



Local Planning Agency

Regular Meeting

~ Minutes ~

2525 Estero Boulevard
Fort Myers Beach, FL 33931
<http://www.fmbgov.com/>

Tuesday, February 13, 2018

9:00 AM

Council Chambers

FINAL

I. Call to Order

II. Invocation

Chair Zuba.

III. Pledge of Allegiance

IV. Minutes

A. *Minutes of January 9, 2018*

MOTION: Mr. Hughes moved to approve the minutes as presented; second by Mr. Safford.

VOTE: Motion approved; 7-0.

Tuesday, January 09, 2018

V. Public Hearing

Chair Zuba requested ex parte communication. Ms. Heil - site visit, met with John Gucciardo, TPI-FMB website and Estero Island Taxpayers Association (EITA) website; Ms. Plummer - conversation with John Gucciardo and site visit; Mr. Hendrickson - site visit, TPI-FMB website and EITA website; Mr. Hughes - conversations with John Gucciardo, Ms. Wolf - met with John Gucciardo, TPI-FMB website, EITA website and site visits; Mr. Safford - met with John Gucciardo, TPI-FMB website, EITA website and site visits; Chair Zuba - site visits and meetings with John Gucciardo.

Town Attorney Peterson advised that members declare that the ex parte communications will not influence their decision making. Town Attorney Peterson stated that the notice of publication was legally sufficient and Town Attorneys Peterson and Turner swore in those providing testimony.

A. *DCI17-0001, Rezoning to CPD with deviations, by TPI-FMB II, LLC*

Tom Torgerson, resident, introduced himself and reviewed his history on the Island. He described information contained on his website and thanked the community for their input into the project and their patience. He discussed the need for additional hotel units and how the Land Development Code (LDC) and Comprehensive Plan (Comp Plan) fit in with the request. He discussed the number of hotel units before and after hurricane Charley. He calculated 156 units as existing on his property. He indicated that using the platted lots as the basis for

calculation, the range of units increased to 190-215 on seven acres. He discussed exceptional circumstances from late August 2004, the 2008 FEMA change of velocity, previous failed attempts to redevelop the area and the benefit to residents and visitors. He stated that private funds would be used to complete the project, and phases of a wisdom and vision pyramid. He displayed the neighborhood around the property and he stated that 100% of the commercial and residential property owners next door or across the street from the project supported it, described the ways that he would be a great neighbor and great corporate citizen, and introduced his team.

John Gucciardo, resident and consultant, introduced himself and his involvement with the project. He stated that they attempted to keep the beach view open, not create a canyon effect on Estero Blvd. and to design project features so that land on the gulf side could be used by residents and hotel guests as an extension of downtown. He described and displayed a map of the Downtown Core Redevelopment Area and the Commercial Planned Development (CPD) area. He noted that the project did not establish a precedent. He displayed and explained a slide that listed public benefits and community features and addressed general financial benefits. He proposed a new public beach access, a more enhanced Canal St. and he discussed their compromise regarding density and height. He felt the project was consistent, reasonable and compatible with the neighborhood and enhanced the goals as set out by the Comp Plan.

John Hafner, architect, described the design process. Slides included: Primary Design Objectives, Overview of the Resort, Looking up to Crescent & Estero, Pedestrian Bridge, Beach looking towards Estero & Crescent, At Estero looking towards Beach, Looking down Crescent & Estero, Standing at the corner of Crescent & Fifth - Looking up Crescent, Crescent & Fifth - Looking up Fifth, Looking from Estero across Seafarers Property, Walking on Crescent towards Fifth, Walking on Fifth looking towards Crescent, Photographs of the bougainvillea green screen, Environmental Considerations and Stormwater Management.

Chris Flagg, Chief Investment Officer, presented density, traffic and parking. Slides included: existing hotels (240 total rooms) along the beach before hurricane Charley, proposal of 260 rooms on Helmerich and 30 rooms located at the existing Pierview and that 145 of the 175 pre-Charley rooms be relocated bayside in exchange for 50 additional rooms. Additional slides: Traffic Summary & Reasoning, Flow Enhancements & Mitigating Improvements, Vehicle Circulation, Pedestrian Circulation, Consumption on Premise Control Points, Parking and Valet-only Parking, Security, Horizontal and Vertical Stacked Parking, Bicycle Racks & Rentals and Locations.

