

**FORT MYERS BEACH
TOWN COUNCIL MEETING
OCTOBER 20, 1997**

NationsBank Building, Council Chambers
2523 Estero Boulevard
Fort Myers Beach, Florida

I CALL TO ORDER

Mayor Anita T. Cereceda opened the meeting on Monday, October 20, 1997 at 3:00 P.M. Present at the meeting were: Mayor Cereceda; Vice-Mayor Ted FitzSimons; Council Members Rusty Isler, Ray Murphy, and Garr Reynolds; Town Manager Marsha Segal-George; Deputy Town Manager John Gucciardo; and Town Attorney Richard Roosa.

II PLEDGE OF ALLEGIANCE

All assembled recited the Pledge of Allegiance to the flag.

III INVOCATION

The Council was led in prayer by Mayor Cereceda.

IV PUBLIC COMMENT ON AGENDA ITEMS

A LENA HEYMAN

Mrs. Heyman, a member of the LPA, wanted to tell the Council that she voted no on Eckerds because of safety. The cut in the road onto Estero will create a 4-way turn. According to our traffic consultant, that will make 24 possible collision points. There are many bike riders in that area and she does not want to see a pedestrian or bike rider killed. She is not against Eckerds, but she wants to see the traffic exit through Lenell. She also does not think they need a drive-thru.

B JACK HEYMAN

Mr. Heyman attended the LPA meeting and he is also concerned that the Lenell area is a much busier area than it seems at this time of year. It is as busy as Times Square. Every time a road crosses a sidewalk, you have the potential of killing a pedestrian. He would like to see a stop light at the Lenell intersection. It would cut speeding on Estero and allow Eckerds to use Lenell as an exit. In addition, delivery trucks should not be allowed to unload on the street.

C CLETE VAN NOCKER

Mr. Van Nocker lives at Island Winds and is against the variances for Gullwing. They should not be allowed to build any more than is permitted there now. He also thinks there are only 1.6 acres at that site. The board of his condo sent a letter in support of Gullwing, but none of those board members live in Florida and the owners of his building weren't consulted.

D RAY MERTENS

Mr. Mertens is not for or against Eckerds. But he is concerned about the concept of rezoning to commercial. The Council has shut down small business people on commercial zoning. He thinks that if he tried to put a restaurant and bar in that location, he would be told it wasn't zoned commercial. He said they must be fair to all.

V PUBLIC HEARING – DANIEL REINFRIED (GULLWING, 6620 ESTERO) 97-08-063.05V

Beverly Grady, attorney for Sunstream, said that the decision for the Council is whether the requested variances will be better for the town, cause less density, and be better for the neighborhood than the project that is currently approved. The property has 4.05 acres, which would mean 48 hotel units would be permitted under current zoning. The existing plan has 100 units already approved, which is 52 units over what could be approved today. It has a 150-seat restaurant with bar and lounge and 12,000 sq. feet of convention space. It includes an 8-story parking garage and a 7-story hotel. It fills the entire property from setback to setback. Sunstream's request today is for 66 luxury units, which will be 11 stories on the rear of property, open space for a pool, and a one-story parking over tennis courts instead of the parking garage. There will be no restaurant and no convention facilities. In order to accomplish this plan, they are requesting height and setback variances, a variance in the permitted size of unit, and a variance in the density allowed from 48 to 66 units. Allowing this variance will permit 18 units over density instead of 52 units over density. The building will be no wider but will be taller. Today the building height allowed would be 76 feet, and they are asking for 98.5 feet. But it will be lower than the surrounding buildings. It

will be a luxury hotel and will have less impact on the neighborhood. The LPA has recommended approval of the four variances. Nannette Hall, transportation engineer, was sworn in and stated her credentials. She handed out a table on trip generation comparisons. The current hotel would generate a total of 164 trips and the new proposal would generate 75 trips. She stated that she took the conservative viewpoint when arriving at these figures. She used the assumption that the convention facilities would cause no extra trips other than what is included in the hotel guests. They also added extra trip generation for the office space in the new proposal, so it is double-conservative. R. J. McCormack, architect, was sworn in and stated his credentials. He showed an aerial photograph of the footprint of Gullwing as it is now permitted. The proposed footprint would be much smaller. He also showed a comparison of height between the two neighboring buildings. Island Winds is 134.75 feet from NGVD (13 stories), and Pointe Estero is 152.16 feet (16 floors). They propose Gullwing at 98.5 feet (11 stories). There will be 6 units per floor, with a maximum of 1975 sq. feet. Mary Ann Monsrud of Sunstream handed out a paper of examples of the size other luxury hotel units in other cities.

