FORT MYERS BEACH
TOWN COUNCIL MEETING
MARCH 11, 2002
LAND USE HEARING
Town Hall - Council Chambers
2523 Estero Boulevard
FORT MYERS BEACH, FLORIDA

I. CALL TO ORDER

The Land Use Hearing of March 11, 2002 was opened by Mayor Daniel Hughes on Monday, March 11, 2001, at 9:00 a.m.

Council members present at the meeting: Mayor Daniel Hughes, Vice Mayor Terry Cain, Howard Rynearson - Council member, Bill Van Duzer - Council member, Bill Thomas - Council member

Excused absence from meeting: None

Staff present at meeting: Town Manager Marsha Segal-George, Deputy Town Manager John Gucciardo, Damon Grant, Dick Roosa (Town Attorney), Dan Folke, Pam Houck and Bill Spikowski.

II. PLEDGE OF ALLEGIANCE

All assembled and recited the Pledge of Allegiance.

III. PUBLIC COMMENT ON AGENDA ITEMS

None.

**Prior to the start of the Public Hearings Deputy Town Manager John Gucciardo came forward to bring the Council up-to-date on several items. He is looking for direction from Council on a request, which came through both the Public Safety Task Force and the Chamber Traffic Committee, regarding the alternating lights on San Carlos Blvd. Lee DOT had plans to use this system until next week (March 18). The impression from the residents and the community is that the trial period for the light has been a benefit. They are trying to get Lee DOT to extend this period through season. Before this is officially put into writing he wanted some consensus from the Council. All Council members seem to be in agreement with the letter.

Deputy Town Manager Gucciardo discussed a letter received by Council from some residents at Bay Beach regarding water pressure. He expressed that they have been working with Beach Water during the past month regarding all condominium buildings in Bay Beach in regards to low water pressure. Kelly Starnes (Beach Water) has been meeting with the associations from each of the building with reported problems. He has asked them to put together a summary memo of all the different approaches that have been taken with the different buildings. The water pressure problems seem to be internal to the building as opposed to the delivery system. The issues in these letters have been addressed all along. There may be one section in Bay Beach being fed by an eight-inch line as opposed to the 10 or 12-inch lines that were

going in other places. He has asked Beach Water to investigate into this, and if this is the case a subcontractor should go in and replace the 8-inch line. Some legal issues exist, but the recommendation of staff is to fix the problem and investigate the liability at a later date.

Mayor Hughes commented that low pressure does not mean a lack of water. Some residents on the island are expressing lack of infrastructure and lack of water.

Council member Rynearson questioned if the Town's responsibility stops at Estero Blvd. and isn't this private property from there on back? Deputy Town Manager Gucciardo replied that this is true.

Council member Rynearson feels if the problem is fixed by the Town they should be informed it is their property. This cannot be done for all the condominiums.

IV. PUBLIC HEARING: Robert and Brenda Burandt. Case Number ADM2001-00013. A variance request from the building code requirement for a fire sprinkler in a three story, single family home. This property is located at 457 Estero Boulevard.

Mayor Hughes asked all Council members if they had any ex parte communications in this matter. Council member Rynearson had a conversation with Mr. Burandt.

Mr. Burandt approached the Council with a handout. He went on to describe his handouts and does not agree with the first floor being considered a story. By code on the beach you are not allowed to have habitable space at grade. He indicated when the building code was written he feels that nobody anticipated stilt homes. He is applying for a variance for several reasons. The first reason is due to the first part of the house or old part of the house would be very difficult to fit with sprinklers. There is no room to get underneath the roof, which would require the tearing out the inside of the ceilings. The architect is present and he is of the opinion that sprinklers would be overkill. Sprinklers do not save lives, but do save property. This is not in the fire code. The cost would be between $6,000 and $10,000 dollars. The last recommendation was to sprinkler only the new part of the house. This would cause a little bit of relief. He is unsure if this would be of any beneficial use. He is asking for a variance to not have to put sprinklers in. If he had to do anything he would consider sprinkling the underneath of the house.

Bob Stewart, Building Official for the Town of Fort Myers Beach, came forward. He expressed that this morning the Town Council is sitting as the Construction Board of Adjustments and Appeals. This means that they have the ability to find that the building department has misapplied the building code or can grant a variance or modification deviation from the code. He referred to Table 500 in regards to height. He explained that they do interpret the ground floor of a building, even if it only encloses parking and storage, to be a floor. A section in the building code allows for this parking level to be exempt if it is separated from the upper floors by concrete construction. This is not and is a wood building. It would not qualify for this exception. The recommendation to the LPA and Council would be to have the existing two-story portion of the building be sprinkled.

