

**CITY OF FORT LAUDERDALE, FLORIDA
REGULAR MEETING OF THE PLANNING AND ZONING BOARD
CITY COMMISSION CHAMBERS
100 NORTH ANDREWS AVENUE**

**WEDNESDAY, FEBRUARY 18, 2004
6:30 P.M.**

| <u>Board Members</u> | <u>Attendance</u> | (P) | (A) |
|------------------------------|--------------------------|------------|------------|
| Barbara Curtis, Chair | P | 21 | 0 |
| Gerry Cooper | P | 19 | 2 |
| Carolina Wiebe | P | 19 | 2 |
| Kenneth Hawkins | P | 17 | 4 |
| Mary C. Fertig | P | 21 | 0 |
| Alan Gabriel | P | 19 | 2 |
| James McCulla | P | 18 | 3 |
| Charlotte Rodstrom | A | 11 | 2 |
| Judith Hunt | P | 4 | 0 |

(Ms. Hunt was present via telephone)

Planning Staff: Chris Barton, Liaison to the Board
Bruce Chatterton, Planning & Zoning Services Manager
Jim Koeth, Principal Planner
Sheryl Stolzenberg, Planner III
Lois Udvardy, Planner II

Legal Counsel: Sharon Miller, Assistant City Attorney

Court Reporting Service: Margaret D'Alessio

**NOTE: ALL INDIVIDUALS WHO PRESENT INFORMATION TO THE BOARD
DURING THESE PROCEEDINGS AFFIRM TO SPEAK THE TRUTH**

Chair Barbara Curtis called the meeting to order at approximately 6:35 p.m. with Carolina Wiebe leading in the Pledge of Allegiance.

Chair Barbara Curtis proceeded to introduce the Board Members, along with City staff present at tonight's meeting.

Chair Barbara Curtis announced that Shayne Regnery had been promoted, and therefore, the new Planning and Zoning Support Coordinator for staff would be Sue Cogswell. Her official title would be Secretary III and her e-mail address is Scogswell@fortlauderdale.gov. She further stated that John Smith, Building Official, had recently retired from the City after 24 years of service. John Heller would be the Acting Building Official until recruitment was complete and a replacement for Mr. Smith was found.

James McCulla entered the meeting at approximately 6:38 p.m.

Chair Barbara Curtis announced that the next Planning and Zoning Board would be March 17, 2004.

All individuals wishing to speak on matters listed on tonight's agenda were sworn in.

Chair Barbara Curtis stated that she had recently been informed that some individuals had received notice regarding Item 18-Z-03, and announced that it was not on tonight's agenda. She stated that notices had been sent in error.

Gerry Cooper asked for some further clarification regarding phone votes. He asked how an individual could vote via telephone when they would be unable to see the displays being presented by the applicants.

Sharon Miller, Assistant City Attorney, explained that it was her understanding that based on this Board's policy, no new information was permitted to be provided during a meeting. Exhibits that staff can put on the Elmo would be done.

Mr. Cooper stated that he disagreed because applicants constantly brought forward display boards during their presentations that could not be placed on an Elmo. He stated that since the phone member could not see such displays, he felt it was a disadvantage to the applicant and the Board. He felt it did not make sense, but if the City Attorney's office felt that was how this Board should be run, he hoped the attendance would not drop off and everyone become phone participants.

Bruce Chatterton, Planning and Zoning Services Manager, stated that new information was not to be supplied at the meetings, and that comment had been made by this Board repeatedly and staff attempted to enforce that as much as possible. He further stated that if any boards were presented, the members could question if they had been included in the back-up material. Therefore, the member not physically present would have seen such information. He stated if new material was submitted, then it should not be included as part of the record.

Gerry Cooper asked if the letters that had been distributed withdrawing an item was new material, and asked if such letters were going to be allowed. Mr. Chatterton replied that one exception had been letters of support. He stated they could not adhere the public to the same standards as they did applicants in regard to submittal of information. He stated these types of letters often came in at the last minute, and he felt the Board should have such information. He felt they could attempt to describe the letters and also place them on the Elmo, if necessary. He further stated that his item on tonight's agenda regarding the Downtown RAC dwelling units had received some suggested language from the public that might be considered. He remarked that it would be read into the record because it was not extensive.

Mary Fertig stated that she did not think they should be discussing this because she was not aware of any rule against what was occurring. She stated that since there appeared to be an opinion from the City Attorney's office that this was permissible, she suggested they proceed with the meeting. She stated that if they began debating what they saw and did not see, she remarked that individuals walked in and out of the room sometimes during a presentation, and an item could have been missed. She felt that they might be better off not to leave the room.

Chair Barbara Curtis stated that she had responded to the City Attorney's letter and was placing it into the record. She felt there were many issues involved. She stated that she had been a proponent of giving notice for the last 6 years in which she had served on this Board, and as of today the City had not notified the other members of the Planning

and Zoning Board regarding the absentee voting. She added that the public had not been notified either. She stated that another member of the Board who was out-of-town had not been offered the option to similarly participate in tonight's meeting. She also stated that the applicant had not been informed of the new procedure regarding absentee voting on quasi-judicial matters until after Monday, February 16, 2004. She continued stating that no information had been supplied by the City Attorney or the City Commission that a determination had been made regarding the absence of a member, due to a scheduling conflict, constituting extraordinary circumstances for absentee voting on quasi-judicial matters.

Chair Barbara Curtis stated that she felt there were many other items that were appropriate at the City Commission, and she felt this should have been before them prior to coming before this Board. She stated that another important item was that she did not believe that an applicant could come before this Board and object to this procedure when there was a person and person's vote being discussed. She believed the proper procedure would have been for the City Commission to discuss the matter without referring to any specific individual, and a decision made at that time and proper procedure having then been put in place. In response to Mr. Chatterton's comments, she stated the Board had never forbidden the public from presenting petitions or letters, nor prohibiting them from presenting large blow-up materials that had been done in one case recently. She added that they never had required applicants to "shrink down" boards to be placed on the Elmo, nor did they forbid them from bringing in photographs.

