

Local Planning Agency

Meeting Minutes of January 14, 1997

**COPY**

**FORT MYERS BEACH**  
**LOCAL PLANNING AGENCY MEETING**  
**JANUARY 14, 1997**  
NationsBank, Council Chambers  
2523 Estero Boulevard  
**FORT MYERS BEACH, FLORIDA**

**I CALL TO ORDER**

The thirty-third meeting of the LPA Committee was opened on Tuesday, January 14, 1997, at 12:00 noon by John Mulholland, Chairman of the Committee. It was determined that there was a quorum with eight members present.

**Present at the meeting were:** Committee members Linda Beasley, Johanna Campbell, Lena Heyman, Dan Hughes, Ron Kidder, John Mulholland, Betty Simpson and Bill Van Duzer. Also in attendance was Marsha Segal-George, Town Manager and Attorney, and county staff members Nettie Gustison and Pam Houck.

**Excused Absence from meeting:** Roxie Smith

**II INVOCATION AND PLEDGE OF ALLEGIANCE**

The LPA Committee recited the Pledge of Allegiance to the flag and Chairman John Mulholland gave the invocation.

**LPA Input**

Chairman Mulholland

**III APPROVAL OF MINUTES FROM DECEMBER 17, 1996**

**MOTION:** Made by Betty Simpson and seconded by Bill Van Duzer that the minutes of December 17, 1996, be approved. Passed unanimously.

**IV HEARING - TRANSWORLD RESORTS, IN REF. TO GULLWING CONVENTION**

**RESORT HOTEL (Continued from 11/12/96) Case No. 96-09-166.02S**

The above referenced case was heard on November 12, 1996, before the LPA requesting a special permit for the sale or service of alcoholic beverages for consumption on premises with outdoor seating and was continued to allow individual notification to adjoining condominium owners. Notices have been prepared and mailed to 358 property owners. The applicant has provided visual information addressing the consumption on premises for the outdoor seating for which staff has previously made a recommendation of denial.

Martha Segal-George requested that everyone wishing to testify in front of the LPA to stand so that she could swear them all in at once. This was done.

Mr. Mulholland requested that the applicant come forward to speak.

**A. RICHARD MCDOLE**

Mr. McDole identified himself as an agent for the owner. He has tried to take care of some of our concerns in a supplemental application that was presented to the county, gaining their support and approval. The application requires three different types of requests, he noted, a type S, a 4COPSRX and a special permit that is an additional requirement by county ordinance to cover the serving of outdoor seating from the tiki bar, and this is created basically because over the past years the outside

environment became a noise nuisance factor. The hotel, located between two condos, is a sensitive area. Mr. McDole does not feel that there is too much difference between the three properties except that the hotel will deal 100% with transients and will also have convention facilities with the restaurant.

As a supplement to gain the county's support on their application they have shown on a site plan the noise and sound barriers that they are providing for the grounds and for the sixth floor seating area outside of the restaurant and lounge. They have also proposed on their own initiative not to provide any outside entertainment nor any public address system that can be heard outside the building.

Mr. McDole stated that one thing he should point out is that if they were making the application for the liquor license, they would have the right to have outdoor entertainment and a PA system. So basically, by our supporting their application for serving liquor and having outdoor seating and the tiki bar, we are in fact putting an additional limitation on it and controlling the noise factor through the granting of that particular license.

**Questions from the LPA:**

Lena Heyman noted that the sixth floor restaurant, the outdoor area and the meeting rooms have a very large capacity. Will they for fire safety stick to the number of people per room per area for egress from the sixth floor? Mr. McDole told her that it was an enforcement situation and will be mandated. Although they have about 3700 square feet allocated for the restaurant area and lounge area, a note on the plans indicates that the space is limited to a maximum of 150 capacity. Her concern, Lena stated, was when they had a convention. Mr. McDole explained that they have redesigned their original layout for the convention room by putting in three additional stairwells. When they filed for the amendment to reduce the size and add three more tiers of parking on the garage structure and to consolidate their convention, restaurant, lounge and sundeck basically over the hotel structure only, they did not reduce any stairwells. They are now overbuilt as far as stair capacity for exits.

Mr. McDole advised Johanna Campbell that he had submitted a menu to staff, which basically answered her question as to what would be served in the restaurant.

Mrs. Campbell asked for clarification on the structure of the building because right now it was a vacant lot with a few concrete pilings on it and there is a for sale sign outside. Can Mr. McDole or the county staff respond to when it would be constructed? Is the present owner constructing it? Mr. McDole advised that it has taken the owner close to eight years to get approvals to get the development order to basically build the hotel from the condominium that was originally permitted. They have put in all the piles required for the hotel structure itself. They had basically stopped at that point for the owner to continue getting his finance in line for it. Mr. McDole also outlined other matters that had to be taken care of. Now, in the past month there have been serious discussions about the possibility of Mariner Sunstream purchasing the project. Whatever happens between the county, Mariner and Diamondhead might affect this project. However, they will continue to protect their development order and right and permit. They will continue the construction. They have a threshold of about three and a half to four more months before they have to have the next inspection. They are going to start back on the piles of the garage structure very shortly.

Marsha Segal-George noted at this point that next week the LPA will see another possibility with regards to this property even though today it has to deal with a liquor license application. Sunstream has had some discussions with the owners of this property and are interested in pursuing a different tack than a hotel. It has asked to make a conceptual presentation to the LPA next Tuesday with regards to this property, because their plan is to take it back to condos. If, subsequently, there was some kind of sale between Gullwing and Sunstream, Sunstream would not be looking at the liquor permit but would be doing condos.

Betty Simpson asked Marsha if she was talking about going back to the original 57 condos.

Marsha told her that it was her understanding they were going back to the original plans, but she didn't know for sure.

According to Johanna Campbell, at the previous meeting on November 12 the staff had put a paragraph in their recommendation that construction be completed within a year's time and that this is not in the new application. It is in the ordinance, Mr. McDole told her, that they have to pull the actual license within a year of the town's approval or else they must go back and get an extension or else refile.

Does the owner have the property up for sale based on the granting of this request for a special permit or is it just for sale? Dan Hughes wished to know. It's just for sale he was told. It seems to me that this whole thing is premature, Mr. Hughes stated. You don't have the special permit and the special permit would enhance the value of that property and make it much more desirable to a potential buyer obviously. But if that's not the intention of the owner, why are we hearing this at this point? It is the intention of the owner to build this hotel, Mr. McDole stated. It's just been this past involvement with Mariner and Sunstream that has reopened the negotiations for purchase that make it very attractive for him to think about selling. If they come in for a condominium, obviously there are rules there that would prevent them from utilizing whatever permission you grant us at this point, because the zoning statutes prohibit that on a condominium. We're here today with a valid permit and a valid request and not to speculate on what might happen in the future.

Do we normally give permission for a liquor license before a building is built? Betty Simpson asked. Betty was answered by Pam Houck, who stated that Lee County has the practice of approving many many special permits through the planned development process for both residential and commercial. Generally, in conventional zoning districts, they'll run with the construction of the building or be issued after the construction of the building, but it's been done both ways.

**County input:**

**A. Nettie Gustison, Zoning and Development Services**

Ms. Gustison reminded the LPA that this case was heard before us on November 12, 1996, and at that time her recommendation for the requested special permit was to deny. Since the continuance of the case, she did have the opportunity to meet with Mr. McDole, who supplied additional information to the county staff. They reviewed it and have changed their recommendation based upon what he has given to them from denial for the outdoor seating areas to approval with conditions. Ms. Gustison then reviewed before the LPA the changes in buffering that Mr. McDole had submitted to the county staff. It is the staff's opinion, Ms. Gustison advised, that because of the increased buffers in the area and the proposed limitations, as well as the restrictions that he has placed upon the project, that this will provide an extra sound barrier. The staff believes that with these recommended conditions, the special permit then meets the considerations from the land development code and recommends approval with conditions. Ms. Gustison proceeded to outline the conditions for the different areas of the hotel for the regulation of noise, lighting, outdoor entertainment and the service of alcohol.

**Questions from the LPA:**

Mr. Mulholland asked Ms. Gustison what the distance was from the pool and tiki hut to the Island Winds. He was told that the distance was around 60 feet to the north property line. Also asked the distance from the sixth floor dining room to Point Estero. Ms. Gustison said she didn't know.

Johanna Campbell asked if the license 4COPSRX was in conjunction with selling 51% of food in a restaurant, and she was told that it was.

Bill Van Duzer verified that the restaurant presently has a permit and it would have a minimum of 150 seats. They would also have a liquor license apart from what we are doing today for inside

consumption of alcohol. So what we are being asked to approve, he said, is an outside consumption of liquor for two areas. Ms. Gustison stated that they do need to get the approval from the county for the consumption on premises because of the fact that they are within 500 feet of a residential property line. This is a restaurant in conjunction with a hotel, Ms. Houck added. It is a subordinate use and therefore a Group 2 restaurant. It doesn't have the same privileges as a Group 3 restaurant would and that's why it's part of this application instead of an administrative application. Would they be able to serve liquor in that restaurant without any action on our part? Mr. Van Duzer asked, and he was told no.

Lena Heyman asked Ms. Gustison if she had known about Sunstream's interest in the property before Mr. McDole brought it up tonight. Ms. Gustison advised that she had heard of it for the first time yesterday. However, she said, all we can do at this point is address the issue at hand. We can't look into the future to see what they are going to do with the property. Anyone has the right to ask for a special permit, a variance, any type of use on their property.

Johanna Campbell read a paragraph included in the November 12 papers that was not included in the January 14 application request regarding the special permit approval expiring one year from the date of approval unless the operation of the alcoholic beverage establishment has commenced.

Ms. Gustison advised she had not included it again because she felt it had been put on the record at the November 12 hearing. It still stands and is part of their ordinance.

AA was explained to Dan Hughes by Ms. Gustison to stand for administrative approval.

Ms. Houck was asked by Dan Hughes if the conditions of the special permit could be amended, and she advised that if the special permit is approved with these conditions, the conditions will be part of the resolution of approval and will run with the land in perpetuity unless the ordinance is amended in such a manner that it will affect that approval. The specific approval would have to be amended through the public hearing process. The real issue, Ms. Segal-George added, is enforcement. No one is going out there to make sure conditions are being complied with unless someone complains.

## **B. PUBLIC COMMENTS ON GULLWING**

### **1. GENNARO VENTURO**

Mr. Venturo stated that we are trying to promote Fort Myers Beach as a family oriented beach and if you have a resort type establishment down here, you are going to get more transients than you would if you had strictly condominium. We don't need another restaurant or lounge on the beach, he said, with a full liquor license.

### **2. MYERS THURBER**

Mr. Thurber, president of Island Winds Condominium Association, stated that he was speaking on behalf of the association. The board of administrators of the association, he advised, objects to the request for permits for the sale of alcoholic beverages by the Gullwing Hotel Resort and he gave the reasons for their objections, which included noise level and undesirable activity by patrons in a residential area.

### **3. JOHN CAPPS**

Mr. Capps is the president of Fairview Isles Condominium Association and stated that he resides 23 yards away from the Gullwing site, which they have watched become a garbage dump for the last 12 years. He considers the area one of the finer residential districts on Fort Myers Beach. They had previously learned that there would be three lanes to the property and now learn that there will be a fourth lane right at the entrance to the Fairview Subdivision, which is Albatross Street and a prime stop for school buses. This means that when the children enter or exit they will be coming across four lanes of traffic. The beach access will shrink when the building is completed. We in Fairview, Mr. Capps stressed, are undeniably opposed to the sale and service of alcoholic beverages in this extremely fine, large residential area.

Mr. Mulholland was told that the Fairview Association also had 150 names on a petition and he advised that this could be left with the LPA. Dan Hughes requested that the heading on the petition be read into the record. Mr. Capps advised that there were two petitions, one signed by Fairview Isles Condominium Association residents that states: "The undersigned as permanent or seasonal residents residing within 100 yards of the proposed Gullwing Convention Resort Hotel request that the town of Fort Myers Beach Local Planning Agency do not allow a special permit for the sale or service of alcoholic beverages on the Gullwing premises." The other petition is signed by Fairview Isles Subdivision owners and states: "The undersigned homeowners of the the Fairview Isles Subdivision, which has deeded beach access adjacent to the proposed Gullwing Convention Resort Hotel, request the town of Fort Myers Beach Local Planning Agency do not allow a special permit for the sale or service of alcoholic beverages on the Gullwing premises."

Dan Hughes expressed his dislike of petitions being made up before it is known what the conditions would be on a piece of property.

**4. ANN JACKLE**

The Jackles have been residents of Fairview Isles for about ten years. Mrs. Jackle read a quote from the State Division of Alcoholic Beverages. "The island contains 2% of the county's population and almost 10% of the county's alcohol licenses." Many of the accidents on Estero Boulevard have been alcohol related.

**5. BILL JACKLE**

Mr. Jackle said that he concurs with everything his wife has said.

**6. BILL BENSON**

Mr. Benson is a condo owner and six-month resident of Fairview Isles. He and his wife are deeply concerned that the issuance of a liquor license in their area will substantially and forever change the character and value of the area for the residents. They see a potential for noise and traffic and urge the LPA to deny this license and help them preserve this area's present character. Mr. Benson asked if the liquor license was transferable with the sale of the property to a new owner and would the permitted use for a hotel resort also be transferred to a new owner. Ms. Gustison said that as they had stated previously, it would run with the land. If new owners took over, they would have to reapply for the actual license itself.

