

## PLANNING AND ZONING BOARD MINUTES

The Brevard County Planning & Zoning Board met in regular session on **Monday, May 9, 2011**, at **3:00 p.m.**, in the Commission Room, Building C, Brevard County Government Center, 2725 Judge Fran Jamieson Way, Viera, Florida.

Board members present were: Henry Minneboo, Chair; Aneta Ott, Vice-Chair; Bill Cannon; Linda Wise; Peter Aydelotte; Clyde Thodey; Jerry Jagrowski; Robert Ludwiczak; John Stone; Ron McLellan; and Robert LaMarr.

Staff members present were: Cindy Fox, Planning, Zoning & Enforcement Manager; Christine Lepore, Asst. County Attorney; and Candy Hanselman, Zoning Support Manager.

The Chair, Henry Minneboo, called the meeting to order at 3:00 p.m.

Henry Minneboo – This is the P&Z, Planning & Zoning Board meeting. And this is an advisory board to the Board of County Commissioners. All decisions that we make here today will be brought to the Board of County Commissioners on May 26, 2011, at 5:00 p.m., back in this particular room here. Today, each applicant will be given 15 minutes to present their particular project. Saying that, did everybody have an opportunity to look at the minutes from the April 11<sup>th</sup> meeting?

Motion by Aneta Ott, seconded by Jerry Jagrowski, to approve the minutes from the P&Z meeting on April 11, 2011. The vote was unanimous to approve the minutes, as submitted.

There were nine regular members, and two alternates present. All regular members, and the alternate from District I, voted throughout the meeting.

The agenda was heard in the following order: 3, 1, 2. These minutes are in agenda order.

### DISTRICT 1

**V.B.1. (Z1105101) – PAIGKO, LLC.** – (Carmine Ferraro) requests a change from BU-1 to BU-2 with a BDP, on 1.71 acres. Located on the east side of U.S. 1, opposite and approx. 50 ft. north of the eastern terminus of Cross Rd. (3700 & 3704 N. Hwy. 1, Cocoa)

**P&Z Recommendation: Thodey/Jagrowski – Approved, with a Binding Development Plan, to be limited to the uses stipulated by the applicant. Vote was unanimous.**

Carmine Ferraro – My name is Carmine Ferraro, Carmel Development, 4265 Quechua Road, Cocoa, Florida. I'm here to represent the applicant today. I wanted to go ahead and just kind of give the board a quick overview of the zoning item. This is a property that is currently zoned BU-1, along U.S. 1. I brought some extra handouts. But do you have an overall, like an aerial map, to show the location of the property? (The aerial maps had been distributed to the board.) The property is located on the east side of U.S. 1, approximately a quarter of a mile to the north of State Road 520, and approximately an eighth of a mile to the north of the Cidco Industrial Park area. It's also located just to the east side of the Florida East Coast Railway. We are here today to ask for a change of zoning from BU-1 to BU-2. Basically, as many commercial property owners have been experiencing in the economy we've been in for the last four years, this property has been vacant for the better part of that four years. They've had problems with vandalism, theft of air-conditioning parts, and those things that occur when a property remains vacant for an extended period of time. It's been reduced four different times from its original price, and it's been marketed by five different realty companies. So the owners have shown a continued effort to try to sell the property. We are now at a point where we have to look at what other opportunities are there to, one, make the property more sellable or, two, there is a possible option of the owner moving his existing business, if he could sell his existing building, and moving his operation over to the U.S. 1 properties. There are two individual properties here that I'm referring to - 3700 U.S. 1 and 3704 U.S. 1. So here we stand now, asking for this change of zoning, knowing that there are

