

**FORT MYERS BEACH
TOWN COUNCIL MEETING
DECEMBER 10, 2001
LAND USE HEARING
Town Hall - Council Chambers
2523 Estero Boulevard
FORT MYERS BEACH, FLORIDA**

I. CALL TO ORDER

The Land Use Hearing of December 10, 2001 was opened by Mayor Daniel Hughes on Monday, December 10, 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, Bill Spikowski and Jerry Murphy.

II. PLEDGE OF ALLEGIANCE

All assembled and recited the Pledge of Allegiance.

III. PUBLIC COMMENT ON AGENDA ITEMS

None.

IV. PUBLIC HEARING: Richard K. Thomas Variance. Case number VAR2001-00030. A variance in the RS-1 (Residential) zoning district from the minimum street setback requirement of 25 feet, per Fort Myers Beach Land Development Code Section 34-2192(a) to allow a street setback of 16.7 feet to construct a two-car garage addition in accordance with the drawing prepared by Gersdorf & Gersdorf, Inc., on a survey by S & H Land Survey Company, stamped received Community Development November 12, 2001. The subject property is located at 8552 Lagoon Rd.

Mayor Hughes began by asking the Council members if there had been any ex parte communications in connection with this matter. Bill Thomas spoke with Lou Marone, President of Laguna Shores Homeowners Association.

Richard Thomas came forward and expressed that he is a full-time resident of the Laguna Shores subdivision of Fort Myers Beach. It is the desire of himself and his wife to put a two-car garage in front of their existing one-car garage. A hearing was before the Planning Commission and the proposal was passed unanimously with the exception of one member abstaining due to him being a personal friend. He has blueprints from the architect showing what the building will look like at completion. He also has letters and photographs for the Council to review. These items were distributed to the Town Council for their review. Mr. Thomas read a letter from a neighbor who could not be present at the hearing. This neighbor was in support of Mr. Thomas' request. He also read a letter to the Council from Gersdorf & Gersdorf, Inc. indicating that the driveway will be able to accommodate a vehicle in the driveway without interfering with the paved roadway.

Jerry Murphy came forward and expressed that staff initially recommended denial for this request, but on the acquisition of additional information they realized that a hardship exists to

the applicant. Staff has changed their recommendation to an approval. He pointed out the plot plan to Council. The existing one-car garage does not accommodate the present owner as well as a two-car garage would. For this reason staff has recommended that the variance be approved to allow for the new garage. Only the configuration as shown on the drawing as prepared by Mr. Gersdorf and not for the entire lot.

Mayor Hughes questioned the reasoning for staff's change in approval. Jerry Murphy replied that the applicant has a prosthetic limb and needs to get in and out of his car with the use of wheelchair. The current one-car garage does not accommodate him to be able to do this.

Mayor Hughes commented that he has trouble with variances in the findings and conclusions. The hardship relates to the person and not the property. The courts have consistently held that this is not something that can be considered. It is the real estate and not the person involved. Property can be sold and you are left with a variation that was unique to the prior owner, but not a hardship in the sense of the statutory sense.

Jerry Murphy replied that he agreed with Mayor Hughes. Staff felt that because this is a full-time resident, there was no opposition from any of the neighboring homes plus the variance is limited to the minimum required they went with a recommendation of approval to accommodate the owner.

Vice Mayor Cain asked for clarification of the setback? Jerry Murphy replied that the setback is from the right-of-way line. The standard required in this particular zoning district is 25 feet. For the applicant to be able to construct the addition it is required that this variance be modified to 16.7 feet.

Richard Thomas came forward and expressed that their asking for a variance is not setting a new situation in Laguna Shores. He has a photograph of a house, which is the first street east of the street they live on. In the last four years they have built a two-car garage with a residence above the garage. It is 19 feet from the corner of the garage to the roadway. This is much closer than what he is asking for.

Mayor Hughes asked if there was anyone who wished to address the Council. None was heard and the public hearing was closed.

MOTION: Made by Council member Bill Van Duzer and seconded by Council member Bill Thomas to approve the Richard K. Thomas variance request VAR2001-00030.

Discussion: Council member Van Duzer wanted to strike items 1 and 2 from the findings for the above motion. Mayor Hughes indicated that he must withdraw his exclusion from the motion. The motion needs to include all five findings. Attorney Dick Roosa clarified that all five need to be included. He went on to state that he felt the facts in the case support all five findings.

VOTE: **Motion passes unanimously.**

Mayor Hughes commented that he has always had difficulty with the above. He has a concern that they sometimes look to see if any of the neighbors approve or disapprove. This is something to consider, but it is not a valid basis for arriving at the conclusion in a variation case.

