

**FORT MYERS BEACH
TOWN COUNCIL MEETING
DECEMBER 11, 2000
NationsBank, Council Chambers
2523 Estero Boulevard
FORT MYERS BEACH, FLORIDA**

I. CALL TO ORDER

The meeting of December 11, 2000, was opened by Mayor Daniel Hughes at 6:30 p.m.

Council members present at the meeting: Terry Cain, Daniel Hughes, Ray Murphy and Garr Reynolds.

Members absent from meeting: None.

Town Staff present: Town Manager Marsha Segal-George and Attorney Richard Roosa.

II. PLEDGE OF ALLEGIANCE

All assembled recited the Pledge of Allegiance.

III. PUBLIC COMMENT ON AGENDA ITEMS

Mayor Hughes advised that the only agenda items were Diamond Head and the Annex. One is a request to rezone and a transfer of development rights. The other is an extension of a development order.

A. PETER HEERWAGEN

A resident of Ohio Avenue, Mr. Heerwagen opposed the extension of the development order. His reasons were excessive noise and also runoff into the canal from excessive parking. He is also concerned that the boat ramp in his neighborhood would become a resort boat ramp.

B. DOROTHY E. FAHERTY

A 14-year resident of Ohio Avenue, Mrs. Faherty objected five years ago to this issue and is objecting presently because of traffic problems that this would bring about.

C. GEORGE BARBER

Mr. Barber stated that the Council was elected to represent the will of the people and not big business and private interest. Four hundred plus residents oppose this extension and there should not be competition between the Council and the people.

D. BILL THOMAS

Mr. Thomas opposes the extension of the development order because it has previously been voted against 8 to 0. He feels that the Council should not compromise and that developers always start big so they have room to compromise. He also stated that over 400 residents oppose this extension.

IV. PUBLIC HEARING: DIAMOND HEAD ANNEX. CASE NO. DC12000-00050

A request to rezone from Commercial Planned Development (CPD), Commercial C-1 and Single Family Residential (RS-1) to Commercial Planned Development (CPD), to permit a maximum of 1,700 square feet of Retail, 30 Hotel Units and Consumption on Premises, not to exceed 40 feet in height, on 0.66 total acres of land. The subject properties are located at

1999 and 2001 Estero Boulevard.

Applicant Representative:

Beverly Grady, representing the applicant, advised that this is a request for a rezoning to CPD on .66 acre property which consists of two parcels on each side of Estero Boulevard and Virginia Avenue on the bay side of Estero. She asked to rezone the two parcels because her request has been revised. The height of the structure has been reduced 25%, from 3 stories over parking to 2 stories over parking. The number of rooms was reduced from 30 to 24 and the meeting space was eliminated. This property is 100% within the Overlay District.

Ex parte communications were given: Councilwoman Cain received a phone call from a resident. Councilman Murphy received a call the day after the LPA meeting from Mr. Swanson, a principal from Sunstream. Councilman Reynolds drove through the community on Saturday and spoke to Helga, a resident for many years. He also spoke with another resident who has lived on the Beach for 29 years whose comments were not very complimentary of Fort Myers Beach. He spoke briefly with Bob Young. Mayor Hughes had a telephone conversation with Bob Young.

Rick McCormick, president of R. J. McCormick Architecture in Fort Myers, spoke about the plan described by Beverly Grady, comparing it to the plan presented to the LPA. He stated that Diamond Head is currently using the parking lot at Pirate Pete's. The developer contemplates the demolition of this structure at Pirate Pete's. This parcel will have no structure at all.

Mr. McCormick stated that the entire parcel is a curb cut and not good for traffic in season. He proposed to close it off, heavily landscape it, put in a trolley stop and have an exit off Virginia onto the street. He also stated that the structure was reduced from 3 stories to 2 floors of units over one floor of 1,700 square feet of retail or office. There will be 10 parking spaces underneath the building and 5 behind it. Across the street is proposed 35 parking spaces and no longer a structure on this side. The project presented to LPA showed three stories over parking and included a meeting room, a small kitchen, public restrooms and six units with a lobby. A typical floor will include 12 units. Each unit will be 375 square feet - 400 square feet (but no more than 400 square feet). Each unit will include a bedroom and bathroom -- a standard hotel room. Six of these units on two floors will face towards the bay and six will face toward the gulf.

The firm of Dave Jones and Associates prepared a detailed landscape plan and it was felt that it is important to put heavy landscaping around the parking areas and the corners.

The trolley, according to Mr. McCormick, would be pulling off Estero Boulevard in the right-of-way.

On December 13, 1994, McCormick's firm and the Carter & Burgess firm acquired a development order for Diamond Head for 154 units and all the meeting space required. Subsequent to that, they acquired a building permit. In between those two dates, five lawsuits and three appeals were filed. Mr. McCormick felt that the permit should receive an extension because of the two years in which Diamond Head was not able to use its land.

Councilman Reynolds wished to know if there had been a sign-off on the project when it was completed and Mr. McCormick admitted there had been one two years ago.