residences to the immediate east of this property. And, as part of what we thought was a very proactive way to approach this, we put together some public meetings. We mailed out to those residents. We mailed out about 48 inquiries. We held two meetings. In the first meeting, we had eight of the residents show, from the east side, the residential area back there. And I had two phone calls. From that meeting, we got a lot of good input from the people. We heard what they were not wanting behind their property, heard the things they would be open to. And we had some very productive discussion. The outcome of that was that we put together a list of all the BU-1 uses, with the BU-2, in a table format. And I'm going to give you a copy of that so you can look at it. There is an additional two pages in there that deal with the permitted uses with conditions, which is not part of the original submission. I'm going to speak to that. So the idea was, was to allow the residents to see the BU-1 uses and the BU-2 uses, side-by-side. Where they are similar, we just basically copied them across. Where they are different, we highlighted them in yellow, with a red, so that they would stand out. And the purpose of this was to come to a consensus with the residents, which we were able to do, and present those items that they would be agreeable to, and those items that they would like to have stricken. So where you see the red strike-throughs, you see where these are the items that we are willing to strike in the BU-2 zoning. And we will offer it in a binding development plan. We mailed this out. We had a second meeting. I received four phone calls from the residents who are adjacent property owners, but no one attended the meeting. They basically corresponded with me over the phone and said that they were comfortable with that. So with the input that we were able to receive, in terms of coming forward to this meeting - there were some additional staff comments that we received. And when we looked at those, we saw that we are consistent with the Future Land Use Plan. We're consistent with the different markers that the Zoning staff looks at to consider a use like this and that, importantly, we would not be impacting any traffic, or changing any level of service, by requesting this zoning. So, basically, here we sit. We're four years down the road. The buildings are still unoccupied. There doesn't appear to be a lot of interest, right now, under the current zoning. We have had some interest from users that would fall under some of the categories that we asked to include in the BU-2. So we are here to ask this board, this afternoon, to approve the request, subject to a binding development plan restricting the following, under permitted uses. We will restrict major automotive repairs, bottling beverages, outside kennels, dry cleaning plants, feed and hay for animal and stock, fertilizer stores, meat markets, paint and body shops, paint kennels, seafood processing, sharpening and grinding shops, welding repairs (except metal fabrication). We also went to the permitted uses with conditions, which is that second part of the Code that allows additional uses that have conditions attached to them. And that was a comment that we received from the Zoning Department. Did not have a chance to get a copy of the table to the Zoning Department. But we did speak with the owner, and the owner is further willing to restrict, in those categories, railroad, motor truck and water freight; passenger stations; and recovered materials processing facilities. So we offer these in a binding development plan which we will bring forward at the County meeting. And we would ask that you would give this consideration. We feel this is an important step to try to continue to sell the property and/or create an ability for the existing business owner of the property to operate his primary business there. And I'll reserve any remaining time that I might have to answer questions. Or if there's any public comment, I can come back.

Henry Minneboo – Any questions of this gentleman?

Jerry Jagrowski – You said other agencies, or other companies, are looking for possible uses? Could you give us any description of what type of businesses they would be in? For example, are they realtors – you can go on and on and on. But exactly what would they be interested in?

Carmine Ferraro – In other words, you're asking me what type of businesses might be able to occupy under a BU-2 zoning?

Henry Minneboo – No. You expressed there's some interested from some firms, or something. And I guess he was curious on what...

Carmine Ferraro – As far as I know, I don't have detail, it was previous interest. There is no current interest, at the time, from anyone. In other words, nobody's looking to put a contract on the property right now, today. There has been some interest from businesses. But under the BU-1 zoning classification, there has not been any...

Jerry Jagrowski – Under the BU-2, you're talking about a binding development plan. Would you be interested in putting only those type of businesses on the binding development plan that shows an interest in using the facility?

Carmine Ferraro – What you're asking me is to limit – I believe we are doing that, because what we've done is we've created a list, if the board does approve it, of BU-2 uses that we would then have the ability to market the property to. And we've restricted several of the heavier uses, and uses that had some objection from the residents. We want to be a good neighbor. You wouldn't want to have your house located in a close proximity to – so in a roundabout way, I believe we are doing that. In order to go ahead and determine ahead of time what uses there might be in, and then restrict, might be counterproductive to offering us the widest net we can have, that we have these uses, and now we can go on and try to market to those uses.

Jerry Jagrowski – The reason I'm concerned is because once this is BU-2, it belongs to the land, and it's forever. We want to make sure that, at that time, it's restricted to certain areas on the BU-2.

Carmine Ferraro – Yes, sir. And that is our intention, as well. And that was one of the reasons we wanted to have these public meetings. We felt, before even coming to this board, it was important to go meet the residents, sit down with them, hear their input, and let them know it wasn't going to be one of these things where you get something in the mail and, all of a sudden, you go, "What is this?" And you come to one of these meetings, and you try to figure out what are the people trying to do. We tried to be as transparent, as open, as we could be, and allow people to have as much input as they wanted. And so the reason a lot of those are crossed off is because of the input we received from the residents.

