FORT MYERS BEACH
TOWN COUNCIL MEETING
OCTOBER 11, 1999
NationsBank, Council Chambers
2523 Estero Boulevard
FORT MYERS BEACH, FLORIDA

I. CALL TO ORDER

Vice Mayor John Mulholland opened the meeting on Monday, October 11, 1999, at 9:00 A.M.

Council members present at the meeting: Mayor Ray Murphy, Vice-Mayor John Mulholland, Anita Cereceda, Daniel Hughes and Garr Reynolds.

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

II. PLEDGE OF ALLEGIANCE

All assembled at the meeting recited the Pledge of Allegiance.

III. PUBLIC COMMENT ON AGENDA ITEMS

None.

IV. PUBLIC HEARING: JOHN C. AND L. DIANE GURIK, 99-07-176.05V

A variance request in the Residential Single-Family District (RS-1) from the Land Development Code (LDC) Section 34-1575, which states development, other than minor, shall not be allowed seaward of the coastal construction control line as established by the State Department of Environmental Protection, as such line existed in 1988 pursuant to LDC 34-1575(a) to allow a deck addition to an existing single-family residence that will extend 13.5 feet seaward of the 1988 CCCL. The property is located at 8200 Estero Blvd.

George Ryan advised that he was here for the Guriks, who at this time are in Ohio but wished to ask for a continuance to our next meeting. There was no objection from the council members.

V. PUBLIC HEARING: CHRISTIAN DATTWYLER, 99-07-194.05V 01.01

a) A variance request in the Commercial (C-1) District from the minimum required street setback of 25 feet to a local road (Second Street) to 16.6 feet to a deck addition to a single-family residence per LDC Section 34-2192. b) A variance in the Commercial (C-1) District from the minimum required side setback of 15 feet to 0 feet to a deck addition to a single-family residence per LDC Section 34-844, and c) A variance request in the Commercial (C-1) District from the minimum required street setback of 25 feet to 15.6 feet for a deck addition to a single-family residence per LDC Section 34-844. The property is located at 1030 Second Street.

Christian Dattwyler, owner of the property, advised that he wished to build a front porch and a rear deck onto a very old house that is in an area of the Beach that was

platted after the house was built. The current setbacks are a problem. One side of the house actually sits on the property line. The setbacks requested have been approved unanimously by both the County staff and by the LPA.

Councilman Dan Hughes said he'd like to say that Mr. Dattwyler's narrative that accompanied his petition is quite well written.

Mayor Murphy welcomed Pam Houck to the meeting, who he said is appearing before us for the first time as a member of our team here at Town Hall.

County Input:

Pam Houck advised that the property is located on Second Street in the Times Square area. The applicant is looking for better access to his house that is on a very small lot, 40 feet wide by 73.8 feet deep. It is in a subdivision known as Business Center that was platted in 1949. County records show that the house was built prior to the subdivision being platted. The house is located adjacent to the side property line.

Staff has recommended approval of the variances requested. They believe there are extraordinary conditions inherent in the location of the old home and the size of the lot. The lot will be found consistent through the minimum use determination of the comprehensive plan at time of building permit. She recommends approval with a condition that the additions be limited to an open porch.

Remarks by Council members:

Councilman Hughes advised that they have had problems in the past with people closing their open decks. Our only protection against this would be records in the Building Department.

Councilman Reynolds noted that the property has always been this way and suddenly now, if the owner doesn't get to change this, then we're not being fair to the owner. Pam Houck said that she has found that they are not a result of the actions of the applicant.

Attorney Roosa advised that the findings that Garr Reynolds is referring to are statutory findings. They are required. The LPA in their resolution, Dan Hughes stated, does not make those findings, and shouldn't they be making them as a fact-finding body as well as the Town Council? Attorney Roosa stated that the LPA is only required to make recommendations for or against, but he would assume they would use those as guidelines.

Councilman Hughes stated that in order to deny a variance, the Council needs only to find that it doesn't meet any one of the requirements. If we approve it, must we make all of the findings? Is that a statutory finding that it be something that is not subject to being cured by a general ordinance? According to Attorney Roosa, if it is of such a common nature that it can be cured by general ordinance, then the proper remedy is for the Council to consider changing the ordinance. If you find that it is of such general nature that it requires an amendment to the ordinance, then you can't grant the variance. The variance applies to the property itself, regardless of who the owner is. So the fact that there is a new owner doesn't prohibit him from applying for a variance to be treated generally as everybody else in the Town of Fort Myers Beach. The question becomes do most people in the Town of Fort Myers Beach have the right to have a porch, and if so, then you would grant the variance so that you're treating them just as you would

everybody else except for the unique characteristics of their property.

