

**FORT MYERS BEACH  
TOWN COUNCIL MEETING  
MAY 5, 1998**

NationsBank Building, Council Chambers  
2523 Estero Boulevard  
FORT MYERS BEACH, FLORIDA

**I CALL TO ORDER**

Mayor Anita T. Cereceda opened the meeting on Tuesday, May 5, 1998 at 10:00 A.M. Present at the meeting were: Mayor Cereceda; Vice-Mayor Ted FitzSimons; Council Members Ray Murphy, Garr Reynolds, and John Mulholland; Town Manager Marsha Segal-George; and Town Attorney Richard Roosa.

**II PLEDGE OF ALLEGIANCE**

All assembled recited the Pledge of Allegiance to the flag.

**III PUBLIC HEARING: JAMES & DEBORAH FIGUERADO, REPRESENTED BY  
STEPHEN ROTH, IN REFERENCE TO PUBLIX SUPERMARKET**

The Council disclosed all ex parte communications. In addition Mr. Mulholland stated that the Figuerados are neighbors and that he uses the marina services, but he still felt that he could give a fair hearing. Mr. FitzSimons said he has been a customer of the marina and he knows the Figuerados. Mayor Cereceda said she has visited the site.

Charles Bigelow, representing Mr. and Mr. Figuerado and Stephen Roth, addressed the question of what plan we are operating under. A comprehensive plan cannot be applied while it is pending, so they are limited to the current plan in force. The central issue is whether a Publix market would be good for FMB. Look at the compatibility with the neighborhood, traffic, and future impacts on Estero Bay with the expansion of the marina. Mr. Roth, the developer, will explain how the site was picked, and will show how this is the only reasonable alternative. Mr. Figuerado will say what is on the site now, what will happen if this is approved, and what will happen if this is not approved. Lee Engelke, who works for Publix, will talk about the specific plan. They also have an alternative plan to show the council. They think their original plan is the better one, but the alternative is acceptable and was to address a concern of the LPA. Reed Jarvey is a traffic engineer and will discuss traffic implications, new trip generation, intercepted trips, where traffic is going now, and how traffic can they be accommodated at the intersection. Mr. Bigelow said he will also comment on some issues that were raised at the LPA, and talk about the question of the impact of the marina on Estero Bay if it is extended.

Stephen Roth was sworn in. He stated that Publix has come up with 5 prototypes fo stores. The one they will use for this site is designed for places where you cannot find the land mass for the type of stores that most people are used to. The site has 3.7 acres, and will have 27,887 square feet. It will be a mini market, but full service, and will be designed specifically for beach areas such as this. The main reason they picked this site is that there is not a lot of land available, and prices are high. The prices and availability at Santini and Times Square are prohibitive. Besides they want to be part of the neighborhood, and the middle of the island will be better because it will make shorter trips to get to the location whether you are on the north side or south side. In addition, to locate a store on the north side would not help the traffic problem. Most new developments have commercial areas within their residential area to service the needs of its residents. There are no other sites available.

Mr. Figuerado was sworn in. He showed a site plan of the development order. There is a marina, restaurant, parking, and two dry storage buildings on the site. Phase two, for which the development order is already issued, would add two more dry storage buildings and additional parking. Publix approached him before, but at that time they did not have a building that would fit the site and he did not want to give up the marina. This new building will allow them to keep the marina. They live on the beach and they like it here. The marina has been there since 1910, and a marina has full privileges to expand the marina with ancillary uses (strip center). The other thing they can do is expand the dry storage--they could put in another 3-4 storage buildings. That would mean thousands of boats coming out of there. If this application is approved, the current operation will stay the same except for some of the boat sales. They sell powerboats and sail boats now.