V. PUBLIC HEARING: Seafarer's Plaza. Case number DCI2000-00047. Rezone a total of 3.64 acres from Commercial Planned Development and Commercial C-1 to Commercial Planned Development (CPD) to permit a maximum of 41,432 square feet of retail uses, 36,602 square feet of restaurant with outdoor seating areas, 12,869 square feet of office uses, 65 hotel units and a 364± space parking garage, not to exceed 40

feet above base flood elevation. Requested uses include mixed retail, medical office, consumption on premises in conjunction with outdoor seating, bar/cocktail lounge, billiard hall and nightclub. A development agreement between the Town of Fort Myers Beach and the property owner will be considered in conjunction with the request to rezone.

Joerg Wiebe came forward and indicated that he is President of Seafarer's 1997 and Seafarer's 2000 Inc.. He expressed that a lot of money was spent to try and find a solution for the project he is trying to undergo in the future. He started at the very beginning. When he was 20 years old he went to Canada where his father had started a development. They began a change of the Town and the Town developed very nicely. It is called Niagra Lakes. Today they have approximately 40 million tourists per year. He can foresee the same type of situation for Fort Myers Beach, if a few things are changed. He would like them to be more upscale, but not to the extent of Naples. The Town can only prosper from this type of change. The first signs of great improvement are visible now. Tetley's is now open and is on the right track. He has always followed through with any matters before him.

Fort Myers Beach lives off of tourists and is a residential neighborhood. Both things must work together. Most residents are tourists who came to the beach and liked it enough to move here. He does not want to forget this. He indicated that people spending \$300.00 or more per night are looking for more than the beach presently has to offer. They must leave the beach by car to get what they do not get here. In certain circumstances he is generating more traffic, but in other circumstances he is not because he is preventing people from driving. He indicated that this project will employ at least 250 people when complete. He believes the development he is trying to create should be looked at in a very positive way.

The Comprehensive Plan discusses the creation of a downtown core. One presently exists, but it is very small. When this development is done the way it is proposed with its own internal roads it will create a real downtown core. People will have variety from shops and restaurants. If they create a good atmosphere for the younger generation they will be back in the future with their families. They need to look long term for themselves, the tourists and the entire Town. He indicated that John Richard's project was approved. His development comes with basically the same architectural design. The story is similar and will fit into the picture. He hopes the other CPD's in the core area will be approved.

He pointed out Phase II, III and IV of the design. Building A - Seafarer's almost built out to the maximum as approved by development orders and building permits. His second phase will most likely be Building E. He foresees a drugstore or something similar with access to Estero Blvd. to the side and toward the new road. The third phase could be Building D, which is basically taking McDonald's down and rebuild it the way it is seen. This will have a tunnel type of drive-thru. This will provide space for a little restaurant and will provide the same space for McDonald's as it presently has. The last phase will be Building B & C, which is the garage, hotel and retail on the ground floor. The parking will be provided in the parking garage, which holds 364 parking spaces with 6 levels. You will only be able to see 5 ½ levels. The maximum height is reduced from the last hearing to 40 feet above flood. They are also providing about 20 parking spaces in the streets, and 18 in front of the Lighthouse Motel. This is the design as it was found sufficient by staff.

He negotiated with Bill Spikowski 5 feet along Estero Blvd.. This will allow him to build this area of Estero Blvd. the way the Town would like to have it with a median people can cross over and stay in the middle while the traffic goes back and forth. This would also require the easement of 7 feet on Crescent Street where he could build over the sidewalk a Galleria with a covered sidewalk. On Crescent Street there will be a covered sidewalk on Fifth Street along with a partially covered sidewalk on Estero Blvd..

The parking is and was an issue. When the first idea was proposed he stated that it did

not make sense for him to come back before Council if they do not agree with the parking garage location. He cannot change it do to the lease he presently has and due to the personal situation of the owner of the property. He needs a 99 year lease in order to get financing. It was his understanding by Council that they could live with this location. The garage has been created to look very tasteful and does not look like a parking garage. He assured them that this will look nice.

Mayor Hughes asked which of the parcels are under the 99 year lease? Joerg Wiebe replied that the 99 year lease is Parcel B only. Parcel C & E are 40 year leases.

He discussed the redesigned Phase I. This drawing shows Seafarer's as it is today and all buildings as they are today. This design was redone after the last meeting. He wants to have the parking lot changed to a commercial paid parking lot which is gated. This will allow anyone to park for up to one hour for free. Anyone who is spending time in Seafarer's or anywhere within the development will have their money reimbursed. The change from the last meeting is that there will be no parking in front of McDonald's. There are three entrances total with an entrance only on Estero Blvd.. He feels that this is an improvement in the design. No more exits exist all the way along Estero Blvd.. He is willing to close the exit/entrance underneath his building also.