Garr Reynolds said what he was asking was, since this has been passed down from other owners in the same way, why is it that we would be unfair if we didn't grant these things now. And he doubts very seriously in the context that Mr. Roosa put it that this would be approved in other areas. It seems that the direction should have been to go to C-1. He's in the C-1 district, so it seems that he should have requested zoning and then he could have gone into these other variances very easily. Pam Houck stated that even with another district, the owner would not comply because it's a small lot. And this is an unusual situation where you have a small lot with a single-family home built on the lot line. It creates the extraordinary conditions where a variance should appropriately be granted. Councilman Reynolds said he sees a conflict because we're overlooking that aspect of it, but then we go back to the other side and extend his construction.

Mr. Dattwyler said he respected all our opinions and how we want to deal with the situation and he hopes we would respect his also. Just he and his wife live in the house and he bought it knowing that it was in the C-1 commercial zone. He has made lots of changes in his past projects and has gone by the rules of the County. All he is asking for is a front porch and a rear, and it will only improve the neighborhood. The house started out as a shack that homeless people were living in and he's been trying his best to improve that property and its surroundings.

Public Comment:

A. Carleton Ryffel

Mr. Ryffel said he is representing himself and Douglas Spearin-Smith, who is the adjacent property owner to Mr. Dattwyler. They both support this application. He's done a lot of good things with that house and they strongly recommend that we approve this application.

Mayor Murphy asked for a motion. Attorney Roosa stated that he thinks that the motion should be to adopt the resolution as presented by the staff, striking in paragraphs A and C the word "not" in the findings.

Discussion:

Councilwoman Cereceda advised that she had made a site visit to the property. As Mr. Dattwyler indicated, he certainly has done a tremendous job of cleaning up that little spot and this is part of the reason why she supports the motion.

Dan Hughes said that there was a condition recommended by the LPA that is included in the resolution. He was told that it didn't have to be repeated since it is already in the resolution.

Garr Reynolds asked why this was coming to us. He believes that the Town Manager has responsibility over that area for okaying or disapproving those projects, as she did for the Waffle House and Bark & Shark. Attorney Roosa stated that those property owners that Councilman Reynolds has identified have elected to go under the alternative guidelines of the overlay district, and there were no variances required. They fully complied with our Town ordinance. Town Manager Marsha Segal-George added that first the applicant would have to opt into the overlay and then it doesn't apply to residential.

MOTION: Made by John Mulholland and seconded by Anita Cereceda that we adopt the resolution as presented by the staff, striking in paragraphs A and C the word "not" in the findings. Passed with 4 yea votes and one nay vote from Garr Reynolds.

VI. PUBLIC HEARING: THE BEACH PIERSIDE GRILL, 99-08-007.05V 01.01. A variance in the Commercial (C-1) District from the Land Development Code (LDC) Section 34-1575, which states development, other than minor, shall not be allowed seaward of the coastal construction control line as established by the State Department of Environmental Protection, as such line existed in 1988 pursuant to LDC 34-1575(a) to allow a trellis over the existing concrete deck that extends 74 feet +/- seaward of the 1988 CCCL. The property is located at 1000 Estero Blvd.

Anita Cereceda asked if she needed to disqualify herself, as she shares ownership of one of the businesses that are listed in the property description. Attorney Roosa said her being listed does not automatically disqualify her. She'd have to have an economic interest. Garr Reynolds challenged this as he felt he had been in a similar situation. Vice Mayor Mulholland said he thought his situation had been much different.

Carleton Ryffel explained the situation. The owner of the property, who is Bill Whitaker, has opted into the overlay district. They went before the LPA, and of those present, they had all of their approvals. They want to build a trellis over the deck, which is made of wood, to provide shade for the people sitting outside eating.

Mr. Ryffel said that they concurred with the staff report and the findings and the condition that is imposed in that recommendation. The staff agrees with them that what they are requesting is consistent with our comprehensive plan and also the overlay district, which both encourage outdoor dining in Times Square with shaded spaces.