Jerry Jagrowski – Thank you. And thank you for all those meetings you held with the area.

Henry Minneboo – Anybody else?

Ron McLellan – We have a staff comment about additional buffering, if we approve the – have ya'll discussed that with staff? In your meeting with the residents, have they had any problems with certain items that you may want to go to in BU-2? Was the additional buffering brought up, at all?

Carmine Ferraro – We saw the comment about buffering. And in my initial conversations, during the first meeting with the residents, there were some residents that were just not happy with the fact that there had been some BU-1 under the existing zoning, and tenants and occupancies, that just weren't as good neighbors. And so, from time to time, they've had problems. In terms of the additional buffering, we looked at the fact that even – let's say we did some additional buffering behind these two parcels, and there was another six parcels that are all part of this whole commercial strip, so to speak, of individual buildings, I don't know if you could require them to do any buffering. If we did some buffering just behind ours, you still have all of this open area that goes out there. There is a retaining wall behind there, and there is some vegetation behind the retaining wall. What we thought the best way to approach it would be to restrict the uses as much as possible so it wouldn't create a problem from a use standpoint. The other thing is, and I know you probably are aware of this, but under the conditions of BU-2, the businesses have to operate inside the enclosed building. Is that correct? That was the way I read the Code.

Cindy Fox – Yes, there are some things that you can do outside.

Carmine Ferraro – So we tried to restrict those outside things so that there would not be a problem.

Clyde Thodey – In marketing the buildings, what value have you placed on those buildings to market them?

Carmine Ferraro – Good question. In the beginning, four years ago, it started at 899. They are now both on the market for 399.9.

Clyde Thodey – And you haven't had anyone step up to the plate?

Carmine Ferraro – No contracts. And a note to add, too – and most commercial owners are in this kind of position – there's a lender involved, as well. We'll just leave it at that. Lenders are more aggressive now than they were a couple of years ago. And so there's pressure coming from lenders, as well. But, at some point, the property can't go below a certain value, because then you get into a situation where you're upside down.

Clyde Thodey – I understand. The next questions I have is, have any of the realtors that you've had taken this to the EDC and see if they could help you out?

Carmine Ferraro – That one I can't speak to, because I'm not involved with any of the realtors. I don't know if the owner is aware.

The owner spoke from the audience, indicating that the did not know what the EDC is.

Carmine Ferraro – The Economic Development Council. There have been some good realtor firms, local firms, that have had it over the years, and it would be my hope that they have been trying to market it pretty hard.

Robert Ludwiczak – Mr. Chair, I have a question for staff. On the Administrative Policy 4, under Criteria A, it says, "The proposed use must not materially and adversely impact an established residential neighborhood by introducing types or intensity of traffic, including but not limited to volume, time of day of traffic activity, type of vehicle", et cetera, "parking, trip generation, commercial activity or industrial activity that is not already present within the identified boundaries of this neighborhood." Under this proposal for a binding development plan, and going to a BU-2, would that be contrary to what Criteria A of Administrative Policy 4 states?

Cindy Fox – I don't believe so. In this case, you have existing buildings. The lots are kind of built out, per se. You're not going to add a lot of extra. And what we do for concurrency and the traffic trip generation analysis, we do highest and best. So when we show that it's going from a BU-1 to BU-2, we've calculated the highest and best use on that property for intensity.

Robert Ludwiczak – So if you were going to put automobile sales in that area, that would not increase traffic, substantially?

Cindy Fox – You can see, on page 10 for this item, the average daily and the p.m. peak hours here, and how the current levels of service are at B, and they're going to remain B. So there's not much change, to be honest with you.

Robert Ludwiczak – Then when he talks about striking major, but leaving in automobile repairs, minor, and he talked about not having any paint shops there, do we not have a minor damage to a vehicle that requires a paint job?

Cindy Fox – Paint and body shop, there's no minor or major. It's paint and body.

Robert Ludwiczak – So there could not be any paint or body in this...

Cindy Fox – That's correct.

Henry Minneboo – Anybody else? I've got a few questions. The staff, I'm going to let you have this one. There's only one BU-2 to the north, and one BU-2 to the south. And I'm trying to think what that is. You got that on your machine? On the east side of U.S. 1.

