

**FORT MYERS BEACH
TOWN COUNCIL MEETING
April 9, 2001
LAND USE HEARING
NationsBank, Council Chambers
2523 Estero Boulevard
FORT MYERS BEACH, FL 33931
(941) 765-0202**

I. CALL TO ORDER

The regular Meeting of April 9, 2001, was opened by Mayor Daniel Hughes at 9:00 a.m.

Council Members present at the meeting: Terry Cain, Daniel Hughes, Ray Murphy, Garr Reynolds, Howard Rynearson

Members absent from meeting: None.

Town Staff present at the meeting: Town Manager Marsha Segal-George, Service Delivery Coordinator Pam Houck and Attorney Richard Roosa.

II. PLEDGE OF ALLEGIANCE

All assembled and recited Pledge of Allegiance.

III. PUBLIC COMMENT ON AGENDA ITEMS

Comments will follow cases.

IV. PUBLIC HEARING: DC12000-00059 Edward F. Streit, Tr., in ref. To DOCKSIDE INN. Rezone from Commercial (C-1) to Commercial Planned Development (CPD) to permit a maximum of 34 Hotel units, 2600 sq. ft. of retail, 2,510 square feet of restaurant, 250 square feet of bar/cocktail lounge, consumption on premises and a bar/cocktail lounge, consumption on premises and a caretaker's residence not to exceed 35 feet in height above base flood elevation on 0.57± total acres of land. The subject property is located at 1130 First Street.

The parties were sworn in as to testimony.

Carleton Ryfle represented the applicant, Doug Spieren-Smith who stated that they had read the staff report and agreed with it. They appreciate the staff's work on this application and advised there was a set of architectural drawings in the packet. He stated this is the Old San Carlos Master Plan and if you look at the architectural drawings handed out to you it matches the building. The proposed is consistent with the master plan and it is another step toward linking the gulf and the bay.

Dan Folke, Planner with Lee County Dept. of Community Development reviewed the request and prepared the Staff Report included in the packet. Staff is recommending approval of this request. A recommendation from the LPA to approve with conditions is also listed. Mr. Folke gave a brief overview as to where the property lies and some of the special development regulations that the property owner is asking to take advantage of and also a brief overview of the Old San Carlos Master Plan and how it ties in with that plan. Mr. Folke believes that what sums it best is the section he had taken out of the plan that was included on page #6 of the staff report where it talks about making a connection between Times Square and the bay and the gulf and it gives a vision as to how that connection can be made. Some features of this request that are consistent with that are bringing the building out to the right of way, right on the sidewalks,

having parking behind the building, some retail on the ground floor which will invite people to come down Old San Carlos and on the second and third floors have hotel spaces or office space. Staff believes that this request is consistent with that vision and the recommendations, which came out of that master plan. As to the portion pertaining to development regulation, this falls under the downtown overlay regulations which allow some reduced setbacks and reduction in parking by one third and the applicant has incorporated these into their plan. Mr. Folke described some of the conditions that staff recommended as well as some conditions that came out of the LPA. Condition #1, basically links the approval of this request to the Master Concept Plan that has been provided.

Item #2 shows the schedule of uses. The primary use would be the hotel/motel, restaurants groups one and two and the applicant has also added restaurant group three, which was approved by the LPA. Signage in accordance with Chapter 30 specialty groups one and two and consumption on premises indoor only, therefore there is no outdoor seating with this request. The applicant is asking for 34 hotel units broken down to 12 business units and 22 efficiency units. The business units are the smaller units the efficiency units are the larger units. The detail of the room sizes is listed in the master plan. The maximum retail square footage of 2600 sq. ft.; a maximum square footage of 2510 square feet; a bar and cocktail lounge of 250 sq ft.; and on caretakers unit. Staff recommended approval of the setbacks as shown on the master concept plan with a maximum height of 35 feet above basic flood elevation.

Condition #3 deals with landscaping and Staff believes that this will tie in with the improvements being made on Old San Carlos.

Condition #4, the applicant will have to enter a written agreement with the town opting into the downtown overlay district.