Facts to consider: 1) His letter to Pam Houck that is attached to our application forms, which is a description of why they need the variance criteria; 2) The trellis is being added over an existing deck and they are, therefore, adding no additional square footage to the property. 3) The shade created by the trellis will promote outside dining and help reduce surface heat. 4) The trellis will be constructed per required hurricane standards.

They see no negative impacts that will result from approving this application and ask for our concurrence.

Remarks by Council members:

Councilman Reynolds told Mr. Ryffel that he noticed that he had indicated his company as an engineering firm. Does that mean he will do the design of the trellis or will he have a registered architect to do that. Mr. Ryffel told him that we should have a sealed set of architectural plans in our file. An architect outside of his company did the trellis. Dan Hughes stated that we don't review plans. If a variation is granted, they have to go through the proper procedure with the County Building Department acting as our agent, and that's not really relevant at a zoning hearing. Mr. Reynolds advised he was only trying to ascertain if the architect was a licensed one because a lot of plans are coming through for commercial ventures that should not be.

Councilwoman Cereceda wished to know if his trellis will be like John's at the docks, and he said yes.

County Input:

Pam Houck advised that before us today is a request for a variance from the prohibition of major structures to be located seaward of the 1988 coastal construction control line. For purposes of clarity, the LDC refers to the coastal construction control line as the 1988 line and the comprehensive plan refers to it as the 1978 line. It is one and the same and she explained why. The subject property is approximately one-third of the property that is seaward of this line. The property was developed pretty much in its existing configuration prior to zoning as far as the existing deck. The applicant intends to put an open trellis over the existing deck and that is the reason the variance has been requested. The proposed trellis is consistent with the pedestrian land use category. It is consistent with the recreation land use category, which prohibits new residential development seaward of that line but not beach commercial.

The '78 line was put in place to protect the dune system in this area. The dune system was destroyed many years ago and the trellis would not have any environmental effect at this point in time.

Staff has recommended approval, limiting the trellis to what is shown on the applicant's site plan that was dated received on the 2nd at the zoning counter, and also saying that the trellis may not be enclosed.

Remarks by Council members:

Vice Mayor Mulholland said that as he recalls, restaurants that have outdoor seating on decks do not have to comply with parking regulations. Does the fact that we are putting a trellis over this deck have any impact on parking regulations for the restaurant? Pam Houck said that it didn't as long as it's not enclosed. If it is enclosed, then it does trip the threshold for parking for indoor seating and that would have to be addressed if they wanted to do that.

Councilman Reynolds asked if the 1988 and earlier requirements of the coastal construction control line have anything to do with FEMA. Mrs. Houck said that the line was put in place to protect the dunes. Mr. Reynolds then asked about the no-build-back line and if it would affect FEMA. Mrs. Houck said not that she knows of. Mr. Reynolds said that this was not a structure that would be easily damaged and it wouldn't be particularly dangerous and there would be no conflict with the amount of serving space that the applicant has. He would only question if it would affect the FEMA insurance by putting an additional structure beyond the coastal construction control line. Mrs. Houck said that they would have to receive their state approvals prior to getting building permits by the County.

Councilman Hughes said that it was his understanding that the coastal line is not relevant to FEMA per se. The FEMA areas are on separate maps depending on what area you are in and the FEMA applies actually to the entire island. Also, if you were building a habitable structure, he doesn't think there are any FEMA requirements relative to a trellis. But, he said, Councilman Reynolds has touched on something that he had also questioned, and that is if it were beyond the coastal line, which is a building line, you would have to get a permit from the state of Florida. And that would be looked at

through the Building Department when it goes in for a permit. Mrs. Houck said that is correct.

Mr. Hughes told Mrs. Houck that he would like her comments on the Gurik case in which the LPA recommended denial and so did the state. In both cases they were on the beach and abutted residential, but of course the basic distinction was that Gurik was in a residential district and this is in a pedestrian commercial district. Is that basically the distinction between the recommendation for in one case and against in the other? Mrs. Houck explained that this case is also in the recreation district and in Policy 4B8 it specifically prohibits new residential development seaward of the '78 coastal construction control line and the policy is silent on commercial.

Public Comment:
None.