**7. RON MUEHLFELT**

Another resident of Fairview Isles, Mr. Muehlfelt has been a taxpayer on the Beach for 17 years. Before purchasing his condo, Mr. Muehlfelt said that he checked with a few of the people on the board to find out just how many liquor licenses would be issued. According to Sunday's paper, not much has been done about it because Fort Myers Beach is the biggest waterhole around. He questioned and got the signatures of people at Fairfield Isles and found that they are fed up with the traffic and the problems at the corner of the Gullwing property. It seems to him that Fort Myers Beach can't handle the traffic now. What are they going to do with more? The people in the area are also strictly opposed to the liquor license. Asked by Mr. Mulholland if the signatures he mentioned were part of the petition that Mr. Capps has, Mr. Muehlfelt replied yes.

**8. JOHN VINCENT PINE**

Another resident of Fairview Isles, Mr. Pine said he has been aware of this project since his appearance on the Beach about ten years ago. He has come to the conclusion, he said, that we're talking about an illusive kind of project. He himself has observed the for sale signs that were displayed on the property. It's very difficult for him to understand how anyone could ask for an application for a specific service and then have all intentions to sell the property and all the benefits that went with the property. It's a matter of not looking to receive a license to operate a business but rather to enhance the business that's about to be sold. Mr. Pine said that when he sees that across the street from Fairview

Isles they are going to put 120 units on a very very small lot, he wonders if anyone truly understands what that kind of density in a building really means. They heard the county say that they will require a 15-foot buffer zone on either side of the project, which he feels will reach across and touch the adjoining building. He feels that despite assurances to the contrary, entertainment will exist at the convention center. With regards to the intersection, this, he said, is where children catch a school bus and where other residents use the bus stop to sit and congregate.

**9. LAURA MUNSFORD**

As their manager, Mrs. Munsford stated, the owners of Pointe Estero Condominium have asked her to speak on their behalf and state that they are concerned that this type of operation will create a lot of noise for their property and become a nuisance.

**10. PAUL SNERBERGER**

President of the Island House Beach Club, Mr. Snerberger asked whether a liquor license is assigned to an individual or is part of the land. He was told that what they were dealing with here is the basic zoning that allows for a liquor license, and that runs with the ownership of the land, the location. The person actually operating the bar or restaurant would also have other licensing requirements from the county that would be individual to the licensee, but what we're dealing with is the right to serve liquor on those premises.

**11. RICHARD MCDOLE**

Mr. McDole, agent for the owners, said he would like to clarify the discussion about the turning lane. The turning lane is an X cell and D cell type of lane entering the property only. It is not basically to be utilized for the traffic going past the property. So the three lanes that exist would still be exactly as they are now and not interfered with. It's more of a turn lane that goes from the property north that is taking the southbound traffic to get off and out of the traffic lane so that those people traveling past the property do not have to slow down. It shouldn't create a problem for the intersection.

**MOTION:** Made by Johanna Campbell and seconded by Lena Heyman that this whole application for the liquor licenses be denied.

**Discussion:**

Her main reason for denial, Johanna indicated, is because we would be giving a liquor license to a vacant lot that is not only vacant but is also for sale. She thinks that it would be more appropriate that when this building is constructed that the owners come back at that time and ask for a liquor license.

She knows the staff personnel had said that the county occasionally gives liquor licenses to vacant lots, but she doesn't think that we have to follow everything that the county says, and at this point since we have this type of case here, she thinks we ought to start a precedent that we do not give liquor licenses to vacant lots. Let's give them to people who own the building and who are requesting it and are going to be there managing it.

Bill Van Duzer said he felt it would be very difficult for someone to pull a permit and build a building not knowing whether they would be allowed to have a restaurant or a liquor license, because in most cases people who have a restaurant want a liquor license to go along with it in order to make it a financially feasible thing.

Lena Heyman stated that they should have known when they went to the county that they would have to go for a special permit.

Dan Hughes said that he was partially in agreement with Johanna and also with Bill. The serving of liquor outdoors and the liquor licenses are in his opinion a quite normal corollary to a hotel. He doesn't know of any hotel that doesn't have a restaurant and a bar. It's just where it's located that's the problem.

Mr. Hughes then proceeded to explain a CT zoning, which he said is a very broad zoning. He would have to go along with the motion in light of the situation, however.

Mr. Mulholland advised that his areas of disagreement are principally with the outdoor serving of liquor and entertainment and noise because it would be too close to their neighbors. He does agree that as a hotel and restaurant they would have the right to an indoor liquor license.

Mr. Van Duzer said he takes exception to anybody referring to Fort Myers Beach as a watering hole. When they say our population is 2% of the county's, he'd like to know what month they determined that. He thinks that right now we are about 10% of the population of Lee County and perhaps higher than that if we include the day trippers. He is also concerned that this property is zoned properly for the intended use and that in that usage one of the allowable things is a restaurant. He is concerned about the outside noise. He does think that this project could go ahead with a restaurant with no limitations to outdoor seating if they didn't have alcohol or noise. With the conditions that have been stipulated, the project could go on as well if the conditions were adhered to. He feels he must keep weighing things, however, before he can make a decision.

Asked was if it wouldn't be appropriate to continue this matter until we hear Sunstream's presentation.

Mrs. Segal-George advised that it is her understanding that there have been discussions between the owners of Gullwing and Sunstream about Sunstream's potential purchase of that property. She believes that Sunstream owns the adjacent property and it is their desire to have Gullwing become condos again and not be a convention hotel. It is also her understanding that these discussions are separate from the discussions between Mariner and Sunstream with regards to Virginia Beach. Sunstream wants to make a conceptual presentation before the LPA, but they have not agreed on price. What they would like is a feeling for whether or not their purchase would be received favorably.

Betty Simpson noted that the residents have a lot of concern over the property. She, too, has a problem with the liquor license for vacant land. But she understands Bill's point of view of how are you going to market something if you don't know that eventually you are going to be able to get a permit. Her main concern is with the safety issue since this is a residential area. There is also the matter of a possible change in ownership. There is an awful lot on our plate, she stated.

Bill Van Duzer leaned toward the possibility that this could be continued until they heard the conceptual presentation. He is going to vote against the motion in the hopes that we can continue this for two weeks or thirty days.

Ron Kidder asked if we pass Johanna's motion for no liquor, at that point could we then go ahead and do what Bill has said and hold this off for a couple of weeks and can they bring it back? If we go ahead and pass Johanna's motion and it fails and we go ahead with the liquor license, then we're stuck with the liquor license.

Whatever we do, Mrs. Segal-George advised, it's a recommendation that's going to be put in front of the council. If Johanna's motion is voted on, we have voted to deny and that recommendation of denial will be forwarded on to the council and then the council will basically determine whether they accept our recommendation or don't accept it. Even if a conceptual presentation is made next week, that's not going to decide anything either. All that's going to do is show us what may be the potential use of the site. And if it was positive, they are going to have to go through some process to convert it to condos. What we could do is put this on hold for thirty days or sixty days to see what clears out amongst the parties and then have it come back and not forward it on to the council. Gullwing's representatives, however, may feel that that's inappropriate and petition in some way for the LPA to forward it on to the council and take their chances with the council.

If it's denied, is there any time constraint on when they could re-petition? was asked.  
Pam Houck advised that if it's a flat out denial, they have to wait twelve months. If it's a denial without prejudice, they can come back in at any time.

Ron Kidder expressed his doubts that the property owners were sincere in their intentions to do something with the property since for all these years it has just been an eyesore and not even the weeds have been cut.

Dan Hughes said he would like to amend the motion to change it from an outright denial to a denial without prejudice. He thinks that a continuation would be too ill-defined for us to proceed again on it and at the same time it allows them to come back. He would like to add the words "without prejudice."

**MOTION:** Made by Dan Hughes and seconded by Bill Van Duzer that the motion for the whole application for the liquor licenses be amended to be denied without prejudice. Motion passed with five yes votes and three no votes.

**Discussion:**

Johanna advised that she would not support the amendment to her motion with the words "without prejudice." She would prefer for the owner to come back within a year's time because she is hoping that by then he would have had his project well on its way so that we could all see what he was intending to do.

Ms. Houck advised that if "without prejudice" is included in the motion, it means that the owners can come back at any time. If it is just a plain denial, they will have to wait twelve months.

**MOTION:** Made by Johanna Campbell and seconded by Lena Heyman that this whole application for the liquor licenses be denied without prejudice, as amended. Passed unanimously.

Johanna complimented the county staff for an excellent job in notifying residents, as evidenced by today's turnout. Mr. Mulholland concurred with Johanna and announced that the hearing was closed.

**V HEARING - NORM & BEVERLY PRIMEAU, in ref. to West Coast Surf Shop**

**Case No. 96-10-095,05V**

Chairman Mulholland announced that this hearing was being held for a) a variance in the commercial district from the parking space requirement of one space for 200 square feet of total floor area, requiring 29 parking spaces for a retail establishment specializing in small products or commodities, Land Development Code Section 34-2020(2)M.2 to allow 0 parking spaces; and b) a variance in the C-1 District from the minimum required side setback of 15 feet for Land Development Code Section 34-844 to allow 0 feet; and, c) a variance in the C-1 District from the minimum required rear setback of 25 feet for Land Development Code Section 34-844 to allow for 0 feet

Marsha Segal-George swore everyone in who planned to give testimony.

**A. JOANNE SUMMER**

Ms. Summer identified herself as a resident of Fort Myers Beach and a consultant for Mr. Primeau. With the use of visuals, Ms. Summer demonstrated the remodeling project Mr. Primeau wants to do. An existing variance that he got in 1993 already allows enclosing several areas and he now needs a variance to relocate an existing fire escape to the back of the building. Regarding the parking issue, they wish to change the language from "to allow 0 parking spaces" to read "to allow as shown on the site plan." Ms. Summer pointed out eight spaces on the site plan for the LPA. Mr. Primeau had 29 legal existing parking spaces but due to the improvements of the Times Square project, he has lost most of those spaces. He would like to add another entrance to the building. He is also adding an elevator and handicapped bathrooms on the bottom floor. They have a letter from the CRA recommending approval.

Johanna Campbell pointed out a sentence reading "he opted not to go with the overlay plan." What would have been the difference? she inquired. Ms. Summers said she believed that if he went with the plan, he would only be allowed a one-third reduction in his parking spaces. It was pointed out that Mr. Primeau voluntarily gave up parking spaces in order to have the entrance into Top O' the Mast. Mrs. Segal-George noted out how accommodating Mr. Primeau has been in giving up property.

**County Input:**

Nettie Gustison specified the three variance requests, one of which is a parking variance and the other two setback variances and she described the location and size of the property. The property, she noted, consists of two lots, Lot 6 and Lot 7. They are relocating an existing stairwell presently in the southeast corner of the property. They are required to have 29 parking spaces on the site and are asking to go down to eight parking spaces. County staff has recommended approval to 0 for the side setback. They would have to comply on the rear setback because in ordinance 96-20 there is no relief and they would have to comply with the 25-foot setback. Subject property is zoned C-1. It is located in the Times Square overlay district master plan. Landowners are encouraged to redevelop or develop their property in accordance with the plan. There is commercial zoning surrounding the property. There are restaurants and beach oriented retail sales located in the area. Ms. Gustison has recommended approval for all three variance requests. For request a, she has recommended approval for the parking. For requests b and c, the side setback and the rear setback, she has recommended approval with the condition that it is limited to the site plan that is attached to her staff report as Exhibit B.

Ms. Gustison answered questions from the LPA.

**LPA Questions:**

Ms. Gustison acknowledged to Mrs. Simpson that the side setback was really being changed from 2 feet to 0 and not from 15 feet to 0, since 2 feet was approved in 1993. The other setback is actually being changed from 15 to 0 and not from 25 to 0.

According to Ms. Gustison, the proposed additions will not have a negative effect on traffic.

**B. PUBLIC INPUT**

Mr. Primeau thanked everyone present for the accolades he had received and said that he would like a recording to give to his wife. The store was first built in 1984 and at that time they didn't have the competition that they have in Times Square today. He has always been proud of his building and would like to have the nicest building in Times Square when he gets done remodeling. It will not be a cheap matter.

**MOTION:** Made by Johanna Campbell and seconded by Linda Beasley that we approve the application with the condition. Passed unanimously.

**Discussion:**

Mrs. Campbell said she really appreciated Mr. Primeau's relinquishing of his parking spaces and she is hoping that maybe he could take it a step further and try to make arrangements among some of the other merchants to let his customers park in some of their areas.

Betty Simpson said she feels the request is consistent with the goals, objectives, policies and intent of the Fort Myers Beach comprehensive plan. She believes it meets the distance separation for the proposed use. It's consistent with densities, intensities and general uses set forth in the comp plan. She is in favor of the motion.

Dan Hughes would like the motion reworded to say that Johanna moves to adopt the resolution presented to the LPA prepared by the Town Manager to show parking spaces as shown on site plan D.

Bill Van Duzer said he understands why they don't want to be involved in the master plan overlay, but we would like to try to keep the architectural design along with what's required and what's suggested in that ordinance. Is that a possibility? Mr. Primeau stated that the colors of the building were probably going to be green and cream. The very top of the building will not be changed at all and he understands that that is sort of a landmark. They will try to keep the rest of the architecture somewhat in line with a Key West ambience.