Beverly Grady introduced Gary Muller, an expert in land planning who has worked with Lee County and as a consultant in land planning. He was there to present a revised master

concept plan and its consistency with the plan and Town code. After being sworn in, Mr. Muller went over the master concept plan and schedule of uses and the request for deviations. He explained how the plan meets the downtown criteria of the Overlay Zoning District. He advised that there was a change in the parking from seven 30 degree parking spaces to five parallel parking spaces. The vegetation buffer increased from five feet to ten feet.

Mr. Muller listed eight deviation requests from the Land Development Code as follows:

1. To allow the rear building setback of 24 feet in order for balconies to extend off the rooms in the back of the building.
2. To allow a connection/separation of 45 feet and 59 feet of existing access way along the western boundary of parcel A.
3. To allow a connection/separation of 45 feet and 73 feet off Virginia Avenue.
4. To allow seven back-out parking spaces to be located on the east side of Virginia Avenue.
5. The county required a 25-foot pavement width and they have a 23-foot and 20-foot width to increase the landscaping.
6. The width of the parking lot entrances at the right-of-way line -- the county requires 15 feet and they have 12 feet.
7. The county required a 12-foot aisle for a one-way parallel parking and they wish to reduce it to 11-3/10 feet.
8. To allow the density multiplier of three hotel/motel units per one dwelling unit. The Land Development Code does allow this multiplier to be used if it's used as part of the deviation process of the planned development.

Beverly Grady asked Gary Muller if he had reviewed the application, the Town plan and the Land Development Code and if in his opinion the application was consistent with the Comprehensive Plan and the performance standards of the Code. He stated that he had reviewed it and that in his opinion the application was consistent with the Plan and the Code.

Greg DeSerio was called on to review the landscaping plan. He is a registered landscape architect in the state of Florida with David M. Jones, Jr. and Associates, a landscaping architectural firm in Fort Myers. Mr. DeSerio brought with him two plans: an illustrative plan and an actual construction plan. He testified that the property would be heavily landscaped with a solid 20-foot buffer for the residential area. He described the type of plants that would be used in the landscaping and explained that there would be good sight visibility for traffic safety.

Beverly Grady stated that this plan has been revised with the county and she explained that they wanted to present to the Council what they were revising so that Council could have a look at what was actually submitted and now being requested, which is a reduced application. Town Attorney Roosa was asked if Council could approve the revision of the plan or if it would have to go back to the LPA. He said that it was the Council's policy to do that, but that it was not required because the impact of the proposal would be less than the impact reviewed by the LPA. Mr. Roosa stated that staff reviewal of the revised proposal should be the consideration of the Council.

Gary Muller explained how the proposed development complies with the Fort Myers Beach Downtown Overlay Zoning District. He testified that they exceeded regulations. They utilized zero percent side and street setbacks in front. They would exceed the maximum building height of forty feet by their 30-foot structure height. The minimum parking is thirty parking spaces and they would provide fifty spaces. There is no open space required and they have 28% open space

with extensive landscaping. They have the Old Florida New Orleans appearance, side street access, placement behind the building and the trolley stop with a bench and pavers. The residents would view the vegetation not the fence.

V. REQUEST FOR EXTENSION OF DEVELOPMENT ORDER FOR DIAMOND HEAD

Beverly Grady had a zone request for CPD. She itemized the assets of application to recognize that this application eliminates the existing Estero Boulevard access point on the existing video store retail site. Zoning that is commercial permits, besides business uses, retail restaurants as the permitted uses on the site where the video store is now located. The existing CPD provides for an access point on Estero Boulevard, which is eliminated, with her request.

Applicants will dedicate to the Town the land necessary for the trolley stop and place paver sidewalks along Estero Boulevard and Virginia Avenue, providing a pedestrian access into the single-family neighborhood. Their design would implement the vision for the Town. They are providing substantially more parking than required. They are providing 50 spaces and only 30 are required. Ms. Grady stated that the key is the Council's vision for the Town. She had current photos which show what is there today and the renderings that the Council is free to adopt as part of any approval to make sure this design is implemented as shown to them. She advised that Sunstream was awarded the best image award by the Chamber for upgrading Fort Myers Beach and bringing up property values. Sunstream is part of the community and supports the community. They assisted with the New Year's Eve party, donated several thousand dollars for the boat races on the Beach, made an annual donation to the swimming pool, supported a drive to assist a father with an illness at the Catholic church and donated money for the support of the trolley service. Ms. Grady felt that Sunstream had complied with the standards that had been set. She asked that Council would look at the revisions and give direction on how to proceed. She requested that the development order be extended for review and a final decision.

County Representative:

Dan Faulk, a planner with Lee County Community Development, had not reviewed the revised plans but had met with Beverly Grady and spoken with Gary Muller on the phone. His comments were on the transfer of density. He wanted Council to consider how those 30 units were approved. The development order approved 154 units in two phases: 124 in the first phase and the remaining 30 in the second. The condition to the approval for the 30 would be that the units would be built in the Phase I footprint in height. The developer had an option to develop but did not save any space to build the remaining 30 units. Now they are asking to transfer the units and there are five findings that the Town must make to allow transfer of density. The first and primary one is public interest as determined by the Town Council.

