I really can't answer that. I know communicate with them quite frequently. They are out provider for our IP address for our e-mails and things of that nature. I don't know the answer in regards to whether they communicate that there is fiber out there. I believe if there was fiber out there, we wouldn't have to do what we are doing today.

Mr. Johnson said I can't remember. I know at one point there was heavy discussion in that manner to link the water plants. It is the same situation: emergency protocol to have plants on-line and they need to communicate together. The Director needs to know and all the pertinent personnel. I don't have a problem with the tower, because I know there is a need for it, but I would just ask that maybe some correspondence occur with either the City and/or Fort Pierce Utilities to check into that. Because I know they were looking into it heavily.

Mr. Parrish said yes, sir. I believe that has been already, but I can't be 100% certain with that.

Mr. Johnson said thank you very much.

Mr. Reilly said just one quick question, line-of-sight, if I build a taller antenna somewhere else, like at Rock Road or your main communication center, can I build a smaller antenna out on the beach, is that how line-of-sight works? I know if I have a taller antenna on my boat, I can reach a little bit further.

Mr. Pecunia said it is my understanding that one of the problems is that we are at sea-level and Rock Road is 35 - 40 feet above sea-level and then there are trees on top of that, tall pine trees. So, we have to get above the higher elevation, above the trees that are on top of that higher elevation. So, that was a big portion as to why the tower height is the way it is.

Mr. Parrish said again, I am not the most technically suave, but the frequency levels actually run at different heights within the air.

Mr. Johnson said you would do this in the most economical way, so if it was less expensive to build one large tower at Rock Road, than build 50 towers that would have been explored.

Mr. Parrish said absolutely. Towers are pretty expensive as well.

Mr. Johnson said ok.

Vice Chair Gates said any further questions? Thank you very much.

Mr. Parrish said thank you, Madame Chair and Members of the Board.

Vice Chair Gates said is there anyone here to speak against this request? I don't believe so. What is the Board's wish on this item? I entertain a motion.

Motion was made by Mr. Enns, seconded by Mrs. Benton, to approve the Site Plan for a Fire Station and communication tower.

Vice Chair Gates said is there any further discussion on this motion?

Mrs. Olson said may I suggest that we add a few things, Jeremiah's question that they check with FPUA about fiber optic capabilities before moving forward and that they will commit to working with City staff to provide landscape screening along the edge of the dry retention pond.

Amend to the Motion was made by Mr. Knott, seconded by Mrs. Benton, to approve the Site Plan for a Fire Station and communication tower with the conditions that they check with FPUA about fiber optic capabilities before moving forward and they will commit to working with City staff to provide landscape screening along the edge of the dry retention pond.

Vice Chair Gates said is there any further discussion on the amended motion?

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

Vice Chair Gates said your request has been approved and you will receive a notice when it goes before the City Commission. Thank you very much.

Board Attorney Walker said respectfully, I would just like to take this opportunity to briefly remind staff that Commission approval will require written adoption of findings. So that staff should make arrangements for that at the appropriate time of final adoption.

Mr. Buchwald said Mr. Walker, can you please clarify as to what the findings are to include or what they are regarded to.

Board Attorney Walker said that is a subject I will discuss with staff later.

Vice Chair Gates said that would be fine. Thank you.

The next item considered - **#6 - WSAMS Food Mart** - Application for Waiver of Distance for a 2APS Alcoholic Beverage License for the sale of packaged beer and wine for off-premises consumption. The property is located at 2410 Avenue D and is zoned C-3, General Commercial. The owners are Raja and Haifa Abed and the applicant is Salem Qaraleh.

Mr. Peter Buchwald said the applicant has recently acquired a business now known as WHAMS Food Mart and is requesting the transfer of 2APS Alcoholic Beverage License for the sale of beer and wine in sealed containers for off-premises consumption. WSAMS is a convenient store located at 2410 Avenue D. This property is zoned C-2, General Commercial. Section 3-7 of the City Code prohibits the sale or transfer of any intoxicating or alcoholic beverage license the business establishment is 500 feet or less from a church or school unless a Waiver of Distance is granted. Although no schools are located within 500 feet of the establishment, a church is located 428 feet to the east 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 500 feet between the applicant's establishment and this church. Now, as the establishment also fronts North 25th Street, in addition to Avenue D, it does not appear that traffic will be generated which may adversely affect the safety of those persons attending the church. A notification of the Waiver of Distance application was mailed to the owners of properties located within 500 feet of the establishment. Ninety-six notifications were mailed and we have updated response numbers since your packet was distributed. A total of 20 responses to the notifications were received. Of these 20 responses, only 2 approved of the Waiver of Distance. The other 18 responses opposed the Waiver of Distance. Staff recommends that the Planning Board forward a recommendation to the City Commission for approval of the Waiver of Distance for a 2APS Alcoholic Beverage License with the conditions that the on-site parking spaces be marked and that landscaped strips be provided along the street right-of-ways to comply with the City Code. However, it should be noted that a recommendation for disapproval of the Waiver of Distance, based on the negative responses received, is at the discretion of

the Planning Board. If the Planning Board recommends disapproval of the Waiver of Distance to the City Commission, the waiver may not be granted by the Commission except by a four-fifths vote.

Vice Chair Gates said ok, thank you. Are there questions for Mr. Buchwald on this item? Mrs. Olson said these landscape strips, what are there sizes and like, how big are they? What is a landscape strip?

Mr. Buchwald said Section 22-187 of City Code requires a landscape strip of 10 feet in width along the public right-of-way or 6 feet in width, depending on the size of the property. There are certain criteria in terms of what is to be included within that landscape strip. It must be irrigated, as well.

Mrs. Olson said it must be irrigated, that was another question that I had. Do we have any ability to enforce upkeep on this, like on the strips, like if the plants die and things like that? Is that the same that you answered to Mr. Reilly earlier that they have to place a bond?

Vice Chair Gates said that would be a Code Enforcement issue, I would believe, right?

Mr. Buchwald said that is correct.

Mrs. Olson said what is the 20% threshold you have in the packet? Letters sent to the property owners, it says 20% threshold, I am not familiar with what that means.

Mr. Buchwald said the 20% threshold is, actually we should revise that particular, when we submit a Property Owner Response regards to this, the 20% threshold pertains to a Conditional Use permit or a rezoning or an amendment to the Code, where notifications are sent out to the property owners prior to City Commission and more than 20% of those property owners disapprove of that element. But with regards to this Waiver of Distance, there isn't a 20% threshold. What factors in is if the Planning Board, the notifications are sent out prior to Planning Board and if you forward a recommendation of disapproval, than that four-fifths vote is required by the City Commission. 20% threshold for those other items, those other elements, such as the amendments, than if more than 20%, again, four-fifths vote of the City Commission...so fortunately the 20% is not applicable. The long and short it is not applicable in this case and I should revise that Property Owner Response Summary.

Mrs. Olson said the 20 % threshold than would mean in other cases, that if 20% opposed then it wouldn't go before the Commission?

Mr. Buchwald said no, approval would require four-fifths vote. What would trigger four-fifths vote in this case is if you disapprove.

Mrs. Olson said I understand, thank you.

Mr. Enns said Peter, I see it is the old Dixon's chicken place and for the life of me, did they not sell beer there before or is this the new ownership?