Mr. Engelke, of Sverdrup Corporation of Orlando, was sworn in. He said the 27 prototype which Publix plans to build is the smallest. It is designed for neighborhood shopping centers in high density areas, and for beach communities. It will reach the most people with the smallest amount of square feet. It will have everything that is in the bigger stores, but they are stocked more often (maybe twice a week). He thinks this will have a pharmacy and a bakery. The lot is narrow on Estero and broadens out toward the marina. There are single family homes to the south. The entrance now is on the northwest corner of Estero. They will move it to the south to separate it from the Ocean Harbor entrance. The elevation is 6' now, but they will be required to have the floor elevation at 12'. In order to address the water runoff, they will have surface retention, swales around the perimeter, and subterranean vaults under the parking lot that will percolate water into the aquifer. These plans meet all requirements. Trucks will unload behind the store in a covered dock. There will be an enclosed trash compactor, so there will be none of the usual clutter found behind other shopping areas. They have made the site pedestrian friendly by adding a trolley shelter and bike racks. They will put walkthroughs from Coral St. and Coquina St. if the neighborhood wants them. They have met all buffering requirements for the residential areas. Mr. Roth said that the time frame when trucks make deliveries can be limited, and trucks can be required to shut off their generators while they are at the site. Mr. Engelke showed two views of how the building would look. The building is 23 feet tall, and the tower (for architecture only) goes up to 43 feet. Mr. Engelke talked about the alternative site plan which would move the building further south on the site and allow a road to go straight back to the marina. Shoppers could turn off that road to the store. This is not the preferred layout. It reduces the surface retention and would require the store to become a left-hand store.

Mr. Bigelow said the surrounding area has two zonings: suburban and urban community category. This property is urban community. The residential densities are the same in both categories, but urban community permits more commercial activity than suburban. Goal 13 talks about locating commercial in certain areas instead of making a whole strip of commercial.

Mr. Jarvey, a professional engineer with Vanasse & Daylor in Fort Myers, was sworn in. He passed out a summary of his traffic statement. Traffic generation that this Publix would create will be about one trip per hour in peak hours, worst case scenario. The alternative is for people to use Topps, Fiddlers, Winn Dixie and Albertsons, and Publix in Bonita. He is working on the assumption that 1/3 of the residents use existing stores, 1/3 will link grocery shopping with another trip off the island, and about 1/3 will do a separate grocery shopping trip. If that is true, 4000 miles a day will be expended if Publix is not put in place. Putting in a new Publix would intercept some of that and make the trip shorter.

Mr. Bigelow reported that an LPA member said they want a big marina at the site. But there are consequences to that. He brought copies of letters from the Florida Dept. of Natural Resources regarding expanding Ocean Harbor docks in 1990 and 1991. Estero Bay is an aquatic preserve and a significant habitat for manatee. They imposed a limitation on Ocean Harbor to 7 power boats and 31 sailboats. If Mr. Figuerado expands the marina, it will double the number of power boats. That would put him in conflict with the goals of the state. The Town is concerned about Estero Bay and the consequences of the impacts must be considered. He also said that many people stated that they shop for groceries when they shop for other things. If that fits their lifestyle to make an adventure of grocery shopping, the 11 mile drive is OK. But the Council must be concerned about the essential shopping needs of the whole spectrum of shoppers, which includes many families.

Mr. FitzSimons asked Mr. Roth asked about the relative size of stores. He said this would be less than half of size of the store at Miners Crossing. The shelving and stocking is done differently but everything will be there. A Publix truck would visit the store about 2-3 times per week. They feel they can capture business in this location without anyone having to travel more than 3 or 4 miles. Mr. FitzSimons asked if Publix has ever built a store on a 7 mile long island with a single lane road. Mr. Roth said he does not have those statistics but he believes they have because this prototype was designed for beach areas. Mr. Engelke said the lifespan of the building is about 50 years, and is usually remodeled about every 5 years. Mr. Roth said usually the lease is for more than 20 years. Mr. Engelke said the stacking lane is about 180-190 feet which would allow about 10 cars. There is also additional stacking in the driving aisles. Mr. Jarvey said he does not anticipate the need for a traffic light. It might be desirable, but that would be determined by state requirements. He has not done an analysis but he suspects it does not meet the warrants. Mr. FitzSimons asked Mr. Jarvey about the percent of trips that go to the marina and the restaurant, and he thinks it is 10-15%. He agreed that would be a significant increase into the property over what is there today. Mayor Cereceda said many people are concerned about what would happen if Publix goes out of business. Mr. Engelke said he would assume another grocery store would go there. But they