**VI HEARING - GEORGE GANIN & SERAPHINA TARICK (continued from 12/2/96)**  
**Case No. 96-08-175,025**  
**(Rescheduled to February)**  
This hearing is now rescheduled for March.

**VII REVIEW OF SIGN ORDINANCE: PARTICULAR EMPHASIS ON SANIBEL AND CAPTIVA SIGN REGULATIONS**  
Mr. Mulholland asked the LPA to review the Sanibel ordinance and compare it to the Captiva ordinance. Ron Kidder advised that a review of signs will include size, how they're lit, how to deal with temporary signs and banner signs, etc. Johanna would like for Ron to bring back the pictures of signs. Mrs. Segal-George suggested moving signs to February 4 as well as reorganization.

**VIII UPDATE ON SUBCOMMITTEE ASSIGNMENTS:**  
**A) BUILDING HEIGHTS -- BILL VAN DUZER**  
Bill has people assigned to the different sections. Each section has somewhere in the neighborhood of 150-200 structures. Once the information has been gathered, someone else will have to collate it, Bill advised.

**B) SIGNS -- RON KIDDER**  
As above.

**C) PUBLIC PARTICIPATION -- LENA HEYMAN**  
There was a subcommittee meeting on Friday at noon with Lena, Dan Parker, Sherri Smith, Bob Keane and Carol Cunningham. They reviewed and refined the draft that Carol brought. More packets have been distributed. Lena advised that they will buy lasagna and bake it at the church if they don't come up with people to do the dinner.

Mr. Mulholland said he sent letters out and got responses from six organizations. The Chamber might help them with dinner. He will also press the Legion for dinner. Other organizations may help with advertising.

**D) BACK BAY/HARBOR -- JOHN MULHOLLAND**  
No report.

**E) TAC/MPO -- DAN HUGHES**  
Dan will attend his first TAC meeting in February.

**F) BEACHES -- ROXIE SMITH**  
Roxie, who is absent today, has been told she has been put on this subcommittee.

Johanna Campbell said she knows that Betty has just been appointed to the steering committee for the Historical Society and wonders if she could report back to us as to what's going on with the Mound House.

**IX NEW BUSINESS: LPA MEMBER ITEMS**

Mr. Mulholland reported that he and Betty Simpson attended a City of Sanibel legal seminar, which was excellent. He obtained a book that he urges everyone to read.

Betty Simpson advised that government and Sunshine was discussed at the seminar as well as ethics for public officials, liability and the hearing process. She would encourage everyone to attend one of these seminars.

Lena Heyman reported that she and Bill are going to be on Mr. Stilwell's daughter's Florida Journal show between 5:35 and 5:40, Channel 10, on Continental Cablevision. She will let the LPA know which day they choose.

Bill Van Duzer expressed his concern about their time frame for doing things. We need to get back to the comprehensive plan. Marsha explained that Bill Spikowski won't be coming back until February 18. Meanwhile, February 4, 11 and 25 are open. She does admit that the hearing schedule is picking up. Ways for being more frugal with meeting time were discussed. Lena reminded everyone that we have to take more than a year to do the plan anyway because we can't afford the entire amount within one year.

Johanna expressed her concern that we have not yet touched on traffic. Marsha advised that Carol Cunningham has inventoried and compiled all of the traffic studies that have ever been done on the Beach and she is trying to distill all of that into a preliminary document. This will set the framework for the consultant. As discussed, we don't want to keep redoing things that have already been done. Asked if we could have hearings in the evening, Marsha advised no.

**X PUBLIC COMMENTS AND INQUIRIES**

**A. ANDRE PRIEM**

Mr. Priem noted that we know that there are a number of vested development interests on the Beach about which you hear people say we can't do anything about this. When there's a development order for a kind of use that doesn't fit our sector plan and is not economically viable unless it gets a special permit, this presents a way for something to come back as some other kind of development. Mrs. Segal-George noted that there are certain things that we have the ability to do and other things we don't have the ability to do.

**XI ADJOURNMENT**

Chairman Mulholland adjourned the meeting at 3:00 P.M.

Respectfully submitted,  
Lorraine Calhoun  
Recording Secretary

**Reminder:** The hearing for January 28, 1997, has now been scheduled as a conceptual presentation by Mariner and Sunstream as hosted by the LPA.

**IV APPROVAL OF MINUTES FROM JANUARY 14, 1997 AND JANUARY 21, 1997**

**Corrections to January 14 minutes:**

1. On pages 8 and 9, Joanne Summers should read Joanne Semmer.

**MOTION:** Made by Betty Simpson and seconded by Johanna Campbell to approve the minutes of January 14 with correction noted. Passed unanimously.

Approval of the minutes of January 21 will be deferred until the next meeting.

Marsha Segal-George advised the LPA that all the minutes are now on Internet.

Local Planning Agency

Meeting Minutes of March 3, 1997

**FORT MYERS BEACH  
TOWN COUNCIL MEETING  
MARCH 3, 1997  
Nations Bank, Council Chambers  
2523 Estero Boulevard  
FORT MYERS BEACH, FLORIDA**

**I CALL TO ORDER**

The meeting was opened on Monday, March 3, at 6:33 P.M. by Anita T. Cereceda, Mayor.  
Present at the meeting were: Anita T. Cereceda, Mayor and Council Member; Ted FitzSimons,  
Vice Mayor and Council Member; Council Members Rusty Isler, Ray Murphy, and Garr Reynolds; Marsha  
Segal-George, Town Manager; and 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 Father Thomas Goggin of Church of the Ascension.

**IV PUBLIC COMMENT**

**A ANN MENZIES**

Mrs. Menzies would rather not see signs that say "no dogs allowed", but rather "dogs  
under control". Her dogs are always well-behaved and she would like to take them for walks on the beach.

**B GENE FICHTER**

Mr. Fichter is opposed to all dogs on the beach. The sign says \$500 fine and it needs to  
be enforced. There are too many people who do not pick up after their animals. He volunteered an ATV  
and to issue warnings, nicely, four days a week for free.

**C HOWARD RYNEARSON**

Mr. Rynearson agrees with both speakers. He really feels there should be no dogs allowed  
on the beach. But people who own animals should have a place to walk their animals without hurting  
someone else's property. Even on the sidewalk, people do not pick up their animal droppings. If people  
will pick up after their animals they should be allowed, but it must be enforced on the beach. We are bare  
bones and he wants to keep it that way. But we'll have to put up a little money to get enforcement started to  
stop people who are abusing our community. Perhaps a \$100 fine the first time and then \$500 the second  
time would get their attention.

**V APPROVAL OF MINUTES OF FEBRUARY 17, 1997**

**Motion:** Mr. Reynolds moved and Mr. FitzSimons seconded that the minutes be approved as  
submitted. The motion passed unanimously.

**VI REVIEW OF EXPENDITURES**

Mr. Reynolds asked about several invoices which did not seem to match with what was being  
paid. Peggy Salten explained that because of the two-week cycle of Council meetings, some of the invoices  
were late in being paid. Now that the Council has decided to receive monthly computer financial reports,  
the bills will be paid weekly.

**VII PROCLAMATION ON CROP WALK DAY**

Mr. Murphy read the proclamation and presented it to Father Thomas Goggin, president of the  
Beach Ministerial Association, which is sponsoring the CROP walk on the beach. Father Goggin thanked  
the Council and explained that the walk is a joint effort of the churches on the beach to raise money for  
hunger. The walkers will go 3.5 miles from Church of the Ascension to Chapel by the Sea on March 9.

**VIII PRESENTATION ON "BEACH KIDS" FUNDRAISER**

Jennifer Kaesner spoke about "Beach Kids" which was begun by beach resident David Essel and tries to meet the needs of local children who are lacking essentials such as clothes and school supplies.

"Beach Kids" relies on donations, and since Ms. Kaesner directs a children's theater group called Paradise Players, they have decided to give a benefit performance. They will perform their play on Monday at 6:30 and 7:00 PM as a fund-raiser. Tickets are free but they will ask for a \$2.00 donation at the door.

#### **IX UPDATE ON THE LPA**

Betty Simpson, Vice-Chairman of the LPA, reported that during the month of February the LPA decided to continue with their present leadership. They discussed sign regulations and have formed a sign subcommittee which is studying sign ordinances from other cities. Mr. Van Duzer is studying building heights and uses. They had a public hearing on February 11 and passed a recommendation on to the Council. They are looking at possible zoning changes. At the February 18 meeting they had a follow-up to the community workshop. Carol Cunningham gave a summary of the comment sheets which were received. Bill Spikowski spoke about commercialization on the island. The next design workshop will be on March 22 from 9 AM to noon at the Methodist church. They will dedicate May to discussing traffic. They are going to take a break in July and August.

#### **X COUNCIL MEMBERS' ITEMS AND REPORTS**

##### **A RUSTY ISLER**

Mr. Isler passed out a proposed letter to the TDC supporting the attorney general's ruling that tax dollars can be used to purchase public property and encouraging them to buy the Virginia beach property. Mayor Cereceda said her concern about the letter is that it is about a particular piece of property. She would rather send the letter supporting acquisition of property as a policy. Marsha Segal-George explained that normally the Town would look at all properties that might be available and prioritize them. She said it is important to prioritize what they think is most important to go after because lots of other people are going to want this money too if it becomes available. Mr. Reynolds said that other places in Florida have been using TDC funds for land acquisition and he supported sending the letter. He questioned the assumption that the Virginia property would cost \$4-5 million. He thinks that just because the investor has spent that much on the property, they have not put improvements on it and the land itself is not worth that much on the open market. Ms. Segal-George replied that the only choices are to pay what the owners are asking or to go for condemnation, but you must have a real purpose for condemning it. That piece of property would have a higher price tag because of the development rights. Mr. FitzSimons said that back in the summer before the permits had even been approved through the Court system, the investors were throwing out the figure of \$5 million. The value of the property is related to the package of the development rights, and the permits allow a 154-unit convention center, 200-car parking garage and a major restaurant which is very valuable. Mr. Roosa said that the value of the property is greater because of the income value from 154 units. It would be worth a lot less if it were zoned differently and would generate less income. Ms. Segal-George said that the BOCC is talking about the issue now and have asked the County Attorney to give an opinion. On Friday the Town is planning to submit Virginia Beach on their wish list to TDC along with other fund requests. Mr. Gucciardo suggested that the Town write a letter to the Commissioners requesting that TDC funds be allowed to be used for acquisition of property, and in a separate request, that the Town put Virginia Beach on a grant application to the TDC. The Council agreed.

Mr. Isler also mentioned that the official stand of the Town regarding Bowditch Point has been to let the process go through channels. He thinks the Council should instead take an aggressive stance in opposition to the land swap. He is afraid that if it goes through all channels and comes to the Council and gets turned down, that the Town might get sued. Mr. Roosa expressed an opinion that the Town would not be likely to be sued for refusing the land swap although there is no guarantee. Mr. Isler decided not to pursue the issue since it seemed that the majority of the Council was in favor of letting the process take its course.

##### **B TED FITZSIMONS**

Mr. FitzSimons had no items to bring before the Council.

##### **C GARR REYNOLDS**

Mr. Reynolds handed out a paper summarizing the views about Bowditch that he has gathered from other people.

He also mentioned a letter he received today from a woman who was concerned about the purchase of the Troutman property. He wanted to assure her and others that the Town would not be using ad valorem money for this, but would be applying for 2020 money, etc. for the purchase.

He also mentioned the problem of dogs on the beach and suggested possibly designating a certain beach for dog walking. He thought perhaps Bowditch point where it is dangerous to swim might be a good location. It was pointed out that it is County property.

He also mentioned the new double striping before the crosswalks and extra wide lines. New signs will also be put up. These things should help but he felt that the Town needs more driver education.

**D RAY MURPHY**

Mr. Murphy had no items to bring before the Council.

**E ANITA CERECEDA**

Mayor Cereceda mentioned a letter she had written to Elaine McLaughlin asking for a meeting about spring breakers. She asked the Council to give her some direction about how the Town feels about spring breakers because the media is getting the idea, apparently from TDC, that the Town is opposed to them. Mr. Isler felt they have the right to be here and should not be discriminated against. Mayor Cereceda asked if the Council agreed that we will welcome anyone and everyone to our island, as long as they "use us but don't abuse us." The Council agreed it should not be considered a negative thing, but not necessary promoted, although the crowd should be self-limiting due to available hotel space.

**XI FIRST READING OF THE CONTRACTOR'S LICENSE ORDINANCE**

Mayor Cereceda read the titles. Public hearing was set for March 17.

The Council took a break at 8:25 PM and reconvened at 8:38 PM.

**XII DRAFT DISCUSSION OF PARKS AND RECREATION ORDINANCE**

First reading was set for March 17. Mr. Roosa explained that the definition of parks means we already have parks (Times Square, Town Hall, public beaches that are not the county's, etc.) This is identical to the County's ordinance and intended to cover some gaps.

**XIII RESOLUTION ON PURCHASE OF BUFFER LANDS WITH SANIBEL**

It was explained that this came out of the joint meeting with the Sanibel City Council. It would encourage preserving land between the two islands. It is not intended at this time that residents would be taxed except through 2020 funds, etc.