Mr. Buchwald said they have been selling beer for awhile. But in Code, whenever there is a sale or it requires a transfer, this is the mechanism by which they can be reviewed again in terms of whether or not license be granted. The large number of respondents indicated that they don't want that license to be transferred to them that they have enough beer and wine establishments within the location.

Mr. Reilly said Mr. Buchwald, when you send these out to neighbors and all that, what is your normal response? Is there a percentage that normally response back? Is this a low percentage?

Mr. Buchwald said we receive about 20% responses. But this is the most number of negative responses that I have received to date, since I started in the last six months.

Mrs. Benton said I am interested to know why does staff recommends approval in light of the responses they received. What is your rationale is the only thing I am asking.

Mr. Buchwald said it is a terrific question, because we are asked to provide recommendations and in the City Code, though there is only so many things where we are of the liberty of a discretion to recommend to. So, by bringing that landscaping as indicated, it does not appear that the way that it is situated with regards to the church and that there is access that would impact the traffic or the traffic would impact the health of those attending the church. If they bring the other elements into Code, which is providing the landscape strips and the parking, then it meets the requirements of the City Code and so we don't have the discretion within the City Code. That is up to you and the City Commission to, as the elected people of the residents and you as the appointed members, to vote according to the wishes of the public, if you so choose. But unfortunately, staff's only obligation to make sure it meets the requirements of the code, as we don't have the discretion to approve or disapprove of this item.

Mrs. Benton said is it fair to say that with the improvements that would be in place should they receive approval on this from the City that it would be an improvement of that corner, in terms of aesthetics?

Mr. Buchwald said aesthetically it would improve the corner. As I said, the whole purpose of sending out these types of notifications and to do it prior to Planning Board is so that you can receive the response and vote according to what you believe whether that is important to improve the aesthetics or whether it is important to respond to the 18 people who disapproved it. From there, the City Commission can decide if it's disapproved, whether they are going to require more of a vote to approve this and that is what makes the system work. That is to respond to the people and that is why they have a say in this and this is the type of mechanism when utilized properly than is what the purpose of that is for.

Mrs. Olson said I was just going to clarify, Peter, what you are saying that if it meets Code, staff has to recommend approval.

Mr. Buchwald said I am not aware of anything in Code that staff has to provide any recommendation at all. It is preferred by the Planning Board and it has been common practice for staff to provide some type of recommendation to the Planning Board and the City Commission. So, we base our recommendation on objective and that would be to the Code, because we don't have any discretion. We don't have the ability to approve or disapprove. That is up to you and the City Commission. So, it is our interest to give you the information you need that it meets the Code. You have a tremendous amount of responses that have been negative and the decision, now, rests in your hands and that of the City Commission.

Mr. Enns said Peter, you may not know the answer to this, but I know there is several grocery stores on the other side of Avenue D, on the south side of Avenue D, right along that same block, I am just wondering do you know if they sell beer and wine?

Mr. Buchwald said yes, they do. There is a convenience store right across the street from there on the southeast corner of 25th and Avenue D and there is a number of convenience stores up and down Avenue D. In fact, one of the respondents did indicate in their response that they feel they have enough liquor stores and beer and wine establishments and it is a high crime area in that area of Avenue D.

Mr. Enns said I know there have been recent drive-by shootings in that area within the last year, I would say something like that. I can see the residents' concerns there.

Mr. Reilly said Mr. Buchwald, is it possible with adding the landscaping, can it be a requirement to add irrigation for that landscaping also, so we just don't add landscaping in the middle of an asphalt parking lot that is basically going to die off?

Mr. Buchwald said that is the requirement of the Code that is be irrigated. Section 22-187 specifies that the landscape strips be irrigated to that they will maintain themselves.

Mr. Reilly said ok.

Vice Chair Gates said any other questions? Well, you all have asked all the questions I was going to ask, so mine are answered. Mr. Enns's question about the grocery stores and things, you are talking about in the vicinity here on the other side of the, show me where you are talking about. (Mr. Enns indicated the locations on Mrs. Gates map)

Mr. Buchwald said I know one for sure on the south. That is a convenient store that currently sells beer and wine.

Mr. Enns said if I am not mistaken I think there is one on the corner of Avenue D and 24th, also. Whether they sell beer and wine, I am not sure.

Mrs. Benton said there is a drive-in at 22nd, as well, and Avenue D.

Vice Chair Gates said these are all for off-premise beer and wine sales, correct? There is nothing that is established there that is on-site consumption.

Mr. Buchwald said I am not sure. What triggered it was because there was a church or school within 500 feet and because it is a packaged store. So, whenever there is a packaged store you look whether there is a church or school within 500 feet. That triggers this whole mechanism.

Vice Chair Gates said ok, thank you very much. Any other questions? Is there anybody here to speak in favor of this request? (no response) Is there anyone here to speak against this request? Yes ma'am. Can you come forward and state your name for the record, please.

Ms. Lessie Wrenfro said I am here to speak against this because of where my property and my mom's property is located. We adjoin the property that is requesting this. It is quite a nuisance as it is. I don't frequent the store, but that corner there is traffic in and out. They congregate there all hours of the night. I have a 91 year old mom there. The loud music. I am constantly cleaning up cans and bottles. Sometimes they even throw it over the fence. It is just a real nuisance and the fence that separates, that divides our property from the prior Dixon's property, if it has been sold, I have replaced, I have repaired it a numerous times. On the south side, as well as the west side, where the vacant lot is in back of the store and all day you are looking at people in the back urinating. It is just disgusting and thank God they are not close enough that...if the wind was blowing in a certain direction, it would be unbearable. So, I am definitely against this. Anything you can do. I have asked numerous times before Mr. Dixon sold the property, if he has sold it, that they put up boulders or something by the parking lot to protect my fence. The back fence and Code will require us to repair the fence and whatnot when the damage is usually because of someone else's negligence. The back fence, which on the west side and the back of our property, I now still have to have that repaired. It is because of the big trucks that used to park back there between the trucks backing against the fence and the hurricane and I can't do everything at one time. Someone drove across the fence on the south side of the property, which is dividing the parking lot from our property, left the car running and it jumped into gear and drove across the fence. Aside from other accidents with cars running across all hours of the night and no longer than this morning there are bottles by the curb, by the sidewalk, between the sidewalk and the gutter. If I don't clean it up, it's unsightly. So, if Mr. Dixon was selling beer and wine, it was as if he really didn't care and I guess he is not around all hours of the night to have to deal with this. Sometimes the music is so loud the windows are vibrating. Just last week sometime, 24th between Avenue D and E was closed off. I don't know what happened. There was police cars everywhere, an ambulance. I think there was car up against a pole. I don't know what happened, but it wasn't something that I wanted to be involved in and I am asking that something be done as far as them hanging out, the loud music, and if you call the policeman and if they come, the crowd leaves and as soon as the cops leave, they are back. I am asking that something be done with the parking lot to protect our property.

Vice Chair Gates said sounds like you've got a little problem there.

Ms. Wrenfro said we really have a problem.

Vice Chair Gates said is this not, I am listening to her, is this not a Code Enforcement problem that we can maybe if she comes to staff help her get to the right departments disregarding this issue, could she come to staff and see if it possibly could it not be helped through Code Enforcement?

Mr. Margotta said short answer is that it is a lot of things. It is obviously a lease and probably some criminal activity, but there is obviously some Code Enforcement situations. She can come to staff. Building and Code handles Code Enforcement, however if the issues are addressed to the Planning Department, we will be sure to make certain that the proper people get a hold of it and be kept informed of the progress. Believe me, that is how they need to know that Code Enforcement needs to occur by being reported.