Applicants want to combine the transfer of the 12 units and the multiplier to give them the 12 units. What they have a right to under the Comprehensive Plan is four units. The land use category they are in permits six dwelling units per acre. At this point, the land development code does not have an automatic multiplier. It needs to be asked for through a deviation.

Mr. Faulk said he had not heard anything that would change the staff recommendation on the transfer of density in the testimony at the hearing. He recommended that if the Town Council wants the transfer to be considered, that the staff be given opportunity to properly review the amended request then have it presented to the Council or back to the LPA. He would like to see a new narrative and this would require approval of the extension of the development

order.

The Comprehensive Plan sets broad standards. This has not been finalized, as the Council is amending the Land Development Code chapter by chapter. It is incumbent upon the Town Council to incorporate that multiplier factor into the Land Development Code section.

Bill Spikowski, planning consultant to the Town, wanted to clarify that the building could be right up to the sidewalk. He complimented Sunstream on the exemplary job that they did at meeting the Comprehensive Plan issues. He felt that it didn't meet public interest, however.

VI. PUBLIC COMMENT ON AGENDA ITEMS

A. KAREN SEVERSON

A resident on the Beach since 1961, Mrs. Severson opposed the whole plan.

B. MICHAEL SHORT

A 10-year resident, Mr. Short was concerned about over development, the traffic and the fact that the balconies would overlook the neighborhood residents. He wanted the extension rejected.

C. ANN HEERWAGEN

Mrs. Heerwagen lives right behind the property and was concerned about noise pollution and traffic.

D. MICHAEL LEONI

Mr. Leoni, a resident of Virginia Avenue, was concerned about how the traffic congestion would affect the residents.

E. BOB YOUNG

Mr. Young said he respects the wisdom of the LPA's no vote because this is not in the public interest and because of the noise.

F. GEORGE BARBER

Mr. Barber's concern is noise and he testified that alarms and generators going off during the night is a nuisance.

G. PAM THOMAS

Mrs. Thomas of Carolina Avenue felt that Fort Myers Beach is overdeveloped and she is concerned about the overhangs being an issue with the bike paths that the residents desire. Mayor Hughes stated that we would not be condemning any private property for bike paths. They would not be encroaching into the right-of-way but coming right up to it.

Beverly Grady added that this property is zoned and developed commercial and anything put there is going to be an issue for the residents. This proposal provides more landscaping, meets our design criteria, meets pedestrian-oriented uses and has been reduced in intensity so that it is consistent with our Overlay. They would respectfully request that they be given the opportunity to be able to obtain a staff report and come back with a full evaluation of the request.

Mayor Hughes said that as he sees it, The Council's three alternatives are to approve the request for the 24 units as presented modified today, which would require a finding that would permit the transfer of 12 units, or deny the request, or grant a continuance as requested by Council to allow staff to review the revised plan notwithstanding comments made by staff based upon the testimony that was heard here today.

Councilwoman Cain said she was very uncomfortable doing anything as far as approval. She felt that this is a new project, very different from the other one, and it hasn't been reviewed by staff or by the LPA. The vegetation things are good but there are a lot of negative things as

well. She would not be able to approve this project. Councilman Reynolds felt that the circulation of traffic through Bayview should have been touched on. He saw nothing in this project that would qualify it under the present Land Development Code or Comprehensive Plan. Mayor Hughes advised that like Terry Cain, he felt that while there was much to be said in terms of the aesthetics and the outstanding landscape plan, one of the things he would like best about it is the demolition of the existing Tartarian building. He thought that the parking arrangement was better than what exists for people who are parking there now. The trolley could be an enhancement to the community and would help us in traffic. However, he must agree with our staff and Dan Faulk and with Bill Spikowski in the interpretation of Policy 4C8 for density transfers where the Town Council has the discretion to prevent the transfer of hotel/motel rights from one parcel to another if all five criteria are met. Not meeting any one of them defeats the transfer and he felt that the criteria that couldn't be met is that it would be in the public interest. While he would like to see a development on this property that would improve the two parcels, neither of which meet our current standards, and while the property is in fact zoned commercial with the exception of one very small piece, he would have to come to the same conclusion as our planner that the maximum allowable permitted units would be 12.

MOTION moved by Garr Reynolds and seconded by Terry Cain to deny the requested rezoning of the property as presented today.
Passed unanimously.

Mayor Hughes advised that the extension order will just die in two days and there will be no need to have any further hearing on that matter. He told the petitioner that he would like to see him come back with something that might be acceptable and in accordance with our Comp Plan and our Land Development Code.

Councilman Reynolds thanked the public for coming in and giving input.

VII. ADJOURNMENT

The meeting was adjourned at p.m.

Respectfully submitted,

Lorraine Calhoun
Transcribing Secretary