Condition #5, is a standard condition dealing with traffic at the time of the development order.

Condition #6, deals with the development order.

Condition #7, deals with the development order.

As to the deviations, Staff has 6 deviations and the applicant also added another deviation at the last LPA meeting.

Deviation A, is from the required 25 feet street setback on First and Second Street to allow 0 foot street setback.

Deviation B, is for maximum lot coverage to allow 100% lot coverage. Staff believes because of the development regulations which are allowed with the 0 ft. setbacks that this is an appropriate deviation. I would like to point out that when we look at lot coverage we don't look at parking. In this case there is parking under some of the building therefore there is a little difference.

Deviation C, is from the allowed density from the hotel/motel room multiplier, which allows one dwelling unit is equal to one hotel room to allow 34 hotel/motel units. Staff is recommending approval with the condition that the approved number of units must be consistent with the comprehensive plan at the time of the local development order. If the 34 hotel/motel units are not consistent then the number of hotel/motel units allowed will be equivalent to the maximum number of units permitted in the Old San Carlos portion of the downtown overlay district as allowed by the comprehensive plan at the time of the local development order. In no case will the total of hotel/motel units exceed the total of 34 rental units.

Deviation D, is from the maximum square footage allowed for hotel rooms. The efficiency rooms are limited to 350 and less and the business units are 550 and less and the applicant is seeking to allow a maximum hotel room of 1270 sq. ft. Page 7 of 10 gives a detail of the rooms requested which will be approximately 750 sq. ft., 7 of the units are approximately 380 sq. ft. and only one unit is over 1200 sq. ft. If the applicant were to seek more rooms that were larger the result would be fewer units. Staff therefore feels the deviation is appropriate.

Deviation E, is from the required parking. The LPA approved a new condition and that is retail parking approved from one per 200 sq. ft to one per 600 sq. ft. retail use only. What was asked for and approved is what was done at Rusty's. Staff is recommending approval of this deviation.

Deviation F is from the required intersection connection distances, we are recommending approval of this deviation.

Deviation G, is from a setback to allow an 8 ft. setback down the east property line and 0 foot setback on all other property lines.

Mayor Hughes asked with regard to Condition #3 on the landscaping. He felt that the language is sort of general and subjective. He questioned whether it is possible to have a condition that they must submit a landscaping plan as part of getting their development order in lieu of this general language and be subject to approval of the plan? Mr. Folke said this would be appropriate. He said it is hard to do something specific as it is built to the right of way line and because of the improvements being made to Old San Carlos, staff isn't totally clear what is going to come out of that project and what landscaping will be included in those improvements.

Mayor Hughes then asked for clarification on the standard condition #5. Dan Folke advised that this condition is based on the fact that conditions may change from the time that the zoning is approved to the time a development order is actually sought and he stated he thought the conditions here were unique. Pam Houck stated that what the condition is saying that today he may be able to get his development order, if he doesn't apply for the development order today and conditions have changed there may be added conditions to the development or as improvements may have to be made to the road or he may not get the development order at all. The Mayor stated this condition clearly benefits the town.

Garr Reynolds asked Dan Folke if there was any way with the deviations that as it stands right now could they get a development order? He questioned if they could come back next week and get a development order as it stands now with the LDC as we have it now and as the CPS presently stands? Mr. Folke advised that they could not and an amendment to the comprehensive plan would need to be done first before they could get a development order for this project.