Mrs. Wrenfro said I have even asked Mr. Dixon. I recently, almost a year, relocated to look after my mom. Prior to that, I was traveling back and forth. I personally went over and talked with Mr. Dixon, when he owned it and asked that he put something there. My mom says there were hedges at one time. But they would run through the hedges too. I have even asked if he has concrete boulders where there were gas tanks, at one time. It noticed he put them around the gas tanks to protect that. So, why couldn't he put something like that along his line of property for protection of our fence and what not. Because with them parking, they way they do it, there really is nothing there done now. Something needs to be done.

Vice Chair Gates said I was going to say, could she come to see you after the meeting and maybe get some kind of idea of where she needs to go in the City to get some help with that particular issue? We can't deal with that particularly. We all feel for you, but at this particular meeting that is not for us to be able to take up. But if you get with staff after the meeting, I am sure that they can direct you in the right place to go to help you get some help for this problem.

Mrs. Wrenfro said I would appreciate that and with the beer and the wine, they would still drop the cans, drop the bottles, and throw them over the fence. This is my concern, as well.

Mr. Reilly said if you had, I guess this is a question for maybe staff and then I would like to ask you some question, if you don't mind. Can we restrict hours of beer sales there or is all or nothing?

Mr. Buchwald said I will defer that question to our legal staff to address that.

Mr. Reilly said on the same lines, with an approval, if we went that way, can we also ut contingencies on that that the new owner is responsible for clean up around the site, both on and off property?

Mr. Buchwald said any owner of any business is responsible for that. So, it is a requirement of the City Code. That just further reinforces, so when it becomes a Code Enforcement issue.

Mr. Reilly said but if that was tied to this use permit, you would probably be a bit...I guess part of my concern is and I understand is I am sure that a lot of revenue is generated for Dixon's through beer and wine sales. That is one part of my concern for the business owners who purchased the property. For the homeowners and the surrounding, I understand, I go by Dixon's all the time, so I understand your concerns also. If there is some way to tie the two where the business owner makes sure that everything that all the people around him are happy that would make me happy. If something like that was done, would that make you happier or you are just against sales altogether?

Mrs. Wrenfro said I am just against how it affects us. They could buy it from the store across the street and still throw the cans and bottles. I've just expressed my feeling about and how it affects us.

Vice Chair Gates said you feel that selling beer and wine on these premises would just aggravate the situation is what you are saying?

Mrs. Wrenfro said they are probably doing it already.

Vice Chair Gates said from getting is somewhere.

Mrs. Wrenfro said they are probably selling it before your approval, if it was being done when Dixon owned it. I don't know. Like I said, I don't frequent the store.

Mrs. Benton said a lot of people aren't here tonight. I do know Mr. Dixon and I believe that when he had it and I don't have information about whether he still has it or not, I understand it was sold. I believe that he did have a license to sell beer and wine, at one time. So, he was licensed, just in reference to Mrs. Wrenfro's statement about whether it was done improperly without a license.

Mr. Buchwald said how it comes to our attention is they are required to...there is an item on their application for the transfer of the license that requires zoning approval from the City and that is when we do a search to see if it is within 500 feet of a church or school. If it is and they want to continue, then they have to through this process and apply for a Waiver of Distance. We are not going to provide zoning approval for their application for their alcohol license. So, it again becomes a Code Enforcement issue, by the State Department that is responsible for that, at that point. The point is is that we have not given approval and so than they will be operating illegally.

Mrs. Benton said I understand that, but we are talking about another person, not the Dixons. I just wanted to clarify that. The other thing is sounds like a lot of loitering in the area and that requires police action, I believe, not so much Code Enforcement that part of it. And if people are coming in and throwing bottles and whatever from where ever they have gotten them from, I do think the owner should be responsible for seeing to it that people to come on his property and loiter. My question would be whether or not if he gets the permit and is allowed to sell packaged alcohol whether we could tie in a requirement that he not allow loitering on his property and also the clean up that somebody else mentioned and in addition whether we could tie in, I have seen us do it in other cases, shoring up the fence

and putting a better boundary there between the properties. In other words, I guess is what I am raising a question about is whether we could actually utilize his desire to get this permit to enforce a better situation at that corner and to make the improvements that would really be helpful to Mrs. Wrenfro. It doesn't have to be like that just because somebody is selling packaged liquor. You go in, you buy your packaged good, and you leave. The idea of someone standing around drinking and throwing bottles here and there and backing into the fence is a horse of a different color. We should perhaps see whether, Mr. Walker, these things could be tied into our recommendation. That would be my question on that.

Board Attorney Walker said respectfully, if I may. That is the second question that has been asked relating to the ability of the City to impose conditions upon a Waiver. Section 3-9, which deals with the procedure relating to that, sets out detailed criteria that could be considered and it indicates that the Planning Board recommends either approval or disapproval. It does not, however, expressly confer authority to approve with conditions. Therefore, if there is any doubt in the matter given the fact that we have never, to my recollection, imposed any such conditions I would tend to err in concluding that there is no authority to impose conditions. I would like to briefly address comments made by staff where staff was indicating that it's discretion for recommendation is tied to consideration of the factors that the Code sets out. In the event anybody got the impression that the Board was itself free to ignore the factors that we have to consider and to make a decision arbitrarily outside the parameters of those factors, I would wish to discourage any such impression. The Planning Board is bound by the same factors that staff is. Staff, based on its consideration of those factors, which are set out on page 2 and 3, has recommended approval. The Board is not necessarily bound by staff's recommendation and it may reach a different conclusion. It is required, however, to base any such decision upon the same criteria that staff worked with and may not go outside the boundaries of those criteria.

Vice Chair Gates said thank you, Mr. Walker. I hope this answers your questions. Thank you very much for coming up and speaking your mind.

Mrs. Wrenfro said if I may, I did speak with the Minister from the church and he was against the Waiver as well. He said he was going to be here tonight but this was his Bible Study night, so I guess he couldn't get anybody to take care of that. When the fence was run over, the gentleman who did it, did repair it for me. Other than that, every time it has been damaged it has been at my expense.

Vice Chair Gates said thank you very much and if you will get with staff after the meeting, maybe they can direct you to the proper places to go for your problems, because it does sound like there are some other problems that are involved there to help you out. Good luck to you.

Mrs. Wrenfro said thank you.

Mr. Reilly said I have a question for Mr. Walker. What are our options with this? If we disapprove...right now we don't have anybody here for this item, if we disapprove, it will go through if it is four-fifths or whatever it would require a...it would go through with all of our notes and disapprove, correct, and then it would take a large vote to approve with the

Commission. We can't, as we have done in the past since we don't have the owner of WSAM's Food Mart here right now, we really can't deal with that person, is there a way to put this off, I hate to even say put it off for a month, is there a way to put it off so we will get the attention of the owner of WSAM's Food Mart to come in on the next month so that we can deal with that person?

Board Attorney Walker said assuming I understand your question, the question as I understand it is does the Board have the discretion to table the application for a limited period of time so that the applicant might have the opportunity to address any questions. Is that the jest of...

Mr. Reilly said yes, sir.

Board Attorney Walker said understanding that, it is my opinion that the Board does have the authority to table the matter to a time certain if it is not satisfied that it has all of the information it needs to fairly address the application so that the applicant might have an opportunity to come in and respond to those additional questions.