Mayor Hughes questioned the inconsistency between the building code and fire code? Mr. Stewart replied that the fire code does not have the limitation as severe as the building code.

Council member Rynearson does not feel that sprinkling half of a house is beneficial. He asked for explanation. Mr. Stewart replied that he does not have the expertise to determine the history for elimination.

Mr. Burandt came forward to explain that a requirement is in the fire code to sprinkle over three stories, unless it is a single-family residence or duplex. The fire code deals with fire safety and this is not a fire safety issue but a building issue. He explained that Mr. Stewart expressed at the other hearing this is over bearing. His personal opinion was that he would not require this. Mayor Hughes accepted Mr. Burandt's comment but explained that it is Mr. Stewart's duty to enforce the literal language of the ordinance.

John Russo from Cape Coral came forward and expressed that he has been a firefighter for 23 years. He explained that sprinklers do protect life and property. He recommends AC/DC smoke detectors, because these will save his life.

Al Brightwieser, Architect, came forward. He indicated that the sprinklers need to have heat to go off. The smoke detector really saves lives and he feels this is important to remember. He feels a gray area exists and is the interpretation of the lower level being considered a story. He does not feel that this is a story.

Steven Marcus, Fire Chief for Fort Myers Fire District, came forward. He heard all comments made today. His position in the department is to save lives and property. He explained that they will be coming before Council in the future to request sprinklers in all buildings over 2500 square feet. The code requires a sprinkler system on a third floor presently. He expressed that sprinklers have the ability to put out fires 99% of the time. He recommends that this will go to a 13 D sprinkler system.

Council member Rynearson asked for clarification on the sprinkling of only ½ of a house? Chief Marcus explained that sprinklers put out water when there is a fire. He expressed that anything which can be done to protect the occupants on the third floor is vital.

Mayor Hughes asked if anyone wished to address the Council. None was heard.

Mr. Burandt came forward and explained that the architect expressed that they can still put a 1 hour firewall on the bottom ceilings. He would be willing to do this in lieu of the sprinkler system. The insurance company will not give a break on the premiums due to the sprinkler system.

Council member Van Duzer questioned the fire separation time? Bob Stewart replied a 2-hour fire separation.

MOTION: Made by Council member Bill Van Duzer to have the entire structure fire sprinkled. **Motion fails due to lack of second.**

MOTION: Made by Council member Howard Rynearson and seconded by Council member Bill Van Duzer to grant relief and not require the sprinkler system. He must provide the 2-hour firewall on the garage ceiling.

Discussion: Council member Van Duzer questioned how you get the 2-hour fire separation wall from ground floor to the first floor?

Bob Stewart explained that without some type of design or alternative method being before this board it will be difficult for this group to vote on approving an alternative method without having seen it. The request before the board was not for approval of an alternate method, but for a variance.

Mayor Hughes expressed that this board must grant or deny the application. The applicant has the ability to come back to the building department with an alternate method, if this request is denied.

Mayor Hughes commented that there is conflict in the testimony. When conflict exists it is his tendency to rely on the interpretation and the position on their building official. He supports the recommendation of Mr. Stewart.

** Motion withdrawn from Council member Howard Rynearson because the applicant can go back to the building department for an alternative. Second withdrawn from Council member Van Duzer.

MOTION: Made by Council member Bill Van Duzer and seconded by Council member Howard Rynearson to deny the request.

Discussion: Council member Van Duzer commented that he has built structures for the architect that are two stories above piling and did need to be sprinkled. He feels that they need to look at the health, safety and well fair of the general public.

Vice Mayor Cain does not feel that they she can vote for either motion, because each is at both ends of the spectrum. In order to hold it level the third floor must be sprinkled.

Council member Thomas expressed that the third floor or bedroom is the least likely place for a fire to start. The smoke alarms will be throughout the building and the electrical is all new. The probability of a fire starting in the bedroom is very low, unless carelessness is involved.

Mayor Hughes feels that they must make a decision based on what the code requires or does not require.

VOTE: **Role Call: Council member Bill Van Duzer - aye, Council member Bill Thomas - nay, Council member Howard Rynearson - aye, Mayor Daniel Hughes - aye and Vice Mayor Terry Cain - aye. Motion passes 4 to 1 with Council member Bill Thomas dissenting.**

V. PUBLIC HEARING: Gore Residence Addition. Case Number VAR1999-00024. A variance in the Residential Single Family (RS-1) district to permit a water body setback of 12 feet for a single-family residence. This property is located at 221 Primo Drive.

Mayor Hughes began by asking the Council for any ex parte communications. None were reported.