Garr stated he was in that area last week and while he was down there he could see that everything is crowded around there and it seems doubtful that they will be able to get 38 cars parked there on the 1/2 acre lot. He was wondering if they would also take the parking space that would be on the street. Dan Folke advised that it is understood, and he did include it in his staff report on the parking deviation, that when the improvements to Old San Carlos are made there will be parallel parking spaces put on Old San Carlos and he has been told that the intention is that they be metered and be open spaces to the public. Assuming there is a space there anyone could park there and go wherever they wanted to. He also counted the number of public spaces that are existing under the bridge and that are metered and believes that the improvement is somewhere from 70 to 80 spaces are anticipated on Old San Carlos. He also mentioned that one of the recommendations out of the LPA talked about shared parking and that the applicant may use off site parking if necessary to provide parking and that parking must be adjacent or within 500 ft. of Dockside Inn. Mr. Reynolds stated that presently there was a 15 ft right of way beyond the bridge coming toward that property. He asked where does that 8 ft. setback go? Does it go to that right of way which would be 15 ft. out from the other wall? Dan advised it would be measured from the property line, which would also be the right of way line. Garr stated there was a 15 ft. easement on each side of the road, which would be the right of way line of that highway. Dan asked that they look at page 3 of the Master Concept Plan with regard to this. He pointed to this area and they discussed this question. It was determined the bridge is inside the 15 ft. space on each side. Garr added that the highway dept has allowed the business there to use that space

but not to restrict it any way. Garr stated what he wanted to find out was if this was going to be a similar situation because the building could not go into that area. Dan responded stating it was his understanding is that no part of the building is in the right of way or in an easement for right of way. Mayor Hughes added that if this were the fact this plan would be invalid. He added this had to be clarified. He stated they couldn't build on an easement. Dan stated he would look at the survey, and asked if the applicant wished to address these questions. The Mayor asked if Mr. Spikowski could shed some light on this question.

Bill Spikowski stated there is not a separate easement. When the state came in and acquired the right of way for the new bridge, they built the bridge within the center of the right of way and there is approximately a 15-foot space (it varies in some areas to 12 ft). The setbacks on this plan are measured to the edge of that right, so there is a 15 ft space between the bridge and the edge of the right of way and then there is 8 more feet before the building begins, so it is ok.

Mr. Spikowski advised he did concur with the staff recommendations. He reiterated councilman Reynolds question as to the unusualness of this zoning before the comprehensive plan. He added it is unusual and that the only reason it is appropriate here is because of the amount of planning the town has done for the property is extreme in the degree of specificity. The fact that the plan amendment has not been adopted yet is more the town's problem and the town's responsibility and there was a glitch in timing of the comprehensive plan being adopted and then two months later the Old San Carlos being adopted and there was a slight inconsistency on this matter that we are now resolving. The landowners have gone ahead in good faith to do what the town has asked.

The condition that Dan Faulk has written here and for Rusty's basically says that if you don't approve the plan amendment that would allow the number of hotel rooms they can't build them. They can still build the building and have that as office space but this does not put the town in any bad position. It was similar to the condition the mayor asked about on transportation impacts. It is really a condition that protects the town should conditions change. It is the kind of condition that applicants hate because it is too open ended for them but they sort of have to live with. On the transportation condition, the concurrency approval that says that the infrastructure is adequate is issued when the development order is issued. Here we are doing a very detailed CPD plan, yet the standard concurrency review has not been done yet and this protects the town in the case of some problem develops between now and when they get the development order. For instance if we change the method of measuring concurrency two years from now. This protects the town and would leave the applicant out in the cold. If we did not have this condition we would have to go back and do the full concurrency review of every CPD application which is difficult as most CPD's have a whole list of uses and you have to analyze every different combination of uses.

The parking meters that would be in the right of way would be metered spaces for the public. They would serve the restaurant, but he doesn't think anyone staying in the hotels would use them.

The on site parking is meager on this property. In this case we have a corner property and the area behind is small especially as the applicant does not own the board of realtors building. The applicants have come in with the building that meets the bulk and the height proposed for the new Main Street. To do that they have had to make sacrifices that they aren't too pleased with one is to get those number of spaces on the property they are using valet spaces where cars are stacked one behind the other. This is not particularly good for the hotel because they have an extra expense. It is efficient to get more spaces on the property but it changes the character of the hotel. They may have to move cars for you but it actually works nice into the town's plans for park once. If you stay at this hotel you would probably walk to most places.

Regarding the Comprehensive Plan amendment on the hotel room question, the first hearing is scheduled for next week before the LPA. The Staff recommendation Mr. Spikowski prepared for the LPA that will be presented to Council in a month or so would allow the 34 hotel

rooms they are requesting. If you chose to limit at those meetings they have to live with your decision and they are aware of that issue. He asked if there were any questions.