Mitch Peterson, Chief Executive Officer, introduced himself and provided a historical review of TPI Hospitality. He described their Employee Stock Ownership Plan (ESOP), Core Values, Purpose, Lighthouse Statement and Ownership & Management Structure.

John Dammerman, Joint Venture Partner and resident, described his partnership with Mr. Torgerson. He recapped highlights of the project and he thanked the LPA and the citizens of Fort Myers Beach for their consideration of the proposal.

Bill Spikowski, consultant, described his experience with Fort Myers Beach and his role in reviewing the TPI proposal. He indicated that they would have to make decisions on three deviations and he addressed strict caps on issues in the Comp Plan. He discussed the LDC and the difference between variances and deviations.

Jason Green, Community Development Director, forwarded public emails to Town Clerk Mayher as part of the record. He stated the proposal was a rezoning request to the CPD and it was not exactly inconsistent with the downtown zoning district. The density and intensity was up to the LPA and Council to decide. He indicated that staff looked at the mechanics and the specifics required by Code.

- Doug Speirn-Smith, part-time resident, explained his reasons for believing that the LDC would have to be rewritten. He addressed parking and a 950-person commercial entertainment venue.

- Joe LaDuca, Primo Drive resident, supported the project completely.

- Bob Boykin from Pink Shell supported future development. He discussed density in the Comp Plan and he mentioned taking density from Seafarers and Crescent. He discussed traffic and parking. He did not support the proposed project.

- Valentina Hernandez, resident, supported change but she did not like the garage. She thought they should consider the proposal.

- Beverly Grady supported redevelopment as a process. She noted that it was time to work with the applicant and have the application evolve. She discussed details regarding density in Deviation 1. She did not think there was justification for the Deviation. It was up to the applicant to prove that the application complied with the LDC and the Comp Plan by evidence placed on the record. She stated that code required that the LPA be given a staff recommendation but there were no recommendations for Deviations 1-3 or for the parking issue.

- Ralph Hickey, resident, did not think the project fit into the image of the beach. He thought it was too big and it wouldn't work.

- Richard McDole, Bonita Springs Building Consultant, spoke on behalf of Robert Conidaris, owner of the Lani Kai. Mr. Conidaris did not object to the application but he requested that if concessions were made that he be granted the same opportunity in the future. Mr. McDole compared density issues between the Lani Kai and the TPI project.

- John Richard, Crescent St. resident, supported the project along with his neighbors. He stated that the plan was within the Comp Plan and the LDC.

- Joe Stockton, resident, described the duties of the LPA. He hoped that they consider the response from TPI, Jason Green's report and the inadequacies in his report. He asked the LPA only consider their responsibility to the community, the LDC and the Comp Plan.

- Andrea Carriere, Silver Sands owner, supported the application. She stated it was within the realm of the LDC and the Comp Plan. She described his due diligence and she reiterated her support for the project.

- Joe Tekulve, Primo Drive resident, supported the resort and Mr. Torgerson. He felt it was a win-win situation.

- Ellen Vaughn, resident, felt the project was an incredible opportunity for the Town. She suggested that the LPA be pragmatic and adopt the plan.

- Tom Babcock, resident and member of the TPI focus group, stated that the TPI proposal did not comply with the intent of the Comp Plan. He cited density as a major issue. He noted that

they could have used pre-disaster build back and transfer of density, but they did not. Requesting four times the hotel density was not legally defensible. Deviation #1 had to be denied and changing the hotel multiplier was wrong and put the Town at risk. He did not support granting a Deviation to one developer.

- Annie Babcock, resident and member of the TPI focus group, stated that it amounted to the amount of Deviation versus the benefits. She discussed the lack of benefits and she noted that it was up to the LPA to preserve the community.

- Mr. Yax questioned how much was allowed for the water park and meeting rooms.

- Jay Light, resident and member of the TPI focus group, supported the project. He asked that the LPA consider the source of the bulk of opposition. He noted that hotels and close neighbors supported the application.

- Cameron McGinty, supported the project. He stated that it would provide an opportunity to brighten the area up and he noted that TPI had addressed issues. He discussed future growth, traffic problems and the beauty of the project. He stated that there was a lot of support in the community for the project and he asked that the LPA cut through the red tape.