Tracy Gore came forward and indicated that on February 15, 2000 she and her husband had a meeting with the LPA regarding a setback variance request. The LPA recommended denial at that time. A hearing was held on April 10, 2000 with the Town Council. The Town Council sent this case back to the LPA to further investigate. A second meeting was held with the LPA on November 20, 2001 and at this time the LPA was against the proposed idea from the Town regarding the zoning overlay. She expressed that they were asking for a setback variance to add a third bedroom on for their new baby. Due to the time it has taken to resolve this issue it became necessary for them to build what they could without the variance. The architect changed the blueprints to fit within the guidelines. The request has been for a 12-foot setback from the water to extend the porch. She explained that they would like to expand their existing porch out another 3 ½ feet to make it 10 feet to be consistent with the way it originally was. She went on to further explain that they would like to extend the roof out over the porch and screen it in. The neighbors on Primo and across the canal on Crescent Street are in support of this request and have signed a letter of support. She read the findings and conclusions of the LPA from the February 15, 2000, which brought them to their decision to recommend denial and gave her responses. She expressed that the Town has posed an unreasonable burden on them due to the length of time they have had to wait. During these waiting periods they have spent over $30,000.00 to try and accommodate their family the best they could. With all the support the Town Council and the LPA have given the Seafarer's issue she would not understand why the Town Council would deny her family the permission to improve their home to better fit their lives.

Joanne Semmer questioned the time this has taken to come forward before the Town Council? Dan Folke will reply to this question during his presentation.

Mayor Hughes questioned the 12.67 feet of canal, which Tracy Gore stated that she owed. He asked how she knew that she was paying taxes on this property? She should not be paying taxes because it is in the water. Tracy Gore replied that everyone down the canal pays taxes on this property.

Joanne Semmer explained that she has spoken with several attorneys and they have indicated they own this land. The surveyors also indicated that this land is owned by the Gore's, and it is part of their deed. She also checked with the Tax Office and they are paying taxes on this property along with everyone else on this canal.

Council member Van Duzer questioned that they are presently now asking for a 3 ½ foot variance? Tracy Gore replied that since the bedroom has already been added they would like to just move the existing porch out 3 ½ feet and put a roof over it.

Dan Folke came forward and explained that he tried to give a summary in the March 5 memo of what has brought them back here today. The applicant stated it was originally heard in February 2000. The Town Council sent this back to the LPA for consideration of a different setback. He explained that the 12.67 piece of land was shown on the plat as reserved. The seawall was built 10 feet on to this. The property owner does not feel that they have use of 10 feet of the property. Dan explained that the motion at the original Council meeting was to send it back to the LPA to see if they would consider an amendment to the Land Development Code on setbacks. If the LPA did not wish to consider this the applicant may come back to the Town Council, at no expense to the applicant, and the Council would reconsider the request. This is where they are today. He does not have an answer as to why this has taken so long. He hopes that this will be resolved today.

Dan went on to indicate that he has included in the packet the original staff report. He expressed that the request has changed significantly. The first time this case was heard the request was for a setback of 12 feet from the waterbody. Today they are asking for a setback of 21 ½ feet. However, the conditions of the property have not changed and this is the basis for staff's recommendation. He explained that the lot does conform and is 21 feet larger than what is required today. He expressed that it was very difficult to make this finding. Staff felt that there was sufficient space to complete an addition. The applicant did complete an addition that does comply with the setback requirement. They are now back for a reduced setback variance. Dan explained that the request for 3 ½ is a reasonable request. He does not believe that the request today would be injurious to the neighborhood. They do look for consistency with others properties as to what has been granted in the past. The condition on the property has not changed in terms of the lot size, but the request has changed considerably. In summary, staff did not change their recommendation but the request is much improved. He explained if the Town Council does wish to approve the variance he would ask that the applicant be required to submit a new site plan that accurately shows the 21 ½ foot setback. This could be attached as a condition to the approval.

Mayor Hughes asked if anyone wished to address the Council on this matter. None was heard and the public hearing was closed.

Mayor Hughes commented that he does not feel that the 12.67 reservation is an issue. He does not feel that this has a significant effect on assessed valuation of the property because it is under water. He feels that the change from the original request is significant and may perhaps change some of the findings that need to be made today.

MOTION: Made by Council member Howard Rynearson and seconded by Vice Mayor Terry Cain to adopt the resolution contained in Council's packet and change 12 feet to 21.5 feet. A revised site plan shall be provided by the applicant to show the location of the setback line in relationship to existing structures on the property.

Discussion: Council member Thomas expressed that they have come back with significant changes that were much improved. A lot of work was put into this and he feels that it is a shame that it took so long to get back to Council. He indicated that it is good to see that nobody in the neighborhood is objecting to the changes. He supports this motion.

VOTE: Motion passes unanimously.