Pam Houck of Lee County Development Services, was sworn in. She said that the most important question is whether, according to Policy 5.1.5, it will be consistent with what the Council envisions for the area. The staff recommended denial although the LPA approved with conditions. Mr. Isler questioned whether the accreted land that has allowed that many units really belongs to the landowner or to the public. Ms. Houck said renourishment does not allow landowners to use the extra land for density considerations, but naturally accreted land is allowed to be considered. Mr. Isler said he thought it was strange to allow consideration of land that cannot be built on because it is past the coastal construction line. Mr. Reynolds expressed concern that if we approve it, we are approving anyone to use the public beach. Ms. Houck answered that they are not treating this any differently than any other property in the county. Mr. Roosa said the re-survey is just for information because the council is not voting on the size of the property. A variance would still be allowed no matter which survey you use. It will have no impact on the public beach. Mayor Cereceda asked if 100 units is always more dense than 50 units that are so large that they may have more people in them. Ms. Houck answered that from a planning and zoning view, the answer is yes. They do not do the calculation per people in a room. Mr. McCormack said that this plan allows for 107 parking spaces, all on ground-level. Before it was an 8-story garage but he does not know how many spaces that was, because he was not the architect for the original design.

Mayor Cereceda opened the public hearing.

A JAMES MARVEL

Mr. Marvel was sworn in and he handed out information to the council. He said the new building will be only 5.5 feet lower than Island Winds. They have lowered the number of units but they have tripled the size. It will be 11 stories over parking and 19 feet above sea level, which is the equivalent of 13 stories. It is the height that he is objecting to. He lives next to this property and is directly affected. He now has a gulf view, which will no longer be there, and he will face the wall of this new building. Fairview Isles and Seawatch wrote letters in support of Sunstream, but they are not directly affected. Pointe Estero is owned by Sunstream, so they would not be opposed. Eight out of nine board members at his condo live in the other building that is not next to the property. Everyone he spoke to in the south building is opposed. The lot is too small for that size building, especially if you don't count the accreted beach. His property values will go down considerably.

B MARY ANN MARVEL

Mrs. Marvel stated that she lives at Island Winds. If a person has two acres and they say they have four acres, they are still only paying taxes on 2 acres. She has a beautiful view now, and if the Council allows this building, she will be looking at a brick wall the rest of her days.

C AL DULCHAVSKY

Mr. Duschavsky, stated that he is president of Seawatch-on-the-Beach, a time-share facility. When this proposal for the change came in, he told the manager to ask the owners what they think. Every one was for the change.

D JACK CAPPS

Mr. Capps stated that he is representing Fairview Isles. The lot is empty now and is an unsightly garbage dump. They have approval for a convention hotel, which is also unacceptable. They have been looking for something in between. Their association strongly approves the new plans. His view will be blocked too, but that is the wheels of progress. The grounds of Pointe Estero are maintained beautifully so they have no problem with approval of Sunstream for the project.

E BOB MARKELZ

Mr. Markelz lives at Bay Beach which is not too far from this site. He envisions a huge building with hundreds of automobiles. He already has trouble getting to the north end of the island. This will add to the traffic trouble.

The public hearing was closed.

Mr. McCormack responded to the question of property values. After this project is built, it is his opinion that the surrounding property values will be higher because it will produce one-half the traffic, the building will align with the other buildings, it will not include an 8-story parking garage, and it will not block the view as much as the one that is permitted now.

Ms. Grady reiterated that because there are already development rights on the property, no one will come in and build at the current regulations. Sunstream is willing to take reductions anyway, though.