Mr. Reilly said he answered my questions, thank you.

Vice Chair Gates said is there any further discussion on this item?

Mrs. Olson said to state my feeling on this issue I have no patience for a business owner who is such a poor neighbor. He allows loitering, litter to pollute the neighborhood, noise. He has owned this property for 10 years, according to the tax records. He lives in Virginia, so he must rent it to someone. I don't see any reason to offer him a carrot when we have plenty of sticks in Code Enforcement.

Vice Chair Gates said thank you.

Mr. Knott said just a quick question for staff, did you inform the applicant when he made his application that his presence would be welcomed at this meeting.

Mr. Buchwald said in person he was at the Planning Department on Friday afternoon and Diann indicated that this would be an agenda item and the date and time of this meeting.

Mr. Knott said he was informed of this meeting.

Mr. Buchwald said absolutely.

Mr. Knott said so he just chose not to show up.

Mr. Buchwald said I cannot fathom why he did not choose to show up.

Mr. Reilly said is this, right now, they are applying for a Waiver because it is changing hands, correct?

Mr. Buchwald said yes.

Mr. Reilly said the current owner already has it.

Mr. Buchwald said they are transferring a liquor license so we received an application in the Planning Department for approval.

Mr. Reilly said but the current owner who has had it for the last 10 years has a Waiver already in hand?

Mr. Buchwald said I am not aware of if they have a Waiver or if they don't have a Waiver, I do not know.

Mrs. Olson said Mr. Reilly, I would assume that the owner of the property owns it and he rented it out to Mr. Dixon and then Mr. Dixon's lease ended for whatever reason and he leased it to someone else and now he needs to get a different one. So, he owns the business, but not the location, is probably my understanding. But I don't know how long he has had this new lease. I don't know how long Dixon hasn't been there. Margaret, you said you knew Mr. Dixon, do you know how long he hasn't had the business there?

Mrs. Benton said I don't know the number of years, but it has been... he has owned for a good while. But as far as I know, it is my understanding that he does not own it now and that is what the tax records are showing.

Mrs. Olson said I was just wondering if you had any idea how long he has not been operating the business.

Mrs. Benton said a number of years.

Mrs. Olson said a number of years, so this particular person who owns who has not been a good neighbor has been there for a couple of years, probably.

Mr. Knott said in light of the discussion and the fact that the applicant chose not to be here this evening and contrary to what Mr. Reilly had indicated, I see that the super majority be kind of tough to get from the Commission...

Motion was made by Mr. Knott, seconded by Mr. Enns, to recommend denial of this to the City Commission.

Board Attorney Walker said Point of Order. Respectfully, the fact that the applicant is not here is not a factor that the Board can take into account in denying the application.

Mr. Knott said I will strike that from my motion.

Amended Motion was made by Mr. Knott, re-seconded by Mr. Enns, to recommend denial based on the response from the neighbors.

Board Attorney Walker said respectfully, any recommendation needs to be based upon the factors that are set out in the Code. Mir neighborhood opposition, as such, is not a factor. The Planning function is not an arithmetic function, it is not a matter of counting up those who are in favor and those who are opposed in making a decision based upon which ever side has the greater number. The Board's action needs to be based upon the factors that are set out in Section 3-9.

Mr. Reilly said I think it might get more out of this and the neighborhood would get more out of this by tabling this until next month sending the message to the current owner or the current applicant to be here next time where then we can make him aware of our view and hopefully get more out of this than just restricting his sale, which might mean additional landscaping, providing protection for other people' property and keep in the site cleaner. Right now, if we just put it on as we said earlier there still might be loitering on that parking lot. They are still selling beer across the street. This will put the illness on if the person really wants to sell beer and wine, which I am sure he does. This will put the illness on him to keep that site clean and keep it....I mean, we can have it better landscaped and I would also recommend in the next meeting that we have the parking, not just adding stripes, but an engineer probably look at the parking problem there. Because that is part of the problem with people backing into each other is that it is not properly laid out. That is why I think that a tabling and putting it off until next meeting would be wiser than just shooting it down right now.

Amended motion was made by Mr. Knott, re-seconded by Mr. Enns, to recommend denial based on Section 3-7 of the Codes that does not allow this use within 500 feet of a church.

Vice Chair Gates said there is a motion and a second on the floor to deny based on the fact that there are churches and schools within 500 feet. I will open this up for discussion. Is there any other discussion?

Mrs. Benton said I agree with the last comment and I think I sort of indicated that earlier. I don't think that we are making the best use of this opportunity by just denying it. I would like to see the owner come in, too. Our lawyer indicated that there was nothing in the Code that specifically allows us to attach conditions to any recommendation here, but there is nothing that prohibits it either and if we want to really go out with it, it is ultimately this is going to be a decision made by the City and if we want to go out and really take a stand on this we might want to use this as an opportunity to attach conditions to it. I mean, Counsel recognizes it and that is how laws are made and that is how ordinances can get changed and it doesn't say we can't do it, he said to be cautious. He would probably recommend that it can't be done. So I tend to agree with the last comment and I would oppose the motion on that bases. Because I would like to see something done, not just that they come in here and get denied and the same thing goes on. The lady in the back is still suffering the same. The community is still suffering the same. We have an opportunity here and I would be opposed to this particular motion for that reason.

Mrs. Olson said there is nothing that keeps this applicant for re-applying for a liquor license at a future date, is there?

Mr. Buchwald said I am not aware of anything in the City Code. I would ask the City Attorney, though, to correct me, if I am wrong, with regards to being able to reapply at a later date.

Board Attorney Walker said a re-application would be barred unless the applicant was able to demonstrate that the re-application was materially different in some respects from the preceding application or that circumstances had changed so that consideration of those circumstances might result in the different outcome.

Mrs. Olson said specifically, if we were to say that we would consider his application in the future if he were to clean up his act, as it were, then that would not be acceptable under current law.

Board Attorney Walker said I respond to that question by suggesting that it appears to impose a criteria for rejection of the application that is other than those that are specified in the Code. The only factor that I can see here that goes directly to that sort of matter involves (Sec. 3-9(8)) sub (b) "the type and size of the establishment including any bar floor space and seating capacity, and whether, in view of such type or size, the proposed establishment is likely to create a public nuisance or traffic impediment by drawing crowds or persons milling about outside the building." So, that is a factor that would permit disapproval.

Mr. Reilly said I have so many questions right now. Mr. Walker, which you are stating with what you just said was basically if we disapprove for a certain reason, such as being within 500 feet of a church, unless the church moved that would be a different circumstance or if that church or something happened there then he could not apply but if we picked it up for a different reason and disapproved it, such as the item you just read then if he cleaned up his act, he could than re-apply. Is that what you...

Board Attorney Walker said the questions that are being addressed here have to do with the doctrine that is called administrative res judicata and that is a rule that says generally once you loose in an administrative proceeding you can't come back for a second bite of the apple and there is one exception and that is whether there is a material change of circumstances. Probably another exception is if you come back with a substantially modified application. You are dealing with a hypothetical that is rather stretching the boundaries of my ability to respond. If the applicant were able to come back and offer new evidence showing a substantial change of condition that was relevant to the reason for which it had originally denied, then I am thinking that it might be possible to come back and re-apply. But to lay the ground work for that scenario, the record should reflect that that was the reason for the denial. If I am making myself clear, and I suspect that maybe I am not. If milling about or traffic impediment by drawing crowds and public nuisance, if that is the reason for turning him down, then probably that should be made explicit in any motion. That would open the door do the applicant to come back later and say that there has been a change of circumstances so that the Board should reconsider or that the City should reconsider any denial. Is that clearer?