**** Mayor Hughes announced that the Town Council will take a break at 10:42 a.m. and they will reconvene at 10:50 a.m.****

VI. PUBLIC HEARING: The Fowler Co. in ref to Snug Harbor Restaurant. Case number VAR2001-00053. Variance requests to allow the following for development of the property with a standard restaurant with outdoor seating: (1) from the required street setback of 25 feet to allow a 0 foot street setback and (2) from the required maximum required 128 on-site parking spaces for a standard restaurant with an outdoor seating to allow for 0 parking spaces. This property is located at 1131 First Street.

Mayor Hughes asked for ex parte communications. Council member Bill Van Duzer met with the owner of Snug Harbor and Roxie Smith. Council member Van Duzer also met with Mr. Cusik. Council member Howard Rynearson and Mayor Hughes have both met with Cusik and Mr. Fowler. Mayor Hughes has also met with Roxie Smith and Bill Huber.

Ed Cusik came forward to be as brief and thorough as possible. He explained that he and Rich purchased Snug Harbor a little over 7 years ago. In 1995 they undertook a major renovation of the restaurant, as well as major repairs and an expansion of the docks. Their preference at that time would have been to tear down the Old Snug and build a new state of the art restaurant in its place. He expressed that they were forced to go with the 50% rule for the remodeling. The renovation included the small strip of waterfront then owned by the County, but is now owned by the Town at the end of San Carlos Blvd. This piece of property was unsightly and unsafe. They took it upon themselves to clean it up and remove the vegetation blocking the view of the water. A deck walkway was built between their docks on the upland side and grass was installed along with a sprinkler system. To this day they have been the unofficial custodians of this area. Three years ago he and Rich discussed a replacement restaurant. They knew it would be tougher to maintain this building as time goes on. The building is very inefficient. They also learned that buildings such as theirs are becoming more and more difficult to insure, and were unsure how long they could get anyone to bid on it. A replacement restaurant needed immediate consideration. He explained that it appeared the Town's vision for the overlay district might become reality faster than anyone thought that it would. He expressed that they had commissioned the Fowler Co. to give a report on the feasibility of building a new restaurant within the guidelines of the existing zoning and the overlay zoning master plan. It became clear that the building they could build would not necessarily be the building that they wanted

to build. It was decided to come before the Town to see how they may be able to work around the existing requirements, so that their building could be more in keeping with the intent of the overlay district. Especially, since it is such a visible location.

He expressed that a few weeks ago they applied for the building permit for the restaurant being discussed today. He explained the reasons why. They wanted to get into permitting before the new state wide building code went into effect. The second reason and most important would be if they were going to start construction during off season they would need to get into the building department as soon as possible. They would like to be under construction at the same time everything around them would also be under construction. Minor changes can still be made, but no major changes such as foundation, framing, roofing, etc. They are presently before the Council for approval of their variance request and are asking them to consider each condition placed on it by the Town staff and LPA.

Ed went on to comment that he and Rich's intentions are very straightforward. They would like to build the best looking, but most functional restaurant on this island. They would like it to be an asset to the overlay district and the Town in general. He explained that the lights, benches and trash receptacles will be the same style as the Town will be purchasing. This will keep everything uniform and no one will be aware of where the different properties start and end.

The LPA has recommended approval of the variances with several conditions. Ed explained that he would like to review the conditions and other suggestions. He read condition 1. He discussed the proposed layout of the first and second floor. He noted how the second floor is setback from the plane of the first floor. He expressed that they did step back the second floor in hopes to facilitate the design process. The intent is to soften the look of the building. The new restaurant will not have as many seats as the existing restaurant.

Mayor Hughes noted that they will be calling the ground floor Exhibit C-1 and the second floor Exhibit C-2.

Ed went on to read condition 2. He explained that this would assure thorough public pedestrian

access is maintained along the bay front connecting Old San Carlos with State Road 865. This access must be at least 10 feet in width and must be located in such a manner to promote and provide for pedestrian access between the applicants property, and the pedestrian plazas planned by the Town on both sides of the applicant's property. Condition 2 has been a problem from the start. They were unaware that such a condition would be proposed. They decided to see if a compromise could be developed that everyone could live with.