Mr. FitzSimons asked if there had been any consideration of giving an extra access to the gulf for the public. Ms. Grady said that Sunstream would be willing to accept a condition that a 5 foot walkway easement for public beach access be added, but the LPA has put in a buffering condition that would have to be considered. Mr. Isler said we are at a critical point already and it seems to be a choice between two bad choices. The public will pay in their quality of life. He asked if Sunstream can take a floor away and go down to 60 units and lessen the impact in some way. Ms. Grady said they feel they have already cut the impact on the Town by about 50%. Mr. FitzSimons said that under the circumstances, he can't help but think that we as a town are better off with this proposal. Bigger units works in our favor because they bring higher dollar value and that will mean a higher quality of life to the residents, including the ones immediately adjacent to the property. He doesn't think that we can do much better than this unless the town buys the property itself.

Motion: Mr. FitzSimons moved that the variance requests be granted, with the additional conditions added that a 5-foot public beach access be added and restricting the floor plan to what was indicated today. Mr. Murphy seconded the motion. Mr. Murphy said it is true that a few people in Island Winds will be affected. Some of those people bought thinking there would be a 7 story building built next to them and now it will be 11 stories and they will lose the view they enjoy. He feels for those people, but he feels that it is the best alternative we have in the big picture of the town. We already have one convention center being built on the beach and he doesn't think we can support another one. Mr. Isler said it is a no-win decision. We have heard from the next door neighbors, but we haven't heard from the community at large that the Council members are supposed to represent. But he still cannot vote for the change. Mr. Reynolds said he would like it to go back to the LPA and the county for reassessment. He cannot support it because it is too big a building for such a small lot. **Action:** The vote was as follows: Mr. FitzSimons, aye; Mr. Isler, nay; Mr. Reynolds, nay; Mr. Murphy, aye; Mayor Cereceda, aye. The motion carried.

The council took a break at 4:55 PM and reconvened at 5:09 PM.

VI PUBLIC HEARING – FIRST UNION NATIONAL BANK OF FLORIDA, REP. BY THE SEMBLER CO., IN REF TO ESTERO BOULEVARD/LENELL ROAD CPD (ECKERDS) 96-12-206.02Z 03.01

Mr. Basinaid said he planned to give a presentation based on the differences between what has already been approved and what they are proposing today. Eckerds cannot build the previously approved plan. If the unadopted draft community design is not applied, their concept master plan can be approved. He submitted Exhibit A (the concept plan of the current proposed plan, Exhibit B (the schematic master concept plan), and Exhibit C (the concept plan that is already approved.) Mr. Tim Keene of Keene Engineering, was sworn in and stated his credentials. Mr. Keene spoke about the differences between the plans. The new plan has two access point on Estero, but the approved plan has three access points. They are now adding a sidewalk on Lenell and will widen Lenell to three lanes. The new plan has a sidewalk around the circumference on the north and east, a buffer zone, and two sidewalks to the Estero Cove parking lot if they want it. He said that it is in compliance with existing comprehensive plan and the existing land development code. They are asking for the following deviations: 1. Pavement setback from 15' to 9.8' adjacent to Cap Plaza. 2. Deviation to allow 35% of total open space to be used for pedestrian ways and impervious surface to allow the paver system in the front. 3. A deviation to eliminate the requirement for an 8' berm. They still will use a berm, but not that high. He said that staff has

recommended approval of all three deviations. Mr. Keene stated that he has attended a traffic committee meeting and spoken with the traffic engineer that has been employed by the beach about traffic calming. He said the engineer has come to the conclusion that traffic calming will not work on Estero and that on-street parking is probably not going to be workable.

Dave Moore was sworn in and stated his qualifications as an architect. Mr. Basinait showed three renderings for the design, exhibits D, E and F. He also showed exhibits G and H showing renderings of how the building will fit into the neighborhood. Mr. Moore described exhibits D, E and F. They will use a metal roof, add some towers, add cupolas, and add windows on the pedestrian level to allow light up high, but display windows down below. Along Lenell they will also add the same two types of windows. They have added some façade along the side to soften the blank walls. It will be heavily landscaped along the areas without windows. There will be pedestrian pavers along Estero, with benches, bike racks, and crosswalks. He said that the LPA has viewed exhibits D, E, and F and approved those renderings, and that Eckerds is willing to build substantially according to those renderings.