feel that their studies have shown that there is a market for it here. Mr. Bigelow said this is being approved as a grocery store, and if it were to close, it would require an amendment to the CPD for any other use. Mayor Cereceda also asked if the picture is the building they intend to build. He answered that it is, even down to the color, and that it has been signed by the Publix vice president. Will it be elevated on land or pilings? There will be an incline to the land but their policy is not to have more than a 4% slope. She asked Mr. Bigelow how much of the permitted marina development this eliminates. Mr. Figuerado will forfeit the right to build two storage structures and a permanent sales building. Mr. Reynolds asked Mr. Jarvey if it is possible to have a right turn lane on the north bound lane. Mr. Jarvey said there is room (barely) in the cross section, but the length would exceed the Publix site. There are single family homes with driveways that might be adversely impacted.

The council took a break at 11:55 AM and reconvened at 12:10 PM.

Mr. Roosa said he agreed with Mr. Bigelow's letter. The council must apply the Lee Plan and the LDC. The arguments in the staff report are based on these.

Chip Block, of Lee County Dept. of Community Development, was sworn in. He said the request is to rezone 3.7 acres of a 7.2 acre parcel. To the north is suburban land use. To the west is urban community, to the south is suburban, and to the west is urban. It is also in the Water Dependent Overlay district. The staff report contains an error on page 4. It says there may be a need for a deviation in height, but that will not be necessary. He said based on the current Comp Plan in effect now and the LDC, it is his recommendation that the plan should be found inconsistent. The LPA also recommended denial based on compatibility and location of land use. There are condos to the north, and single family and duplex. To the west across Estero there are condos, to the south are single family and duplex. Just north of the site along Estero there are resort style and motel style uses. Also there is marina use to the east before the bay. The council must look at whether this plan is compatible with the surrounding land uses and whether the new land use will have an increased intensity of use. The applicant said they will conform with the LDC but they have not expanded the buffers. It would be hard to buffer the condo to the north because it is 15 stories high. There will be an increase in intensity of traffic also. The staff agrees with the applicant that they do not consider this will generate new trips, but will be capturing some trips that would have gone elsewhere. It will redistribute traffic to this site. Now it is pass-by traffic that does not congregate on this property. He believes there will be some traffic impacts at the intersection. The mitigation offered by the applicant will be addressed at the local development order stage. It is the council's job to decide if the use is appropriate at that location. The CPD would only allow a supermarket use. The applicant said a strip center is allowed but it has not been approved at the current development order and would require review of the development order and would have to prove consistency. He believes it is incompatible and inconsistent, and does not meet the current commercial site locations. Goal 13 provides for certain requirements. In order to meet the site standards it must be considered a minor commercial land use, and must be at the intersection of a collector and an arterial, which we do not have, or at a local and arterial, and the closest is Bayland Road south of the property. There are 6 properties between Bayland and the subject property at a distance of more than 350 feet. The distance must be within 330 feet for Goal 13. Staff believes it is inconsistent, but should the council decide to take another action, he provided a set of conditions in order to assist the council with any action. It is important that any approval include the deviation because the site for the marina is accessed through this property and areas where there is backout parking. The deviation will allow the driveway aisle on the southern side to double as an access to the marina.

Mr. Mulholland asked if it is the same staff report as went to the LPA. Yes. He is calling it an incompatible expansion of commercial activity, not directly commercial intrusion, because the argument can be made that the marina is commercial also. But the marina has been there for a while and has already been found consistent. But when expanding that use with a new use and new impacts, he thinks it becomes incompatible. Mr. Murphy asked if the plan could be further conditioned to exceed the current buffering plan. Yes. But you cannot buffer the condos looking down (but they are already looking down on something and if the current development order is finished, they will look down at a few more barns.) Mr. FitzSimons asked how a supermarket ranks according to intensity, times open, volumes etc. Mr. Block said it varies because some stores operate from 9 to 9 and some are open 24 hours. Traffic is in upper range of traffic generation, but it is not as high as fast food, which is at the top. Mr. FitzSimons asked if he was aware of any supermarket built on a two-lane road without any intersection access. No. He asked if you could locate a supermarket anywhere, does it make sense to put it as close to the population center as possible? Mr. Block said it is important to look at that as a consideration, but he feels that the reasons he has given in the staff report override the positive factors and that is why they recommended denial. So it