He addressed a general issue with the parking. Attachment B is based on the rule that a shopping center larger than 25,000 square feet will have 4 ½ parking spaces per 1000 square feet, regardless of what is in there. Hotels are the exception. He did exactly what the law states. He came up with 318 parking spaces. Constantly staff tries to stress the issue that he should have 762 parking spaces under normally required circumstances. He is unsure what to do. Numbers are constantly changing. The number of parking spaces which should be required is 317. He referred to a memo from Bill Spikowski dated December 4, 2001. He addressed a few issues in this memorandum. He discussed items ranging from density, parking garage and dance hall/restaurant. He is willing to do everything that make everyone happy, but it must be financially feasible and buildable by the existing rules and regulations that presently exist. He also discussed the memo dated May 8, 2001. He referred to the comment that his development conflicts with the Town's design standards. There are no Town design standards at this present time. If they had some he would gladly follow them. The elevations are wonderful and can be changed.

Mr. Wiebe went on to discuss the issue of the restaurant and dance hall. He talked with staff earlier to have this approved administratively according to the existing CPD. He read the CPD to Council. He was asked to put the dance hall and restaurant into the CPD. He does not feel that he must do this, but he will if he is asked. He is flexible to discuss this matter and does not want Council to be unhappy. He would like to cater to the tourists and feels that it would be an enhancement to the Town. This type of atmosphere will cater to all and provide a variety of entertainment. If they do not want it he will not stress the issue. He would like them to contemplate this.

Council member Van Duzer asked where the food would be cooked? Mr. Wiebe replied that they will provide food and no kitchen will be required. He will use something along the lines of an Air Master. This only requires a grease trap under the sink.

Council member Van Duzer has concerns with the number of people occupying the area? Mr. Wiebe replied that he did unofficially withdraw from the idea. He would like Council to consider this as an enhancement to the Town. They will not have black painted windows and people intoxicated in the parking lot at 2:00 a.m.. He feels that this should be classified as a restaurant. If they say no he will go along with it. It is only for five years and if it is not successful it will be closed.

Vice Mayor Cain asked for the time line? Mr. Wiebe indicated that the Streetscape will be done in about five years. In between they will build Building E. He pointed out the buildings that will stay and that will go.

Town Manager Marsha Segal-George indicated that the LPA conditions are specific in regards to phasing. These conditions are different than what is being explained by Mr. Wiebe.

Beverly Grady with Roetzel and Andress came forward to represent the applicant in the case with a rezoning from CPD to CPD. She referred to the revised set of staff conditions from Dan Folke. The application has come a long way. There are very few issues being discussed. She discussed condition #10, which incorporates the developers agreement. The reason that the developers agreement was approved was primarily that the Town would be the recipient and beneficiary of some easements that would help facilitate implementation of the Town's plan for this area. She indicated that the developers agreement has been substantially revised. Some of this language causes them concerns. They would like direction from the Town Council to recognize why some of the provisions would cause them concern. She focused on the developers responsibilities. This indicates if the developer wishes to obtain permits for the final phase, which is phase V, the developer must provide a construction guarantee for the parking garage. One problem is that they must provide parking for 99 years. This lease is currently in effect and would need to reflect this time frame. It requires a type of easement for public parking. They are concerned about the language for the easement and also the bond being required. A discussion was held regarding the design guidelines and they would like some certainty from the Town that this design would be acceptable.

The Town will receive from the developer the land along Estero Blvd. and this agreement requires it to be given within three months. It requires that they donate a 7 foot perpetual sidewalk easement along Crescent Street. The developer will construct a 12 foot wide sidewalk along Fifth Ave. adjacent to the property. They expect to receive impact fee credits for the construction of the sidewalks. Page 11 of 14 refers to failure to comply with the requirements. This is a whole process that if you have a non-compliance you will get 30 days, and you then have the ability to initiate rezoning on the property to remove the allowances. She felt that the real purpose of the developers agreement was the mechanism for the Town to assure that they receive the easements for the sidewalks to fulfill the plan. The Town has plenty of enforcement capabilities. They are looking to receive direction from the Town Council regarding the issue of zoning, and some direction and recognition of a more balanced agreement.

Mayor Hughes referred to the provisions for the appeal situation and indicated that this should mitigate her concern? Beverly Grady responded that this is not how any other zoning case is treated. If you read the administrative provisions contained within it states that if there is any default the Town could take away the zoning.

Town Manager Segal-George commented that if the Council denies the applicant then they do not have to worry about the over reaching developers agreement. Beverly Grady questioned what the purpose of this was.

Town Manager Segal-George indicated that they must have a second hearing on the developers agreement. Perhaps the Council may want to discuss the case and go to the developers agreement at the end, because they need to have a second hearing on the developers agreements anyway.