**Motion:** Mr. FitzSimons moved and Mr. Murphy seconded that the resolution be accepted. The motion passed unanimously.

**XIV NEW BUSINESS**

**A EXECUTION OF GRANT WITH FLORIDA COMMUNITIES TRUST FOR THE MOUND HOUSE**

Marsha Segal-George explained that the grant forms have been completed and it requires action by the Council to execute it.

**Motion:** Mr. Murphy moved and Mr. Reynolds seconded that the mayor be directed to sign the grant. The motion passed unanimously.

**B EXECUTION OF GRANT WITH FLORIDA DEPARTMENT OF STATE ON MAIN STREET**

**Motion:** Mr. Murphy moved and Mr. FitzSimons seconded that the mayor be directed to sign the grant. The motion passed unanimously.

**XV TOWN MANAGER'S ITEMS AND REPORTS**

Marsha Segal-George reminded the Council that Walter Kulash will be making a presentation to the LPA on traffic calming tomorrow night and she encouraged their attendance.

**XVI TOWN ATTORNEY'S ITEMS**

Mr. Roosa mentioned a letter that was forwarded to the Town from the County regarding a request for an extension of construction permits at the Best Western Pink Shell Beach Resort. They contend that the possible land swap may influence their plans for a convention center and they would like an indefinite extension until that has been decided. Mr. Gucciardo told the Council that generally the first request for an extension is granted administratively. This is a first request but it is different because they are asking for indefinite extensions. It was decided to put it on the agenda for the next meeting.

**XVII PUBLIC COMMENTS**

**A DAN PARKER**

Mr. Parker reported that the Charter Review Committee is having its first meeting tomorrow night at 6 PM. Ilene Barnett was elected as chairman at their organizational meeting. He noted that all changes must be approved by the Council and again by the public in a referendum. The committee would like to give regular updates to the Council.

**B BOB GAYDOS**

Mr. Gaydos asked the Town to pass a resolution affirming the water restrictions set forth by the Southwest Florida Water Management District. The fresh water supply is getting low and we may soon find it too low for bathing, drinking or putting out fires. It is not unusual to see condos washing off their concrete which is a waste of our freshwater supply. We should use water resources, but not abuse the privilege. It is the duty of the Council to protect the Town. The staff was directed to check with the water district to see if a resolution would be appropriate at the next meeting.

The meeting was adjourned at 8:57 PM.

Respectfully submitted,

Peggy Safen  
Recording Secretary

**FORT MYERS BEACH  
TOWN COUNCIL MEETING  
MARCH 17, 1997  
Nations Bank, Council Chambers  
2523 Estero Boulevard  
FORT MYERS BEACH, FLORIDA**

**I CALL TO ORDER**

The meeting was opened on Monday, March 17, 1997, at 3:00 P.M. by Anita Cereceda, Mayor. Present at the meeting were: Anita T. Cereceda, Mayor and Council Member; Ted FitzSimons, Vice Mayor and Council Member; Council Members Rusty Isler, Ray Murphy, and Garr Reynolds; Marsha Segal-George, Town Manager; and 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 the Reverend Raymond Kress of St. Raphael's Episcopal.

**IV PUBLIC COMMENT ON THE AGENDA**

There was no public comment.

**V APPROVAL OF MINUTES**

**A FEBRUARY 13**

**Motion:** Mr. Murphy moved and Mr. Reynolds seconded that the minutes be approved as submitted. The motion passed unanimously.

**B FEBRUARY 27**

**Motion:** Mr. Murphy moved and Mr. Reynolds seconded that the minutes be approved as submitted. The motion passed unanimously.

**C MARCH 3, 1997**

**Motion:** Mr. Murphy moved and Mr. Reynolds seconded that the minutes be approved. After discussion, the motion passed unanimously.

**Discussion:** Mr. Reynolds said that on page 1, item IV(B), it should be clarified that Mr. Ficter volunteered to patrol on an ATV. He also mentioned that on Page 2, item X(A), after the last sentence, he would like to have it in the written minutes that he agreed with the course that Councilman Isler suggested even though no vote was taken. He also said that on page 3, item X (C) at the end regarding crosswalks, he intended to say that the Town needs more media publicity regarding crosswalks and drivers.

**VI REVIEW OF FINANCIAL REPORTS FOR THE MONTH OF FEBRUARY**

There were no comments on the financial reports.

**VII PRESENTATION BY WAYNE DALTRY (SOUTHWEST FLORIDA REGIONAL PLANNING COUNCIL) ON REGIONAL HARBOR PLAN**

Mr. Daltry spoke about the problem of boater regulation under so many different jurisdictions. There are about 80,000 boats now in our region and that number could double. They have established a regional harbor board as a non-regulatory alternative to asking the state to establish a statewide boating regulation on anchorage. He is speaking to all the local governments to promote the program which will help with mediation, education and technical assistance rather than adding more policing and regulation. Boaters would then know that the same rules apply all along the coast. They are asking that the Town Manager and Town Attorney review the program and hopefully the Council will sign a memorandum of agreement with the Regional Harbor Board.

**VIII PRESENTATION BY ROLAND OTTOLINI ON BEACH RENOURISHMENT PLANS  
(REPRESENTING THE COASTAL ADVISORY COMMITTEE)**

Mr. Ottolini, with Lee County Division of Environmental Services, reported that the CAC is finishing a long-range beach erosion control plan that will be submitted to the state this month. He introduced engineering consultants Ken Hunniston and Bret Moore who have been doing a feasibility study on Estero Island to evaluate the condition of the shoreline where there is high erosion and how to deal with it. In 1970 the Corps of Engineers authorized an erosion control project for Estero Island, but it never went into design and was never built. They are now reevaluating it and he showed a timeline which estimated that it will probably be 2002 before construction could begin because it would require reauthorization from the federal government because it has been so long since it was originally authorized. He showed another time line about how fast a project could be completed if a local government were to take on the project by itself (about 3 years.) The third alternative (which they are recommending) is where the local government starts the project and then gets reimbursed from federal government later. It would take a little longer than the second alternative because they would have to comply with all the Corps of Engineers guidelines. It could be completed in about 4 years and without additional expense to the local government. The original Corps project entailed the northern 4.6 miles of the island and included a groin structure at the north end to reduce loss at Matanzas pass. The beach berm would be 50' wide and 4' high. He thinks that is inadequate and they are recommending a berm that is 5.5' high with a width of 150'. They also recommend two shorter groin structures at the north end. They are also recommending some renourishment at the south end (70' wide), and the placement of a groin structure at the pass. The Corps plan would cost about \$2.5 million, with an annual maintenance cost of over \$900,000. Their recommendation would cost \$9 million, with an annual cost of around \$550,000. The federal share will only be about 3% of the renourishment cost and 65% of the groin construction. State beach management will fund up to 50% of the project (although our project will probably not qualify for that much because of access and parking.)

**IX PUBLIC HEARING  
A CASSON 96-11-153.05V**

Charles Bigelow, attorney for the applicants, stated that the property is on the corner of Sterling and Estero. The variance request is to permit a deck which has already been constructed. The applicant was renovating the house to make it structurally sound. A small deck on the west side needed to be replaced and she didn't realize she needed permits. She hired a licensed carpenter to build the new deck and he failed to get the permit. He described the applicant as an innocent person trying to do the right thing, who made some mistakes but there was no real harm or impact because all of the neighbors say it is fine and that it doesn't impact them negatively. Mr. Roosa swore in Ms. Chris Swihura who stated that when she bought the house she had an inspection and was told that the deck, which was the only entrance, was unsafe and must be replaced. She had never owned a house before. She called some carpenters and didn't know she had to call a contractor. She got an estimate and put the deck up. A complaint was filed, she applied for a permit, and the hearing examiner decided this was an extension, not a replacement, and the variance was denied. The LPA recommended that she cut 5' off the deck, but in order to do that she would have to remove the whole deck and rebuild it. The neighbors closest to the where the encroachment is do not object to the deck. Mr. Bigelow circulated pictures of the deck. He explained that this is technically a rear setback and should be 20' back. But since this really looks like a side setback, the LPA was willing to accept 7.5' but the deck is at 2.5' now. It has already cost her about 3 times the cost of the deck and if this is passed she would have to spend even more. Mr. Reynolds expressed concern because there are so many cases like it on the island and he is concerned that the Council will have to give unlimited variances. Mr. Bigelow recommended that the rules should be applied strictly if there is evidence that it was an intentional violation of the rules to obtain an advantage, and perhaps even if the violation was innocent but there is a negative impact on the community. But in a case where there is innocence and no real injury and there is no neighborhood objection, then the Council can afford to be lenient. Mr. Roosa swore in Bill Casson, the owner of the house. He said the neighbors are pleased that they took an eyesore and made a beautiful addition. Nettie Gustison of Lee County Development Services was sworn in by Mr. Roosa. She stated that the area is zoned RM-2 and across Estero it is C-1. She recommends approval because there were extraordinary conditions (irregular shape of the lot, the house was built before zoning, the house is bounded by other homes so that the applicant cannot purchase more property to fix the problem, and because the owner hired someone to do the work and relied on that person long-distance.) The LPA agreed to 7.5'

rather than the 2.5' which is requested. The carpenter was issued a warning for building without a permit. Mayor Cereceda opened the public hearing. Since there was no public comment, the public hearing was closed. Mr. Roosa asked if any council members needed to disclose any ex parte communications. Mayor Cereceda said that she walked down to see the property but did not talk with anyone. Mr. Roosa referred to the resolution he drafted and said that the second "whereas" clause should be stricken, and the figure "7.5" should be changed to "2.5". Mr. Murphy said he felt like it would be punitive and cold-hearted to require them to tear out 5'. Mr. Reynolds said that he did not think it was cold-hearted to go from 20' to 7.5' and he did not think it would be a major problem to take off the extra part. Mr. Roosa swore in Pam Houck who explained that even if the applicant had come for the permit before building the deck, it would have had to come to the Council for a variance even at 7.5 feet because the requirement is 20'. Mr. Isler is concerned that the Council is being asked to approve a structure that no one else would have gotten approval for.

**Motion:** Mr. Murphy moved and Mayor Cereceda seconded that the variance of 2.5 feet be approved. Mr. Murphy, Mayor Cereceda and Mr. FitzSimons voted for the motion. Mr. Isler and Mr. Reynolds voted against the motion. The motion passed.

The Council took a break at 4:50 PM and reconvened at 5:00 PM.

## **B GANIM/TARICK 96-08-175.025**

Geri Waksler, attorney for the applicants, stated that the property is on Estero between the Lani Kai and the former Hess gas station. They originally requested something that was turned down by the LPA, so the applicant listened to the LPA and came back to them with a recommendation which they did approve with conditions. She showed renderings of the building. There will be no access from the deck to the beach without going through the restaurant. They will serve hamburgers, pitas, etc. They know there is opposition to more bars on the beach, but she emphasized that this is not a bar, but a group III restaurant and will only serve beer and wine along with food and with no outdoor entertainment. There will be sufficient parking. County staff has recommended approval and stated that it will not cause detriment to the neighborhood. Carleton Ryffel, a certified planner, was sworn in. He stated that the property is in the Times Square area and currently contains 3 buildings in poor repair. It is zoned C-1 and the nearby area is overwhelmingly commercial. All the restaurants in the area except McDonalds have at least a beer and wine license. There is a day care center in the area for guests of the Lani Kai and employees, but the Lani Kai has 5 bars anyway. The area is generally unsuitable for residential use and many people have a hard time renting their property. There are a few scattered residents but it is clear that the area is commercial in character, serving tourists. It will not be an intrusion and will improve the appearance of the neighborhood. He showed some photographs of the area from the street and from the beach. Two buildings will be removed and the third will be renovated. The building they are renovating has 800 square feet and will be expanded to 1200' and they will add a deck of 785'. There will be an elevator for handicap access and it will have a new roof and will probably be done in the old Florida style. Altogether there will be a reduction in square footage on the property. They are willing to go along with the recommendations added by the LPA. Mayor Cereceda expressed concern that there was no control over making sure this really was a restaurant and not just a bar. Mr. Ryffel said there will be a kitchen on the premises and food will be served during all hours of operation. She asked about extending the sidewalk which ends at the Lani Kai. He replied that the client would like to have the sidewalk but he cannot commit to it without knowing the cost. Nettie Gustison spoke that the request was for consumption with outdoor seating, no more than 52 seats outside and 50 seats inside. It is in the urban community land use area and the restaurant is consistent with that use. The staff recommends approval with 7 conditions (no bar, outdoor seating limited to 785 feet, no outdoor entertainment, hours limited, lighting on deck shuttered, no advertisement from Estero or the beach indicating the service of alcohol, and planting a buffer.) The LPA agreed with staff recommendations but modified the hours of operation. Mayor Cereceda opened the public meeting.

### **1. MARGARET THURSTON WADE**

Ms. Wade, who lives on Palermo Circle, stated that they already have trouble with loud people at night that wake up her children, and having to sweep up their driveway in the morning. You can get just as drunk on beer and wine as on hard liquor. She also stated that the people at Batiki West were not notified individually.

The public hearing was closed. Ms. Waksler said that all the applicant must prove today is whether the proposal will adversely affect the surrounding area, not whether the Town needs another establishment that serves beer and wine or whether there is a better use for the land. Mayor Cereceda asked Mr. Roosa if the Council could add a condition requiring 51% food sales and then revoke the license if they do not meet it, and Mr. Roosa replied that they could. Ms. Waksler said she has not talked with her client to see if they would agree to the condition, but there are other establishments in the area with a 2COP license that do not have to make that proof.