could be more beneficial to the community than the comp plan would indicate. If the council decides to go against staff recommendation, they have the authority. They may weight findings on certain elements more than what the staff based theirs on. Approval should provide those reasons, saying they should have been weighed more heavily than the ones provided by the staff. Mr. Reynolds said when he gets the conditions of approval he gets mixed feelings about how strongly Mr. Block feels about his analysis. How does he feel about being overridden on his recommendations? Mr. Block said professionally he provides what he feels is best and most appropriate. He provided the conditions not to water down his recommendation, but to simplify the process for the council which is struggling with many issues. It is to help them understand if they decide to disagree, that they must give some consideration to the impacts that the surrounding areas will feel, and to help with the proper wording. It will not hurt his feelings if they go against him. He would come back again the next time and it will not hurt his feelings then either.

Mr. Bigelow asked Mr. Block about the site location standards in goal 13. He read paragraph 10 which says that this shall serve as a guideline regarding local roads and they will have leeway. He replied that Lee County has approved special cases in the past, and if the council votes for approval they may want to quote this paragraph in the resolution. Mr. Bigelow asked Mr. Block when he did the analysis, did he evaluate if Publix was good for FMB? He said that the answer is generally yes for the entire town. They do not object to a supermarket in the town. Mr. Bigelow asked if the decision on compatibility is a judgement call? Yes. It may differ from person to person. Did he find that the standards for buffers between commercial and residential to be inadequate in this case? Yes, because of the inability to provide for an opaque situation (the current LDC calls for 25% opacity,) and also the height in relationship to the roadway system (the building will be raised and the parking lot will have a grade which would make it visible over the buffer to the residences.) If the buffer was opaque and maintained an 8' relative height, you would have no objection? The problem is that the residences are a mix of on-grade and stilt homes. The stilt homes will be able to look over the buffer. They overlook the marina now? Yes. What are you trying to accomplish, to totally block the view? They are trying to reflect noise, lighting, and activities away from the residences so they won't be impacted. The Council can decide that a supermarket is more compatible than a boatyard as it stands now? Yes. Did you make an evaluation of whether there was another feasible site on the island? No.

The public hearing was opened.

**A AL VAN HORN**

Mr. Van Horn said last night Mr. Roosa gave the council a short course on ex parte relative to opinions vs. facts. The facts are compelling from the county staff. The facts presented at the LPA hearing were in regard to the customer market. It is anticipated that 80% of their customers will come from within 3-5 miles, 60% from the south and 40% from the north. The 40% coming from the north will have to turn around and go back and that is the direction that during peak period everyone is coming from. It will only exacerbate the current traffic. The LPA voted 9-0 and he knows they are advisory, but they have had time to study this. He implored the council not to overturn the LPA.

**B BOB BUNTING**

Mr. Bunting is in favor of the proposed Publix. For those who travel north off the island to shop, it would save considerable time. When his family goes into town to grocery shop, they do most of their other shopping when they go. If they can shop here, they will use some of the other stores on the beach.

**C JOELLEN RECKWERDT**

Ms. Reckwerdt said we did not incorporate to stop all growth. Many working families could not make this 10 AM meeting, but they need the store. Don't succumb to the "not in my back yard" mentality. She lives close to Topps. She does not hear trucks--she hears motorcycles and traffic on Estero, which is much worse. People are happy to live close to a grocery store and think it is an asset. Another supermarket would be good for the island. Many people travel inland to shop and would not if this were approved. There is no traffic light at Topps and there is no problem now. There is no right turn lane there now and it is no problem. There is no traffic light at Santini and there is no problem. Having two grocery stores will spread out the shopping and traffic.

**D WILLIAM DARROW**

Mr. Darrow said he has talked to many people, and most are for it, but some are not because will be traffic tie-up. We need it here for the southern end and also for the quality of goods.