Mayor Hughes stated this is a large assumption of this council that five years ago that 100% of the council members voted 1 to 1 on dwelling and hotel units. At this time we are approving a project which is being presumed or assumed that now there is no multiplier for that area presuming that 3 out of 5 council members will go along with this. He feels that it is a lot to ask of five elected officials and he has problems with that.

Dan advised that was done in 1997 and it was before the Old San Carlos Plan was done and at that point the council indicated it wanted to proceed with the concept. He added that when the council did that you changed multiplier 1 to 1 it was the general understanding at the time that it was not going to necessarily last forever and secondly it forced anybody that wanted to do anything more had to come before the council and let you choose. In essence the town did not want to see the county staff routinely things of higher density.

Mayor Hughes questioned where it read... "Three stories over base flood stage". What is flood stage? What is the measurement? Mr. Spikowski advised it was about six feet above ground and twelve feet above sea level. The Mayor then said that the building would go down within six feet of the ground. He stated the maximum height limit would be measured from that base flood elevation.

Ray Murphy asked Mr. Spikowski about condition #3 in regard to the landscaping. He questioned if it was Mr. Spikowski's recollection of all this that we have somewhat of a plan already envisioned for that area. He was advised the engineering work was almost done and current plan is that landscaping would be done right away and at the town's expense although possibly assessed back to the landowners. Mr. Spikowski said that it was probably not done in essence so they would have some plants on private side that they would have to comply. The condition is to keep the option open that the town's final plan might include something on private property.

The mayor asked that in 1997 when the town council established that original ratio under the comp plan, that was prior to the concepts we had on Old San Carlos.

Garr Reynolds explained to Mr. Spikowski that he was trying to determine where the measurement starts on the 35-foot height. He was advised that the way height is measured is above base flood elevation and what is permitted in the downtown overlay is 40 feet above base flood elevation. What they have asked for is a maximum of 35 ft. above base flood elevation. In looking at the architectural the building starts at ground level but when you measure the maximum it would be measured from base flood. Mr. Reynolds reiterated that base flood then is 6 ft. above sea level and Mr. Spikowski advised it was about 12 ft. above sea level but 6 ft. above ground level at this location. The building would be 35 feet plus 6 feet for a total of 41 feet if built to the maximum height. Garr questioned the caretaker's quarter and was it going to be another story. He was advised he did not think so but the applicant could address that question. On the drawing the ground floor shown on the second page of your master plan, then a second and third floor that are the hotel units.

Mr. Ryfel advised they had not as yet specifically designated where the caretaker's unit will be. He continued by adding what Mr. Reynolds was looking at was just architectural dormers and that there was nothing up there. He added that maybe the caretaker's unit would come out of the 1270 sq. ft. unit, but it has not been decided yet.

Mayor Hughes wanted to clarify again stating that looking over the concept sketch from the sidewalk, which was assumed to be equivalent to ground level, to the top of the roof is 41

feet. He advised that the height of the building is measured to the vertical eave where the center section. The point of the roof would be higher as it is a pointed roof. The 41 feet would be to the top of the eave.

Garr Reynolds asked Mr. Ryfel how high is it to the bridge? He was advised that he understood the clearance is 63 feet.

The applicant added that all the parking is on site and they are now counting on the metered parking. Their numbers are based on site parking and they are actually one short and that is the deviation we are requesting.

Garr Reynolds asked Dan with regard to his report on page 2, where it spells out consumption would be on the premises and indoors only. He asked why he said that as the building goes from border to border where else could they have it? He was advised that quite often people try to get some outdoors seating somewhere. We wanted to be specific to indoors.

Terry Cain wanted to clarify that there was no pool on this property and was advised there was not. The applicant reiterated by nodding his head there was no pool.

Dan Folke added to what the applicant said with regard to the parking. He had discussed this in the report to justify why staff feels the deviation is appropriate. This does fit in with the overall strategy that there will be a significant number of public spaces and the opportunity to use them. All the parking they are asking for will be on site.