Ms. Heil questioned the clearance of the pedestrian bridges. Mr. Hafner stated that the clearance was 14' 6" and in accordance with Federal Department of Transportation (FDOT) requirements. Ms. Heil asked about the incentive for employees to park off the Island. Mr. Flagg noted that reimbursement was provided for employees who used public transportation and the parking calculations included parking for employees. He stated that at any one peak time there may be 50 employees on site. Ms. Heil questioned the previous agreement and how the parking calculations changed over the period of discussion. Mr. Green responded that he was not aware of an agreement and his calculations came from the LDC.

Discussion ensued regarding parking calculations and Mr. Green stated that his calculation was based on the LDC; adding up the uses equaled 848 parking spaces. Mr. Green remarked that there were differences of opinions and he stood by his report.

Ms. Heil questioned why the staff's report was so different from Mr. Spikowski's report. Mr. Green replied that it looked like the calculations were different. Ms. Plummer had a hard time understanding why the Town was fighting with the expert they hired.

LPA Member Hughes noted that alleged items previously agreed to between the applicant and the staff were contradicted in the supplemental report and there was a conflict with Mr. Spikowski's report. He felt that the LPA was in a difficult position because the two reports were somewhat conflicting and contradictory. Mr. Hughes felt that some items in the supplemental staff report were of some importance, but it neutralized everything they heard. He accepted Mr. Spikowski's report that stated there was no conflict with the Comp Plan and was within the permissible judgment of the LDC. Chair Zuba agreed and felt that the issue of the supplemental report hinged on the discount with the parking. He commented that sky bridges would be significantly helpful to the public but the report stated that the public value had not been proven. He brought up the implications of the Federal Emergency Management Agency (FEMA) 2008 changes regarding height limitations.

LPA Member Hendrickson sought to clarify the 848 calculation, that it did not include the downtown discount. Mr. Green agreed and stated that the number would be 568 if he included the discount and it would correspond to the number in Mr. Spikowski's report. Mr. Spikowski explained that most users would be going to the beach park from the resort via the sky bridge so he recommended that parking not be required for the portion of users coming from the resort. The question was the 225 people from the public who would use the beach park. He noted that there was nothing in the LDC that described that situation, so he picked the nearest similar use, which required five more spaces. He thought the disagreement had to do with the other 700+

guests. He did not think parking was required and parking for the Tiki Hut in the hotel was already counted in the resort number. In Mr. Spikowski's opinion, the project met code.

Mr. Hendrickson questioned the 1/3 discount. Mr. Green replied that the 1/3 discount tied into the Comp Plan language of 'park once' concept.

Mr. Spikowski explained transfer of density. Thirty hotel rooms will be on the beach side, which used up the allotment on the beach. They asked for extra rooms on the non-beach side and offered that they would not build on approximately 400 feet of the beach. He recommended that the LPA treat that as a density transfer. TPI would file a legally binding instrument leaving the parcel open perpetually. Chair Zuba questioned Deviation #2 regarding building height. Mr. Spikowski replied that the building code was never updated after the 2008 changes in FEMA rules. He allowed 40 feet on the bay side because the building had to go up higher. He did not support the use of FAR because it was an abstract measure. He stated that the issue was the hotel rooms and the extra story and that FAR was a minor issue. Chair Zuba questioned Deviation #4 regarding a type D buffer. Mr. Spikowski suggested that the TPI plan was superior to the type D buffer requirement.

Mr. Hendrickson asked whether the Town could legally defend approval of a requested density of four times the limit allowed by right and if there was any case law where similar approvals were successfully challenged in court. Town Attorney Peterson was not aware of any case law. Mr. Spikowski stated that the LDC allowed for Deviations without a cap and it was a judgment call. Mr. Hendrickson questioned whether there was a legal definition of exceptional circumstances. Mr. Spikowski included Comp Plan Policies in the report relative to the case but he stated there was not a literal definition of exceptional circumstances. Mr. Spikowski clarified that he saw no reason that they could not approve Deviations 1, 2 and 3. He explained that spot zoning was applied when any property was zoned differently than the surrounding properties. It was considered wrong and unfair and he did not think the Town was at risk from a spot zoning challenge. Mr. Hendrickson questioned whether there was a legal definition of public benefit and whether case law attempted to clarify that definition. Mr. Spikowski did not use the term because communities defined it themselves and the Town did not have a definition.