Attorney Dick Roosa replied that if Council approves the rezoning it will be continued to a date certain to adopt both the rezoning and developers agreement at the same time.

Attorney Ciccarone came forward and expressed to Council that he has no participation in this case up until he was asked to draft a development agreement. The reason he was asked to do this was because he wrote the regulations in Lee County when the development agreement concept was first introduced by the legislature. The applicant in this case wishes to do some things that would not ordinarily be permitted. The Town in return would like some things that in the ordinary course of zoning they would not get. Mr. Spikowski suggested that a development agreement was the best way to go. The statute that creates this is very broad and anything that can be negotiated that is not inconsistent with the Comprehensive Plan or

otherwise illegal as a matter of law.

He went on to comment on a few of Beverly Grady' comments. He discussed the Town's responsibilities and indicated that he does not have an opinion on this. He would have to defer to Mr. Spikowski. There is no legal right that would compel the Town to grant the rezoning without the development agreement. He was told that the big internal issue for the Town is the parking garage. If they do decide on the parking garage the Town would like a guarantee on the garage to be built before the hotel. This agreement was structured to bring this about. He has not negotiated any of this with the applicant. He was instructed by Bill Spikowski to protect the Town's interest to the maximum extent. This is a 10 year agreement. Most of the agreement is driven on the parking garage necessity. This agreement is not the only way the easements can be dealt with. The primary question is if they want a parking garage or not? If they want a parking garage should it look like the one depicted on the attachments? The rest is pretty straight forward. This is not a negotiated agreement and is one-sided, because this is the way he was instructed to write it. There is room to work on this agreement. He indicated that they must announce the time, date and place of the second public hearing today. This is a statutory requirement and Mr. Spikowski will probably suggest a date. He indicated that they could also continue the rezoning itself, and at that time could make a final decision on both matters when it is continued.

Bill Spikowski, Planning Consultant to the Town, came forward to discuss the development agreement to aid the discussion. Most of the terms of the development agreement have been negotiated between May and July. This was between himself and Mr. Wiebe. There are some new things in this version of the agreement that resulted in dealing with some problems. Development agreements under state law expire after 10 years. Mr. Wiebe had indicated that he would keep the excess spaces in the garage open to the public for 99 years. He had difficulty solving the problem of how to enforce this in an agreement that must expire. Mr. Ciccarone found a way to solve this issue. The applicant would need to sign a non-exclusive easement for the public to use the garage. The other issue was regarding the timing. How do they assure that this will happen and not require a parking garage that may not be needed. As the project has evolved the parking garage is not as essential as was originally planned. It is only essential if the hotel is built. The development agreement is written with this in mind. If the garage is started and not completed this agreement will protect the Town should the Town have to take over and finish the garage. The applicant does not have to do any of the security construction guarantees.

The need for the development agreement was not driven by the sidewalk easements. It was driven by the parking garage. He considers the sidewalk easements to be an important part of the agreement. This is important to the Town and would be one of the most important things the Town would get from the agreement. This has been structured in a way that is fair to both parties.

The applicant agrees to eliminate most vehicular access to Estero Blvd.. This is the toughest block on the entire island for traffic. In May a driveway was going to be the main entrance to the parking garage, and would have created major traffic repercussions. All of this has been resolved since the previous hearing. Most of the problems have been solved and he is no longer recommending against this project. The only problem he has is with the parking garage. It is big and it will look like a parking garage. The other issue would be the dance hall.

The applicant receives benefits by entering into this agreement. He will receive clarity on impact fees and there is a real question on the parking garage. The impact fee ordinance is not clear. He has contacted Lee County to find out how they assess this. The answer he received is if the parking garage is for a private business providing just for his business they do not charge impact fees. If the parking garage is open to the public then they do. This parking garage is both. There is a good chance that the applicant will end up paying impact fees due to it being open to the public. This agreement states that Mr. Wiebe will not have to pay road

impact fees for the garage. Another important issue in the agreement is that the Town agrees not to revoke the zoning and change it for 10 years. If there is a default from the developer there needs to be some method of enforcement.

The development agreement and CPD are very closely intertwined. The CPD resolution will become an exhibit to the development agreement. If Council is going to approve they will need to approve the two simultaneously. A continuance needs to be announced today and he is suggesting the regular land use hearing on January 14, 2002 at 9:00 a.m.. Between now and then they will need to respond to the objections raised by Ms. Grady that have not yet been heard prior to today. The title work is still needed to know all parties involved. If Council is not interested in going ahead with the zoning there would be no reason to continue the development agreement hearing.