He went on to explain that an easement could not be granted across their private property. There are good valid business reasons a landowner does not want to have unnecessary easements across their private property. He explained that the idea of access across the dock was suggested and discussed. Although, they felt this idea had merit he had concerns of whether they could grant such an access, since it is within their submerged land lease. He explained that they did check this out and found that they could grant such an access. They felt that this would be a really good solution that made a lot of sense and solved a lot of problems. He expressed that they are in the business of attracting the public and not restricting their access. The point has been

made that it is the future owners of concern, but a future owner would have the same motivations. The cash flow for this property comes primarily from the restaurant. The LPA added an additional condition that it be at least 10 feet wide. No problems exist with the 10 feet, but they are in disagreement with this being over their private property. Ed discussed if the state were to come in and do away with the submerged land lease. He expressed that it would be nearly impossible for this to be done. If this did in fact happen it would be devastating for the property owner. A huge amount of the value for the property is in the submerged land lease in the docks, and the owner would suffer financially. The Town would lose one of its two accesses. No one can guarantee the future and you cannot have a solution for every possible conceivable consequence. He explained if they grant the easement the cloud on the title happens now and follows the property. They are asking for the public pedestrian access across their dock and have agreed to the following terms: No shared maintenance of the docks, agreement of unobstructed access across the dock, agree to a mutual hold harmless clause, name the Town as an additional insured on their insurance policy and will allow specific performance for the Town to enforce the agreement. He explained that they are asking for the approval of the pedestrian access to the Town over the 10-foot wide dock, and they are agreeing to the terms as outlined above.

Mayor Hughes asked Council to direct their attention to Exhibit E. He has concerns with the docks not matching up. They do look continuous but they are not. The submerged land lease ends at this area and they would need some access across the corner. He asked for Ed Cusik to address this issue.

Ed Cusik replied that the submission to State to extend the submerged land lease contains some additional housecleaning items and requests. One of them is to adjust certain areas of the submerged land lease. The solution they would agree to is a temporary easement/license with some type of reasonable date to have the Town go in and get their submerged land lease to build the new proposed dock.

Council member Thomas questioned the docks for the pedestrian plazas? Town Manager Segal-George replied that if the Council believes this is an acceptable pedestrian access along the waterfront they would be committing to putting the docks on the two pedestrian plazas. It will not work without them. Up until this point this was not something they were considering doing, but can be done. Both sides will need this dock/boardwalk.

Council member Rynearson asked Mr. Cusik if he would be willing to add into his agreement the extension of this right until they had the permits to do what they need to do? This does not lock in a time and they are not able to lock in a time due to dealing with the government. Mr. Cusik replied that he does not have a problem with this language as long as they are reasonably diligent.

Charles Bassinet came forward and replied that as long as reasonable diligence is used by the Town by moving forward this would not be a problem.

Mr. Cusik announced to Council that they are going to get this done. Whatever it takes to make the issues work will be completed.

Ed Cusik went on to read condition 3 regarding parking. He explained that some confusion took place at the LPA meeting. Some new information exists today and the agreement did not get signed until two days after the LPA hearing. He expressed that parking lot #3 did not exist at the LPA meeting. This property was tied up two days after

the LPA meeting. He expressed that they have 203 standard parking spaces with all four lots. However, with valet or stack parking they have 322 spaces. All calculations are assuming a new restaurant will be in place and require 267 spaces. They do comply with 322 spaces. An excess of 55 spaces exist. Under current .67 relief they would be required to have 178 spaces. They have 25 excess spaces with the standard layout and 144 excess spaces with the valet or stack layout. Ample parking exists without any relief at all. They are asking that the 96 space permanent condition on the restaurant be a mute point for a multi-use facility. Since they comply with the existing parking requirements they ask that this condition be dropped.

He went on to read condition 4. The future use of this building is in question. The future status is in question. This condition is not an issue.

Condition 5 refers to the site and architectural review by the Town that must take place prior to the issuance of a local development order. This condition has become a very difficult issue. He explained that a contradiction exists within the drafts. He pointed this out to Council and expressed that many more changes will be taking place. He expressed that it is their intent to take the least desirable and the least visible side for the back of the building, and make it as presentable as they can. He hopes that they can all work together and that everyone will recognize they are trying to do the right thing. Sometimes there needs to be exceptions to the rule. Hopefully, there will be room for reasonable solutions based on the circumstances involved. He read from the existing overlay zoning master plan. He asked Council to look at the four sided building (C-1) prepared by the Architect. He explained that the only area of the building they did not step back were in places they could not. These areas would be the men's and ladies rooms and tower for the elevator shaft. The orientation of the customers needs to be toward the water. He explained that the step up design will allow for more of a water view.

Council member Rynearson asked for the reason for the elevation toward First Street? He questioned if this could be put at ground level and do the raising through platforms? Mr. Cusik replied that there is a slight elevation change there anyhow. Due to handicap requirements you must choose a middle group that is accessible to anybody anywhere. This level was determined in advance and dominos back to the components together. He does not see how this could move without a major change in the design and construction of this building.