> **MOTION**: Made by Anita Cereceda and seconded by Dan Hughes that we approve the resolution, striking the word "not" in A and C and striking the word "disapprove" on the next page. Passed unanimously.

VII. PUBLIC HEARING: JOHN W. RICHARD, 96-12-212.01S 01.01.

A special exception in the Commercial (C-1) District for a commercial parking lot consistent with LDC Section 34-1145 (C), Table 1. The property is located at 320-330 Old San Carlos Blvd.

Beverly Grady advised that she was representing John Richard, Trustee. The property is 6/10 of an acre and its designation in our Town plan is pedestrian commercial. A part of policy 4B6 recognizes that we want commercial activity, and it must contribute to the pedestrian-oriented public realm as described in this comprehensive plan. This request is consistent with our comprehensive plan, and in particular consistent with Policies 3D5 and 4C3. We would agree in the findings that the proposed commercial parking lot will provide residents' overnight guests with parking, and parking certainly configured to the pedestrian character of the Town. This request is also consistent with performance standards and the criteria of the land development code. The Town certainly has recognized in it a plan, as well as the Old San Carlos study and other discussions that we've had of the need for parking. This property has been submitted to the overlay.

No objection to this plan has been made any member of the public. They've received a recommendation of staff approval, which is expert testimony. We have in our packet that the Local Planning Agency has recommended approval.

The LPA's condition #2 has been completed in that they have prepared a Type 1 limited development order that's been reviewed by Lee County and staff here. They have not waited until after our approval to go forward, but have already gone forward and prepared the application. Conditions 3 and 4 deal with access and provide that there will always be two accesses to this property, one on Third Street and one on Old San Carlos. They are in agreement with those conditions. All of the evidence and testimony have supported approval of this request and they would respectfully request that we approve

the special exception. A special exception is a list of uses that's permitted in that zoning category, but it does require a public hearing because they are uses that may need to be conditioned, and we have prepared for ourselves conditions for this particular use.

Remarks by Council members:

Dan Hughes advised that we have another copy of the memorandum of May 5 showing that somebody wrote delete for Condition 5. He asked if this replaced what we have in our package and was told no, it does not replace the memos that are more current than that one. Just for clarification, Pam Houck stated, the May 5 memo from staff did replace conditions in the original staff report, and at the hearing the staff recommendation of conditions is consistent with the LPA resolution. So the final staff recommendation of appropriate conditions is the same as the conditions included in our LPA resolution of approval.

Dan Hughes said he suspected we had something to do with the underlying things in the addendum, and was told yes. He asked again about the word "delete" and was told that that was because they've actually done the development order which shows what they will be obligated to do. They've done a drainage system. It shows the surface material. So they have gone a step forward from what we're used to seeing. Mr. Richard wanted to be assured of what he would be required to do, and so he went ahead without even without having the approval and submitted the application for the development order, which has been reviewed by our staff and Lee County. We do have in our file the actual site plan that would be constructed.

Town Manager Marsha Segal-George stated that after the LPA hearing, she received communication from a couple of the LPA members with regards to this. And she discussed it with Pam Houck and she knows that Pam has discussed it with Beverly Grady. One of the difficulties the LPA had with this Type 1 development order is that normally the LPA would not see it, and they didn't see it until the hearing, so they didn't really have a chance to take much of it in. But there was an issue raised with regards to drainage, whether or not the drainage plan in the development order is workable, and at this point she has no clue one way or the other.

The other issue that was raised was brought up after the hearing. Mr. Richard wants to have a special permit with regards to the parking, but he also has a building at the front that she believes he's in the process of doing plans on. The concern was that he could have a parking lot that is not landscaped unless it's in tandem with a development. She thinks this is of sufficient concern to be considered. Mayor Murphy asked Beverly Grady if she had discussed this with her client, and she said no. Marsha Segal-George said there is also a consistency issue because of what's happening with the other parking lots on the Island with regards to landscaping.

Vice Mayor John Mulholland said it appears that we are asked to overlook any landscaping requirements that we imposed on another parking lot. Beverly Grady said that the application was submitted for a commercial parking lot and this property is located within the overlay district. Therefore, when they recognized that they would need to apply for a limited Type 1 development order, in order to understand what would be required, Mr. Richard hired an engineering firm that submitted for that development order, and it was reviewed under the same regulations that anyone else is reviewed under in the land development code and being in the overlay. So there is a difference when you

are in the overlay, and Mr. Richard has submitted a design that complies with our regulations as they exist. And so this property is coming forward to provide a use that is needed by the Town in the area that is definitely needed by the Town in compliance with our regulations. The conditions do take into account that there is an existing building on the property and, if occupied, appropriate parking would have to be allocated to the use of that building.