Mr. Chatterton explained that was his point exactly that they could not do that, and certain allowances needed to be made. He stated that it was at the discretion of the Board as to whether or not the items could be shown on the Elmo and described to the member not physically present at tonight's meeting.

Ms. Fertig stated that she did not know if the Board had any control over what would and would not happen, and she felt it was beyond them to make such a decision. She stated that she wanted to make sure the Board was clear on this point because they had held months of conversations regarding applicants not being permitted to submit additional information the night of the meeting, and in some cases had deferred cases due to such circumstances. She stated if there was a concern about this, she would suggest that a recommendation be made to the City Commission under "For the Good of the City."

Chair Barbara Curtis stated she had never intended to belabor the point, but she reiterated that the Board had never prohibited applicants from coming in with Boards, and obviously such information was not presented ahead of time. Ms. Fertig stated she was not suggesting that the Board had ever prohibited anyone from bringing forth information, but she had stated that the Board had voted that new materials were not to be presented by the applicant the night of the meeting, and they had adopted that in their procedures. She reiterated that they had spent many meetings discussing that matter.

Chair Barbara Curtis stated that a rule should be passed that the applicant could not bring in boards. Mr. Chatterton stated that the same material shown on the boards should have been included in the back-up material. Chair Barbara Curtis remarked that the information in the back-up material was not in color.

Alan Gabriel stated that having been on both sides, he stated that he had presented photographs of the site that were included in the back-up material. He stated it was not clear to the public or the presenters that they were not to bring forward information. He felt if they were going to start enforcing that, then staff needed to inform the presenters that everything should be submitted beforehand because nothing would be permitted the night of the meeting. He further stated that he felt that would put the Board at a disadvantage because things changed and new issues constantly arose. He added that otherwise they would be backed-up forever with continuances. He asked for this Board to move forward.

Ms. Fertig requested that staff provide the minutes of the meetings where the Board had decided not to accept new materials, and she believed that had not included photographs.

Mr. Chatterton stated that he believed discussion had been reflected that the Board had the ability to disallow any information from the applicants they felt was new and not included in the backup at any point.

Mr. Cooper stated that it appeared that if an individual was appointed to the Board, it was an honor and it should be accepted in that fashion. He remarked that the Board's meetings were scheduled months in advance, and he feared the day could come when no one would be present and everyone would participate via telephones, and he felt that was wrong. He emphasized that if a member was appointed, he felt they should attempt to be present. He stated that he realized that sometimes there could be an occasional conflict, but he felt the new policy was wrong. He urged the Board to proceed forward with tonight's meeting.

Approval of Minutes – January 22, 2004

Motion made by Gerry Cooper and seconded by Alan Gabriel to approve the minutes of the January 22, 2004 Planning and Zoning Board meeting.

Carolina Wiebe stated that on page 20, last paragraph, the word "one" should be deleted and clarified with the words "**a park.**"

Alan Gabriel stated that on Item No. 4, page 9, reference was made to Jeffrey Monback as the President of the Coral Ridge Isles Homeowners Association, but it should reflect that "**he was the President of the Temple.**"

The motion was restated as follows:

Motion made by Gerry Cooper and seconded by Alan Gabriel to approve the minutes of the January 22, 2004 Planning and Zoning Board meeting as corrected. Board unanimously approved.

1. **Sunrise Middle River Hotel** **Don Morris** **33-R-02**
Request:** Site Plan Approval/Waterway
 Use/B-1, Acreage in 36-49-42
Location: 2025 NE 10 Street

2. **Sunrise Middle River Hotel** **Don Morris** **30-P-02**
Request:** Plat Approval/"Sunrise Middle
 River Hotel"/B-1, Acreage in
 36-49-42
Location: 2025 NE 10 Street

Chair Barbara Curtis stated that had been a request to defer Item Nos. 1 and 2.

Chris Barton stated that they had a letter from attorney Ron Mastriana, Representative for the applicant, who had requested that due to discussions with Commissioner Trantalis they were continuing to work on this. He explained there was the possibility of this becoming a park through the County Parks system, and possibly be redesigned. At the City's request they were seeking a deferral until the April meeting.

Gerry Cooper asked if the contents of the letter should be placed on the Elmo so the voting person at home could view it. Mr. Barton suggested that the letter be read into the record.

Judith Hunt stated that she had discussed the letter with Mr. Barton earlier in the day, and was given privy to the information.

Chair Barbara Curtis stated that she wanted to clarify that this meeting was not being watched on television, but was being watched on the Internet. She added that the chance of being able to read something placed on the Elmo was small.

Motion made by Alan Gabriel and seconded by James McCulla to defer Item Nos. 1 and 2 until April 21, 2004. Board unanimously approved.

3. **Swiss Beach Holdings, Inc.** **Lois Udvardy** **122-R-03**
Request:** Site Plan Approval/Sidewalk Café/
 PRD Las Olas by the Sea.
 P.B. 1, P. 16, Block 3, the S.
 ½ of Lot 4, and Lots 5 and 6
Location: 219 South Fort Lauderdale Beach
 Boulevard

Chair Barbara Curtis announced that this matter was quasi-judicial.

Sharon Miller, Assistant City Attorney, explained that certain items on the agenda were considered quasi-judicial which meant that the items were treated similar to Court matters, but with less formality. She further stated that the case would be presented, and individuals wishing to speak on such items would be sworn in, and the Board would disclose any communications or site visits in regard to the property. She also advised that anyone testifying could be cross-examined, and that exhibits used in the presentations would remain as part of the record.

The following disclosures were announced by the Board as follows: Carolina Wiebe stated that she had been to the site. Gerry Cooper stated he had been to the site. Mary Fertig also stated that she had been to the site. Alan Gabriel announced that he had been to the site. Kenneth Hawkins stated he had been to the site. Judith Hunt stated that she had been to the site. Barbara Curtis announced that she had also been to the site.

Mr. Cherwin proceeded to show a map of the site. He stated that the design and character of the proposed sidewalk café was consistent with the overall character of the area. He added that in regard to the fire safety issues, there were 3 main entries to the business and the design did not interfere with safety circulation for the patrons exiting out of the nightclub. He proceeded to show those entries on the rendering of the plan. He advised that he had to reduce the number of tables in order to conform with the safety issues.