Mr. Cusik spent some time reviewing the plans with Council and pointing out the different areas along with their intentions for construction. He explained that they would like to carry the theme of the new Snug Harbor out onto the street. It is there intention to get together with the Historical Society to create a visual display from inside that would show the history of Fort Myers Beach. A display of this type along with the Town announcements would be an important aspect of this area. He explained that they have given this a lot of thought and have worked very hard to come as close to the proposed guidelines as possible. Their intent is to make this building as attractive as it can be, but it must also be functional. It is impossible for them to conform to each and every proposed guideline without some recognition of the unusual circumstances surrounding their site. He hopes as the proposed guidelines are being further debated and drafted a section will be added that speaks to unusual circumstances, and speaks to the very language of the overlay zoning master plan. He hopes that some discretion is given to

the Town Manager as they review the circumstances to each particular submission. This is a very important and very special component of the new downtown district. Mr. Cusik hopes that he has conveyed how dedicated they are and how excited they are about making their end of the street something everyone can be proud of. He thanked Council for their time and attention.

Pam Houck, Zoning Director, came forward and explained that two variances are before Council. One is from the required street setback on First Street from 25 feet to 0. The other variance is from the required 128 parking spaces to allow no parking on the site. She clarified that her 128 parking spaces in the request was conceptual. The applicant has now been able to better define the areas of the restaurant. This is why they are discussing 96 spaces today. Some fluctuations may still take place before the project is finalized. Sufficient lot area exists to provide the required amount of parking this restaurant will need.

She went on to discuss her reasoning for recommending approval. The property is a unique property by location and configuration. The parking setback variance is a result of the applicant's intent to develop this property and comply with the overlay. The applicant does own a significant amount of property on the other side of Old San Carlos and has the area to provide parking for the restaurant and other activities that take place on his docks. She found the property is located in the pedestrian commercial land use category. The proposal of a restaurant on the site is consistent with this land use category and is consistent with Policy 4A2, which seeks to insure that new commercial activities will contribute to the pedestrian oriented public realm. She feels that the conditions she has recommended are important and appropriate for this site. She has recommended approval with the conditions contained on page 2 of 6 on the staff report.

The first condition would limit it to a 2-story restaurant. The second condition refers to the applicant providing permanent restrictions on the property prior to a development order to insure there is pedestrian access along the waterfront. Condition 3 requires that the applicant maintain the required 96 spaces. She suggested to Council if they approve the variance they should strike the 96 and just require that the applicant provide the required amount of parking at the offsite locations.

Mayor Hughes commented after much discussion regarding the parking spaces that they will need to have more sophisticated language for condition 3, so it does refer to the number of parking spaces required by the Land Development Code at the time of the development order.

Pam Houck went on to condition 4, which is addressing the existing building for the Snug Harbor Restaurant. This would require that any use of this building would have to provide the required onsite parking. Condition 5 is in regards to the Town approving the site and architectural designs prior to the issuance of a local development order.

Bill Spikowski, Planning Consultant for the Town, came forward. He agrees with Pam regarding the condition sufficing for the parking requirement. He does not want to see the language too restrictive. This will allow the applicants regulations to fluctuate.

He went on to the pedestrian access and expressed that there is a relation between the 25 foot front setback variance and the issuance of a pedestrian access. He explained that everywhere in the overlay somebody is required to build a 0 foot setback to the sidewalk. In this case the applicant is asking to do this. Why does he

have to ask for it rather than just doing it automatically? The reason is due to the 0 foot setback requirement, which only applies in the overlay where buildings were contemplated. A connection along the water must be complete to make it work. He discussed the situation if the submerged land lease is lost. He agrees that no upland owner would give up their submerged land lease, because it is such an asset to the property. Who knows what the State may do in the future. A situation may exist in the future with another owner not wanting the public going by in the same way. If you are running a private club you would not want the public going by your property. This is the reason for the backup easement. The commercial building guidelines have been general and have not brought in what they expected. This is the reason they are bringing more specific commercial design guidelines. The new guidelines have a lot in common with the old guidelines. The new guidelines are style neutral. He expressed that this design does meet the majority of the standards, but not all. They still do not comply with the guidelines. He explained if Council likes the guidelines and wants to approve them today, rather than going with condition 5, they should go with a condition that states the variances are limited to compliance with the architectural elevations submitted on March 7. There is no reason to ask the Town Manager to go back and compare these to standards that they clearly do not meet. A suggestion was made regarding bay 3 (kitchen) to replace the fake looking doors and have the architect design a colonnaded covered area extended out from the building over the sidewalk. This would break up the facade. This would be beneficial for those who wish to use valet parking and for a Trolley stop. The display panels will become less prominent and more useful. The applicant was interested in this idea, but does not have permission from the Town to do this. This would be built over the Town's right-of-way. To make this useful as a Trolley stop it is possible the curb would need to be moved in a foot to accommodate the width of the Trolley and would effect the design. He feels that these are minor stumbling blocks. If Council likes the building as is they should substitute condition 5, and if Council likes the change the additional language should be added. If Council does not like the building they can stick with the existing condition, but cannot expect the Town Manager or anyone else to say that it does meet the letter of the guidelines. It would need to come back before some review body. He feels that this should be taken care of now.