Mr. Reilly said yes, sir.

Vice Chair Gates said yes. Are there any other questions or discussions on this item?

Mr. Johnson said I have to give my two cents in. In my opinion, beer and wine approval would not allow...tell me that the owner is going to clean up the property just because we gave him this license. In other words, I am telling you that in my opinion this property is a Code issue. Code Enforcement should be handling this situation. I don't care what they sell there at this point, but there is obviously a Code Enforcement issue. Giving this approval, knowing that there are many other establishments along the same area, doesn't tell me that the owner is going to straighten up, clean up his act. You have heard the residents from the neighborhood talking about the issues and it says right there "as specified by Section 3-9(8),"A waiver of distance requirements under this section shall be granted only if it does not adversely affect the community health, safety, or general welfare and that the following are considered:.." To me there is five or six items in that list right there that I am just not comfortable with. Number one is the health, safety and welfare and by approving this license doesn't tell me that the owner is going to clean up the property. It is a Code Enforcement issue - 100% all the way.

Mr. Reilly said again, what I am saying is not to approve and not to disapprove. The only way that you are going to get...I mean, yes, you can go after them, Code Enforcement can try to straighten things out, but using a carrot, which is something that is very valuable to, I am sure, to any convenience store owner is your beer and wine sales, to bring him into compliance would probably make the place look a lot better, a lot quicker. Right now, some of the damage, I mean I go by Dixon's all the time, that place is loaded up early in the morning. So there is a lot of traffic in that parking lot, people are buying and stocking up on ice, water, Gatorade, food for the day, everything right there and it is packed. You have got to somehow get the whole place up to speed and you could just pick the guy to death with Code compliance, but if you get the business owner in here and tell them that he is not going to get something basically that he wants and has to have unless he complies with what our wishes are is just like working with a developer and getting him to put additional landscaping in or getting him to do an additional deceleration lane or something like that. That is why I am saying to table it, move it off until the next meeting, and if the guy is interested in it, if he wants that beer and wine license, I guarantee he will be here on the next meeting. If not, we could always disapprove it then. If I understand correctly, if we table it, he doesn't have his license right now anyway. He doesn't have his variance, correct, Mr. Buchwald?

Mr. Buchwald said staff has not signed off on any transfer of the liquor license.

Mr. Reilly said ok.

Mr. Enns said if we deny it, I guarantee he is going to show up at the City Commission, though. And that is where the real action is going to take place.

Vice Chair Gates said Mr. Reilly, we have three options: we can approve it, we can table it, or we can deny it. If we deny it, we must base it on what Mr. Walker said, something that is in the Code. Ok. They still can approve this request of his with a four-fifths vote. Four-

fifths it will take to approve it. Hopefully, the City Commission is going to read and they should be reading our Minutes from this meeting and I am sure that they are going to be aware, after this, of what our concerns are and what the neighbors' concerns are, which are really not, I don't like to say our problem, but they are not something that we can enforce because we are a Planning Board. The issues that we are all seeing and hearing about are Code Enforcement and police issues. Even if we told him, I believe, that we would not approve this unless he did those things, we can't enforce that. Do you see where I am coming from? I understand your point of view and I agree with you and I agree where you are coming from, but in this Board we are here to look at the item as a Planning Board and from the standpoint of "I am not going to give you a Beer and Wine license, unless you do this" Mr. Walker, I want to make sure I am saying this correctly, we don't have the teeth to enforce that. Am I correct? The conditions that we are asking, we can't really enforce.

Board Attorney Walker said the Planning Board does not have an enforcement function.

Vice Chair Gates said could we still put those conditions on it? Then you would hope that the City Commission would approve it with those conditions also and see to it that it was enforced, right? I mean, that is where I am coming from.

Board Attorney Walker said the question is whether or not the Board's recommendation can be conditioned and go beyond a simple approval or disapproval.

Vice Chair Gates said that's right.

Board Attorney Walker said respectfully, I believe that I previously addressed that where the Code does not expressly give authority to impose conditions upon a recommendation of approval or disapproval. So, based upon past practice where the Board has not, to my recollection, imposed any such condition it would be my recommendation that the Code does not confer authority to impose a condition where the simple role of the City is to either say up or down, yes or no.

Vice Chair Gates said thank you.

Mr. Reilly said when we have a developer that comes in and they want to do something, they want a Code variance, we give our recommendation and with that developer standing right there we say "I would like more landscaping around that fence and I want something around that water retention area" with that we are not actually saying you have to do that, but we are getting that person to buy-off on what we want.

Vice Chair Gates said those are not Code Enforcement problems either.

Mr. Reilly said but we are doing the same thing here. If we send it as a denial, I guarantee that Dixon's is not going to get any better looking.

Mr. Margotta said if this might help, as I understand the Code, a Conditional Use approval is different than a Development Permit approval. Development Permit approval, I believe, this Board is specifically allowed to approve, approve with conditions, or deny. You have that

approval with conditions capability. Yet another idea is that the application is before you to be decided upon on its face. What you have in front of you is what you have to decide upon. There is nobody here to have a two-way discussion with, I understand that. But it wouldn't actually matter. The application before you is what the applicant says they are going to do and that is what the decision should be based upon.

Mrs. Benton said as the Planning Board, are we permitted to make a request or recommendation to the City Commission to make changes in the Code? For example, in light of what has been said here, can we ask that they consider giving us the authority in the Code to make recommendations in reference to Waivers?

Board Attorney Walker said the Board has from time to time in the past through motion instructed staff to prepare proposed ordinances, sub-mandatory ordinances for consideration by the City Commission and the Board has then either ask that the proposed draft come back for further review by the Planning Board or that the recommendation be sent directly to the City Commission without further review as the recommendation of the Board.

Mrs. Benton said in light of that that type of recommendation we can go ahead and handle with what Mr. Reilly has been saying. Because if this particular matter were tabled or we made a recommendation to basically amend the Waiver ordinance and if it were accepted by the City Commission, then we would then have the authority to attach conditions to any recommendation about the Waiver. Just to conclude, in light of that we do have a motion and second on the floor....

Vice Chair Gates said a motion and second on the floor to deny it based on the fact that it is within 500 feet of a school or church, so there is a motion and a second on the floor here.

Mrs. Benton said but in light of all the discussion, what I just said and what Mr. Reilly had said, again, I would not be able to vote for this much. I would hope that it's defeated and that we could then take another approach based on what Mr. Reilly has said and then ask the City to consider an amendment to the ordinance.

Mr. Reilly said I don't know if Mrs. Olson had a question first.

Mrs. Olson said I did awhile ago. I will just ask it quickly. Mr. Walker, if we could somehow contrive to make our conferring of a license to sell alcohol based on him keeping litter out of the neighbors' yards and keeping people from loitering and the noise issue, if we could somehow attach those things, could we withdraw his license if he did not follow up on those things?

Board Attorney Walker said the question actually involves a chain of assumptions. Number one, it asks that there be an assumption that one can impose conditions; number two, it assumes that certain conditions are in fact imposed; and then number three, it asks about the legal affect in the event the conditions are subsequently violated. It is difficult to respond with that chain of assumptions, but we would have to have explicit authority in the Code that would permit the City to seek to repeal an approval, one of the questions that

would have to be addressed is whether or not that could be done under State regulatory guidelines. I don't know if the State would permit a municipality to repeal or revoke a zoning approval once given. That would be a sub question. There are a number of issues that would have to be addressed and I hope I have touched on those to give you an idea of why it is difficult to really give you a simple answer to that questions.