Mr. Cherwin continued stating that the tables met the required 13' setback. He added that he felt the café would be an asset to the neighborhood and would be an activity generator promoting tourism to the area. He urged the Board to approve this request.

Lois Udvardy stated that the applicant was seeking approval for a sidewalk café in connection with an existing restaurant/bar. She stated they were requesting 9 tables with a total of 34 seats. She announced that Section 25-184.A.10 required that "requests for sidewalk cafes in the Central Beach Area be reviewed as a Site Plan Level IV." She advised that the café met the requirements of the sidewalk café ordinance, and brass boundary markers of the type approved by FDOT would be installed to delineate the limits of the sidewalk café. She explained that the applicant had indicated the location of the brass markers on the plans submitted. She stated that a minimum path of 13' in width would be maintained for pedestrians along the existing sidewalk as required by the Lease Agreement with FDOT. She stated that the plans indicated a 32 square foot customer waiting area as well.

Ms. Udvardy continued stating that as required by Section 25.184.A.8. the applicant had prepared a Maintenance Management Plan which was detailed in staff's report. She stated that landscaping was not required in connection with sidewalk cafes, but the Chief Landscape Plans Examiner had discovered a way to have 3 removable planters incorporated into the area. She stated that the proposal had been reviewed by DRC on November 25, 2003, and the plan had obtained pre-PZ sign-offs. She stated that staff found this proposal in compliance with the ULDR, as well as the sidewalk café ordinance. She advised that if this Board approved this application, the following conditions were proposed by staff:

1. Compliance with Fort Lauderdale's Code of Ordinances, Section 25-181 through 25-190, sidewalk cafes.
2. The site plan approval shall be valid as provided in ULDR Section 47-24.1.M.
3. A sidewalk café permit form must be reviewed and approved by all applicable disciplines prior to final DRC.
4. Final DRC approval.

Gerry Cooper stated that in reading the recommendations, Item No. 1 stated: "A sidewalk area shall be serviced and maintained by South Florida Services Corp." who

provided service to the remaining adjacent facilities. Ms. Udvardy confirmed. Mr. Cooper asked what happened if that corporation was fired, dissolved or quit. Ms. Udvardy stated that another maintenance company would have to be engaged, and suggested that such a condition could be included. Mr. Cooper asked if it would be more appropriate to have a performance requirement instead of one company. Ms. Udvardy confirmed.

Sharon Miller, Assistant City Attorney, stated that it should be worded that the applicant was to be responsible for making sure the sidewalk was clean, but not indicate who would do the work.

Ms. Udvardy stated that staff would make the clarification.

Carolina Wiebe asked for some further clarification regarding that no additional parking was required since it was not private property.

Ms. Udvardy explained that sidewalk cafes were on the right-of-way, and there was no parking required in connection with such cafes. She explained they had to provide parking for the outdoor seating on their own private property. She further stated that the area under the roof was considered part of the restaurant. Ms. Wiebe stated that in the plan there appeared to be an area where no tables were located, and the existing tables appeared smaller than the tables being proposed for the outdoor café. She continued stating that she was concerned about the 13' clear right-of-way being proposed. She remarked that it did not appear to be a continuous 13' pathway since it was interrupted by the palm trees. She felt that during the busy season, the full right-of-way was not always sufficient for the pedestrians and it appeared this pathway was being cut in half due to the palm trees. Ms. Udvardy stated that they still had to maintain the 13' area, but the planters were eliminated from the 13' requirement. She stated that the 13' did not have to be continuous or in a straight line. She stated further that the architect had shown where the markers were to be installed.

Ms. Wiebe asked if staff had taken into consideration that their plan had showed a certain vacancy under the roof. She stated that in an area where they showed 3 tables, it appeared they could place additional tables in that space.

Chris Barton stated that they were qualified for a certain amount of seats for the tables on their property. If they added additional tables or chairs, additional parking spaces would have to be provided. He remarked that it was based on the amount of square footage. He explained the tables and chairs had been included for informational purposes only showing the general arrangement. He remarked that they could put in as many tables and chairs in the sidewalk café that they could fit, but they could not cross the line for the required pathway.

Ms. Udvardy added they were requesting approval for 9 tables with a total of 34 seats. She remarked they would be in violation if a 10th table was added.

Ms. Wiebe asked if the Board could request they use smaller tables in order to increase the amount of available walkway. Ms. Udvardy stated that she assumed that could be the Board's prerogative.

Mr. Barton explained that the general rule of thumb normally used was that from the edge of the table to the line going into the 13' zone be no less than 22". He stated that on the beach this was an enforcement problem, but according to the Code the defined line was done by the brass markers.

Ms. Wiebe asked if other restaurants had gone to the 13' limit within the same area. Ms. Udvardy confirmed. Mr. Barton explained that the brass markers were basically for the use of the code inspectors.

James McCulla asked if there was a standard by which the restaurants had to maintain the sidewalks. Ms. Udvardy stated it included whatever had been placed in their Trash Management Plan. She stated that she was not aware of anything else that had been written stating certain requirements. She added that each business submitted their proposal of what they wanted included in their plan.

Mr. McCulla suggested that they should include that the sidewalks had to be maintained according to their Trash Management Plan, and they eliminate the name of a specific contractor from the recommendations.

Sharon Miller stated that in addition to this hearing and approval for the development permit, they then had to execute an actual license with the City including the trash management requirements, along with the insurance and indemnification requirements. She stated this was the first level, and the other requirements were contained within the license.

Ms. Udvardy added they also had to go before the Commission since it was a Site Plan Level IV.

Gerry Cooper stated that reference had been made that the tables were included in the plan for informational purposes only and the owner could include as many as they wanted, but Ms. Udvardy had stated they could only have a certain amount. He asked for some further clarification of the issue. Ms. Udvardy stated they could only include a specific number. Mr. Barton stated he had misspoken. Mr. Cooper stated that the restaurant might possibly include some extra tables and chairs in the empty space shown on a busy night. He added that staff was asking this Board to approve something that was pushing things to the limit and could end up over the limit, and he was uncomfortable with such a situation. Ms. Udvardy reiterated that they were only discussing 9 tables on the sidewalk cafe, and stated the other areas in the restaurant were not presently under review. Mr. Cooper reiterated that he felt they were opening up "Pandora's Box" in this situation.