Mayor Hughes questioned the use of the Design Review Board. Would they only be used in cases where there is no compliance? Bill Spikowski replied that this is what he is proposing.

Mayor Hughes felt that this would be an automatic requirement to be reviewed by the Design Review Board? Bill Spikowski is encouraging them not to do this. He is suggesting that there be three ways for the design to be reviewed. If it is in full compliance with the very detailed guidelines it would be approved at the administrative level. If it comes through as part of a planned development it would be completed as part of the zoning. The third case would be the appeal from the administrator.

Mayor Hughes asked if anyone from the public wished to address the Council. None was heard.

Town Manager Segal-George pointed out that condition 2 was not discussed. Mayor Hughes commented that the condition requires that there be an agreement/document. Town Manager Segal-George responded that there is no

document. The applicant presented it as talking points in his presentation. No discussion has taken place.

Mayor Hughes commented if Council makes an approval today many things will need to be articulated. The resolution will need to come back before Council for review. A decision conceptually will need to be made along with a clear picture of the conditions to be drafted by Counsel and back for review by the Town Council. The language in the agreement will need to be clear that the 10 foot dock area will remain unobstructed, hold harmless clause, Town as additional insured, specific performance, reference to a temporary license for the extremities of the dock and the applicants Counsel has suggested that the Town use due diligence in obtaining a submerged lease and be granted a temporary license for accessibility. He would also want the agreement to provide that the applicant will apply for the amendment to their submerged land lease to extend to the eastern extremity of a line, which is an extension of easterly boundary line of the property in question. In the amendment the applicant will ask for a 25-year term for the granting of the revised lease. The form of the agreement will need to be satisfactory to the Council for the Town.

Town Manager Segal-George indicated that Mayor Hughes has covered all points. She expressed that the only issue raised would be if Council is comfortable accepting the 10-foot on the dock? Mayor Hughes replied that he is not comfortable with it, but he can live with it.

Council member Thomas commented on the access point between the Town properties. He asked what will happen if a storm or high tide causes extreme damage to the docks? The public will not have access between the two areas. Charles Bassinet replied that if a catastrophic occurrence takes place and the dock is removed they will give temporary access over the upland area until such time that the dock could be replaced.

Town Manager Segal-George asked if they would be willing to add in this provision if there is a temporary lapse of the submerged land lease they could have a temporary easement until the ability to use the dock would be restored? Charles Bassinet replied that there will not be a temporary lapse.

Mayor Hughes mentioned that some discussions took place in other meetings regarding hours. His notes indicated that they would be willing to have it open between 8:00 a.m. and 12 p.m. Monday thru Sunday and so posted. He asked how it would be closed off at night? Ed Cusik replied that they will probably not actually close these areas unless there is a problem. Chuck Bassinet replied that they will post signs to put people on notice they may use these areas from a given time to a given time.

Town Manager Segal-George suggested that the applicants Counsel draft the agreement and submit it to the Town for review by the Town Attorney.

Charles Bassinet indicated that this is primarily complete. The Counsel will draft and submit to the Town for their review.

Council member Van Duzer would like to see language in the agreement to include access will not be restricted through the courtyard area from either end. Presently this area is open and he would like to see it remain the same.

Mr. Cusik commented on the proposed design of the colonnaded covered area extended out from the building over the sidewalk in bay 3. He indicated that he would not commit to this design at this time, but would look into it. Mayor Hughes questioned

how this would be resolved? Town Manager Segal-George replied that the improvements on First Street will not be done to coincide with the applicant's construction of his restaurant. She is unsure of the applicant's intentions.

Mr. Cusik replied that the colonnaded shelter was floated as a possible idea. He did not mean to convey that they expected the Town to pay for this. In the future anything that is a good idea will be considered. Today they would like Council to approve what they believe is a handsome and practical design. Some enhancements may be made in the future

Chuck Bassinet suggested providing the rendering as it is today and state that when the Town is ready to come forward to discuss the design of the Trolley stop the applicants will be willing to sit down and accommodate some type of Trolley stop along this portion of the building. He does not feel it is fair to ask the applicant to agree to anything that has not been designed or the cost calculated.