**Motion:** Mr. FitzSimons moved and Mr. Reynolds seconded that the request be denied. After discussion, Mr. FitzSimons and Mr. Reynolds voted for the motion. Mayor Cereceda, Mr. Isler and Mr. Murphy voted against the motion. The motion failed.

**Discussion:** Mr. Murphy said that what is there now is a eyesore which can be improved by this request, and the Town is trying to encourage such upgrading, but he would like more assurance that it would be a restaurant. Mr. FitzSimons said the area has changed dramatically over time but there is no rule that says that trend has to continue.

**Motion:** Mr. Murphy moved and Mayor Cereceda seconded that the request be approved. After a vote on the amended motion, Mr. Murphy, Mayor Cereceda, Mr. Isler, and Mr. FitzSimons voted for the motion. Mr. Reynolds voted against the motion. The motion carried.

**Amended Motion:** Mayor Cereceda amended and Mr. FitzSimons seconded that a condition be added that the applicant be required to prove to the Council semi-annually that more than 50% of their total revenue is from food sales. The motion passed unanimously.

The Council took a break at 6:45 PM and reconvened at 6:59 PM.

#### C TRANSWORLD IN REF. TO GULLWING 96-09-166.02S

Richard McDole, authorized agent for Gullwing, stated that they are requesting licenses for sale of alcoholic beverages for consumption on premises. At their first hearing, it was decided that the adjoining property owners were not properly notified, but they were able to get public comment. So during the delay they amended their application to address some of the complaints. They added about 15 stipulations in order to win the support of the county and the LPA. The County recommended approval, but the LPA ruled against them due to the outdoor noise factor. So they have withdrawn the outdoor seating request. They went back to the LPA and addressed more objections. There will be two exhibition halls and six meeting rooms. They plan to put in a deceleration lane in front of the property. The plans call for an 8-foot fence and landscaping between the hotel and the public access so there should be no intrusion. He feels they have provided as many safeguards as possible. They are approved and permitted as a convention hotel and are mandated to have a restaurant for the hotel. It would be odd to have a restaurant in a hotel that cannot sell liquor with its food. He feels that the objections are more toward the hotel itself rather than to the sale of liquor. But the condos around all have signs out that they rent, so they really are acting like hotels too. Nettie Gustison stated that the request is for indoor service only. There is no outdoor seating. A Group II restaurant is designed to be for the patrons of the hotel. They are applying for a 4-COP-SRX license (beer, wine and liquor served in conjunction with meals) and S-Hotel beverage license. The County staff recommends limiting hours of operations to midnight. The restaurant will be located on sixth floor of the hotel and the use is clearly subordinate to the hotel. The property is in the urban land use category and the staff believes it will not cause any adverse affect on the community. The LPA recommended that it be denied without prejudice. Mr. FitzSimons asked if the Council could require that only guests be allowed to be served. It was agreed that enforcement would be the problem. Mr. McDole said originally they did not have enough parking for a group III restaurant but now they do. He would have a problem if it is only limited to guests because there will be some people attending conventions at the hotel who are staying at another hotel. He does not want to see a stipulation which they couldn't enforce. The public hearing was opened.

#### I JACK CAPPS

Mr. Capps was sworn in and stated that he lives next door to the area. He feels that it is a pure residential area. The property has not been cared for, and they were not notified when the permitting was changed from condo to convention hotel. He also talked about the extra deceleration lane.

Since the school bus must stop there to let off kids in the Fairview subdivision, the students will now have to cross four lanes of traffic. He has a two petitions with over 100 signatures that asks that alcoholic beverages not be allowed to be sold at the location in order not to detract from the residential area.

**2 GARY GRIFFIN**

Mr. Griffin, manager of the Island Winds, said that he came to pass on the concerns and objections of his residents, which have been submitted in writing.

**3 GENARO VENTURO**

Mr. Venturo, a resident at Fairview Isles Condominium, gave some history of the property. If the Council approves the license, he will sell to Transworld. If the Council denies the request it will not harm the applicant because he can still sell the property to Sunstream who will build a condominium, so denying the license will not cause undue harm on the applicant. But if the Council grants the license, it will have a deleterious affect on the residents in the surrounding area. The island already has more than enough liquor licenses. The Council has the opportunity to halt that proliferation and maintain the family atmosphere in Fort Myers Beach.

**4 MARK COMBS**

Mr. Combs stated that the property owner is his father-in-law. He showed a map of the area showing that there are many hotels, condos that rent, a medical center, tennis courts, and a restaurant in the area. They are not invading a residential community.

The public hearing was closed. Mr. Reynolds said that the hotel does not fit with the density plan on the island and the distance to the other residences is a problem. But how can you have a hotel without a restaurant with all the amenities? Mr. FitzSimons did not feel that the applicant proved that their application would not have an adverse affect on the area. He did not feel that the Lee plan was complied with or that the area would be improved.

**Motion:** Mr. FitzSimons moved that the request be denied. There was no second.

**Motion:** Mr. Murphy moved and Mr. Isler seconded that the motion be approved with conditions as recommended by the County staff. Mr. Murphy, Mr. Isler, Mayor Cereceda and Mr. Reynolds voted for the motion. Mr. FitzSimons was opposed. The motion passed.

**Amended Motion:** Mr. FitzSimons moved that customers of the restaurant must be proved to be guests of the hotel. There was no second. The motion failed.

**X COUNCIL MEMEBERS ITEMS AND REPORTS**

**A RUSTY ISLER**

Mr. Isler had no items to bring before the Council.

**B TED FITZSIMONS**

Mr. FitzSimons had no items to bring before the Council.

**C GARR REYNOLDS**

Mr. Reynolds referred to item XVI in the March 3 minutes, and wanted to know whether first extensions should be granted administratively or if they should come to Council for a decision. Mr. Roosa said if it is in the county code, the Town Manager can grant them administratively. Marsha Segal-George said that since the Pink Shell request was different and was for an indefinite extension, they brought it to the Council.

Referring to the minutes of February 27, item 6, he asked if a Council member is late and comes in and sits in the back then a vote is taken which results in a tie, should the council member then be called up to vote? Mr. Roosa said that if a council member is in the room, they should vote.

He mentioned a letter from Island Winds requesting a crosswalk. Mr. Gucciardo said that the request has been included in the most recent batch of RFAs and will be looked into by the road committee.

**D RAY MURPHY**

Mr. Murphy had no items to bring before the Council.

**E ANITA CERECEDA**

Mayor Cereceda referred to recent letter she received and reported that towing is out of control at Helmerich Plaza. Tim Anglim of Sunshine Beachwear said one of his employees was towed while at work. A group of Argenteans went in McDonalds and were towed while they were eating. She has asked Marsha Segal-George to bring the towing ordinance back up to the Council at the next meeting.

**XI PUBLIC HEARING ON CONTRACTOR'S LICENSE ORDINANCE**

Mayor Cereceda read the titles. The public meeting was opened.

**A RAY MERTENS**

Mr. Mertens said that businesses are required to go through contractors. Sometimes it takes 90-180 days to get someone out to bid because the job is not big enough. He asked if perhaps there could be some latitude. Perhaps if it is under some dollar amount (perhaps under \$4000) they could hire a licensed carpenter or a home contractor. A non-bearing dry wall does not need a licensed contractor.

**B EVE HAVERFIELD**

Ms. Haverfield asked if there could be some way to check that contractor's are working within the guidelines of the regulations of Fort Myers Beach. Some contractors put up lights that are against the turtle ordinance.

The public hearing was closed. Mr. Roosa said that Mr. Merten's concerns had to do with the building code, not this ordinance which has to do with licensing. Marsha Segal-George reminded the Council that this is identical with the County's and allows us not to have to have our own licensing board.

**Motion:** Mr. Reynolds moved and Mr. Murphy seconded that the ordinance be adopted. The motion passed unanimously.

**XII FIRST READING OF THE PARKS AND RECREATION ORDINANCE**

Mayor Cereceda read the titles. The ordinance was set for public hearing on April 7.

**XIII OLD BUSINESS**

**A SHERIFF'S ENFORCEMENT OF JET SKIS**

Marsha Segal-George reported that WCIND has agreed to give the Town \$6000 for enforcement this year. The Sheriff's department does not have the money because they are spending the WCIND money they have already received to buy boats. Enforcement will start April 1 and go through the end of July, then pick up again October 1. By then the Town will be in the next cycle for WCIND budget. Enforcement will be on the gulf and the bay side and will be for 20 hours per week. She reported that there are still some citation issues because she was told at a meeting that the Sheriff's office can only enforce County ordinances and not Town ordinances. Mr. Roosa passed out an excerpt from the minutes of the meeting of April 25, 1996 which shows that Mr. McDougall stated that if the Town maintains the same ordinances and wants the same coverage, there would not be any change from past years. He also passed out a letter from Mr. McDougall which stated that he intends to continue serving the Town as he has for the past years and that enhanced law enforcement requirements can be worked out in the future. Mr. Roosa said that this indicates that if our ordinances are the same as the county ordinances, the sheriff would enforce them. That is our position and what we were led to believe. He also discussed Florida statute 125 which says that the County Commissioners can enter into an agreement with the Town for law enforcement. The sheriff is taking the position that we can enter agreements directly with him. Mr. Isler expressed the reservation that when we enter into this agreement with the Sheriff, we will just start paying for the coverage that we already have and then it will be expected of us from now on. Mr. Roosa suggested that we write the sheriff to see if he has been enforcing our ordinances.

**B REQUEST BY BEST WESTERN PINK SHELL FOR PERMIT EXTENSIONS**

Mr. Roosa said that Mr. Naylor, general manager of the Pink Shell, has requested an extension on construction permits based on the theory that if the land swap goes through they may not want to build under their current permits. Mr. Roosa advised that the Council should not be involved, and that Best Western needs to make their own business decision whether they want to proceed or not. They can let the permits expire and try again, or they can handle it administratively like any other first extension request and be given a 6-month extension. Mr. Gucciardo said that the Town has probably granted about 5 administrative extensions but this one was different because it was tied in with another event. The Council asked Mr. Naylor to speak and he said that his request was really intended to be a request for an administrative extension.

**Motion:** Mayor Cereceda moved and Mr. Murphy seconded that the extension be handled administratively and not tied to the land swap. Mayor Cereceda, Mr. Murphy, Mr. Isler, and Mr. FitzSimons voted for the motion. Mr. Reynolds voted no. The motion carried.

**XIV NEW BUSINESS**

**A SIGNAL MAINTENANCE AGREEMENT**

Mr. Gucciardo explained that this agreement is for maintenance of the one signal light in Town. The signal is being moved but not removed. The plan is that it will be blinking during season, and pedestrian-controlled off-season.

**Motion:** Mr. Reynolds moved and Mr. FitzSimons seconded that the resolution be approved directing the Town Manager to execute the agreement. The motion passed unanimously.

**B RESOLUTION DIRECTING THE TOWN MANAGER TO PREPARE A REVISED BUDGET**

**Motion:** Mr. FitzSimons moved and Mr. Murphy seconded that the resolution be accepted. The motion passed unanimously.

**XIV TOWN MANAGER'S ITEMS AND REPORT**

**A VOICE VOLUNTEERS**

The Council agreed to try some public relations to see if any residents of the Town might be interested in being trained to be a Voice Volunteer on the beach.

**XV PUBLIC COMMENTS**

**A JOHN NAYLOR**

Mr. Naylor recommended that jet ski enforcement should be geared mostly toward private jet ski owners and therefore should be concentrated on Friday, Saturday, Sunday and holidays and should go into August. Don't worry about mid-week. Most activity is from 10 AM to 6 PM.

**XVI ADJOURNMENT**

**Motion:** Mr. Murphy moved that the meeting be adjourned. The meeting adjourned at 8:30 PM.  
Respectfully submitted,

Peggy Safen  
Recording Secretary

Local Planning Agency

Meeting Minutes of March 11, 1997

**FORT MYERS BEACH**  
**LOCAL PLANNING AGENCY MEETING**  
**MARCH 11, 1997**  
**NationsBank, Council Chambers**  
**2523 Estero Boulevard**  
**FORT MYERS BEACH, FLORIDA**

**I CALL TO ORDER**

The fortieth meeting of the LPA Committee was opened on Tuesday, March 11, 1997, at 12:00 noon by John Mulholland, Chairman of the Committee. It was determined that there was a quorum with nine members present.

**Present at the meeting were:** Committee members Linda Beasley, Johanna Campbell, Lena Heyman, Dan Hughes, Ron Kidder, John Mulholland, Betty Simpson, Roxie Smith and Bill Van Duzer. Also in attendance was Marsha Segal-George, Town Manager and LPA Attorney.

**II INVOCATION AND PLEDGE OF ALLEGIANCE**

The LPA Committee recited the Pledge of Allegiance to the flag and Chairman John Mulholland gave the invocation.

**III PUBLIC COMMENTS ON THE AGENDA**

None.

**IV APPROVAL OF MINUTES FROM FEBRUARY 18, 1997**

**MOTION:** Made by Roxie Smith and seconded by Betty Simpson to approve the minutes of February 18. Passed unanimously.

**V HEARING -- GANIM/TARICK 96-08-175.02S**

Mr. Mulholland explained that this hearing of George W. Ganim and Serafina Tarick is a request for a special permit in a C-1 commercial district for consumption on premises with outdoor seating for Land Development Code Section 34-1264(A.2.) Subject property is located at 1450-78 Estero Boulevard, Fort Myers Beach, Florida.