MOTION: made by Vice Mayor Murphy and seconded by Councilwoman Terry Cain to approve the resolution that is before Fort Myers Town Council which incorporates the LPA conditions which would include in Condition #3 that there be a landscape plan submitted for review and approval prior to issuance of the development order; approval of the recommendations and the deviations of the staff; and that the resolution is accepted in its form except striking the word “denied” in the now therefore clause.

Mayor Hughes said to Mr. Roosa, the findings and conclusions of the staff on page 4 and 5 of the report are not consistent with the whereas in the resolution he added that has been something he would like to have clarified. In the LPA makes references to the findings and conclusions on page 4 of the staff report as well as to the deviations and conditions on pages 2 to 5 which he thinks should be 2 to 4 and we don't incorporate the staff findings. Mr. Roosa said they would if they adopted the LPA resolutions. He stated that he understands this motion to read that this council's resolution adopts the LPA's resolution with the exception of #3 the landscaping prior to the development order. He stated it would incorporate everything.

DISCUSSION

Howard Rynearson congratulated the applicant and their team. Adding that when the town passed the plan for Old San Carlos area this is exactly what we were looking for. He wished them well and also agrees that they did not wait until all the amendments were approved.

Garr Reynolds stated that he believed for the ratio of density originally. He could not go along with this type of promotional project without having guidelines on the record and he thinks that is why we have a comprehensive plan and why we have the LDC.

Mayor Hughes advised that this council was being asked to vote to rezone specifically to a CPD. He again advised that the applicant was going at his or her own risk prior to the amendment.

Motion passes by a vote of 4 to 1. Council member Reynolds descending.

AT THIS TIME THE COUNCIL WILL RECESS AS THE TOWN COUNCIL AND RECONVENE AS THE GOVERNING BOARD OF THE ESTERO ISLAND COMMUNITY REDEVELOPMENT AGENCY

1. Mayor Dan Hughes called to order the meeting of the Town Council sitting as The Governing Board of Estero Island Community Redevelopment Agency of the Town of Fort Myers Beach. All council members are present.

Mayor Hughes turned the meeting over to attorney Roosa who has given a proposed settlement agreement that arose out of the meetings we had with the county board members and with the subject of our Executive Session several weeks ago.

Mr. Roosa stated that Council has before them a proposed settlement that represents a lump sum payment to the Town Redevelopment Agency of \$2,000,000.00, which is in sum measure a reflection of the present value of the future revenues that would be collected through the tax funds that would represent the county's share. The proposal of the county commissioner is rather than them contributing a portion of the taxes each year over the term of the development of those projects that have been identified that they would make a lump sum payment to the town promptly upon the agreement and execution of this settlement order and the subsequent order of the Court. The staff has reviewed this and has found the terms of the settlement to be manageable and it appears to be an equitable settlement in that whenever you discount the present value of funds of course, that share is much less than long range value. Attached should have been a list of the projects. Part of the settlement agreement is that there are eight phases of projects that were identified a current plans of the CRA that total \$4,100,173.00 and so the county has identified that \$2,000,000.00 amounts to one-half of the total project. The agreements says this commission determines the expenditure of those funds as totally at your choice you could use them all for one project, you could vary them, however, as each of these projects are completed and there is a dedication ceremony there is a provision in the settle net that we will notify the county manager and offer them an opportunity to be in attendance. Each of these eight projects then would be acknowledged that it was in participation by Lee County as well as the Town of Ft. Myers Beach.

Marsha Segal-George stated when the town came into being the county maintained from the beginning that the CRA that existed no longer existed and that the town basically was not to receive any future dollars. At that time she believed it was the sentiment of everyone that we could not do anything about it. She stated she came up with a concept that the town could go in and capture the county's CRA and make it ours. We had a plan for how could we go about doing something like this and secure money for the Town of Fort Myers Beach, where under normal circumstances the town would not see any. At that point Dick, John and Marsha put their heads together and hired David Cardwell and put together a plan of how we could go about making this happen. We worked on this project for two and on-half years.