Mrs. Grady said that as to the drainage, it has been designed on site and has been and will be reviewed by Lee County. She can't respond directly to the plan, but what she can respond to is that Mr. Richard has retained an engineering firm that has developed a development order, and the development order would not be issued unless Lee County finds on our behalf that the on-site drainage plan is in compliance with the regulations. We have given them this responsibility.

Councilwoman Cereceda said that she would ask what kind of measure her client would be willing to take in order to ease the concern regarding landscaping his parking lot, maybe even up to and including adding an additional condition that might require that the landscaping that would be required for the development he is planning be put into place at this early stage. Or, what could be an easier way to go about it is that the landscaping that would be required for any temporary lot in the Town be put into place. She realizes it would be an expense, but she also believes it would be in the property owner's best interest to have that property as attractive as possible.

County Input:

Pam Houck described the request before us today. She advised that she had done the initial staff report on this in February 1999, and in this report she had recommended approval with seven conditions which were later again reviewed and amended in the May 5 memo.

The applicant is seeking a special exception to allow use of his temporary parking lot as a permanent commercial parking lot. The lot is located around the old Kentucky Fried Chicken building. He also intends to use the Kentucky Fried Chicken building as one of the commercial uses that may be permitted in the C-1 district. He has opted into the overlay and will be limited to the uses permitted there. The lot is of sufficient size for his needs.

She has recommended conditions to address her concerns on access and drainage. Also, during the time of this application, the Old San Carlos master plan came before the Town Council and was reviewed. The applicant intends to comply with this plan.

All her conditions are outlined in her memo of May 5.

The drainage is being reviewed in the Type 1 limited review development order. That review has not been completed pending the outcome of this hearing. The conditions of approval of the special exception will have an effect on how that is reviewed and approved.

Mrs. Houck said she did not recommend a condition for landscaping because the property was in the overlay, but it may be appropriate that we add another condition addressing it. Chapter 10 does not require a whole lot of landscaping for this type of project. The County has adopted a revised landscaping plan for the street and it may be appropriate just to require landscaping along the street.

Remarks by Council members:

Vice Mayor Mulholland voiced his concern about landscaping and the consistency with which we treat different people. He thinks the applicant has done everything that has been asked of him, but he wonders why he was not asked to landscape when another commercial lot owner was told they had to landscape on Estero Boulevard in the overlay district and spent quite a bit of money doing so. Pam Houck said that may be partly her fault, but part of the landscaping requirement on that lot was because that lot abuts residential.

Town Manager Segal-George advised that this was a problem in the overlay that she will talk to Bill Spikowski about. With most of the properties they have dealt with in the overlay, the buildings are up to the property line and there has not been any place to landscape. So we have a glitch in the overlay with regards to landscaping requirements. The Council can deal with this problem right now through a condition and then the overlay ordinance will be examined to find out where that glitch is.

John Mulholland said he would strongly recommend landscaping for this particular lot.

Pam Houck said it might be appropriate for her to review just how that landscaping can be accomplished, because all the property is virtually an asphalt and concrete area.

Dan Hughes wished to know if we address this, would the landscaping apply not only to Mr. Richard but would it also be made to apply to pre-existing parking lots? Town Manager Segal-George stated that the reason why she raised this issue was because of consistency.

According to Anita Cereceda, because of John Richard's interest in the success of the Old San Carlos/ Crescent Street area, we may hear that he has some willingness to do something regardless of what the requirements may be.

Dan Hughes referred to Pam Houck's memo of February 2, 1999, and asked since it deals with paving, etc., if it was relevant to our discussion. Pam Houck explained that that memo was a review that Bill Spikowski had done based upon this proposed project and the Old San Carlos plan, and she thinks that her conditions in the May 5 memo address the conditions and discussions in the February 2 memo.