Cindy Fox – I'm not able to answer that question.

Henry Minneboo – So we don't know what the BU-2 to the north is, or the BU-2 to the south?

Cindy Fox – No. When I look at the aerial that's been provided, the BU-2 to the north does not look overly developed. In fact, it could be a single-family home, actually. And the BU-2...

Henry Minneboo – That isn't the law office up there, is it?

Cindy Fox – I don't know. I can't tell you. And the BU-2 to the south appears to be a developed site, but it's hard for me to tell what it is on this property.

Henry Minneboo – Was this the site that used to house old space memorabilia?

Carmine Ferraro – One of the buildings is Stephen's Furniture. They're a 10,800-square-foot metal building.

Ron McLellan – That's the big building there?

Carmine Ferraro – Yes. I didn't know if you want it, but I have copies of all the letters we sent out to the residents. If you want them, they're available.

Henry Minneboo – Is there anybody in the audience would like to speak for, or against, this item? Seeing none, I bring it back to the board.

Clyde Thodey – I make a motion to approve the application, as submitted, with the stipulations that was also made by the gentleman.

Cindy Fox – Would that just be with a binding development plan?

Clyde Thodey – With a binding development plan.

Cindy Fox – Thank you.

Henry Minneboo – Motion by Clyde, and seconded by Jerry (Mr. Jagrowski's motion was made without a microphone; therefore, it is not audible on the record.

Henry Minneboo called the question, and the board recommended approval of the request, as stated above. The vote was unanimous.

## DISTRICT 2

**V.B.2. (Z1105202) – VINCENT KEENAN REALTORS, LLC** – (Vincent Keenan) – requests a CUP for Alcoholic Beverages for On-Premises Consumption in a BU-1 zoning classification on 0.57 acre. Located on the northeast corner of Garfield Ave. & N. Atlantic Ave. (6600 Atlantic Ave., Cape Canaveral)

**P&Z Recommendation: Ludwiczak/Ott – Denied. Vote was 6:4, with Wise, Minneboo, Jagrowski and Cannon voting nay.**

Vincent Kennan – Vincent Keenan, realtor - 6099 North Atlantic Avenue is our main office, Cape Canaveral, Florida. Today, I'm bringing to the board this building that I've owned for about 30 years. And for the last 15 years, it was the Thunderbolt Fireworks store. And at the end of their lease, they decided not to renew it because of the changes in the regulations between the cities and the opposition of fireworks sales that's been going on for the last 15 years they've been there, even county-wide. So it was best that they vacated the building. And the building is 1,482 square feet. It's in the BU-1 zone. It's zoned for what we're asking. It's just a conditional use permit. I have a small internet café and a coffee shop, with just coffee in there. And it's really not a big place, but it sits on a little over 0.57 acre. The building sits close to the road. It has adequate parking, ingress/egress. In addition to the internet café, where people pay, and they can log on with their computers, and they can buy high-price coffee, I'm asking the board to approve a conditional use permit to turn on my 4COP liquor license there. All the activities are inside. It's an upscale environment. It has closed doors, velvet ropes. Membership cards are available for the operation. And, also, the public people will be screened on an MAF background screening with their driver's license before they can enter. So it's a high-scale, upscale, liquor and coffee shop. It's a conforming use. As you can see from the survey, I also have plenty of vacant land in the back, probably a 100 by 125, if we decide ever to expand, or if we decide ever to put in additional parking, as needed. But on the impervious surfaces that are available now, there's just sufficient parking, sign coverage. It's a corner. It's in the corridor of many alcohol establishments across the street. And the City of Cape Canaveral, is Izzy's Pub and Restaurant, and then two blocks down is the Lido's Cabaret. And we also have Graham's Lounge. So this is going to be a little bit more upscale, tighter operation, and in a small-capacity venue. And that's really it, in the way of my request. Maybe the board has some questions?

Henry Minneboo – Fireworks and alcohol don't mix, is that...

Vincent Keenan – The fireworks have been gone since last November. And there was a couple fireworks people that tried to keep the existing use there on the occupational license. But I thought it best for – I probably own nine buildings on that strip, and have all the restaurants and real estate offices. So I thought it would be better for the community, and everything else, and for income purposes, to have this coffee shop and high-class liquor.