Mrs. Olson said I understand. To sum up, if we wanted to do what we are talking about here, which I think Ed has a good point to tie this carrot on and make these kinds of things happen with property owners who we would like to control a little bit. But in order to do that, we would have to go through a lot of revision to our Code and even have to address State law issues, correct?

Board Attorney Walker said I believe that all of those factors might well be confronted, yes.

Mr. Reilly said Mr. Walker, if we sent this through with recommendations, can the Commission put caveats or contingencies on the use permit or the Waiver?

Board Attorney Walker said I am not aware of the practice that has prevailed in front of the Commission on this in the past. All I can really tell you is that there is nothing in the Code that appears to expressly confer that authority. Now, what legal position counsel to the City Commission has taken, if any is unknown. It is simply my opinion here reinforced by past practice that there is no authority to impose conditions beyond a simple yes or no. I might add that the Commission doesn't always agree with my conclusions.

Mr. Reilly said continuing on those, is there anyway to restrict...once you get one of these alcoholic beverage Waiver of Distance, do you have it for life or is there anyway that the Commission can tie it to a yearly review?

Board Attorney Walker said that is a condition and there is no authority for that expressly in the Code. The zoning approval that is authorized by this section is for individuals. So as I understand it, this is something that we go through whenever the license changes. Does that answer your question?

Mr. Reilly said well, what I am asking is I realize that part of it whenever the license changes, but is there anyway to make it more restrictive in certain cases such as this were this person goes through a yearly review. I am basically looking for enforcement using the license as an enforcement technique to get what we want.

Vice Chair Gates said no.

Mr. Enns said than they would have to review everybody's. They can't just pick one guy out and say "we are going to review yours" They would have to review everybody in the whole State.

Vice Chair Gates said I think, it is for the tenure of that business, I believe, correct?

Mr. Enns said yeah, you can't pick one guy out and say "we are going review you".

Vice Chair Gates said ok, we have a motion...

Mrs. Benton said just one other question, I know that when we started, Mr. Buchwald indicated and his recommendation is written here, that the Planning staff recommended we, as the Board, recommend approval of the Waiver for the beverage license with the conditions, and that is what we have been talking about, that the parking spaces at the property be marked and that the landscaped strips be provided along the street right-of-ways to comply with the City Code. I guess it comes back to the same thing all of those are City Codes that are recommended to be conditioned on an approval, so why can't we attach compliance to other City Codes as conditions? The precedent is here in this recommendation.

Board Attorney Walker said compliance with Code requirements is an implied condition to everything that we do and require.

Mrs. Benton said does that include no loitering and some of the things that we have already talked about? Could that be included as well?

Board Attorney Walker said loitering is a very difficult subject to address. Courts have a field day in striking down anti-loitering ordinance on constitutional grounds. Not only do you have difficulty in defining what is meant by loitering, but you also encounter constitutional issues. So, where the Board to attempt to say something about loitering, it would be just really opening a Pandora's box. Anti-loitering ordinances are just very, very difficult to enforce because of that. They are very vague. The courts don't like them because they intertwine with constitutional issues about a person's ability to move about in the community. I cannot recommend that any effort be made to condition approval upon a prohibition against "loitering", if that was the question. If it was not, I apologize.

Mrs. Benton said I am aware of those constitutional issues on loitering. We are also dealing with clean up. We are also dealing with the fence and the boundary problem. There are other Codes that even if we exclude loitering, I am just wondering since staff kind of opened the door here whether we could walk through there.

Vice Chair Gates said it is getting to be a little late here tonight. We do have a motion and a second on the floor to deny this request for a Waiver of Distance based on the fact that it is within 500 feet of a church or school. I think we have had plenty of discussion on this and if there are no questions further, I would like to see that we take a vote or does this motion still stand, after all the discussion?

Mr. Knott said yes.

Vice Chair Gates said does the second stand?

Mr. Enns said I have re-seconded it, absolutely.

Those voting in favor of the motion were: Mr. Harris, Mr. Johnson, Mr. Knott, Mrs. Olson, Mr. Enns, and Vice Chair Gates. Those opposed: Mr. Reilly and Mrs. Benton.

Vice Chair Gates said we have two dissenting and six...that carries, doesn't it? That's a majority. This will go to the City Commission without a recommendation for approval and it will require a four-fifths vote for approval.

Mr. Buchwald said what was the vote?

Vice Chair Gates said six in favor to deny and two opposed.

Mr. Buchwald said it is the majority of the 10 members, so it is going with recommendation for denial.

Vice Chair Gates said yes.

Mr. Buchwald said ok, thank you.

Vice Chair Gates said Mr. Walker, on our next items, do I need to take these individually, the annexations?

Board Attorney Walker said we have here before addressed that as a matter of discretion at the Planning Board level. According to past practice, we have had the ability to either consider them separately or to lump all together as one for purposes of a recommendation. We do have that discretion at the Planning Board level, but the City Commission level, however, they would have to be considered separately.

Vice Chair Gates said if it is ok with the Board, than I would like to bring items 7,8, and 9 the annexations as a group. Are there any objections? (no objections) I will ask staff to read each one. We have three annexations here. If we could have staff report, please.

The next items considered - **#7 - Annexation - Group 31** - Approval of annexation of properties identified as having recorded Annexation Agreements and having contiguous municipal boundaries of Fort Pierce. The properties are located at 6880 Graham Road, 6791 Taro Street, and 1750 Kings Highway and are zoned R-1, Single Family Intermediate Density; R-1, Single Family Intermediate Density; and C-3, General Commercial. The owners are Richard E. Wall, Rodney Vannoy, and Florida Gaming Centers, Inc.

#8 - Annexation - Approval of an annexation of a property identified as having recorded Annexation Agreements and having contiguous municipal boundaries of Fort Pierce. The property is located at 4585 Selvitz Road and zones I-1, Light Industrial. The owner is Midway Properties of St. Lucie, LLC.

#9 - Voluntary Annexation - Whispering Oaks - Approval of annexation of properties identified as having contiguous municipal boundaries of Fort Pierce. The property is zoned PUD, Planned Unit Development. The owner is MTA Development Inc.

Mr. Travis Gibbons said we will start with Number 7 Group 31 is comprised of three parcels that are on the north side of Graham Road adjacent to Kings Highway and includes the Fort Pierce Jai Alai. They have Annexation Agreements and they are now contiguous. Proposed zoning R-1 on two of the residential properties and the Jai Alai as C-3, General Commercial. Number 8 is annexation of property off of Selvitz Road, which is part of Midway Properties and actually Midway Properties is a collaborate of the Municipal Power Agency. The proposed zoning is I-1, Light Industrial. Number 9, voluntary annexation is Whispering Oaks. It is a collaboration of three parcels comprising of 67 acres on the corner of Jenkins Road and Orange Avenue. The property is currently zoned PUD and it will actually come into the City as a PUD, Planned Unit Development, as well. Staff recommends approval of all three.

Vice Chair Gates said are there any questions for staff on these items for annexation? (no response) I think you are all questioned-out tonight. Is there anyone here to speak on behalf of any of these requests? (no response) Is there anyone here to speak against these requests? (no response) What are the wishes of the Board on these items?