Chair Barbara Curtis proceeded to open the public hearing.

Mr. Cherwin stated that the existing firewall separating the building from the retail to the north, and in effect it created a dead-end condition and proceeded to show the area on the drawing. He added that the tables would not interfere with the flow of traffic.

Ms. Wiebe stated that she wanted to understand the context of the entire property. Mr. Cherwin proceeded to show photographs of the site.

Ms. Fertig stated that she had asked for copies of the minutes to be presented to the Board wherein they had discussed that the applicant would provide additional information, but it did not include information from the public or staff. She stated that this conversation had been held numerous times and the Board had voted. She reiterated that many times she also brought in pictures regarding the sites. She stated if the Board wanted to disqualify the pictures because a person could not see them, and if that person wanted to abstain from voting due to that fact, it should be up to that individual.

Judith Hunt remarked that she could see the photograph being shown.

Mr. Cherwin proceeded to explain the area on the photograph which he was referring to and reiterated that pedestrian traffic would not be interfered with, and further explained that the raised area was currently on the City's sidewalk. He added that he had not constructed that area. Mr. Cooper asked if a permit had been necessary to construct that area and asked staff to clarify the matter.

Chris Barton stated that the raised area was not placed on the City's sidewalk. Mr. Cherwin confirmed. Mr. Cooper stated that it appeared the north wall did not project past the wooden deck area, and asked where the new tables were to be located. Mr. Sherwin stated they would be seaward of the wooden deck. Mr. Cooper reiterated that the wall did not project into the area.

Ms. Udvardy proceeded to show a survey of the site. Mr. Barton added that it was not seaward of the wooden deck and stopped at the covered wood deck. Mr. Cooper stated the new tables were to be located east of the covered wood deck. Ms. Udvardy confirmed. Mr. Cooper stated he had been led to believe that a dead-end situation existed and tables could be placed in that area, but he did not see such an area. Ms. Udvardy explained the wall was on the outdoor seating on the private property.

Mr. Cherwin clarified that after looking at the photograph, he concurred and stated no dead-end condition would exist. Mr. Cooper stated if that portion of Mr. Sherwin's testimony was not accurate, it made him wonder if the rest of the testimony was correct. Mr. Cherwin confirmed that his remaining testimony was accurate. He further stated that in regard to increasing the number of tables and blocking the fire exits, he felt there would be more of a potential for the existing tables in the wooden deck area to be more of a hazard, than the proposed café arrangement.

Ms. Wiebe asked what was the requirement in regard to egress. Ms. Udvardy stated that the Fire Department had reviewed the proposal, along with zoning, and it had been approved.

There being no other individuals who wished to speak on this matter, the public hearing was closed and discussion was brought back to the Board.

Motion made by James McCulla and seconded by Alan Gabriel to approve the application as presented with the amended condition regarding the elimination of the requirement of a specific contractor being named for maintenance of the sidewalk area, and substitute the wording that the business had to maintain the area in accordance with their Trash Management Plan.

Roll call showed: YEAS: Judith Hunt, Alan Gabriel, and James McCulla. NAYS: Mary Fertig, Kenneth Hawkins, Gerry Cooper, Carolina Wiebe and Barbara Curtis. Motion failed 3-5.

Chris Barton stated that he had previously misspoken in regard to the deferral for Item Nos. 1 and 2. He stated that the April Planning and Zoning Board would be held on April 15, 2004 and not April 21, 2004.

4. **Broward Gen. Med Office** **Jimmy Koeth** **66-R-02**
Request:** Site Plan/Parking Reduction Approval
Extension Parcel 1: Croissant Park
Lots 11 and 12, Block 35, PB 4, P. 28;
Parcel 2: Resubdivision of Block 38,
All of Lots 1-8, and all of lots 25-30,
PB 52, P 8; Parcel 4: Croissant Park,
Lots 13-18, Block 35, PB 4, P. 28
Of the public records of Broward County.
Location: 1523 S. Andrews Avenue

Chair Barbara Curtis announced that this item was quasi-judicial.

The Board made the following disclosures: Carolina Wiebe stated that she had been to the site. Alan Gabriel stated that he had spoken with Robert Lochrie. Mary Fertig stated she had been to the site. Judith Hunt stated that she had been to the site. Barbara Curtis stated that she had been to the site.

Robert Lochrie, attorney for Stiles Corporation, stated that they were requesting a one-year extension to the site plan for the medical office building which was proposed to be constructed west of Andrews Avenue across the street from the Broward General Medical Center. He stated that correspondence had been provided to the Board from the developer indicating the reasons and justifications for such a request. He also stated that he had copies of letters from the neighborhood in support of this request which he believed had also been provided to the Board. He added that the President of the South Andrews Business Association was also present, along with a representative from the hospital.

James McCulla suggested that the President present the letters, thereby making them non-contentious.

Jeryl Madfis, President of the South Andrews Business Association, proceeded to read a letter as follows:

“Mr. Chris Barton, City of Fort Lauderdale, Construction Services. Dear Chris and Jim: As President of the South Andrews Business Association, we would like to let you know that we are in full support of granting the extra time requested by Stiles Development Company for the North Broward Hospital District Medical Office Building located on Andrews Avenue in obtaining their building permit. Our group is in complete agreement to do whatever it takes to eliminate any further delays on this project. Thank you for your consideration in this matter.”

Jim Koeth, Planning and Zoning, stated if the Board found that the applicant had shown good cause that the extension be approved. If they had not shown good cause, then the Board's option was to deny such an extension.

Mary Fertig asked when such extensions were granted did staff look to see if any of the circumstances had changed. Mr. Koeth explained that if any building codes or ULDR changes had occurred, staff would inform the Board of such changes that could affect the Board's prior approval. Then, it would be up to the Board to decide if such changes were to be enforced or not.