Ted Links, traffic engineer, was sworn in and stated his qualifications. Mr. Links spoke about traffic patterns and safety of the two plans. There is a reduction of one cut on Estero. The pedestrian plaza allows you to get to an area for entrance to the store. On the north side, pedestrians from the condos will only cross a one-lane, one-way driveway. The driveway will not be in conflict with the parking for the store. Lenell exiting will be two lanes and will be safer and faster. There will also be a left turn lane into Eckerds. Even if someone unloads a truck in one lane, there will still be two. Backing out vehicles onto Lenell could be a safety factor. The draft design element is supposed to make everything as pedestrian friendly as possible since traffic is such a problem. The idea is to bring pedestrians as close to the store as possible. The new plan only has one lane of parking between Eckerds and Estero and eliminates one driveway on Estero. It is his opinion that exhibit A is better from a safety standpoint than the approved plan.

Chip Block was sworn in and stated that it is the decision of the council whether to follow the current comp plan or the draft plan.

The public hearing was opened.

A LARRY PIERCE

Mr. Pierce was sworn in and stated that he lives on Lenell Road and he feels that the applicant has cooperated with the neighborhood and listened to them and taken it into their planning. He is fully in support of the plan as presented.

The public hearing was closed.

Mr. Basinait said they are seeking to move the building from the corner out away from the intersection, about 50 feet. The draft design element is only a draft and has not been adopted and cannot and should not be used in their deliberations today. He cited the Florida statutes and legal cases that state that you must use the comprehensive plan that is in effect. They have made as many changes as possible to incorporate as many of the ideas as possible. They handed out letters from neighboring groups that are in favor of exhibit A. They have made it more pedestrian-friendly, added brick pavers, stop signs, bike racks, etc. to promote pedestrian safety. Eckerds has reviewed exhibit D, E and F and they are prepared to construct according to those renderings. He would like to add those renderings as a condition of approval. They will add improvement to Lenell Road. This is a transitional design for the new design at Santini Plaza if they decide to go with it. But it will also allow the town to go in another direction if they should decide to at a later date. He mentioned the new conditions to the resolution that he is proposing, which the Council has already received in their packet. In addition, he would like to make the following changes: delete condition #18 which deals with approval of design features and signage (they will not be seeking any deviations from the land development code); approve design features as shown in Exhibit D, E, and F; Lenell Road improvements as indicated on the Master Concept Plan; the sidewalk on the north and east be considered discretionary if Estero Cove wants them.

Mr. Roosa said he is inclined to agree that the Council is limited when making approvals to the existing comp plan. However in this case, the applicant at the time of approval consented to those changes, so the Council can set changes on any development plan that the applicant will consent to. If this were a fresh application and the applicant insisted on following the existing comp plan, they would have to apply it.

Mr. Reynolds said he has received many letters and that Eckerds has done a lot of work, and he sees many advantages to the new plan: backing into the street has been eliminated, they will make Lenell into three lanes, and parking will serve the customers better.

Motion: Mr. Isler moved that the plan as presented be approved with the added conditions. Mr. Reynolds seconded the motion. **Discussion:** Mr. FitzSimons said the major difference between Exhibit A and C is that we are a town now. Now we feel we have the right to establish a direction, and that direction is of a small town character which we are trying to save from extinction. We want to do something better and something we can be proud of. We hired people to help us get back that small-town feel, and they tell us one way is to move buildings to the street and put parking in the back. Without a vision we have nothing. He thinks we should stay with that vision and he does not think we are asking the applicant too much to do it. Mayor Cereceda said we are charged with looking to the future. We have to look at our vision and follow it. If we were happy with the comp plan we wouldn't be a town. She feels we have to listen to the people on the island as a whole, not just the ones who live next door. Three hundred people came to a meeting and worked out a vision. Mr. Isler said he feels strongly that Eckerds provides a service for people who live here so they don't have to go off island to get them. He attended the workshops and he doesn't like the way they happened. They were told to dream big, but they never got back to what is do-able and practical. It was never his vision to move buildings to the street. This new plan is so clearly superior and does incorporate many of the things that were discussed in the plan regarding pedestrians. It will be an asset to the community. Mayor Cereceda asked Mr. Basinait about the Eckerds in Naples that is built on the corner. Mr. Basinait said that that store is not meeting marketing expectations. It is not as viable. Mr. Reynolds said he felt like the safety factor is the most important. Mr. Isler said all the phone calls he has received prefer the new plan. He feels the people have clearly spoken on this issue. **Action:** Mr. FitzSimons, nay; Mr. Isler aye; Mr. Reynolds, aye; Mr. Murphy, aye; Mayor Cereceda, nay. The motion carried.