Motion was made by Mr. Enns, seconded by Mrs. Benton, to approve these items for annexations.

Vice Chair Gates said is there any further discussion on them?

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

Vice Chair Gates said ok, they have been approved and will go to the City Commission.

The next item - **#10 - Discussions**

Vice Chair Gates said I received a letter this afternoon that was faxed to Chairman Bergman and he could not be here so he faxed it to me. I am going to pass it to the clerk. But just so that you can be aware that we did receive it, it is a letter from Mr. Jerald Wurhman. The letter is not signed, Mr. Walker, I didn't really notice that until now, so I don't know if that makes any difference. It is not signed, but it is from Jerald Wurhman, who is a property owner over on the South Beach and he owns properties in R-4A and C-5 on the South Beach and he is very disturbed about the proposed South Beach Overlay ordinance and would like to see it come back before the Planning Board. I want you all to know that we did receive this letter from him. He basically says that he feels that some of the Board Members, as well as himself, did not have "a clear understanding of what they had voted on as to the "amendment" proposed to the original draft of the overlay format they critiqued and questioned at the prior Board meeting". He said he feels that "the property owners and the City have to live with whatever is adopted for a long time", so us, as "the Board and the public should have an opportunity to review the "composite document" as it will be proposed to the Commission for review". He is disturbed that there was no City workshop held for the public on this item and he is asking that the Board reconsider the action of last month and

to “call for a further review of a “composite” overlay document which more clearly defines matters and eliminates any ambiguity”. I am just letting the Board know that this was presented here and I am going to pass this to the clerk. That is all I have. Does anybody else have any thoughts or feelings for discussion?

Mr. Johnson said on that note, is there a first hearing coming up for the Commission or what is the status of that?

Mr. Margotta said right now that ordinance is prepared and is being ready for the 21st of August City Commission meeting. I don't know how long the review is going to go, but the first reading is scheduled for the 21st.

Mr. Enns said have you heard from this Mr. Wurhman on this matter?

Mr. Margotta said many times. Mr. Wurhman is a friend of mine.

Mr. Knott said on another item, I would like to take a couple of minutes to let the Board think about some things that have happened since the City Commission's workshop a week or so ago that I attended a portion of that concerning the Planning Board. While I was there, Commissioner Becht slipped me note saying that the City Commission, the day before, said they are going to adopt a resolution eliminating the service of all the Board members that are on the advisory Boards that City has in that they would limit them to two consecutive terms and which you can only serve on one Board. Now, I have talked to a couple of you about this. I have talked to the Mayor and Commissioner Coke and to Commissioner Becht and to Dennis Beach about this and to Mr. Walker. I will give you just a very brief summary of what these discussion how they ended up. My feelings and I told them very clearly that I have been on the Board quite a few years and several of us has been on...Sunny, I think you probably have been on as long as anybody...

Vice Chair Gates said I don't know about that Tom, I think we are just about family now. But I sure have enjoyed the time.

Mr. Knott said it has been fun. But anyway, I told them that I serve on another Board on the Code Enforcement Board, which I have been on for 15 or 20 years, and I understand the limitations that they are trying to outline here, but I expressed concern that they are going to really learn what is going to happen on these Board, because four years is not enough time. Because we have two year terms and four years, in my estimation is not enough time. There is some confusion with a couple of Commissioners: they thought that we had four year terms and they were saying eight year terms. In my estimation that if you feel the need to limit our volunteer time on these Board, that is a good number. I think you could live with that with certain other conditions. I reminded each one of them that they have the prerogative at any time to not re-appoint. If they want to limit people on here, they can just not re-appoint them. But they said they will deal with that another way. I asked Mr. Walker if he, the legal staff, had been instructed by the Commission to prepare this resolution. He said, “no, not as of this date.” Tonight, I was contemplating asking the Board, perhaps, to send a motion to the City Commission to be proactive on this thing from our standpoint, rather than wait for them to come down to us, we go back up to them and give them some

direction. Because here is the way I see it or I kind of feel about this, if they are hell-bent on going ahead with some term limitations, that's all right, let's modify the ordinances that says our terms are no longer two year, they are four year terms and we can only serve two consecutive and one member can only serve two consecutive, which would be eight years with a caveat in there that says that at the Commissions pleasure or discretion they can extend one more term, if it is somebody that they really want to keep on one of the Boards. You are talking 12 years. I think that is a pretty comfortable time for being on a Board at one time. But as far as sitting on more than one Board, I disagree with that because when talking with them they mentioned something about a conflict of interest between one Board and another Board. I don't see it and if there appears to be a conflict like that they can take their actions and not re-appoint that person or not appoint one person to two Boards. Why they are doing it they don't need to limit our volunteer time on these things. If we want to do it, then that's fine. I don't know if the Board wants to do anything tonight. If you all want to think about it until next month or what your feelings are on this...

Mr. Buchwald said Mr. Knott, if I just may, last night at the City Commission meeting for the public record Commissioner Coke did state that she believed that the two year terms limiting the Planning Board to 2- two year terms would not be enough. So, that there was a limitation to two terms, she was suggesting that each of those terms be extended to four years recognizing the fact that, in her words "that it takes that amount of time to get your feet wet on these types of Boards." Hopefully that helps.

Mr. Knott said did they take any other action on that or just that comment?

Mr. Buchwald said no it was just a discussion. Another item that they did take action on was Eckle's Restaurant, for your information with regards to that Waiver of Distance that was approved last month or the Planning Board before but they voted to deny the Waiver of Distance for that particular establishment there on 25th and Avenue D. Just for your information, some of the items that just went on last month. I know there wasn't any sound on the TV, so you may not have been able to follow last night, even though it was broadcasted.

Mr. Knott said I couldn't find it on cable. Was it on cable?

Mr. Buchwald said Channel 27, FPTV.

Mr. Knott said I saw it this afternoon. They were advertising, but I didn't know they transmitted last night. Getting back to this, I don't know if the Board wants to send a motion with our feelings in the Minutes to the Commission tonight or if you all want to think about this or if just want to let it happen. Is there any discussion?

Mr. Johnson said I like the idea. It is good. You have to get your feet wet. I like the idea of them being able to extend four years because there have been times where there are no applicants waiting in limbo for a Board. There have been times where all of a sudden the Planning Board drops to eight members for now reason, because people have quite and then we don't have our full 10 member quorum. I like that idea because if we drop down to nine, because there is no one else that has applied for the Planning Board, then they

should be able to opt into extending them another term for that particular person. In my opinion, eight years is good. Sometimes you get burnt out, so you need a break.

Mr. Enns said my only thing, too, is getting people staggered in there because you sure don't want to loose half of the Board at the end of the thing or two-thirds of the Board. So, that would be somehow or another incorporate that into the deal also.

Mr. Knott said you can stagger like...

Mr. Enns said where you are not replacing a whole bunch at one time.