Mrs. Segal-George requested that anyone giving testimony in this hearing come forward and be sworn in.

**A. GERI WAKSLER**

An attorney with Peper, Martin, Jensen, Maichel and Helitage, Ms. Waksler said she is here today on behalf of the applicants. The property is located on Estero Boulevard between the Lanai Kai and the Hess Gas Station. When the applicants were before the LPA previously, they were seeking a full COP for service of all alcoholic beverages in conjunction with outdoor seating. They were also seeking outdoor entertainment and planned for a full bar that would be located within the restaurant. Their request was unanimously rejected. They have come before us again hoping to get a recommendation of approval, but this time they are seeking a 2COP which allows only for the service of beer and wine. This would be on the condition that it would be in conjunction with a Group 3 sit down restaurant.

The applicants have agreed to a specific condition that would expressly prohibit outdoor entertainment.

The total property area is 11,800 square feet. The size of the deck has been reduced. The deck would be 785 square feet, which represents only 6.5% of the total land area.

The applicants are asking for the ability to serve meals on the deck throughout their hours of operation, which will be until 2:00 A.M. They have eliminated the interior bar and have agreed to a condition expressly prohibiting a bar.

The interior square footage of the restaurant has been increased to address previous concerns about the size of the kitchen and the ability to actually serve meals. A rendering was displayed to give a sense of how the building would look. The whole building will be elevated 7-1/2 feet above sea level.

The applicants make no claim that they will be a four-star restaurant but will serve food common to a beach area such as, hamburgers, hot dogs, salads, barbecue.

Their burden, Mrs. Waksler stated, per Section 34-1264 of the Code is to show us that this request will not have an adverse effect on the surrounding property. They recognize that there is strong opposition to permitting any more bars on Fort Myers Beach. They would like the ability to offer beer and wine along with nonalcoholic beverages and that is why they are requesting a special permit. They have agreed to an expressed condition that this will be a Group 3 restaurant. In the Land Use Regulations, Group 3 refers to a standard-type restaurant. A standard restaurant is defined as "an establishment whose principal business is the sale of food and/or beverages to customers in a ready-to-consume state and its principal method of operation includes one or both of the following characteristics:

1. Customers normally provided with an individual menu are served their food and beverages by a restaurant employee at the same table or counter at which food and beverages are consumed; or
2. A cafeteria-type operation where food and beverages generally are consumed within the restaurant building. That can also include buffets and pizzerias.  
Their intent, Mrs. Waksler claimed, is for a sit down restaurant, not a cafeteria. Patrons will receive a menu. They will be served by a waiter or waitress.  
The owners have also agreed to shade the lights so that they will not bother surrounding property owners and to plant a vegetative buffer along the rear property line. This will create both a visual and sound barrier for the cottages (primarily rental and many of which are used for commercial purposes) that are behind the line.  
They have also asked for sufficient parking and will not ask for any variances.  
The property is adjacent to a public beach access and therefore beachgoers can get to the restaurant without trespassing on private property.

#### **B. CARELTON RYFFEL**

Mr. Ryffel, a professional planner, gave his credentials to the LPA. He corrected one statement of Ms. Waksler in which she said the building was 7-1/2 feet above sea level. He said it was 7-1/2 feet above grade.

By means of a graphic, Mr. Ryffel explained where the building would be located. He feels that no restaurant could compete in the subject area unless it had a beer and wine license like the other restaurants.

Two existing buildings on the property will be removed, thereby decreasing the square footage of floor area on this property.

On the beach side, the adjoining property is a travel agency. Scattered cottages towards the beach are used for seasonal rentals and are sometimes combined with jet ski operations. All the residential uses in this area are on properties zoned C-1. It's a high activity area that is generally unsuitable for residential use. The area is generally geared to younger people.

Mr. Ryffel showed photos of the subject area and explained what they depicted.

Mr. Ryffel read to the LPA his letter to Pam Houck dated February 18, 1997, which basically outlines what the project is, what it's about, and indicates that they are in compliance with the comprehensive plan. The letter also cites the different changes that were made to the property since the last time the applicants appeared before the LPA. He noted that the existing building of 800 square feet will be enlarged by 400 square feet and the deck will be 785 square feet. One of the two buildings being removed is of metal and could be hazardous during a hurricane if left there. No parking variances are needed. The proposed use cannot be considered to be a neighborhood intrusion. The improvements on the property will make a very significant visual impact, which is in the public interest.

They are aware that the Lanai Kai has a day care center for their guests and employees on the first floor above the pilings of their building. If the day care is not affected by Lanai Kai's bars, one of which is across the hall from the day care center then, surely, Mr. Ryffel feels, their less intensive restaurant will have even less impact.

The existence of a few scattered properties in the area does not change the predominant character of the area, which is mixed commercial.

As amended, their application will have only a beer and wine license.

A neighborhood, Mr. Ryffel stated, is defined and characterized by its predominant use, which is commercial in this case.

Mr. Ryffel said he sees intrusion as the negative change to the character of an area.

The comp plan policies that Mr. Ryffel feels this application is consistent with are as follows: Policy 1.1.4, Policy 18.2.1, Policy 6.1.7, Policy 6.1.5, Policy 6.1.2, Objective 2.1, Policy

6.1.10.

As far as the staff report, they had only one objection Mr. Ryffel noted, which were the hours of operation. The staff wanted to limit their deck hours to midnight and they want the facility to be available until 2:00 A.M.

They feel that the proposed use of the property is consistent with the Times Square Plan.

Mr. Ryffel responded to the nine questions of the Land Development Codes' standards for special exceptions.

#### **LPA Questions:**

Asked what the total amount of square footage of the coverage by both under roof and parking would be, Mr. Ryffel advised that they are removing 2300 square feet of buildings that were already there. He also advised that when located seaward of Estero Boulevard, a property owner can ask for a waiver to the parking requirements and this is probably what they would do. The only thing that has to be paved by federal law is the handicapped spot and the path to the access.

Ron Kidder asked why they continued to want an exit and entrance off Estero Boulevard. He feels that Avenue C would be better. Mr. Ryffel said that right now it's a free-for-all. They have been approved for an intersection separation variance. They would lose parking spaces with a different entrance/exit.

How many seats do they anticipate for the outdoor seating area? Mr. Ryffel stated it was 50-52. Lena Heyman said she doesn't understand the rationale for wanting to keep the deck open beyond midnight. Mr. Ryffel said keeping the deck open until 2:00 A.M. would be consistent with the surrounding area.

What assurances can the applicants make that customers won't wander off to the beach with a beer? You have that risk at any restaurant, Mr. Ryffel said. According to Pam Houck, not only is that prohibited by law, but there is no access from the deck down to the beach. People would have to go back out through the main front doors.

**Input from County Staff:**

**Nettie Gustison.** Ms. Gustison advised that staff had originally recommended approval for the 4COP and staff is again recommending approval for the 2COP. She advised that she had researched the LPA's concerns regarding residential intrusion, the Batiki condominiums, and the day care center located in the Lanai Kai.

After stating what additions the applicants wished to make to the property, Ms. Gustison advised that they intended to do no interior bars at all to the restaurant. They are requesting the hours of 10:00 A.M. until 2:00 A.M. Staff recommends that they limit the hours of operation until midnight, which is consistent with the surrounding neighborhood. Only Hooters Restaurant is allowed to have consumption on premises for outdoor seating until 1:00 A.M. on Fridays and Saturdays only and until midnight other than that.

The proposed restaurant will have 1200 square feet and applicants are required to provide 17 parking spaces. The outdoor seating area does not require any additional parking.

The property is located in an urban land use category. While outdoor seating and consumption on premises is not specifically addressed by the Lee Plan, the principal use of the subject property is consistent with the uses that are anticipated by that land use category.

A policy of the Lee Plan that is always looked at is Policy 5.1.5 regarding any kind of use that could be encroaching into a residential area that could potentially be destructive to the character or the integrity of the residential environment. The subject area is primarily developed with commercial uses and is not residential in character. Staff believes, therefore, that the proposed use of the property would not be destructive to the character of the area based on the conditions staff has placed with the approval.

Additionally, the subject property has applied for an administrative variance on a side setback for the deck on the west property line abutting the Lanai Kai. They are requesting a 4.3 foot side setback administrative variance that would line up with the existing building. That application is currently in the county office pending the outcome of this hearing. Additionally, they did receive an administrative deviation for the existing driveway. This was approved back in September 1996 by the Director of Community Development.

The county's main concern for special exceptions for outdoor seating is always noise and nuisance. Because the property is located along a main thoroughfare, Estero Boulevard, and surrounded by intense commercial uses, any impacts that are created by the outdoor seating should be minimal, especially with the conditions placed on their approval.

Ms. Gustison said she has recommended approval with seven conditions:

1. That consumption on premises is limited to a 2COP which is for beer and wine only. The beverage license is to be used in conjunction with a Group 3 restaurant. A bar/cocktail lounge is prohibited.
2. The outdoor seating area is limited to the 785 square foot deck addition, as shown on Attachment B of the staff report. Again, the use of a bar for the service of alcoholic beverages is prohibited.
3. Outdoor entertainment is prohibited.
4. The hours of operation have been limited from 10:00 in the morning until midnight daily.
5. The lighting shall be shuttered and shielded from the surrounding properties.
6. There will be no advertisement indicated from Estero Boulevard or from the beach that alcoholic beverages are being served.
7. The applicant has agreed to provide a buffer along the southern property line. The applicant will provide five trees and 24 shrubs per 100 linear feet along a nine-foot strip area. The trees will be a

minimum of 10 feet in height at planning and the shrubs a minimum of 36 inches in height at planning. All the trees and plants will be native and salt tolerant.

**LPA Questions:**

Dan Hughes questioned Ms. Gustison regarding the Hooters Restaurant's hours. She explained that the condition was placed on them after they went through a public hearing before the Lee County Hearing Examiner. She doesn't know the whole history of why they were allowed to stay open until 1:00 A.M. on weekends. Asked if the town would have the authority to modify the hours in this regard, Ms. Gustison replied, yes.

Ms. Gustison explained to Ron Kidder that the closest restaurant to the subject property is Marozza's, which is limited to 12:00 midnight daily.

Is there a time frame during which these conditions remain in effect? Mr. Hughes asked. Do they run with the land and are they binding on successive owners? Yes, it does run with the property and the use of the property Dan Hughes was told. Mr. Hughes was also told that as long as the property was a 2COP, whatever hours were attached to that would remain attached. If this decided to come back in and become a full-fledged bar, those hours would not apply but it would require another public hearing before the LPA and the Town Council.

The hours limitation would only apply to outdoor seating but the indoor seating for the restaurant could continue on until 2:00 A.M., which has been mandated by the state. This is for all the restaurants in Lee County.

Marsha Segal-George asked whether there were any percentages with regards to food and beverage sales for Group 3 restaurants. The only time you get into percentages, Ms. Gustison advised, is when you want an SRX beverage license, and that is mandated by the state. Enforcement would be complaint driven.

Lena Heyman asked if the 500-foot requirement for a day care center would not hold because it is in the Lanai Kai. Ms. Gustison advised that the 500-foot requirement still applies, but the Lanai Kai's bars are closer to the day care center than the outdoor seating of the proposed restaurant would be. Asked if the 500-foot requirement is simply a threshold and is not a condition, Ms. Gustison said yes.

**PUBLIC INPUT ON GANIM/TARICK HEARING**

**A. RICK BOGGS**

Mr. Boggs, a resident of Avenue C, stated he still has the same objections as at the previous hearing. We are still trying to put a restaurant with alcohol consumption next to his property. He has a deck that overlooks the water that is nice and quiet right now. Outdoor consumption by a restaurant next door would change that. His neighbor has the same objections.

Asked if he was employed by the Lanai Kai, Mr. Boggs admitted that he was.

**B. NEIL VAN FLEET**

Mr. Van Fleet, general manager of the Lanai Kai, said their day care center was for the employees and guests of the hotel. The piano bar, which is 40 feet from the day care center, is never open when the day care center is open. Their only open bars are down on the beach quite a ways from the entrance to the day care center and parking lot. Their bar at the south end of the property, which was opened in 1980, closes at 5:00 P.M. The restaurant bars are open until 2:00 A.M. He would like to know who is going to run the business of the proposed restaurant, as its owners are attorneys. Who can assure the town what will happen once the owners are out of the business? He doesn't feel that they need another beer and wine license on the beach. The property was a residential home at one time.

**LPA Questions:**

Asked if any food was served at the Lanai Kai after midnight, Mr. Van Fleet said only until 6:00 P.M. He admitted that from that time on until 2:00 A.M. only the bars were open. There are three bars on the beach level, a piano bar with a singer every night starting at 6:00 P.M., and there is a singer from 9:00 P.M. to 1:00 A.M.

Does the Lanai Kai object to the subject property's deck coming out four feet from Lanai Kai's property? Mr. Van Fleet feels that there will be a lot of lawsuits, because the parking lot is there and people throw bottles off decks onto cars.

Is the administrative variance a part of this hearing? Answer: No, it's a separate issue.

What's the position of the petitioner if the administrative variance is denied in terms of the setback? Answer: You create a hardship in terms of the deck.