**E DOREEN TURNER**

Ms. Turner said we need another grocery store and it will not cause more traffic. In fact it will help alleviate it. She goes off island and goes to Publix. If it were here, she would shop more here.

**F       FRANCES HODOSH**

Ms. Hodosh said she can envision that we will have traffic tieups so bad that they will not have to close the Bonita store because everyone will be turning around and going there. Residents have an investment in the town and expect protection. The council should try to alleviate traffic, not compound it. Traffic will be converging from both ends. There will be increased truck traffic because they won't have much warehouse space. It is a narrow road with lots of bicycles and walking. There are too many accidents already, and we don't need more opportunities. People don't go into the marina to buy boats every day, but they do for groceries. We already have many groceries and convenience stores. There is noise from grocery stores and they attract varmints. It is not a good location to live near a supermarket and no one will want to buy there. It is the will of the people to keep neighborhoods in tact and stop commercial intrusion.

**G       TERRY JOHNSON**

Mr. Johnson lives two blocks away. Working people must go to work but they still have to get to a grocery store and there is no time except at 6 AM. That is not right to working people. This won't make any more congestion. In fact, during low season he would like to see some congestion in that area because people go 50 and 60 mph.

**H       RANDY PHARES**

Mr. Phares said traffic is here and it is not going away. Publix would at leave give us a choice, and he would rather shop at Publix.

**I       ROBERT GUTIERREZ**

Mr. Gutierrez moved here because he couldn't live in Ft. Lauderdale any longer. We need to watch density, but Publix would be good as a whole. He works 11-12 hours per day in season. He has to drive by there and he will funnel in to the new store. It will keep him from going over the bridge. All the working people he has talked to feel the same way, but they couldn't come to this meeting because of the time.

**J       DOROTHY FRENCH**

Mrs. French said traffic is continually getting worse. Sunday morning when she goes to church, she must allow 3 times as long, and continual traffic going into a grocery store will impact all the churchgoers. A bicycle rider friend was hit by a truck coming out of Ocean Harbor and seriously injured because the truck driver was not used to looking for traffic the other way. She shops at Topps often, and during season you do have trouble getting out of the parking lot.

**K       ROBERT FRENCH**

Mr. French said that the grocery business is getting a terrible reputation. When grocery stores leave an area, they leave a dinosaur behind. There are many that close because of lack of customers. Topps was abandoned by Winn-Dixie. The former post office was a grocery store before. There is not enough business off-season to keep it in business. If 20% of the northern traffic comes to this store, it will only add to the traffic.

**L       JIM LAWRENCE**

Mr. Lawrence has been a liveaboard at the marina for 6 years. One of his goals is to stay off Estero as much as possible. This will save him at least 9 trips a weeks, because grocery shopping is an almost a daily chore because of his limited refrigerator space. It will also save on pharmacy trips.

**M       BOB OHLEMACHER**

Mr. Ohlemacher said it is already difficult to cross from Bayland to the beach. Instead of getting a 6' side sidewalk, it looks like we will lose it. There will be hideous gridlock. When they back up, trucks must beep, and that noise will go for blocks over water. He already hears the trucks at the boatyard. If they add enough lighting to the parking lot to make it safe, the poles will be very high and there will be light pollution. Because the grocery store will be so close, people will go twice as many times.

**N       RAY MERTENS**

Mr. Mertens said the Council is not here to decide if the LPA was correct or incorrect. The LPA did their job correctly. If the council rules in favor of Publix, it is not a vote against the LPA. It will simply be that they have made a decision that a Publix will have a better impact on the island than something else in that location. What is better for the island--an intensive marina even though it is inconsistent with the back bay plan, or a grocery store even though it is inconsistent with the land use plan? Which is worse? It is a difficult decision and the council must decide what is better for that spot. Is it better to have two viable options that can dress up the land, or is it better to have one business that may not

have a positive cash flow and must put up buildings that are less attractive? He thinks we voted for evolution, not revolution. We didn't vote to destroy. We voted to build something. We must be progressive.