Councilman Hughes advised that this parcel consists of seven platted lots and there's no condition that they now be converted into a common use as a parking lot. He feels that there should be a consolidation of these lots when they're converted into a single use like this. If this use should terminate, they will be considered seven little substandard lots again. He asked Mrs. Houck if she felt it would be appropriate to consolidate the lots in this kind of situation. Pam Houck stated that typically in these situations, the recording of the property in one deed under one strap number combines the lots. Yet, they're still platted lots and at some point in time, because they are platted, you could create a deed and a separate strap number for each of those lots. But typically the lots are so small that for commercial development it's impractical to develop them individually. And another issue is that once you get a development order, you're under a unified control that combines the lots for that property. Beverly Grady said she thinks that as a practical matter that if the amendment remains at the C-1 district, you've ensured that you will keep this parcel intact.

Attorney Roosa advised that under Florida law replatting is not required. But Lee

County has an exception that they're unique in. Most local governments require that once you combine parcels, you lose the development rights of the individual parcels, particularly in residential areas. But that's not true in Lee County and, therefore, it's not true in the Town of Fort Myers Beach because we have Lee County regulations. But that's something that needs to be corrected by the ordinance.

Councilman Reynolds said he did not like to come in here after studying all weekend on a case and then get a four-page renewal of extra items that we're supposed to deal with. When something like this comes in the future, he would respectfully ask the Town Manager to withdraw that from our packets.

Input from John Richard

With respect to the drainage issue, Mr. Richard advised that there were four different culverts around the property and the property drains very well. What they are having him do from the County he considers overkill, but he's happy to do it. The front of the parking lot, as far as the landscaping goes, is all tar to one point and then all concrete. They are coming forward with a CPD on a master plan for this where they want the buildings right to the property line. He totally buys into this plan. He wants to go forward with the Town's vision. He would suggest that if we feel more comfortable with the landscaping, that we give him a two-year time limit and he would be happy to put it in, because by then they will have moved forward to that. He said he wouldn't want us to make him do something that La Playa doesn't have to do. All he's asking for is a level playing field.

Marsha Segal-George stated that the Old San Carlos plan talks about landscaping on the road, but there are still the issues with regards to landscaping the perimeter of the property. And that is the issue of the other parking lots that come to the Town's attention either through special permit or temporary lots. That is not addressed in the Old San Carlos master plan and appears to be something that is not taken care of right now in the overlay district. It is something that she and Bill Spikowski will definitely take care of for the future. But with regards to issues of consistency, one of the major questions has been with the perimeter landscaping of parking lots.

Mr. Richard said he had the bridge behind him and the Pizza Hut on one side, and the master plan is going for one big shared parking lot. It will be easier to see when he comes forward with his CPD in the next two or three months.

Vice Mayor Mulholland told Mr. Richard that the Town Manager had mentioned the perimeter of his parking lot. He wished to know if Mr. Richard would address that now, in two months or in two years? He understands what he is saying about buildings coming out and he will put landscaping along the street, but what about the perimeter of the lot? Mr. Richard said he would like to address that in the CPD within the two-year time frame. Mr. Mulholland said that that made him feel a lot better about it.

Anita Cereceda said that Pam Houck had made a suggestion that we continue this hearing and allow Pam, Marsha and Bill to come up with a solution to fix this glitch for the overlay, a solution that perhaps Mr. Richard could abide by. The two-year grace period isn't going to fix the problem, and it might be something that we could address but might not be able to address at this hearing. Town Manager Segal-George said that we could continue it to November 8 if we like when the Gurik case is coming back.

Beverly Grady said that what they were discussing sitting here, recognizing that this

property is in the heart of the core and completely surrounded by commercial and very intense uses, was that within 24 months they would install palm trees within Old San Carlos adjacent to the property as approved by whomever we want to delegate that to. The reason they are asking for 24 months is because they are going to be coming forward with commercial planned development. On the other hand, they are providing that if for whatever reason it didn't happen, we need some assurance that these palm trees would be installed in that time frame. The number, size and precise location of the trees would be subject to the decision of our Town's representative. They are proposing to put the trees right inside the Old San Carlos right-of-way line where there is room to put palm trees and this would address our pedestrian walkway.