Your petition is not contingent upon the granting of that administrative variance? Answer: No, we could still open a restaurant at that location if the administrative variance is not granted.

Attorney Waksler advised the LPA that our job is to review the evidence that has been presented before us today to determine whether they have met their burden of proving that the proposed restaurant with a 2COP license will not adversely affect the surrounding property owners. Attorney Waksler does not feel there would be any reason to limit the hours of operation as there will not be entertainment outdoors to create additional noise. They would like the ability to serve all their patrons up until 2:00 A.M. regardless of whether they are seated indoors or outdoors. There is an explicit condition that they will have no bar indoors or outdoors. Attorney Waksler commented again on the commercial character of the neighborhood, the buffers that are planned, the public access from the beach. They respectfully request that we recommend approval of this request for a special permit and the ability to serve their patrons until 2:00 A.M.

John Mulholland advised the LPA that motions for approval or denial should be based on issues involved in this case only.

**MOTION:** Made by Johanna Campbell and seconded by Lena Heyman that this request for a special permit to serve beer and wine be denied on the grounds that the subject property would intrude on a residential neighborhood. The motion fails with 4 yes votes and 4 no votes.

**Discussion:**

Johanna Campbell stated that she didn't believe that this would provide a hardship on the owners of this property. Since the property is zoned C-1, the owners have a long list of other uses that they can put on this piece of property other than a bar or restaurant. The applicant is imposing a hardship on itself by asking for this beer and wine license. Just because this is in a commercial area does not mean that liquor and food are the only businesses that can be used. There has been references to the residences that are scattered throughout the neighborhood, but the Batiki Condominium is not scattered and is a quite large establishment. The other neighbor is just a few steps away from this property and it's immaterial whether he is operating a business inside his house or outside his house or whether other cottages are being used for jet ski operations. Those properties are zoned residential and that is the true nature of those properties if and when they are ever sold to anyone. The neighbors who live in residences in this area are trying their best to maintain what they have left. She is hoping that we in the LPA will try and help these residents by stopping that intrusion at this time.

Letters not previously given to the LPA from Palermo Circle and signed by people against the proposed restaurant were now presented. One complaint was discounted because it referred to a

restaurant and bar and there will be no bar.

Lena Heyman advised that she agreed with Johanna.

Dan Hughes said that with all due respect to the Batiki, none of the residents testified. And it's not our position to fill the gaps when there's a lack of testimony by people who we assume are concerned. He said he does not agree with Johanna that this is an intrusion on the character of the area. He doesn't feel that the testimony supports this opinion. The testimony we have been given by the planner and that was supported by the staff refutes that position and specifically finds a lack of intrusion and, Mr. Hughes stated, he agrees with this testimony and the only testimony in this regard. He is opposed to the motion.

Ron Kidder advised that if the deck is 6.5% of the total property and the deck is 800 square feet and the house and kitchen are 1200 square feet, 6.5% is not really a true gauge of how big this deck is. It's going to be the same size as the original existing building.

Marsha Segal-George explained that the reason the testimony has to be in front of us is so that dissenting persons can be asked questions and the opposing side can cross examine. If we have specific questions about the property, these should be asked of the applicants. The burden is on the applicants to show no adverse effect on the surrounding area, and we in our deliberations and determination of what our recommendation is going to be to the Town Council must show whether we believe the applicants have carried their burden of showing no adverse impact or they have not. We must also show why we believe there would be an adverse impact.

John Mulholland stated he agreed with Dan Hughes' remarks. He thinks the point was brought out by our LPA attorney that we have to go by the facts and not by our feelings.

Betty Simpson said she thinks we have seen some improvement since the last hearing. The idea that a bar or cocktail lounge is definitely prohibited is new. Her big concern is the hours of operation and she is happy to see that they will be from 10:00 A.M. until midnight. The buffer is also a definite positive. She would prefer for the ingress and egress to be off of Avenue C in such manner that it would not hurt the number of parking spaces.

Marsha Segal-George also noted that we have wrestled with the 4COP SRX issue and 51% food, and it is very clear in this 2COP situation that there is no percentage with regards to food. We have the ability to ask the applicants whether or not they would be willing to accept a condition of 51% of food sales with regards to their 2COP. That is something that is not currently in the county's regulations. Lena Heyman and Roxie Smith advised that the sale of wine and beer without food was one of their concerns. Roxie wished to know if a food condition was accepted by the applicants if it would affect other established restaurants. Mrs. Segal-George advised that it wouldn't, that we can't deal with what has happened in the past.

Ms. Waksler said that she understood our concern, but the situation we're facing is not one that they have created but is a situation that has not been addressed by our Town Council. She feels uncomfortable that they are being made to answer for a lack of action on the part of the Town Council. They would agree to an additional condition that required that food always be offered for sale through the entire hours of operation. However, she would have a little concern about a condition that said they had to have 51% food because she would be agreeing to something that has no framework in place. Who are they supposed to give the information to? How would it be double-checked? It has no form or shape and is not imposed on anybody else around them at this point, creating an additional burden for her client. However, if we would agree to grant a 4COP, a full liquor license in addition to beer and wine, they would be happy to agree to serve 51% food. This to her seems a fair trade off. They believe they have met their burden of showing there would be no adverse effect to the surrounding areas.

Ms. Waksler was asked if she would accept any percentage, to which she replied that her client isn't here and this is not an issue she has discussed with him. Perhaps there is a percentage that he would agree to.

Johanna Campbell advised that this particular area of Times Square will be redeveloped for mixed uses and we want to try and do everything to keep those people who are residents and zoned residential in that area to have their property brought up to good condition and be able to sell their property one day if they wish to instead of seeing it go down the tubes.

Asked what would happen if food was not available when wine or beer was being served, Pam Houck replied that the applicants would be given a certain amount of time to bring the restaurant into compliance. If not done, then action before the Hearing Examiner would take place. The definition of restaurant requires that food and beverage service be the primary use of the property. If alcohol service becomes the primary use, the restaurant becomes a bar by definition. This code violation is determined through complaints. There is no mechanism in place to go out and audit each business.

**MOTION:** Made by Dan Hughes and seconded by John Mulholland that the application Case No. 96-08-175.02S be approved in accordance with the staff resolutions given to us by our Council, which provides references to the Whereas clauses and the conditions that are identical with the recommendation of the staff, but with the following modifications: (1) That food service be available at all hours that the restaurant is open; (2) As condition 4, that hours of operation of the outdoor seating area will be restricted to the same hours as presently applicable to the Hooters Restaurant, which are from 11:00 A.M. until midnight Monday through Thursday; 11:00 A.M. to 1:00 A.M. Friday and Saturday; from noon until 10:00 P.M. Sunday. Motion does not pass with 4 yes votes and 4 no votes.

**Discussion:**

Betty Simpson would still want the access to be on Avenue C. Carleton Ryffel advised that there is a pole that would make a left turn onto Avenue C a blind one. It's also better to come into a commercial business from a commercial street. They are very limited as to where they can put the parking lot. If they come in from Avenue C, they would need a driveway that is 25 feet wide and this would eliminate three parking spaces and would need a parking variance.

**BREAK**

Mr. Van Duzer, who had come late, was asked if he understood the hearing. He advised that he did and therefore he was asked to vote. The last motion was restated as follows:

**MOTION:** Made by Dan Hughes and seconded by John Mulholland that we approve the draft resolution submitted by Council for the LPA which represents that the Town Council approves the applicants' request with the conditions as set forth in said resolution as presented to us with the following addition: In paragraph 4 of the conditions, strike everything after the phrase "hours of" and insert the hours that were previously stated, which are from 11:00 A.M. until midnight Monday through Thursday; 11:00 A.M. to 1:00 A.M. Friday and Saturday; from noon until 10:00 P.M. Sunday. Continue on in paragraph 4 "and that food service be available during all such hours." Motion passes with 5 yes votes and 4 no votes.

**VI HEARING -- TRANSWORLD RESORTS, IN REF. TO**

**GULLWING CONVENTION RESORT HOTEL 96-09-166.02S**

John Mulholland stated that this was a request for a special permit in the tourist commercial district for sale or service of alcoholic beverages for consumption on premises per Land Development Code Section 34-1264. Subject property is located at 6620 Estero Boulevard, Fort Myers Beach, Florida. The applicant's representative was called on and he was sworn in by Attorney Segal-George.

**RICHARD MC DOLE**

Mr. McDole is the agent for the applicant. He advised that they have withdrawn their request for outdoor serving at a tiki hut and by the pool which should eliminate the nuisance factor. Their request now is simply for the indoor operation of a hotel and a restaurant with the S license and the SRX 4COP for the restaurant, which also goes in kind with the hotel operation. Everything will be held indoors. There will be no intrusion into the neighborhood as far as adversity is concerned. They do have the recommendation of county staff on their application and proposal at this time. His only objection with the county's recommendation would be that he was under the impression that the county did support his request to extend the hours of operation to 2:00 A.M. for the inside and that they did self-impose a lesser time on the outdoor seating. In the recommendation approved by the county they said that they would support 11:00 P.M. rather than the proposed 2:00 A.M. He would respectfully request that the board consider the later operation based upon the fact that this is going to be a five-star resort hotel where all hotels of this type and nature have the late hours allowed by law.

**County Input:**

Nettie Gustison reminded the LPA that at our last hearing we denied the applicant's request for a special permit without prejudice. The applicant then amended his application and withdrew the outdoor seating portion of the request. They are back here before us today with just the requested special permit for the proposed restaurant located on the sixth floor of the proposed convention hotel for a 4COP SRX license, as well as an S hotel beverage license for use of alcoholic beverages for the convention hall and the meeting room. Staff again is recommending approval of the requested special permit with three conditions:

1. The 4COP SRX beverage license shall be used in conjunction with a Group 2 restaurant that's to be located on the sixth floor.
  2. The S hotel beverage license is to be used in conjunction with a hotel convention hall and the meeting room and the hours of operation have been limited from 7:00 A.M. until midnight daily.
- Approval is recommended because of the belief that the location of the restaurant inside on the sixth floor will not create any undesirable conditions or noise or nuisance to the surrounding property owners.

**Discussion:**

None.

**PUBLIC INPUT ON TRANSWORLD RESORTS HEARING**

**A. JACK CAPPS**

A resident of 6645 Estero Boulevard, Mr. Capps said that the stated property at 6620 Estero Boulevard is just 25 yards from his property line. Mr. Capps' deeded beach access going west from Estero to the beach abuts the Gulfwing property. From the cement pillars that are already in place to his easement is only 12 yards and with build-out, the distance will be shorter. Mr. Capps feels that they are in one of the finest residential districts on the island. There are already three lanes of traffic on Estero and he has heard that a fourth lane will be built for ingress and egress to the property. The school bus stops at Albatross Street. The residents of the area, Mr. Capps stated, wish the LPA to deny the issuance of a permit.

**B. JOHN B. PINE**

A resident of Fairview Isles Condominiums at 6655 Estero Boulevard, Mr. Pine stated that he is a little taken aback to hear the county staff say that there would be no residential suffering by this request. At the last meeting, he said, residents of the area very strongly expressed concern about this license permit going to the hotel. Their fine neighborhood will not be enhanced by having an additional area

where liquor will be dispensed. Also, they have a difficult crossing at that intersection and having people unfamiliar with it will not help traffic and safety there.

**C. GENNARO VENTURO**

Mr. Venturo lives at 6665 Estero Boulevard, across the street from the subject property. A resort hotel will not be a contributing factor to developing a family-oriented island. If the applicant is successful in obtaining a liquor license, he will sell the property to TransWorld, who will build a resort hotel. This could have a deleterious effect on the residents of the area. If the LPA denies the liquor permit, the applicant can still in all probability make a deal with Sunstream and build a condominium, which is what its best use is.

**D. JOHN MC DOLE**

Mr. McDole said he wished to clarify some misconceptions about the project. He explained that the turning lane is a D-cell lane starting from the north of the property to the center of the property where it terminates. It is just basically to get southbound traffic out of the roadway while they slow down so that other traffic can go right on through. It will not increase the lane width where the crosswalk is to the public access to the beach.

The hotel will not be 13 stories but six stories over parking. There will be 100 rooms, not 154. This is a liquor request, not a zoning request for a hotel operation.

**LPA Questions:**

Lena Heyman asked if the property were still for sale. Mr. McDole replied that the owner had asked Sunstream to commit to buying the property and they decided not to, so that contract has fallen through.

**MOTION:** Made by Johanna Campbell and seconded by Ron Kidder to deny this application because this special permit will have an adverse effect on the adjoining land owners, it does not meet the distance separation for the proposed uses. Motion denied with 6 opposed and 3 for.

**Discussion:**

Johanna stated that when the applicant requested that the zoning be changed from residential to commercial tourist, she is sure they realized that the surrounding properties and those across the street were all residential. Therefore, she thinks they have brought the hardship on themselves. She also feels that if we approve this liquor license, we are going to be opening the door for more requests for liquor licenses from other hotels and motels on the island. The LPA should vote against this to try and protect this neighborhood.

Mr. Van Duzer said he felt that the property owners do have the proper zoning for a convention hotel. His recollection is that the people who objected to it were objecting to the noise from proposed outside seating at the tiki bar and the sixth floor deck. The owners have agreed to have all seating inside. He feels that this is consistent with the zoning for that property and the use of it. He feels that if a permit is not granted, they will sue and get it anyway. He cannot support the motion.