**O ROBERT SADLER**

Mr. Sadler is president of Ocean Harbor. He feels that, in general, virtually every resident and visitor would welcome with open arms a Publix on the island. On other hand, the traffic at that particular location is his primary concern. The proposed rezoning is contrary to the judgement of the LPA and the recommendations of Mr. Block. There will be an increase in bicycle and pedestrian traffic in this location. There will be extensive road backups that will be second only to what we have at Times Square. There will be much more trolley use to get to the grocery store on both sides of the street and that will also add to traffic backups. Please consider that they must move emergency vehicles through that area. The LPA discussed whether Estero is wide enough to handle a turn lane in that area and he understood that there was not enough right of way. He urged them to look into it. The third lane would help a lot but without it, it is impossible.

**P HELEN LINDSEY**

Ms. Lindsey lives on Bayland, and that area is primarily residential and should remain so. When Mid Island Marina was shut down, it was a shame it was allowed to reopen, but that is a done deal and is too late to change. But a grocery would be detrimental to their quality of life.

**Q DORIS BROWN**

Ms. Brown lives on Strandview and a Publix store will only make the traffic worse. She loves Publix, but she is still going off island. In season she has to judge when to come and go. She shops at Topps or Fiddlers occasionally. The street is way too small for a turn lane.

**R DENNIS MILLER**

Mr. Miller said he moved here for the quality of life. He sold his businesses so he could raise children here. You must go shopping in the middle of the night during season. When traffic is backed up, it is backed up and this won't make it worse. Most people on the island plan their day around the traffic. This will allow you to have more quality time for your children and family.

**S O. B. THOMPSON**

Mr. Thompson said when you live on a barrier island, you don't have all the conveniences. Most don't even have a major grocery change. He suspects the reason is because there is not enough business in the summer. You give up some of the conveniences to live on a barrier island.

**T FRANCES STOUT**

Ms. Stout lives on Coquina and said the council should think about how many people are within walking distance of this store and can leave their car in the driveway and not put more cars on the road.

**U PETER SCHULLER**

Mr. Schuller is an independent distributor and he services other chains, but no other chain can provide the same noise control as Publix. If anyone will do it the right way, it will be Publix. Even if he lived there, he would have confidence it will be done properly.

**V SAN GIACOBELLI**

Mr. Giacobelli lives in Ocean Harbor. He is opposed because of the intrusion into a residential area and the traffic congestion. He doesn't see enough parking spaces for employees in three shifts. He fears it will be open 24 hours a day, 7 days a week. How can we do away with the noise and pollution? He fears they won't be able to sell if they have a Publix next door. Traffic getting in and out is already a nightmare.

**W CAROLYN VAN DUZER**

Mrs. Van Duzer spoke in favor of Publix. Everybody has to eat and has to buy groceries. She lives south of Mid Island and will be one of those intercepted by Publix. It won't cause major traffic because she will go there and then go back home. She will not sit in traffic all the way to San Carlos Blvd.

Mr. Bigelow asked Mr. Figuerado about the truck traffic. He said that there are 7 or 8 truckloads per week to the marina. With those gone, it will reduce the number of trucks coming in.

Regarding the proposed conditions: Condition #1, no problem; #2 they would like 30,000' to allow some wiggle room for design changes; #3 no problem; #4 is Ok except the building height is 24 rather than 20 and the tower is 43; #5 their only objection is that it would be hard to cover the service drive; #6 air conditioning must be placed on the roof, but they don't object to covering them and using noise

abatement; #7 the operating hours is a problem and he suggested they set the hours by ordinance instead of by land use (they have no trouble with the delivery hours being the same as the store hours and they have no intention of it being a 24-hour store); #8 No problem because there is enough room for a turn lane; #9 he thinks a 13' fence will look ridiculous and opaqueness can be maintained by having a fence go with the contour of the land; #10 he is not sure what it is intended to accomplish so he would prefer it be deleted; and #11 no problem shielding light. Regarding the deviation, he does not interpret the ordinance the same way, but he can work with it any way.