VII PUBLIC HEARING – ANTONINA AND SHARON RIGBY (RIGBY'S HEALTH SHOPPE, 1188 & 1190 ESTERO) 97-07-226.05V

Nina Rigby was sworn in and stated that she has lived here since 1965. Mrs. Case bought the building in 1969 and had it remodeled and it is still the same. They have never had a problem with parking. The LPA approved the request with the condition that she have an agreement for two extra parking spaces off-site. Ms. Houck stated that they are requesting a variance from six to allow for the existing four spaces. It is currently a real estate office with two dwellings upstairs. It lawfully exists as a non-conforming structure. They want to change the use to a health food store. The staff recommends approval because of the unusual circumstances and they recommend three conditions: limiting commercial uses to the site plan dated 8/26/97, limiting the commercial uses to those that require one space for every 200 sq. ft., and an agreement of two off-site parking spaces.

The public hearing was opened. There being no comment the public hearing was closed.

Motion: Mr. Murphy moved and Mr. Reynolds seconded that the request be approved with the stated conditions. **Action:** Mr. Murphy, aye; Mr. Reynolds, aye; Mr. Isler, aye; Mr. FitzSimons, aye; Mayor Cereceda, aye. The motion carried.

VIII PUBLIC HEARING – JANE B. PLUMMER (310 MADISON CT.) 97-08-046.05V

Mayor Cereceda disclosed that she has talked with Ms. Plummer and visited the site.

Ms. Plummer was sworn in and stated that she would like to raise her fence to 6 feet because she is on Shell Mound and has no privacy. She also would like to put her pool in a place where it would be safer for her children. Also her house is already non-conforming on one corner. She feels like she has extraordinary conditions that are not her fault. She has 27 names from neighbors stating they do not have a problem with the placement of the pool. Ms. Houck stated that the three variances are for the pool to come within 2 feet of the road right of way, the deck of the pool to be built up to the seawall, and the fence to be increased to 6 feet in height. The staff recommends denial because they did not find extraordinary conditions. The spot where the pool could be placed in compliance already has a pool underneath a concrete slab. Ms. Plummer said she consulted six different pool companies, and the cost was going to be prohibitive.

The public hearing was opened. There being no comment, the public hearing was closed.

Motion: Mr. Murphy moved and Mr. Reynolds seconded that the variances be approved as conditioned. **Discussion:** Mr. Reynolds said he has a problem with a 6-foot fence along Shell Mound.

Action: Mr. FitzSimons, aye; Mr. Isler, aye; Mr. Reynolds, aye; Mr. Murphy, aye; Mayor Cereceda, aye. The motion carried.

IX PUBLIC HEARING – PETITION TO VACATE – PATRICK C. HUNT, AGENT FOR AXEL AND CORNELIA SCHULTZ (LAGOON EASEMENT BEHIND 201 SAN CARLOS BLVD) 97-09-042.03R

Patrick Hunt was sworn in and stated that the seawall was constructed in the right of way and is in disrepair. He needs this vacation in order to repair the seawall.

The public hearing was opened. There being no comment, the public hearing was closed.

Motion: Mr. Murphy moved and Mr. Reynolds seconded that the petition to vacate be granted. The motion passed unanimously.

X PUBLIC COMMENTS

A JENNIFER KAESTNER

Ms. Kaestner asked the council members to begin to look into getting our own law enforcement officers. At an earlier meeting she had talked about a body piercing studio that also sells drug paraphernalia (which is not illegal.) They felt like if they addressed the age of kids being body- pierced, it would give the sheriff's deputies a reason to go and clear out young people from those shops. Now in the newspaper, we find out that the deputies are distributing porno tapes and flushing marijuana down the sinks. We need to look into having our own law enforcement. She realizes it is a complicated process but it is time to look into it.

XI ADJOURNMENT

The meeting adjourned at 6:52 PM.

Respectfully submitted,

Peggy Salfen
Recording Secretary