Council member Bill Thomas asked Bill Spikowski if he still had concerns regarding the height of the parking garage? Bill replied that he still does. It was indicated at the May hearing that Mr. Wiebe cannot move the parking garage. He asked the Council if they could not abide by the parking garages height and location he wanted to know that day. The Council sent them back to do more work, so he considers this a settled issue. He would rather it not be so large and visible when coming off of the bridge. It is not against the Comprehensive Plan for approval.

Mayor Hughes questioned the provision in the conditions or in the agreement that they must comply with the Land Development Code standards as they exist at the time of the issuance of a development order. There is a concern that these standards could change significantly from what they are now. He asked Bill Spikowski to comment on this.

Bill Spikowski replied that the architectural elevations that would become part of the development agreement are consistent with the regulations that the LPA are working on. There is language in the agreement that states the new design regulations would apply, except where this agreement clearly shows something else is to comply.

Mr. Ciccarone also commented that it is the intention that this agreement control in the event of a conflict. The developer could provide a list of those items that they would like to be vested to build under the agreement. If there is no objection to this it can be incorporated into the agreement as an exhibit, and would be a vested development right. As long as the developer is complying with the terms of the agreement they will get to build according to those specifications, even if the regulations would change in the interim.

Dan Folke, Community Development Coordinator for the Town, came forward. He referred to the staff report dated November 14, 2001, which was also presented to the LPA. At the last hearing on this case they were asked to go back and work with the applicant to see if there could be some improvements made in certain areas. He indicated that a new staff report has been written. He has tried to complete some comparisons regarding what was presented previously vs. what is before the Council now. At the first LPA meeting he presented the staff report and it was a recommendation of denial. The LPA was interested in seeing some possible conditions of approval. This hearing was continued for one week. Conditions of approval were provided the following week and the LPA did recommend approval with conditions. The Council has been provided the LPA resolution with the conditions attached.

He referred to page 3 of 16 in the staff report regarding the summary in Table 1 and the comparison of the square footage. One significant change is that the parcel where McDonald's sits has been brought into the plan. This is a real positive improvement. Staff encouraged this and it will provide for more continuity as this triangular piece is developed. The overall square footage has increased by 10, 872 square feet. The number of hotel units has decreased by one to 65. The parking garage is a six level garage with approximately 364 spaces. The maximum height of the parking garage remains at 40 feet above base flood. He discusses the mix of uses and the intensity of the proposed uses throughout the staff report.

He moved on to the discussion of the Comprehensive Plan. The subject property is in

the pedestrian/commercial land use category. This is the land use category that you would want to see this type of commercial development. The location is where you would want to see this type of use. He provided an analysis of the floor-area-ratio of this request, which is 1.77. This is OK to approve and is not inconsistent with the Comprehensive Plan. The floor-area-ratio has been reduced and this is an improvement.

He has included Policy 4C3, which is commercial locations. The intent of this policy focuses on the request for the nightclub/dance hall. This policy has been included because of its language regarding the sensitivity of the proposed commercial activity to nearby residential areas. Those residential areas can be effected by the type of commercial activities, such as traffic, hours of operations, noise, etc.. Staff strongly feels that this will be a use, which will be intrusive to the existing residential properties on Crescent Street as well as the hotel across the street. This particular part of the request staff strongly feels is inconsistent with Policy 4C3. He also included Policy 4C6, which is hotel density. The proposed 65 hotel units does require the maximum multiplier, which is 3 and is allowed.

On page 11 he has included a discussion of the proposed and required parking spaces. The current required parking for this multiple occupancy building is 4 ½ spaces per 1,000 square feet. This is what the Land Development Code requires. His property does meet the qualifications to use this calculation. Being in the downtown overlay you would get the 1/3 reduction. Essentially, what is required would be 3 parking spaces per 1,000 square feet. The hotel units are separated from this and he is required to have one parking space per unit. He discussed method A, B and C.

Council member Van Duzer asked if they use the 3 parking places per 1,000 square feet does this work? This is the bottom line. Dan Folke replied that this is a difficult question. The parking garage will provide public parking. Will there be a surplus of spaces based on the uses being proposed? He feels at build out and during peak season there would be a good chance no additional parking would be available for general parking. He does not feel that this will have a negative impact on the Town, if the parking is approved as proposed. He would prefer to see a different mix of uses, which would have less required parking.