He said the main question is whether Publix is good for the town. A lot of people have said yes, that it would make their lives easier. Others say they won't use it and will go off-island anyway. Most of us want grocery shopping to be convenient and that is why they are located close to neighborhoods. It is a service residents need. It won't create new trips. It won't draw people to the beach who aren't here already. It will only serve those on the island. Is the incompatibility so profound that Publix should be precluded? If they decide the incompatibility is unbearable, there won't be a store here. The staff report doesn't mention it, but the relationship to Estero Bay is significant. Boat traffic is a critical issue and we must strike a balance. You must worry about someone who must live next to something new that is coming in, but a balanced community is the other issue. They have the opportunity to limit the marina to its current size.

Mr. FitzSimons asked Mr. Block if there is any question that this is residential on all sides except for the marina. He answered no. He asked him is he is familiar with the entrances at Santini and Topps. Yes. It was agreed there are about four curb cuts at Topps and Santini, and he asked Mr. Block to compare the handling of traffic at multiple vs. singular exits. He said that multiple accesses gives more options for traffic than single accesses.

**Motion:** Mr. FitzSimons moved that the application be denied. The motion failed for lack of a second.

**Motion:** Mr. Murphy moved for approval with the conditions as set out by staff except that #9 allow a contoured berm that is heavily planted. The motion failed for lack of a second.

Mr. Mulholland asked to discuss the conditions. He is open to the hours of operation being in an ordinance or in the development order, and he agrees with Mr. Murphy on #9. Mr. Reynolds asked why the air conditioning can't be on top. Mr. Bigelow said it is an engineering problem if they are on the ground. Mr. Reynolds wished this could go to referendum, but it can't, but he believes it would pass if it did because he hasn't heard that much opposition. No matter how they vote, will be wrong in many people's minds. He thinks it will cause a traffic problem in that area. Mr. Roosa suggested a short recess for the county staff, town staff and attorney for the applicant to get together with him to work on conditions for approval. Mayor Cereceda suggested #1 no problem; #2 - 28,000'; #3 no problem; #4 maximum height is 24 feet with the tower at 43 feet; #5 eliminating is impractical; #6 may be placed on the roof but must be covered; #7 eliminate; #8 fine; #9 a 13' wall would be more of a nuisance than a benefit; #10 the architectural design should state that the picture "as submitted to town council on 5/5/98"; #11 as stated. Mr. Reynolds said #10 has been put in before, so why not here. Mayor Cereceda said the difference is because this rendering has already been approved and signed off on by Publix. Mr. Mulholland asked about the feasibility of the turning lane.

The council took a break at 2:23 and reconvened at 2:41 PM. Mr. FitzSimons did not return after the break.

Mr. Roosa reported that they had agreed on the following conditions:

#1 as printed. Mr. Figuerado said he promised the residents that the streets would be closed and Publix has agreed to eliminate the walkways. It was agreed to eliminate the pedestrian walkways to Coquina and Coral.

#2 28,000'

#3 same

#4 same except the maximum height is 24' and the tower is 43'

#5 struck "service drive"

#6 struck the word "No"; capitalize the word "Air"; struck out "located to the rear of the building" and added the word "baffled to" before "deflect their noise".

#7 hours of operation will be 8 AM to 10 PM

#8 first two sentences same; third sentence strike out “may also” and add after the word "include": “a south bound left turn lane and if necessary a north bound turn lane and”.

#9 first sentence same; second sentence strike out "fence or wall" and add “and landscaping”. Strike out "as measured from the average first floor elevation of the proposed building" and add “Within one year of occupancy,”. After the words "right angles" the rest of the condition is eliminated. ( It was clarified that the combination of berm and vegetation will be 8 feet. It does not specify the height of the berm.)

#10 After the words "must be" add "as submitted on 5/5/98”, the rest deleted.

#11 no change

Deviation – no change

**Motion:** Mr. Murphy moved approval with the amended stipulated conditions. The motion was seconded by Mr. Mulholland. Mr. Murphy, Mr. Mulholland, Mr. Reynolds and Mayor Cereceda voted in favor of the motion. The motion carried.

#### **IV ADJOURNMENT**

The meeting adjourned at 2:52 PM.

Respectfully submitted,

Peggy Salfen  
Recording Secretary