Ms. Fertig further stated that she was concerned about the traffic at this time in the area, and with the project still under construction she was questioning the impact there would be to the existing traffic.

Mr. Lochrie stated that there were going to be 477 parking spaces within the building, and there were 450 spaces allocated in the garage for such use. He stated that the hospital was not expanding the number of hospital beds, but essentially it was being reconfigured to be more efficient and providing greater services. He stated they did not anticipate a significant increase in the number of people going to the hospital. He added that the top 2 decks of the garage generally were vacant.

Ms. Fertig clarified that the parking reduction being requested was for about 200 spaces. Mr. Lochrie confirmed and stated that a parking study had been done showing that they could request less than the 191 spaces being requested. He added that this was about a 17% reduction which took into account that the people using the medical office building would also be using the hospital, such as doctors. He reiterated that they believed the parking study was still accurate.

Chair Barbara Curtis proceeded to open the public hearing. There being no individuals who wished to speak on this matter, the public hearing was closed and discussion was brought back to the Board.

Motion made by Alan Gabriel and seconded by Gerry Cooper to approved the request as presented. Roll call showed: YEAS: Mary Fertig, Alan Gabriel, Kenneth Hawkins, Gerry Cooper, Carolina Wiebe, James McCulla, Judith Hunt and Barbara Curtis. NAYS: None. Motion carried 8-0.

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| 5. | <u>Ronan Kelley/Rookery Park Estates</u> | Jimmy Koeth | <u>115-R-03</u> |
| | Request:** | Site Plan Review/Mixed Use Development/Conditional Use Portion of Parcels A and B, P.B. 137, P. 31 | |
| | Location: | 5100 NW 31 Ave. (NE Corner of NW 31 Ave. and Commercial Blvd.) | |

Chair Barbara Curtis announced that this item was quasi-judicial.

The Board made the following disclosures: Mary Fertig stated that she had been to the site. Kenneth Hawkins stated he had been to the site. Judith Hunt stated that she had been to the site. Barbara Curtis stated that she also had been to the site.

Rod Feiner, attorney, proceeded to show the site on the map and stated that it consisted of 3.98 acres. He stated there were apartment complexes to the north, with a gas station and fast food restaurant to the south, and a hotel to the east. He stated there was a County nature preserve in the area but it was not open to the public. He stated there was a small area that would be open for guided tours. He stated that the property was presently zoned B-1. He stated they were present today in accordance with the mixed-use site plan for property of 5 acres or less. He explained it allowed residential use for the site. He then proceeded to show the layout of the site.

Mr. Feiner explained that the project would consist of 67 units and the maximum density permitted up to 98 units. He stated there was a flex base to the project for townhomes that would be owned in fee simple with the common elements owned by the Master Association. He explained that the average size of the units would be approximately 1800 square feet, and the price range of the units would be from \$220,000 to \$250,000. They believed this would be an overall improvement for the area.

Mr. Feiner went on to explain that the primary entrance would be off 31st Avenue, and a gate would be provided. He added that there would be a pool located in the common area. He explained to the north was another entrance off 31st Avenue and was a limited access roadway at this time. He stated they were in the process of negotiating an agreement with the County so there could be shared access to the site. He explained that part of the agreement called for parking spaces off site that were to be used for overflow parking. He stated they were required to have 187 parking spaces on site. In accordance with the agreement with the County, the applicant was also going to construct a pathway with an observation deck in the County Park area, along with improvements off-site in the area next to the County property where they were requested to stabilize part of the area next to the lake.

Mr. Feiner pointed out that all the townhomes were 2 stories with a garage incorporating various architectural features. He proceeded to show a drawing of the buildings. He stated the project was compatible with the surrounding area that could be considered transitional.

Jim Koeth, Planning and Zoning, stated that he wanted to clarify that the proposed project could only be approved as a multi-family use and could not be fee simple townhouses. He stated that was how staff had reviewed this project.

Mr. Koeth continued stating that this was a mixed-use residential development and the request required an allocation of flexibility. He stated that this project was located in zone 42 with 226 available units. He explained that one of the requirements of a mixed-use development was that a 1400 sq. ft. public plaza area be provided which would be located at the southern end of the project, and the applicant was providing a 2200 sq. ft. plaza. He stated that staff felt the proposal complied with the sections of the ULDR subject to the following conditions:

1. Prior to application for a building permit, a Construction Debris Mitigation Plan shall be submitted to include, but not limited to, the requirements of the Construction Debris Mitigation Policy as attached and approved by the City's building official.
2. Site plan approval shall be valid as provided in ULDR Section 47-24.1.N.
3. The proposed shadowbox fencing on the site plan along the northeast and south perimeter of the project be changed to a non-opaque decorative fencing type.
4. The plat shall be amended to reflect the uses proposed.
5. Final DRC approval.

Kenneth Hawkins stated that an agreement had been mentioned regarding the access at the northern end of the property, and asked how far along was the agreement. He added that he felt uncomfortable that the agreement had not yet been finalized, but yet they were approving a site plan layout that could affect ingress and egress from the site. He stated that he was concerned how a person traveling south on 31st could gain access to the site if the agreement was not approved.

Mr. Feiner stated that the agreement with the County was similar to the one already enacted and passed 10 years ago by the County Commission. He explained that agreement had recently expired, but they were also updating that agreement. He stated the agreement was near 95% completion. Staff was in agreement to its contents and a draft had been presented. He stated that one of the modifications to the agreement was that the County requested a chainlink fence along the property line, but staff was requesting an opaque-type fence. He stated the applicant and County both agreed to that issue. He stated they had no reason to think that the matter would not move forward.

Mr. Feiner further stated if one was heading south on NW 31st Avenue, they would have to go down and make a U-turn to gain access to the complex. He reiterated that the agreement would be approved, but he would not be adverse if the Board wanted to add a condition requiring a recorded agreement showing dedicated access on the northern portion of the property from NW 31st Avenue prior to the issuance of the building permits.