Mayor Hughes referred to the schedule with the build out. He asked if the "nightclub" was included in this? If so, under method B where would this be? Dan Folke replied that he should look under Helmerich. He has given the square footage and the nightclub is included. If the nightclub was denied the applicant could put a restaurant in there, and this has the same parking requirement. This issue was brought up at the LPA. The real objection to the nightclub is the impact to the neighborhood. Dan commented on the Phase I plan. A few deviations have been asked for the parking gates. An engineering problem exists with the parking gates. Before the last LPA hearing some changes have taken place. The downtown development and review staff is not satisfied with the way it is designed. Staff is not against the controlled gates, but it is a matter of getting it properly engineered so it will not cause a hazard to the public. The other issue on Phase I is the nightclub. The applicant is willing to change the closing time from 4:00 a.m. to 2:00 a.m.. In staff's opinion this is a nightclub and not a restaurant. Their primary concern is the size of the club, which will create a very large capacity. Another concern is what happens when people are coming and going, particularly when they leave. Staff has a real concern with the noise that will be generated and its impact on the neighbors on Crescent Street and the guests at the Lighthouse. Staff strongly recommends that the nightclub be denied. This is also what the LPA has also recommended.

He handed out the conditions that the LPA approved.

(Mayor Hughes announced a 10 minute break)

Dan Folke began speaking after break and indicated that he handed out Exhibit A. These are the conditions that the LPA recommended approval of. Condition 1 - He filled in the blanks with the Master Concept Plan. This ties the zoning approval to the two Master Concept Plans with the appropriate dates and revisions dates. Item 2 are the approved schedule of

uses. He crossed out the dance hall/night club, because the LPA recommended denial of this use. He discussed if the night club is not approved what could go into this space. Anything on the schedule of uses that is consistent with the rest of the conditions. He put together the site development regulations. The setbacks would be as shown on the Master Concept Plan. He has a summary of the total square footage based on the different mix of uses. The total square footage must comply with the ones shown in the footprints of the Master Concept Plan A, B, C, D & E. This gives a more specific breakdown of the different type of uses within each building. He put in the required parking to make it very clear for the applicant, if approved. The requirement is 3 parking spaces per 1,000 square feet except for the hotel units. He gave a breakdown of the required parking for each building. The Phase I plan would require 181 parking spaces. Building B has 3 parking spaces, because there is about 800 square feet of retail and this is the parking garage. Phase II would be the replacement of the existing Helmerich building with Building E. Phase III is Building D. Phase IV is the parking garage Building B. Phase V is the hotel Building C. Phase II and Phase III may be reversed. All other phases must be completed in order. Prior to Phase II he has conditioned that the two buildings labeled existing building and existing building temporary restaurant/dance hall must be removed. The build out of all phases would be no later than December 31, 2017.

Condition 3 is a standard condition on traffic impacts. Condition 4 is another standard stating that it does not give an undeniable right to a development order, and must still comply with all the requirements except as conditioned in the zoning approval or development agreement. Condition 5 is the denial of the night club. Condition 6 deals with consumption on premises. Consumption on premises would be permitted by right in all restaurants. Any other uses including bars, cocktail lounges and in conjunction with outdoor seating would require a special permit, except as allowed by Condition 7. The LPA recommended that the hours of operation for the outdoor seating areas be the same as for the restaurants food service, but in no case later than 12:00 a.m.. Live entertainment is limited to an accordion and string acoustic musicians. No other live entertainment is permitted in the outdoor seating area. All would be subject to the noise ordinance. Discussion was held regarding the Muzak System at Diamondhead.

Council member Ryneason understands that the Muzak system is not in place. He feels that they need to look at this closely. The music gets out of hand in this area. He does not want to see it turn out to be like Bourbon Street.

Dan Folke replied that an alternative would be to prohibit live entertainment all together in the outdoor seating area. The administrative approval did not allow live entertainment in the outdoor seating area. These are very difficult issues to enforce. No matter how strict the conditions are he feels an enforcement problem with exist. The intent was not to stop anything presently happening, but simply put it in a condition.

Mayor Hughes asked how late Dusseldorf's plays live music now? Mr. Wiebe replied until 12:00 a.m..

Dan went on to Item V and indicated that it states any other outdoor seating areas would have to get a special permit prior to allowing consumption on premises in the outdoor seating areas. He feels that it is inappropriate to approve any other outdoor seating areas with COP until they aware what is to be done there.

Condition 8 addresses some of the existing uses on the property. February 1, 2003 date has been supplied by the applicant indicating that this is when the leases are up for the existing uses.

Condition 9 ties the approval with the architectural elevations, which have been presented to Council. Minor changes could be made through the Town Manager and significant changes can only be done through any amendment to the development agreement.

Mayor Hughes has concerns with what is minor and what is major. This could be an area of considerable disagreement. Dan Folke replied that it had to remove all subjectivity. He

knows of no other way to handle this except for stating that all changes would have to go through an amendment. He indicated that this is presently the system in place and seems to work.

Mayor Hughes asked Town Manager Segal-George if she would be comfortable making the determination between minor and major? She replied that she would feel comfortable. She went on to discuss how she would determine the difference. A lot of times it has to do with an issue such as awning size. This is done all the time. It would not be any type of footprint change.