Bill Spikowski came forward and explained that the bids just received for Old San Carlos do not include improving First Street. However, because they do improve Old San Carlos and make the turn onto First Street they had to design how the First Street improvements will go in order to know where to put the curbs. He expressed that they do need Mr. Cusik's cooperation to provide the space for the Trolley stop. The question was a way to make the Trolley stop a pleasant area for people to wait under with a roofed shelter. He suggests if this hearing will be continued to develop the detailed agreement on the pedestrian access agreement. They may conceptually include the language he has suggested about the Trolley stop and not finalize this until next month. This will give both sides a chance to consider this matter further.

Mr. Cusik commented that he agrees with the concept and will sit to down to discuss this at a later time once it is finalized. Cost will be a factor and will need to be considered.

Council member Thomas asked where the pull over would be for the valet parking? Mr. Cusik replied that this would be one area. He pointed out on the plans the area they have planned for this drop off point. Valet parking will not be directly in front of the restaurant.

MOTION: Made by Council member Bill Van Duzer and seconded by Council member Howard Rynearson to approve the resolution with some modifications. Approve the required setback from 25 feet to 0 feet and to approve the required parking to 0 spaces on site. Approve Condition 1 as written. Condition 2 as to be determined by Counsel from both sides per the earlier discussion. Condition 3 - Strike 96 and the number of parking spaces required under the Land Development Code at the time of issuance of the development order. Condition 4 - the use of the existing building will cease upon issuance of the certificate of occupancy. Condition 5 - the design be controlled or be substantially as per the submitted elevations that were received today. Motion amended by Council member Bill Van Duzer and seconded by Council member Howard Rynearson to add a condition with regards to C-6 and the possible Trolley stop. Both sides will use their best efforts to try and work out a mutually

agreeable solution for this issue.

Discussion: Council member Van Duzer feels that the applicant has gone a long way to accommodate what the Town has asked for. He feels that there should be an easy way to have a cooperative effort to complete this matter.

Charles Bassinet explained that they will be willing to sit down with the Town and accommodate them to the to the best of their ability within reason.

Town Manager Segal-George explained that she and Chuck can work on some acceptable language.

VOTE: Motion passes unanimously.

Town Manager Segal-George explained that she will bring the resolution forward on the Consent Agenda. This may take place the first meeting in April.

Mayor Hughes expressed that the public hearing is closed. The substance will not be revisited unless by appropriate action by anyone. The only purpose this will be brought back to Council is for review and approval of the resolution.

Mayor Hughes asked if any Council members had items for discussion.

Vice Mayor Cain explained that for two years they have been working to acquire the land between Mango and Chapel. A rumor circulated that someone has been looking at this property. She expressed that they went forward to 20/20 to try and acquire this property. The appraisal came in extremely low and the homeowner has given a realtor on the island a 30-day option to review the property. She talked to Mrs. Higgins. The property belongs to herself and her brother. Mrs. Higgins was not clear on the mitigation. She explained that the offer is for $87,000.00. They are requesting a firm $225,000.00. She has requested Dan Folke to contact 20/20. She would like to request funding from Council for the difference between the $87,000.00, which may be received from 20/20 and the $225,000.00.

Town Manager Segal-George explained that Dan will go downtown to get a copy of the County's appraisal. It is believed that the property is under appraised, because the development potential has not been recognized.

Council member Rynearson questioned why they cannot make an offer subject to financing. This will give time for them to work with 20/20. He is looking to tie up the property, if possible.

Town Manager Segal-George does not believe an offer can be made without an appraisal to back it up. She explained that they could go to Trust for Public Lands and ask them to tie up the property while the Town puts everything together.

Council member Rynearson suggested that the Town Manager go to TPL and see what can be done. A special meeting could be called, if necessary.

Town Manager Segal-George expressed that no action can be taken by Council today.

Vice Mayor Cain mentioned that the TDC will receive the application today about the Newton Property. She would like to propose a resolution to encourage TDC to participate in the Newton Property Agreement with the support of the Town Council. She is asking for support for lands.

Town Manager Segal-George explained that they are submitting the Newton Property to 20/20 and TDC. A moving price tag exists. Presently it is at 2 million dollars. $500,000.00 is being asked for from both 20/20 and TDC. She expressed that they may need to sit out another year due to time constraints.

Vice Mayor Cain would like to establish a land trust. She asked if Council would be interested in hearing from the gentleman who started the land trust on Pine Island. All Council members would be interested in hearing a presentation.

VII. PUBLIC COMMENT

None.

VIII. ADJOURNMENT

The meeting was adjourned at 2:20 p.m.

If a person decides to appeal a decision made by the Council in any matter considered at this meeting/hearing, such people may need to ensure that verbatim record of the proceeding is made, to include the testimony and evidence upon which any such appeal is to be based.

Respectfully Submitted,

Shannon Miller
Transcribing Secretary