Gerry Cooper asked if this was to be a rental property or a "For Sale" property. Mr. Feiner stated that this was to be an ownership property. Mr. Cooper stated that staff had stated not to be in "fee simple." Mr. Koeth stated they could not do fee simple townhomes in a mixed-use development. Mr. Cooper asked how they would then be able to give title.

Mr. Feiner stated that he had misspoken and the units were to be condominiums, and only the air space was to be fee simple. He added the property would be fee simple and the air rights would be fee simple, and could be transferred. The actual buildings and driveways would be owned by the Association.

Mr. Cooper asked for some further clarification from the Assistant City Attorney. Sharon Miller stated that she was not sure what was being stated.

James McCulla suggested that staff elaborate on the fee simple restrictions, and added that normally condominiums were a fee simple ownership.

Ron Jones, Consulting Engineer, stated that this was a strange prohibition which was against calling the units townhomes. He stated that the form of sale was to be a condominium form of ownership which to his understanding was not a fee simple form of ownership. He further stated that in his viewpoint, fee simple was dividing things up and owning the land underneath, and owning the unit as if it was freestanding. He explained that the condominium association owned the dirt, along with the building. He felt when one bought the air space in a condominium that it was bought in fee simple. He further stated that nothing in the condominium form of ownership had ever suggested the normal definition of fee simple ownership.

Gerry Cooper asked if Alan Gabriel who was a land use attorney could help clarify the matter. Alan Gabriel stated he was not sure what they were referring to in this case. Mr. Cooper suggested that possibly the Board should defer this matter until more clarification could be provided. He reiterated that he was very concerned and confused in this matter.

Mr. Jones stated that in reading that section of the Code, he did not feel it made a lot of sense. He stated if one took the broad view of the fee simple definition, the only choice would be to rent which he did not think was the intent of the Code.

Motion made by Gerry Cooper and seconded by Mary Fertig to defer this matter until March 17, 2004.

Mary Fertig asked if they could add on to the motion regarding the issues of ownership and gaining access to the site.

James McCulla stated that if staff could provide the information requested by the Board, then this matter should not be deferred. He stated if they could not definitively define whether a condominium was a fee simple transfer of interest in property and whether it violated the Code, then the matter should be deferred. Mr. Barton stated that he could not answer that question at this time. Sharon Miller also stated that she could not answer the question at this time.

Mary Fertig stated that she wanted more information regarding the mitigation regarding the number of students attending the local schools. Alan Gabriel stated that the Board had received a copy of a letter from the School Board dated December 8, 2003 that was in the back-up materials as an exhibit.

Carolina Wiebe stated that she was concerned about some other issues she wanted to discuss.

Ms. Fertig stated that she would remove her second for the Motion to Defer for discussion purposes.

Mr. McCulla seconded the Motion to Defer.

Mr. Barton stated that they had a definition of a townhouse that was not specifically permitted in the mixed-use provision.

Roll call showed: YEAS: Gerry Cooper. NAYS: Alan Gabriel, Kenneth Hawkins, Carolina Wiebe, James McCulla, Judith Hunt, Mary Fertig and Barbara Curtis. Motion failed 1-7.

Ms. Wiebe stated that in regard to the landscaping, they had referred to Section 47-21.H.3 defining the requirement for a 1400 gross square foot plaza, but she stated she was unable to find that section. Mr. Feiner stated the Section was 47-18.21.H.3 that stated: "That a mixed-use development shall contain a public plaza open to the sky which includes pedestrian amenities such as landscaping, benches and fountains." Ms. Wiebe asked for some further clarification as to where the plazas were to be located. Mr. Feiner stated that he would show their locations on the site plan. He also stated that such plazas would be located on private property for public use.

Mr. Jones stated that when they were perceiving the plaza area and meeting the intent of the Code, one of the key criteria was that it had to connect to a public sidewalk which it did. He stated it would be acceptable to dedicate an easement to secure the rights of the public. He added that the area would be accessible to the public.

Ms. Wiebe stated that her concern was that a certain amount of square footage was to be dedicated for public use, but it appeared that a good portion of the area was on the inside part of the gate. She asked for some further clarification. Mr. Jones referred the Board to the detailed plan and explained how the plaza would appear. Mr. Feiner added that he had not stated that the area was located inside the wall. He further stated that the detailed information had been supplied in the Board's backup.

Ms. Wiebe asked if this was to be considered a "gated community." Mr. Feiner replied there would be a gate, but no security guard. He added that they had reviewed the Code in regard to the residential and fee simple issues, and the mixed-use development prohibited townhomes. He stated that he had misspoken and had characterized the design as a townhome that it was not, but allowed mixed residential use.

Mr. McCulla reiterated that he did not want to sit and discuss this matter and find out in the end that it had to be deferred or denied. He stated if the answers could not be provided, then he wanted the item to be deferred.

Motion made by James McCulla and seconded by Carolina Wiebe to defer this matter until March 17, 2004.

Judith Hunt stated that if the Motion to Defer passed, she wanted to see the documentation regarding the mitigation for schools at the next meeting.

Roll call showed: YEAS: Kenneth Hawkins, Gerry Cooper, Carolina Wiebe, James McCulla, Judith Hunt, and Barbara Curtis. NAYS: Mary Fertig and Alan Gabriel. Motion carried 6-2.

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| 6. | <u>City of Fort Lauderdale</u> | Don Morris | <u>4-T-04</u> |
| | Request:* | Amend ULDR Section 47-1-12 <i>Effect of Annexation</i> on property to allow legally permitted existing uses on annexed properties to remain legal and permitted after rezoning to a City zoning | |

classification, subject to certain restrictions regarding reconstruction and prohibiting the use if discontinued or changed to a permitted use in the new City zoning district.

Chair Barbara Curtis announced that this item had been withdrawn.

Judy Hunt stated that she wanted to commend staff because the broadcast of tonight's meeting had been crystal clear, and the items on the Elmo had shown up very well. She stated that she appreciated the indulgence the Board had shown to her regarding this meeting because she had a prior commitment prior to her appointment on this Board, that she was not able to put aside.