Council member Van Duzer feels that they need an architectural review committee. He is not trying to take this away from Town Manager Segal-George. He feels that this is necessary for the downtown area. If a change were to come up it would have to go past this committee.

Dan Folke resumed with Item 10. This states that the zoning resolution does not become effective until the development agreement between the Town and equitable owners of the property have been executed by all parties.

Condition 11 deals with prior to the issuance of a Certificate of Completion for the parking control gates directional arrows will be painted on the parking lot surface. He indicated that some arrows are currently on the parking lot. This will insure the traffic flow.

Dan went on to indicated that there are 13 requested deviations. Deviation 5 is the multiplier deviation and allows them to use the hotel room multiplier of 3 to get to the 65 units. Deviation 7 is to allow a deviation from the minimum hotel room size of 550 square feet to allow hotel rooms of 600 and 700 square feet. The total square footage all of hotel units will not exceed 42,250 square feet. Conditions 10 & 11 are the two conditions which are specific to Phase I and the control gates. Staff feels that it would be a good idea and a nice improvement, but they need to work out the details on the engineering. He discussed the recommended wording. Condition 11 deals with the width of the stacking lane. Deviation 12 was withdrawn. Deviation 13 is the final deviation. This is the request for a deviation from the sign ordinance. The applicant has asked to have an identification sign that is not located on the unit itself. The applicant would like to place a sign within the stairwell. The idea is that the sign will identify the unit, and if it is not going to be on the unit then it would not be in compliance with the code. Staff is recommending that they be allowed to do the sign for Tetley's on the stairwell, but it be limited to 24 square feet. The applicant asked for a 36 square foot sign. Staff is recommending against the additional 24 square foot sign. Staff would like to see a sign package for this development. Dan feels that they need to look at the overall signage for the whole project.

Dan stated in summary that this has been a long review process. The applicant has been frustrated at times. It is a very important case and there is a lot here for consideration. He does feel that the proposed development agreement and these conditions are very positive. If this is approved a lot of positive things will result. They tried to find a good balance.

Mayor Hughes announced that this has been a very excellent job for the standpoint of all parties concerned. He commended everyone.

Mr. Wiebe came forward and discussed the music. He feels that he is the biggest enforcer of music. He also feels that everything is under control. He does not want anyone out of control and will not allow this. He stressed that they have no complaints from neighbors.

He went on to discuss the parking. In season at 11:00 a.m. everything is full and a third lot is being filled. At 5:30 p.m. it eases up nicely. He discussed the Comprehensive Land Use Plan regarding the encouragement of shared parking. This is what they are doing.

The third issue is the signage. He would love to see them approve the Tetley's sign. He would also like them to approve a temporary directional sign for the parking lot. He discussed the problems with the sign package. The package will be good for only six months and another will need to be completed.

Council member Rynearson has concerns with where and how the sign will be placed?

Mr. Wiebe replied that the red rail above the McDonald's building is where the sign would be located. It will be black and white and fit to the building.

Mr. Wiebe went on to comment that he would like to build the parking garage and hotel together. He will not stop the project halfway through. The square footage created in the hotel and retail building is so important to the financial feasibility it is absolutely necessary.

Beverly Grady feels that it is important to recognize that a reduction of intensity has taken place since the plan was seen in May by Council. She addressed the parking requirement and indicated that it is located in the downtown core and is entitled to the 1/3 reduction, as are all the other properties in this limited area. The parking calculations submitted on behalf of the applicant are accurate and adequate. They would be looking for something that makes the applicant provide adequate parking, but does not necessarily mean that the existing building be removed before Phase II is started. She expressed appreciation for the time and effort spent by Staff on this project. They feel what has been put together truly implements the plan that has been designed. The plan brought back today takes into consideration the comments made by Council. The applicant respectfully requests Council's approval.

Mayor Hughes opened the meeting for public comment.

John Richard came forward and indicated that he lives on Crescent Street. Mr. Wiebe has done an excellent job with the front side of his development. He has a little problem with the backside temporary use, which is the night club. It has inherent problems showing up there. He has a lot of faith in Mr. Wiebe and knows that he will do great. This night club will do so good that it will be bad.

Mike Raider came forward on behalf of Frank Helmerich. He is part of the agreement for the redevelopment of the project. He has been involved with the CPD zoning from way back and has been involved with the property for a long time. Mr. Helmerich is very pleased to have someone with Mr. Wiebe's vision to take this forward. The plan he has is very innovative. So far he has done a fine job. They are in support of the request. Mr. Helmerich is prepared to sign the agreement when everyone comes to the table. He discussed the demand for parking. He feels that plenty of parking will be available and should not be an issue. Mr. Helmerich is very much in support.