Betty Simpson agreed with Bill that they do have the proper zoning and that the complaints have been against outdoor seating.

Attorney Segal-George advised that this application would have been appropriate for the administrative granting of the liquor license if it had been submitted as it stands right now. Serving liquor outside is what triggers a public hearing. If the applicants had just come in under the normal process and asked for a liquor license with regards to their restaurant which meets the COP SRX requirement of 150 seats, they would have been able to receive an administrative granting of that liquor license with no public hearing required.

Mrs. Campbell stated that under the proposed draft resolution, one of the findings is that the burden is on the applicant to show that the granting of this special permit will have no adverse impact. This afternoon, the testimony offered by the affected adjoining landowners continues to show adverse impact. Mrs. Segal-George advised that she had tried to show that if this process had not gone as it has up to now, it would have been looked on as a routine type of administrative action.

Dan Hughes asked if a motion is denied, could an applicant withdraw and apply for administrative approval. Attorney Segal-George advised that she thought they could technically, but thinks that from the county staff's perspective they would take it back to us because of the fact that it has gone through this process. The regulations allow the decision to be made whether to handle it administratively or send it to a public hearing. Asked for the citation, Dan was told it was 34-1264.

Lena Heyman agrees with Johanna and Ron.  
It was explained that distance separation is not a factor of the administrative approval. But if a special permit is granted, it automatically weighs the distance separation requirement of 500 feet. Linda Beasley asked how a nuisance factor could be considered now that seating would be all indoors. She was told that staff doesn't feel that it is a nuisance.

**VII UPDATE ON SUBCOMMITTEE ASSIGNMENTS**

**A) BUILDING HEIGHTS -- BILL VAN DUZER**

Mr. Van Duzer said he is preparing a report for Mr. Spikowski showing heights only and has one area to complete. It should be ready in two to three weeks.

**B) SIGNS -- RON KIDDER**

Mr. Kidder advised that they are working every Thursday at 3:00 P.M. They are probably two-thirds through the original sign ordinance. The people who are working on the real estate end of it have taken it upon themselves to write a little article we'll all be happy with. They have been given input on the things that we didn't like.

**C) PUBLIC PARTICIPATION -- LENA HEYMAN**

The report back from Peggy shows that she reimbursed Ron Kidder \$68.06. They also had expenses of \$755.48 for the dinner. They paid a few of their expenses out of the cash donations received: \$40.00 for the material and paint for the banner; \$25.00 for sewing the banner; \$20.00 to a couple who helped serve the dinner; \$10.00 to Dan Parker for the video. Cash remaining after these expenses were paid was \$228.15.

**D) BACK BAY/HARBOR -- JOHN MULHOLLAND**

No report.

**E) TAC/MPO -- DAN HUGHES**

Mr. Hughes reported that the Technical Advisory Committee met last Thursday, March 6. Lena had brought up at the last meeting the San Carlos Boulevard/Pine Ridge Road intersection and the right turn lane and this coincidentally appeared on the TAC agenda along with a recommendation for a right turn lane. It was felt that there were enough viable right turn lanes to warrant the construction of this one. Dan advised TAC that it seemed to be the consensus of our group that a right turn lane there was not warranted and that we disagreed with the initial findings; that there really was not a sufficient delay in making a right turn or even going through it at that intersection since the widening of the road. He made a motion to the MPO to in effect terminate any further study and it was approved. After making his motion, he was advised by someone from FDOT that Commissioner Judah and Councilmember Garth Reynolds were in favor of the right turn lane.

Also of interest, Mr. Hughes advised, is that there is a congestion management study and a traffic signal coordination committee and there is no representative from Fort Myers Beach on this committee. Section 5 of the report, however, deals with Estero and San Carlos Beach Boulevards in

Fort Myers Beach Area 14 with all kinds of suggestions and actions. Mr. Hughes asked whether or not this was something that was being submitted to the town and nobody seemed to know.

Dan also reported that there will be a quarter bus that will run down U.S. 41. It will go to Bell Tower and a transfer may be made there for the downtown area. To get downtown now, one would take a trolley to the end of the island, then take another trolley to Summerlin, then a bus to Bell Tower, then take the Florida bus downtown. The whole trip would take about one hour and twenty minutes from the center of the island.

**F) BEACHES -- ROXIE SMITH**

Roxie advised she had a handout from the American Coastal Coalition, which is a national advocacy organization composed of government officials, business people and property owners. The first page, first paragraph, last sentence advises that it is the Administration's resolution to consider funding only for those projects that protect the areas that are not recreation or tourist destinations and do not involve any financial commitment beyond that initial construction. This says that we would not be considered for renourishment. The back page advises of imposing a tax on cruise ships to fund beach renourishment and should generate about \$30,000,000 a year.

**G) SAN CARLOS CRA -- JOHANNA CAMPBELL**

No report.

**H) STEERING COMMITTEE -- MOUND HOUSE -- BETTY SIMPSON**

No report.

**VIII PUBLIC COMMENTS AND INQUIRIES**

None.

**IX ADJOURNMENT**

Chairman Mulholland adjourned the meeting at 3:00 P.M.

Respectfully submitted,  
Lorraine Calhoun  
Recording Secretary

IV APPROVAL OF MINUTES FROM MARCH 11, 1997

Corrections:

1. On page 10, the motion voting results should read "Motion passed to deny with 6 for and 3 against."
2. Preferred is to put motions at the end of the discussions.
3. On page 8:
  - a. Change the second line in the first motion from "be approved in accordance with the staff resolutions given to us by our Council" to "be approved in accordance with the draft resolution given to us by our counsel."
  - b. Change line 3 of the second motion from "which provides references to the Whereas clauses" to "which includes references to the Whereas clause."
  - c. Change the first "Council" in the next motion to "counsel."

**MOTION:** Made by Betty Simpson and seconded by Lena Heyman with corrections noted. Passed unanimously.

**ADDITIONAL AMENDMENTS TO MINUTES FROM MARCH 11, 1997**

Dan Hughes would like the minutes of March 11, 1997 to be further amended as follows:

1. On page 11, para. 4, line 2: change "weighs" to "waives"
2. On page 12, para. 1, line 1: change "quarter bus" to "corridor"  
line 4: change "Florida" to "corridor"  
line 5: add to end of sentence "and will cost \$1.00."

**MOTION:** Made by Dan Hughes and seconded by Roxie Smith to amend the previously approved minutes of March 11, 1997, with the corrections noted. Passed unanimously.

Town Council Resolution #97-10

RESOLUTION OF THE TOWN COUNCIL OF  
THE TOWN OF FORT MYERS BEACH, FLORIDA  
RESOLUTION NUMBER 97- 10

A RESOLUTION OF THE TOWN OF FORT MYERS BEACH, FLORIDA  
APPROVING / ~~DEEMING~~ THE REQUEST FOR CONSUMPTION ON PREMISES.

WHEREAS, Dan Reinfited /Transworld Resorts/Gullwing Convention Resort Hotel filed an application for a Special Permit in the CT (Tourist Commercial) district for the sale or service of alcoholic beverages for consumption on premises with outdoor seating for consumption on premises per Land Development Code Section 34-1264.; and 4-COP-SRX and S-Hotel1

**WHEREAS, the request for out door seating was withdrawn; and,**

WHEREAS, the subject property is located at 6620 Estero Blvd. Fort Myers Beach, Florida and is described more particularly as: A tract or parcel of land situated in the State of Florida, County of Lee, being a part of Government Lot 1, Section 34, Township 46 South, Range 24 East and Further bounded and described as follows:

BEGINNING at point on the Southwesterly right-of-way line of Estero Boulevard, which point is 2,055 feet Southeastery of, as measured at right angles, the Southeastery side of Block "T": McPhe Park #2. according to the map or plat thereof recorded in Plat Book 8, Page 59, Public Records of said Lee County, Florida; THENCE S 50 degrees 42' 03" W, parallel with the Southeastery line of said Block "T" for 533.5 feet to the Point of beginning of the herein described parcel; THENCE N 50 degrees 42' 03" E along the afore described line for 533.5 feet to a point on the Southwesterly right-of-way line of said Estero Boulevard; THENCE Northwesterly along raid right-of-way line for 152.7 feet more or less to an intersection with a line 1,905 feet Southeastery of, as measured at right angles, me Southeastery side of the aforesaid Block "T"; THENCE S 50 degrees 42' 03" W parallel with the Southeastery side of said Block "T" for 515.8 feet; THENCE S 67 degrees 07' 11" W for 216 feet more or less, to the water of the Gulf of Mexico; THENCE Southeastery along said waters for 157 feet, more or less, to an intersection with a Line that bears S 67 degrees 07' 11" W and passes through the Point of beginning; THENCE N 67 degrees 07' 11" E along said line for 230 feet, more or less, to the Point of beginning. Together with all Riparian and Littoral Rights appurtenant thereto.

WHEREAS, the applicant has indicated the property's current STRAP number is: 34-46-24-W4-00010.0000; and

WHEREAS, a public hearing was legally advertised and held before the Local Planning Agency (LPA) on March 11, and.

WHEREAS, the LPA gave full and complete consideration to the recommendations of the Staff. the documents in the file and the testimony of all interested persons.

WHEREAS, a public hearing was advertised and held on March 17, 1997, before the Fort Myers Beach Town Council who gave full and complete consideration to the recommendations of the staff and the Local Planning Agency, the documents on file with Lee County, and the testimony of all interested persons.

NOW, THEREFORE, BE IT RESOLVED BY THE FORT MYERS BEACH TOWN COUNCIL, that the Council APPROVES / ~~DEFERS~~ the request WITH/~~WITHOUT~~ conditions attached.

#### FINDINGS AND CONCLUSIONS:

The following findings and conclusions were made in conjunction with the approval / ~~denial~~ of the requested modification:

1. The applicant did / ~~did not~~ comply with Section 34-1264 (2) b. which places the burden of proof upon the applicant to demonstrate that approval will not have any adverse affect on surrounding properties.
2. That there is / no error or ambiguity in the Land Development Code of Lee Plan which must be corrected by the Special Permit.
3. That the character and nature of the surrounding area make approval of the Special Permit, as conditioned, appropriate/ ~~inappropriate~~.
4. That the Special Permit, as conditioned, is consistent/ ~~inconsistent~~ with the goals, objectives, policies and intent of the Lee Plan, and the densities, intensities and general uses set forth in the Lee Plan and Land Development Code.
5. That the Special Permit, as conditioned, meets / ~~does not~~ meet all performance and locational standards set forth for the proposed use.
6. That there are no environmentally critical areas or natural resources to be adversely affected by the Special Permit, as conditioned.
7. That the Special Permit, as conditioned, will / ~~will not~~ be compatible with existing or planned uses and ~~will~~ will not cause damage, hazard, nuisance or other detriment to persons or property.
8. That the location of the request ~~places~~ / does not place an undue burden upon existing transportation or other services and facilities and will / ~~will not~~ be served by streets with the capacity to carry traffic generated by the development.

9. That the Special Permit, as conditioned, will / ~~will not~~ be in compliance with all applicable general zoning provisions and supplemental regulations pertaining to the use, as set forth in the Land Use Regulations

**EXPIRATION**

This permit expires 3/17/98 unless operation of the alcoholic beverage establishment has commenced. This may be further extended for six months by the Town Manager if substantial construction has occurred.

The foregoing resolution was adopted by the Fort Myers Beach Town Council upon being put to a vote, the result was as follows:

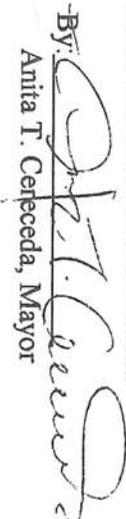
Anita T. Cereceda	<u>aye</u>
Ted FitzSimons	<u>may</u>
William (Rusty) Isler	<u>aye</u>
Garr Reynolds	<u>aye</u>
Ray Murphy	<u>aye</u>

APPLICATION DULY APPROVED / ~~DENIED~~ this 17th Day of March, 1997.

ATTEST:

By:   
Marsha Segal-George, Town Clerk

TOWN OF FORT MYERS BEACH

By:   
Anita T. Cereceda, Mayor

Approved as to form by:

  
Richard V. S. Roosa, Town Attorney

Condition:

1. The consumption on premises for a 4-COP-SRX beverage license shall be used in conjunction with a Group II restaurant located on the 6<sup>th</sup> floor of the hotel.
2. The consumption on premises for an S-hotel beverage license shall be used in conjunction with a hotel convention hall and meeting rooms.
3. The hours of operation are limited to 7:00 A.M. to Midnight.

GeoView Map

# Lee Property Appraiser GeoView Map



Map printed: 8/3/2011 11:55 AM  
 45m  
 100ft



Disclaimer: Maps and documents made available to public by the Lee County Property Appraiser's office are not legally recorded maps or surveys and therefore are not intended to be used as such. The maps and documents are created as part of a Geographic Information System (GIS) that compiles records, information and data from various departments, cities, county, state and federal sources. The source data may contain errors. Users are encouraged to examine the documentation or metadata associated with the data on which the map is based for information related to its accuracy, currentness, and limitations.

- Aerial Imagery**  
 2010 Hi-Res (1/2 foot)
- Parcels and Streets**  
 Parcel Lines  
 Street Centerlines
- Planning and Zoning**  
 Delinquent Tax Parcels  
 Zoning (on January 1)