7. **City of Fort Lauderdale** **Bruce Chatterton** **9-T-03**
Request:* Amend ULDR Section 47-13.20,
Downtown RAC Review Process and Special Regulations to provide a process and requirements for the allocation of dwelling units in excess of the original 5,100 units allocated in the Downtown RAC

Chair Barbara Curtis stated that this Board would be acting as the Local Planning Agency in regard to this matter.

Sharon Miller, Assistant City Attorney, explained that by State Statute the City had to designate a body to act as the Local Planning Agency that reviewed Land Development Regulations to see if they were consistent with the Comprehensive Plan, as well as preparing and approving the Comprehensive Plan and amendments thereto. She advised that the City Commission had appointed the Planning and Zoning Board to act as the City's Local Planning Agency.

Bruce Chatterton, Planning and Zoning Services Manager, stated that the Downtown Master Plan had been approved by the City Commission in November, 2003 which included the vision for the development of the Downtown over a 20-30 year horizon, along with a detailed set of design guidelines. He stated that also in November 2,960 residential dwelling units had been added to the Downtown Regional Activity Center. He stated that the two events were connected. He added that the City had held off on the plan amendment and recertification by the Planning Council until the Downtown Master Plan had been completed, and design guidelines were in place. He stated that when the Commission had approved the Downtown Master Plan, they had also enacted zoning in progress. He explained that the zoning in progress in this case required that the new units be reviewed against the Master Plan's Design Guidelines. He further stated that the intent of the draft ordinance was to ensure that new units would be allocated in a way that would implement the Master Plan, and specifically were implemented consistent with the Master Plan's Design Guidelines.

Mr. Chatterton continued stating that the process the Board was familiar with in regard to Downtown projects would not really change, except in one sense. He stated that if a developer was now required to come before this Board or the Commission by virtue of the ULDR, they would still have to do that, but what changes was that the final allocation of units would be handled by action of the Commission in every case for the new units. He stated it was important to mention that these design guidelines were not prescriptive and were for the most part exactly what they said they were which was guidelines. He stated they encouraged things that would implement the plan and the plan's objectives. He explained there was more than one way to implement each of the plan's objectives, which the plan acknowledged. Therefore, when one looked at the design guidelines one would see a condition that was not encouraged with a big "red X" across it, and on the right-hand side was an encouraged condition.

Mr. Chatterton further stated that in regard to the exact language of the draft ordinance, Robert Lochrie wanted to make some comments in an attempt to clarify the relationship of the Design Guidelines to the ULDR.

Chair Barbara Curtis proceeded to open the public hearing.

Robert Lochrie, attorney, reiterated that the Downtown Master Plan had been accepted by the City Commission in November, 2003. He stated he was in support of the ordinance that allowed them to go forward with the additional residential units. He stated that he had one concern regarding the language and criteria in the Code, and specifically it was the reference to compliance with both the criteria applicable to the proposed development as provided in the ULDR, and the design review criteria provided in the Consolidated Master Plan. He stated that his concern was that when they specified that they needed to comply with the Downtown Master Plan, it was by nature a document which was full of principles and guidelines. He explained there were provisions in the document that laid out absolutes or appeared to lay out absolutes, and he did not feel that was the intent because the document should be considered a guideline. He hoped that this language better reflected that reality. He stated that some of the provisions in the Master Plan indicated that City Code changes were necessary for implementation. He stated further if there was to be an ordinance that stated they had to comply with both the ULDR and the Master Plan, when they already knew the two were in conflict, he felt that could lead them down the wrong path in the future.

Mr. Lochrie further stated that the Master Plan also pointed out that FDOT guidelines and requirements were inconsistent with the Master Plan. He stated there was a group that would be meeting on Friday who was going to work with the County and FDOT to have such changes made, but today they would not be able to comply with the Master Plan and FDOT regulations in many circumstances, thereby creating an impossible situation in a project. He continued stating that he felt they should imply the principles of building design and the reason he did that was because there were many pages in the Master Plan which laid out things that should be discouraged and encouraged. However, other pages dealt with specific criteria and character areas which clearly laid out exact setbacks, building heights, buildings against sidewalks, and other items that had clearly been identified as tools to be used in the process, which were not absolute nor were zoning changes. He stated that by adopting it with the other language, his concern was that it would be tantamount to a zoning change requiring these types of development instead of encouraging them. He proceeded to read the suggested language as follows:

“Compliance with the criteria applicable to the post development as provided in the ULDR and shall also be reviewed to determine that the proposed development adequately implements the principles of building design recommended in the Consolidated Master Plan.”

Mr. Lochrie stated that he felt this language would still provide the “strong hook” intended by staff and the Commission, but yet did not tie them into a situation where they could end up facing litigation.

Mr. Chatterton stated that he felt the language might be acceptable because the Downtown Master Plan, like others that Ken Greenberg had done around the Country, did not require immediate Code changes. He stated it was important to get the vision and principles in place first. He stated there was a process of years in which Codes had changed to implement master plans. He stated this was the beginning of the process, and he felt the language, in terms of looking at a balance between the existing regulations and the vision, clarified those issues.

Mr. Chatterton further pointed out that in regard to FDOT and County requirements, they could not suddenly require changes. He stated that applicants could not be forced to comply, but they were going to the County and FDOT with a Master Plan and using it as a tool to convince them to bring about such changes for the good of the community in general. He felt the point was well taken regarding the language, and that there should be a “give and take” and that over time the Code could be amended to better reflect the Downtown Master Plan. He stated that they had no objection to the proposed language.

Kenneth Hawkins stated that in the words “...adequately implements the principles of building design recommended...,” the word “building” was a problem for him. He stated that illustrations had been shown where there were problems with FDOT and landscaping, and using the word “building” appeared to lean more towards the architectural elements instead of the non-structural elements.

Mr. Lochrie stated that was a good point because in the Master Plan itself, it did break down building design and street design. He suggested that possibly saying “...principles of design recommended...” would be better.

Chair Barbara Curtis clarified that the word “building” was to be stricken from the language. Mr. Lochrie confirmed.