Mayor Hughes asked for any ex parte communication on this matter. Council member Van Duzer has met with Mr. Wiebe and Mr. Richard. No other Council members have had any other communication.

Council member Rynearson feels that it is a great concept. He has done a great job. He has some concerns with the noise. He feels that it should be continued. A lot of options exist and staff could put everything together and provide the options.

Council member Thomas indicated that a lot of work has been put into this by Staff and Mr. Wiebe. There are still some big questions out there and one would be the vision for the Town. When you come over the bridge the first thing you will see will be a six story parking garage. Do they want to see this? He has reservations with this. The dance hall issue is still open.

Council member Van Duzer would like to see them move forward. He has some reservations also. He referred back to the last Council meeting. He would like to give some direction to the applicant and staff, so this can be concluded at the next meeting. There are some hard decisions that need to be made, but he feels they need to make them and move forward. His feelings have changed today since he first came to the meeting this morning.

Mayor Hughes agrees that they need to give some direction on the various open issues.

Attorney Dick Roosa recommended a motion that the attorney draft a resolution of approval subject to the following conditions and deviations. They can then review the list and the resolution will be prepared for the meeting of January 14, 2002.

MOTION: Made by Council member Bill Van Duzer and seconded by Council member Howard Rynearson to instruct Counsel to draft a resolution subject to the conditions and deviations discussed today. Also instruct the special counsel to finalize the development agreement to be consistent with the resolution. Subject to the conditions as set forth in the revised Exhibit A presented today by Dan Folke dated December 10, 2001 and subject to the following: 1. The night club be denied, but put more restrictions on the use. The dance floor not to exceed the size of 720 square feet. Could be used as a restaurant or other use under the conditions of the agreement. 2. The live entertainment be restricted to 11:00 p.m.. 3. Changes to the architectural design may be approved by the Town Manager for minor changes or in the event the Town Council has adopted an ordinance creating an Architectural Review Committee. 4. (2) signs for a total of 48 square feet for Tetley's's and Tradewinds. A temporary (six month) attached identification sign to also be allowed on the corner of Estero and Crescent for parking. Sign package to indicate the total signage for the entire complex. The next hearing will be on February 4, 2002 at 9:00 a.m.. The second public hearing for the developers agreement will also be held on February 4, 2002 at 9:00 a.m..

Discussion: Council member Bill Thomas can support Phase I, II and III with the deviations notes. Phase IV and V he cannot support due to the six story parking garage. Deviation #7 he does not agree with.

Vice Mayor Cain had a problem with the parking garage the last time they met. After seeing the elevations she felt better. She became uncomfortable with the dance hall building and the square footage contained within it. Dan Folke informed her that fire code would allow up to 1100 people.

Council member Van Duzer explained that if this building is not a dance hall it will become a restaurant that will allow a considerably lower number of people. The present design has a great deal of open floor space. If it is made a sit down type restaurant he will need to create a kitchen and add more tables for seating. This will change the number of occupants.

Dan Folke agreed with Council member Van Duzer and feels that the capacity will be reduced.

Vice Mayor Cain discussed the grouping of street signs just before you make the right hand turn on Crescent. Town Manager Segal-George replied that this will be coming to Council for a new plan on how to deal with the signage on the corner.

Mayor Hughes stressed before the vote that Council is not voting to approve, but to direct the attorney to prepare a resolution, which will be decided upon at the continuation of this public hearing.

Mr. Wiebe wanted to split things up into four different groups. 1. Dance hall/restaurant - yes or no. 2. Signs that he has asked for - yes or no. 3. Phase I - yes or no. 4. This discussion is finalized today or will go on to January.

Attorney Dick Roosa discussed the temporary sign. The Council may want to address that separately and not have it part of the resolution. Council could direct the Town Manager.

Mr. Wiebe indicated that he will withdraw the dance hall. Mayor Hughes replied that the dance hall is off the table as part of Council member Van Duzer's resolution.

Town Manager Segal-George discussed the temporary sign. With the approval of Council she can administratively authorize him to go do the directional sign. With regards to Tetley's it complies with the sign ordinance in size, but the location is the issue. She can administratively approve this also. Mayor Hughes has no objection to the directional sign nor does he have any objection to the Tetley's's sign. He asked for any objections from Council. None was heard.

VOTE: Motion passes unanimously.

Mr. Wiebe stated that he could not be available for the January 14, 2002 meeting. He requested February 4, 2002.

Mr. Ciccarone wanted to be clear that the motion continues the development agreement issue for a second hearing on February 4, 2001 at 6:30 p.m.

VI. PUBLIC COMMENT

None.

VII. ADJOURNMENT

The meeting was adjourned at 1:45 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