Mr. Spikowski explained that TPI took out all the EC land except for the .033 acres behind the seawall because it was not repeated anywhere else. He stated that the .033 could be removed from the CPD and it would probably work fine. Town Attorney Turner concurred with Mr. Spikowski. LPA Member Hendrickson questioned whether it would set a precedent. Mr. Spikowski replied that the Comp Plan was intentionally vague for hotels. LPA Member Hughes commented that the Pink Shell was not a precedent and he did not think that this CPD would create a negative precedent.

Member Hendrickson questioned the difference in strap numbers between the two reports. Mr. Spikowski stated that he compiled the list of strap numbers to represent the boundary description, which was used to change the zoning map. He will double check all the numbers.

Mr. Spikowski stated that the overall acreage on the CPD was 5.07 acres. Tina Ekblad clarified that 4.47 acres were available for developable land, which corresponded with the application. Mr. Hendrickson clarified that 278 guest rooms were less than 450 square feet and 12 were between 450 and 750 square feet. Mr. Gucciardo stated that public benefits ranged from the open space and gulf front view to the pedestrian bridges. Community features included the beach club. He referred to a slide in the presentation that listed benefits and features. Mr. Torgerson explained the factors behind the design for the fence surrounding the pool. He discussed keeping the view corridor open. Discussion ensued regarding the height of the building, from grade level to the top of the roof and what would be on the roof. Mr. Hafner referred to the LDC definition of height and stated that the main building was 40 feet and the top of the roof deck was 52 feet above grade. If the pitched roof was included in the measurement, it was around 65 feet.

LPA Member Safford questioned other factors involved with transferring density. Mr. Spikowski replied that they discussed a pre-disaster build back provision but they decided to go with the Deviation method authorized in the LDC.

LPA Member Wolf questioned the height of the garage. Mr. Hafner replied that clearance was 13' 6".

LPA Member Plummer discussed the importance of TPI giving up rooms in order to provide a view and air corridor and the fact that 11 accesses were taken off the table. She questioned why they did not have kiosks like Snug Harbor. Mr. Spikowski replied that they did not have the space due to parking requirements.

Mr. Green pointed out that part of the application included vacating two rights-of-way in exchange for the parking lot.

Mr. Hendrickson questioned the relationship of the aquatic venue to the hotel. Mr. Spikowski noted that it was listed as recreation facilities commercial.

Mr. Spikowski stated that the Lani Kai was 102 rooms per acre, the Pierview 80 per acre and the Lighthouse 56 per acre.

Chair Zuba thanked Mr. Spikowski for his participation and the applicant for his hard work and patience. He noted that it was regrettable that the County, owning a key parcel in the downtown, had not cooperated at all.

MOTION: Chair Zuba moved to approve the rezoning CPD with the four Deviations as contained in the staff report, Conditions 1A, 2A, 3A, the buffer and 5-18; second by Ms. Heil.

Mr. Spikowski suggested an amended motion.

AMENDED

MOTION: Chair Zuba moved to approve the rezoning to CPD with the four deviations and special conditions 1-18 as set forth in the Spikowski report. The motion was based on the presentations made by the applicant, staff, and public input and the findings and conclusions in the report. The criteria that have been outlined include consistency with the Comprehensive Plan and criteria of the LDC; second by Ms. Heil.

Mr. Safford thought that they needed to discuss the conditions. Mr. Hendrickson agreed. Chair Zuba reviewed Deviations and Conditions. Mr. Hughes explained the reasoning behind establishing the 40-foot height restriction on the bay side of Estero Blvd. in reference to Deviation 3. In Condition 7, Mr. Spikowski will insert the correct square footage. Town Attorney Peterson will research a license for the air rights regarding Condition 9. Chair Zuba indicated that the fence must be 80% transparent in Condition 11. Mr. Safford noted that TPI was giving up a substantial amount of revenue to make the project work.

VOTE: Motion approved; 5-2 with Mr. Hendrickson and Ms. Wolf dissenting.

VI. Public Comment

None

VII. Adjournment

The meeting adjourned at 3:39 PM

Minutes adopted as amended on February 27, 2018; Motion by LPA Member Plummer; seconded by LPA Member Zuba. Motion passed 6-0 (Member Heil absent).



Michelle D. Mayher CMC
Town Clerk