Anita Cereceda asked Mrs. Grady if there would be any great strain on herself to have the hearing continued until November 8. Mrs. Grady said that the problem is that Mr. Richard is moving forward and not only do they go by our regulations, but they went further and did the development order to make sure that it clearly complies with our regulations. They think this issue is really going to be appropriately dealt with when he comes in for the commercial planned development; but they understood that the focus of the landscaping would be along that Old San Carlos area and they wanted to offer what would provide us with palm trees along Old San Carlos with the assurance that they would be installed within 24 months.

Councilman Reynolds told Mrs. Grady that he sees she is requesting a commercial parking lot. It doesn't say whether it was permanent or temporary. Mrs. Grady said that by definition it's permanent, because if you ask for a special exception, that is by definition under our code a request for a permanent commercial parking lot. She added that what they've proposed today is in addition to what our regulations require. However, they did recognize that it would be an improvement and Mr. Richard was willing to put in palm trees on San Carlos.

Councilman Hughes asked Beverly Grady if she would be willing to summarize this in a succinct sentence that we could consider as condition number 7. Mrs. Grady said that within 24 months developers shall install palm trees within Old San Carlos as approved by the Town's representative as to number and location.

Councilman Reynolds asked the Town Manager if a special exception is spelled out in our code as a request for a permanent commercial parking lot, and was told yes. Attorney Roosa added that the special exception goes with the land even with a change in ownership.

Town Manager Segal-George stated that we have an Old San Carlos master plan and if everything goes the way that everybody hopes it's going to go, then there's a plan with regards to parking and how Mr. Richard's parking lot will fit in with the other parking lots back behind there. But if it doesn't work, or if something doesn't happen the way we would like it to happen, this is a permanent parking lot. What she is looking for is some condition that if it doesn't develop the way we all hope it will develop, that at that point there would have to be some kind of landscaping done with regards to the parking lot.

Garr Reynolds stated to Mrs. Grady that basically she is moving us from five years to two years. She advised that after the landscaping condition it would obligate them to do this within 24 months or two years. We are going to see them with a CPD, but this condition assures us that if for whatever reason we don't see them with a CPD, we will

have palm trees along Old San Carlos in a location and number determined by this Town's representative. They want us to know with regards to the time frame that they will be back here before us, and that's when it would be appropriate to fully address landscaping and all the other issues with the CPD.

Vice Mayor Mulholland told Beverly Grady that he appreciate her willingness and Mr. Richard's willingness to work with us. He thinks that the Town Manager outlined what he thinks is our dilemma today. If all goes well on Old San Carlos, we have no problem. If all does not go well for whatever reason, he thinks we do have a problem of consistency, and that is that we are treating commercial parking lots in or out of the overlay differently. What he would like to see is her having agreement with us that if the plans for Old San Carlos do not come to fruition, that she would adopt the requirements for landscaping of a commercial parking lot within the overlay. Mrs. Grady said that if this would apply to all parking lots within the overlay district, then she could agree to that condition.

B R E A K

Mayor Murphy said he sees two different items being presented. One is either adding the landscaping requirement as a condition to the resolution before us, and the other suggestion was to continue this hearing until November 8.

Beverly Grady said that upon the Town's adoption of landscape requirements for a permanent commercial parking lot in the overlay, developer shall install a buffer within 24 months that comply with
that regulation. If nothing ever changes and there's no CPD, this parcel will have to comply with those newly created requirements.

Mayor Murphy asked if everyone was satisfied with the language of that condition.

Councilman Reynolds said that the interpretation that he gets is that Mrs. Grady is making it conditional that if she has to go ahead and do this within the 24-month time frame, then the others in the area would also have to do the same.

Beverly Grady advised that her condition did not mention anyone else.

Dan Hughes asked if the 24 months was from the date of us adopting these standards, and was told yes. He asked if then this superseded the other condition regarding planting trees by 24 months, and was told yes. He then asked what if the condition read instead of 24 months of the date of adoption, 24 months of the date hereof provided that the Town has in fact adopted landscaping standards. This was acceptable.

Garr Reynolds said he had no objection to the delay because this problem came to us incomplete. But if this satisfies everyone else, then he's agreeable.

Dan Hughes made a motion. He said there are really two tests. 1) We have to adopt the standards and criteria, and 2) there's a 24-month deadline.