Ms. Wiebe asked if they were being all-inclusive in changing the wording because in referencing the ULDR in the proposed language, they were using the requirement “compliance with the criteria applicable as provided in the ULDR,” and she felt it should be left open-ended not knowing what all the subcategories were to the Consolidated Plan. She felt it needed to be in “compliance with both the criteria applicable with the proposed development as provided in the ULDR and the Consolidated Master Plan.” She stated that she was not familiar with the Master Plan for the Downtown to state that she wanted to vote on the principles of building design to be implemented, as opposed to any other design principle that was included in the Consolidated Plan.

Mr. Lochrie asked if Ms. Wiebe was suggesting they refer back to the previous language wherein it stated: "compliance with the Master Plan," or was she suggesting that the Master Plan provision be deleted entirely. He stated that his concern in stating that one had to comply with the Master Plan was exactly the fact that the Board did not have it in front of them. If they were going to say one had to comply with such plan, he was not sure everyone had reviewed it. He stated he was suggesting that they be consistent with the policies in the Downtown Master Plan.

Ms. Wiebe stated that she was under the impression that Mr. Chatterton had made it clear that the plan acknowledged the fact that these were just basically guidelines, and not criteria that were similar with the ULDR requirements one had to comply with, and even then the ULDR made it very clear when one had to comply with certain criteria.

Mr. Lochrie stated that he disagreed with Mr. Chatterton in regard to certain aspects of the Master Plan. He further stated that there were pages in the plan which very effectively stated "preferred" and "not preferred." He added there were other pages which were very specific, but did not use such types of words. He was worried that those pages would tie such pages to a specific development.

Ms. Wiebe suggested that instead of saying "...adequately implements the principles of building design..." could they say "...adequately implements the principles recommended in the Consolidated Master Plan." Mr. Lochrie agreed.

Mr. Chatterton stated that the wording was acceptable, but in terms of clarification he stated if one read the Master Plan as a whole, it was very clear and specifically stated that the design guidelines were not prescriptive. He further stated that if someone took a particular page of the design guidelines out of context, there could be some confusion and maybe this would help to clarify the issue.

Judith Hunt asked for a clarification of the wording due to her having difficulty reading what had been placed on the Elmo.

There being no other individuals who wished to speak on this matter, the public hearing was closed and discussion was brought back to the Board.

Motion made by Gerry Cooper and seconded by Alan Gabriel to approve 9-T-03 as amended by Mr. Lochrie regarding the definition of criteria.

James McCulla thanked Mr. Lochrie for pointing out this issue because there could have been controversy in the future.

Roll call showed: YEAS: Gerry Cooper, Carolina Wiebe, James McCulla, Judith Hunt, Mary Fertig, Alan Gabriel, Kenneth Hawkins and Barbara Curtis. NAYS: None. Motion carried 8-0.

"For the Good of the City"

Wrapping Buildings During Construction

Chair Barbara Curtis asked Chris Barton if he could provide the Board with an update regarding the wrapping of buildings during construction, including how the decision was made as to when to wrap and when not to wrap.

Chris Barton stated that he would have to defer to the Chief Building Official, but pointed out that when a site plan was approved, a condition was included that they had to meet the City's Building Services Division Construction Debris Mitigation Policy. He explained that there was a section included regarding wrapping. He stated that when a determination was made and how it was applied was done at the building division stage during the construction and construction inspection. He referred the Board to page 5 of the memorandum distributed to the Board regarding Item No. 5 on tonight's agenda. He further stated that criteria No. 7 stated: "The Building Division will require measures to minimize airborne debris from all open floors, including, but not limited to, a requirement that each floor undergoing construction activity be wrapped to control the spill-over of concrete and dust onto adjacent properties." He stated that buildings were required to do this, and it becomes an enforcement problem if there was a large site and the builder deemed that it was not necessary, he would not be wrapping it at his own risk.

Mitigation/Schools

Mary Fertig stated that during an earlier issue this evening, there had been a question regarding mitigation on schools, and she had some questions. She stated that she had noticed that the School Board Liaison was not present this evening, and she asked if there was anything anywhere allowing them to require someone to mitigate.

Chris Barton stated that one first had to define the word "mitigate." He stated that he did not think this had been established yet, and explained that one could mitigate in various forms. He stated there had been a previous discussion this week between Sharon Miller and Chair Barbara Curtis regarding this matter, and 4-5 different forms of mitigation had been identified which could be possible. He stated that another question was whether they were practical or realistic.

Ms. Fertig clarified that there was nothing in writing stating what mitigation entailed. Mr. Barton replied there was no directive which had come from the School Board in an attempt to define mitigation. He stated that one example was a multi-family complex generating 15 school-age children, a form of mitigation could be that they declare it to be restricted to adults or seniors only. Another form was a busing or shuttle system transporting children to school areas where there was excess capacity. He further stated that another form could be a cash payment. He stated that he did not think the matter had been thought through as of this time.

Ms. Fertig reiterated that they had no control over moving students from one location to another. She stated that they recommended mitigation, but staff did not make any such recommendations. She felt something had to be established, otherwise there would be no mitigation due to there being no requirements.

Mr. Barton stated they had not established any, and he felt they needed to go back and have discussions with the School Board, and get them to make more specific recommendations. Ms. Fertig suggested that the School Board Liaison attend the meeting. Mr. Barton stated that the person involved had a staff of one to cover 30 cities.

He reiterated that everyone recognized early on that this was work in progress, and they were attempting to find out exactly what this meant. He stated they would convey the request to the School Board representative.

Ms. Fertig explained that in some areas of the County when they required mitigation, they had made plans to expand the schools involved. She stated that in this City there were no such expansion plans. She felt the question was whether they would be placing undue burden on the developers building in this community, as opposed to other parts of the County.

Motion made by Gerry Cooper and seconded by Judith Hunt to adjourn the meeting.

There being no further business to come before this Board, the meeting was adjourned at approximately 8:30 p.m.

CHAIRMAN

Barbara Curtis

ATTEST:

Margaret A. D'Alessio
Recording Secretary

A mechanical recording is made of the foregoing proceedings, of which these minutes are part, and is on file in the Planning & Zoning Offices for a period of two (2) years.