Vice Chair Gates said I have two questions. I am disturbed about a Board member not being allowed to sit on two boards that it might be a conflict of interest. I don't agree with that either. I do sit on more than one Board and I feel that as a Board member of one Board I have been better educated to sit on another Board by serving. For example, the Planning Board and the Historic Preservation Board, which I sit on, there is not a conflict of interest that I see there for me to sit on both of those Boards for example. And one has actually helped me with the other. So, unless there is a standing room only line that is waiting to sit on a seat, I don't see it as a conflict of interest, personally. My feelings are that the Code that is in existence now and if I am reading correctly, we sit at the Commissioners' wishes. At any time a Commissioner and I think I am right, Mr. Walker, that the Codes states that we can be removed by the Commission at any time. So we sit at the pleasure of the Commission. To me, that alone and the reappointment process that we have to go through every two years or three years or whatever it is is a term limit in itself because if the Commission decides that they don't want, for some reason, whether it be conflict of interest or whatever, that particular member to re-up and be reappointed that is a term limit in itself. So I don't really see the point in making term limits because they are already in effect and I hope I am making myself clear. That is my point of view. I have sat on this Board and I know some of the others have too for a long time and if there is a standing room only line and there is somebody else that they want to reappoint, I think they are going to probably do that. So, I have enjoyed greatly sitting on the Board. My other concern is we have a good mix on this Board of very qualified people in their fields, as well as laymen, and I think that is good on this Board to bring that to the Board. But what if the term limit, for example of Tom, who has great engineering experience and Mr. Enns who is a contractor, or going down the line and then you have these lacking and you can't fill those positions and you have Mr. Bergman who is an architect, they each bring something to this Board. Now, if there term limits come up, say, and there's two or three of them gone and you can't fill those positions with that area of expertise, than I think that compromises this Board. Those are my concerns of the reasons of a compromise of the Board. I think this Board is a very good mix of what we need for the Planning Board, for example. Now you might find another engineer or another architect, but what if they come up at the same time in those vacancies, you are going to compromise this Board. I just hope the Commission will think about that before they make their decision.

Mr. Knott said that was solely my intent, too. When I contacted the Commissioners to express that it ain't broke, but if you feel the need to fix it... My first motion to the

Commission was "hey, guys, if this is a Board, go along with us. Let's keep it the way it is. We don't see it this if you don't somebody reappointed..."

Vice Chair Gates said that's kind of my feeling.

Mr. Knott said that is my feeling. But if they are going to proceed with this and it seems like they agree with this eight year term. They are in agreement with this. My intention was to get the feel of the Board out here to see if that is wanted something you wanted to send that message to the Commission that if you are going to pursue it, even in regard that we don't support the change and if you do it, here is our guidelines. We want to be a part of the decision. I don't know if that is something the Board wants to do tonight or...

Vice Chair Gates said if they will let us be a part of the decision.

Mr. Knott said well, I know. That is their prerogative, but if it is in writing to them, I think we will have a little more to say about it. If they don't, we can, like I said, if we all quite, to quite at one time.

Vice Chair Gates said I also want to state...

Mr. Flip Gates said Madam Chairman, can I say something?

Vice Chair Gates said yes, Flip.

Mr. Gates said thank you, Madame Chairman, as a person here who is very concerned with the jobs that you all do, I think Mrs. Gates was exactly right. There are term limits in place now. The Commission has no excuse if they do not want to reappoint anybody or they want to institute their own term limit, they can actually vote to limit your term, right now. There is no reason they can't do that. All they have to do is stand up to the plate and vote.

Mr. Knott said I believe I told them that, Mr. Gates. That is exactly what I told them. I said, "if any of you have the backbone, all you have to do is stand up and do it."

Mr. Gates said that is exactly right.

Mr. Knott said I told them that he was not going to be fired from a volunteer job.

Mr. Gates said and Tom, you are exactly right and Mrs. Gates is exactly right that there are people that serve on this Board that have a certain expertise and there are other people on this Board that serve as what some people might want to term as laymen terms, I don't believe that is exactly the case. I believe that the people who serve here do it for a reason to help this community. But they are also members of the community that have a lot of experience and that sit on this Board that do have experience to make these decision even as you might call them a "layman" but they are far more experienced in being able to do this than as a laymen term people would want to say. I think that you all should feel very proud to be able to serve in the capacities that you serve and, again, if the Commission wants to stand up and say they don't want you on the Board, they have that responsibility to do that and make that decision, themselves. Thank you.

Vice Chair Gates said thank you. If I may just add one more thing and that is only I know there are some of us that has served for a long time and I, number one, enjoy it. I have learned a lot about my city. I feel that I am much better citizen for having done this and I am really proud to serve with the people that I serve with on this Board. Each one of these people comes to this meeting prepared, they are very dedicated citizens, no matter whether have an area of expertise or not. These people that I have been sitting with over the last number of years, I am very proud to serve with and I feel like the Commission needs to realize how we feel about each other and it is a good feeling to me to see the dedication of these people that come to serve on these Boards. I am proud to be part of it. I don't know if we need to say anymore or just this will be in the Minutes to go to the Commission.

Mr. Knott said I would assume the Minutes would probably be adequate at this time. Mr. Walker, do you think it would be necessary for us to have a formal motion to the Commission or can we just let our discussion be their guidelines?

Board Attorney Walker said the discussion, as such, doesn't necessarily capture an overall sense of the Board on any specific point. The message might be a little clearer if the Board acted on a Motion.

Vice Chair Gates said is there a Motion on this issue?

Motion was made by Mr. Knott, seconded by Mr. Johnson, to request that City Commission to not proceed with or implement new term limits or multi-Board restriction, at this time. If they do proceed with a resolution to adopt term limits and multi-Board membership, this Planning Board recommends that they consider the following: 1) all terms shall be increased to a four-year term; 2) each member can only serve two consecutive four-year terms with a third term can be added at the discretion and approved by the City Commission; 3) this is Board is not in favor of members being able to only serve on one Board.

Vice Chair Gates said your motion is basically that we are not in favor of changing the way things are now, correct?

Mr. Knott said right.

Mr. Enns said you are modifying your motion from two- to four-year terms. That is what your recommendation is.

Mr. Knott said the first part of the motion was just to leave it as it is.

Vice Chair Gates said that is what my concern is. You are basically saying, "well, if you don't do this, then do that." Mr. Walker, how can we do this?

Mr. Knott said I am just trying to save us some time in the long run here.

Vice Chair Gates said he is modifying a motion that he is already making. In one sense saying he doesn't want any changes and then he is saying these are the changes he would like. Do you see where I am coming from? Should he leave it?

Mr. Johnson said tell them to ask us for input later on. If they want to change it, ask for input.

Vice Chair Gates said I don't like the whole...don't change it, but if you do...either you change it or don't change it. I can't go with that motion.

Mr. Knott said it will be in writing in the Minutes and it should be little clearer...

Vice Chair Gates said I would like to hear your motion made very clear. Are you saying you don't want it changed at all and leave it status quo or...

Mr. Knott said that was the first part.

Vice Chair Gates said then leave it at that and if they don't like that, maybe they will come back to hear our discussion about it.

Mr. Knott said trust me, it is not going to come back to us.

Vice Chair Gates said it probably won't.

Mr. Knott said we will have no input into if we do not stand up to them now. If we don't give it now, we will never see it again.

Vice Chair Gates said is there any discussion on the motion?

Mrs. Benton said as modified.

Mr. Johnson said the first one he said with all the information, because they are going to do it without us.

Mr. Knott said they are going to do it with out us.

Vice Chair Gates said we have a motion and a second on the floor, any further discussion?

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

Vice Chair Gates said I might add that when this comes up, I guess it is going to come up, it won't hurt if this Planning Board comes to the City Commission and is present. If you can realize that they do see us out there, hopefully. Is there any further discussion to come before the Board? (no response)

Adjournment at 9:20 pm