Discussion:

Mayor Murphy said that he considers Mr. Richard a leader down in that area by virtue of his holdings down there. He looks forward to him bringing forward this CPD that we'll take a look at. He doesn't have any reason to believe that this is not forthcoming. Hopefully, this will make this all moot at that point. He will support this motion with the understanding in his own mind and heart that the intention is not to

create a permanent parking lot down there; that the highest and best use of that land will be brought forward by a CPD, and that being the leader that he is in that area that he will be actually igniting the redevelopment of the Old San Carlos project.

Garr Reynolds ascertained that this was condition 7.

> **MOTION**: Made by Dan Hughes and seconded by John Mulholland to adopt the resolution as presented to the Town Council by the staff with the following revisions: in the caption, strike "denying." In "Now Therefore Be It Resolved," just prior to the findings and conclusions, strike the word "denies." Change the word "modification" to "special exception." In the findings and conclusions strike "did not"; in paragraph 3 strike "inappropriate." Change the word "permit" wherever it appears in the resolution to "exception" so that it reads "special exception" as distinguished from "special permit." In 4 strike the word "inconsistent." In 5 strike the words "does not." In 6 strike "will not." Add paragraph 7 reading "Upon Town's adoption of landscape requirements for a permanent commercial parking lot in the overlay, developer shall install a landscape buffer within 24 months from date of approval that complies with staff regulations." On the last page strike the word "deny" after the approval there and before the signature lines. Passed unanimously.

VIII. TOWN ATTORNEY

Dick Roosa advised that the lady he had selected as a possible appellate attorney could not serve the Town because they had represented one of the bonding companies and the bonding companies would not release them from a conflict situation. He has a fax from Robert Donald, a local attorney who is certified to do appellate work, which he does exclusively. He has no conflict and would work with us on an appeal and Mr. Roosa would like our permission to employ him under the terms of this letter, which are that he would work for $150 an hour. He estimates his work would be from 50-60 hours, costing approximately $10,000, depending on whether or not we'd have to have oral arguments. As part of our strategy, Mr. Roosa said, he has also communicated with an attorney in Tallahassee who is also certified as an appellate lawyer. They have determined they have no conflicts, and depending upon the cost involved, he'd like to come back with a recommendation for that attorney also.

Mayor Murphy asked if the attorney in Tallahassee was in a firm and was told yes. He asked if the case would be heard in Tallahassee. Mr. Roosa said that if they do have oral arguments, the case would be heard there and he agreed that in that case, we would be sending Mr. Donald to Tallahassee and picking up his expenses.

Dan Hughes noted that the attorney states that our chances are less than 50%, and one of the reasons is that he feels there may be a bias in favor of validating bonds. The original case is still pending and he's ruled against us on the interlocutory motion, the preliminary motion. He asked Attorney Roosa when that case comes up for trial. Mr. Roosa said that nothing has happened on that case pending a bond validation hearing, but there are some issues that will be res judicata, to which Dan Hughes agreed. Mr. Hughes

said that as a result of the doctrine of res judicata, we can probably pretty confidently assume that we're going to lose that case, that he's going to rule against us in that. He wonders, Mr. Hughes stated, if that might not be the better case to appeal rather than the bond validation. Attorney Roosa said that we can dismiss that case if we don't appeal the bond issue, because the bond issue will in effect kick us out of court. As long as we have an appeal pending, it's not a moot issue. So if we didn't file an appeal within the 30-day period in the validation case, they could go in on a motion to dismiss and probably prevail on the basic case.

Councilwoman Cereceda asked Mr. Roosa if he felt comfortable that Mr. Donald, a local attorney, did not have any conflicts of interest. Dick Roosa said that he's handled several appellate cases against the County before so he has no problem regarding him. Garr Reynolds asked if he had won, which caused laughter.

Vice Mayor Mulholland felt that Mr. Donald looked quite competent and asked if he was the best locally or if perhaps Mr. Roosa should open his search. Mr. Roosa indicated that he had already searched in other cities and does have one potential in Tallahassee. But even if we were to have a Tallahassee attorney, he feels that there is an advantage to having a local attorney.

> **MOTION**: Made by Anita Cereceda and seconded by John Mulholland that we approve the hiring under Attorney Roosa's recommendation of Mr. Donald. Passed unanimously.

IX. PUBLIC COMMENT

None.

XIII. ADJOURNMENT

The meeting was adjourned at 12:15 p.m.

Respectfully submitted,

Lorraine Calhoun
Transcribing Secretary