The Mayor asked for clarification as to Paragraph 4. He was advised that the concern being addressed is the viability of the CRA. It is not to be dissolved just upon the payment of the one payment from the county, that the CRA is going to continue. It also states that the Town of Fort Myers Beach TIF obligation to pay will continue. The mayor stated that at the executive

session, it was indicated that the council had total discretion expending these funds within the scope of the project. The mayor then wanted clarification as to where funding would go if projects changed, does the county have to be involved in that decision? He was advised that that was the original understanding that the county would be out of the project. When the proposed settlement came back it had this additional requirement. Their concern is that we would use the funds, perform only one of these projects and not complete any of the other projects, that we would abandon them; and, then what we would have is improvements that were in effect 100% paid by the county and no contribution by the town. The first proposal they submitted allocated a percentage to each of the projects and that if the town failed to complete a particular project that that percentage of the money would be returned to the county. The Staff found that to be totally unacceptable. The mayor agreed. At that point the county came up with an alternative that if for some reason the project is abandoned and not completed that we would negotiate with them to use that portion of the funds towards another project. That leaves to a future date the resolution of the expenditure of all these funds. Today, we could still use the \$2,000,000.00, on the first project, Phase I, II and III. What they are saying is that is fine but that they want credit as participating in each of these projects. As such, we would have to meet with them on any alternate project should any project be abandoned or changed. Marsha Segal-George stated she does not feel this has a lot of effect on the town. Garr asked why Phase IV, the sidewalks, was not mentioned? He asked could this money be used for this project. He was advised it could be used in the Times Square area, which has been identified as the CRA area. Marsha advised that the original Times Square project was for the sidewalks to go as far as the Lanai Kai. Garr added that he believed the project was then continued to go to Virginia and he added he was under the impression sidewalks were going to be put down to Pearl St. Marsha advised that this was not so. She added the money could only be spent within the confines of the overlay project, which goes to Pearl. She stated that the extension of sidewalks on the beach side only comes with the Estero Island Streetscape, which gives residents sidewalks on the whole island technically from the Lanai Kai all the way down to the end of the island on the beach side. She stated that there are sidewalks to be completed as part of the original Times Square project where there were to be sidewalks in front Lynn Hall Park and decorative sidewalks in front of the Seafarers area. She added that was all part of the project that was never completed.

Terry Cain stated she was glad the money was coming in one lump sum and that we did not have to request funds all the way. She asked Mr. Roosa for a clarification on Item #4, the last sentence. "That the town shall contribute to its own TIF obligations as those amounts come due into its own trust fund". Mr. Roosa stated that means the CRA. He added that what they mean by our trust fund is that we would set up a fund for this money.

MOTION: made by Vice Mayor Ray Murphy and seconded by Councilman Garr Reynolds for approval the settlement agreement between The Community Redevelopment Agency of the Town of Fort Myers Beach and Lee County, State of Florida, property owners and citizens of Fort Myers Beach and all other entities involved.

Public Comment on Motion:

Mr. Richard congratulated the Town especially Marsha Segal-George for her work.

Mayor Hughes thanked everyone, attorneys, staff and all who participated for their work on this settlement agreement. That this would be the beginning of a new era between the Town of Fort Myers Beach and Lee County.

Vice Mayor Murphy added he wanted to echo what Mr. Richard and Mayor Hughes stated. He congratulated Marsha for initiating this plan originally. He stated that upon receipt of the funds the projects should go underway.

Motion passed unanimously.

AT THIS TIME THE TOWN COUNCIL AS THE GOVERNING BOARD OF THE ESTERO ISLAND COMMUNITY REDEVELOPMENT AGENCY ADJOURNED AND RECONVED AS THE TOWN COUNCIL.

V. PUBLIC COMMENT

None.

VI. ADJOURNMENT

The meeting was adjourned 10:34 a.m.

Respectfully submitted,

Eileen Scofield
Transcribing Secretary

Janeen Paulauskis
Transcribing Secretary