Henry Minneboo – Any questions from any of the board members?

Robert Ludwiczak – Mr. Chair, I have a question for the applicant. When I hear internet café, I'm reminded of the news which says internet cafes may be shut down because they're nothing more than illegalized gambling.

Vincent Keenan – There's nothing like that there. This is just for Avis Car Rental, which is right next door to me to the north. This is an internet café where people come, and they pay \$5.00 an hour, and they rent a computer. It's not an internet café. And they print out their boarding passes. There's only four terminals in the whole building. If someone's gambling on-line, I think the management would – they would use their own computer, I guess, to gamble on-line. This is strictly for the car rental business, and the cruise ship industry business, where they drop the people off by the busloads. And, basically, they're just going on-line and

printing out boarding passes and checking emails. And there wasn't even a decision, just lately, to move those four computers two blocks north to my new store, Vinnie's Hot Dogs and Hamburgers, and putting it there in the City of Cape Canaveral, because we think it might even do better there. It's just more proximity to more of the surrounding rental car institutions.

Henry Minneboo – Anybody else? Seeing none, I go out to the audience. Is there anybody in the audience would like to speak for, or against, this? State your name and address for the record, please, ma'am.

Lila Gilbert – My name is Lila Gilbert. My address is 620 Manatee Bay Drive, Cape Canaveral, Florida. Good afternoon. My husband and I own multiple residential properties on Garfield Avenue, and a unit within Cape Shores Condominium complex, all of which are located within 500 feet of this requested zoning change. One single-family home is less than 100 feet from this location. If this CUP is approved, the quality of life that I have known and enjoyed since 1970, when I moved to Garfield Avenue, will be adversely affected, and I ask that you deny this request. As a quick overview, I offer the following information: "The zoning of 6600 North Atlantic Avenue is BU-1. In 1970, this was a gas station and a radiator shop. It has seen many different businesses since then. Over the past five years, this location has been a fireworks store, car rental, scooter rental, boat rental and sales, a flea market, mobile barbeque, to name a few. Most recently, it was an internet café, coffee bar, until this closed on April 18<sup>th</sup>, and the tenant moved out. To the east, or rear, it directly abuts RU-1-9, single-family homes. The property survey specifies that the single building on the property is 1,482 square feet, has 40 seats and 20 parking spaces. There is one bathroom. Supposedly, there is additional plumbing, but I couldn't verify any permit issued for another bathroom construction. After this CUP request was applied for, March 13<sup>th</sup>, or March 11<sup>th</sup>, construction started on an outdoor wooden deck. On April 20, 2011, Brevard County Code Enforcement cited the property owner for violation of Section 104.1.1 of the Florida Building Code, construction without a permit. Workers at the site said they were helping the owner out and didn't think they needed a permit. This is, according to Code Enforcement, approximately 30 by 30 or, otherwise, a 900-square-foot deck being built. Staff from Brevard County Licensing Regulation & Enforcement also posted a stop-work order notice at the CUP address. Before coming here today, there is no active business in the building. The signage says, "Coming soon, upscale full-liquor club". The 900-square-foot outdoor deck is being constructed within two feet of a residential property line, without site review, building plans or permitting. There is a damaged electrical connection in the parking lot, covered by an orange traffic cone, which I also couldn't find permit information for, electrical. And the full liquor club at this location, it is not compatible, given the proximity of residential homes in this long-established neighborhood, or with current established retail businesses in the immediate area. Seating. The CUP request application dated March 11<sup>th</sup> is for 60 seats. And this 60-seat zoning request is also repeated in the section, "Reason for Rezoning Request", on the zoning information worksheet. Staff comments, on page 14, paragraph titled "Other Considerations", states that the CUP is accessory to an internet café with 40 seats. Applicant has asked for 60 seats. It's written in the paperwork. In this same section, it specified that without the presence of a restaurant, the zoning cannot distinguish this use from a bar. So it's a bar. Parking and traffic. On page 16 of the staff comments, the applicant states there is no need for off-site parking, as required. Land development regulations specify that the parking required for 60 seats is 21 spaces, 20 spaces for the seats and one space for four employees. If there are more employees, they are going to need more spaces. There is not sufficient parking for 60 seats and employees, according to the property survey, as there are only 25 spaces. Traffic on A1A, North Atlantic Avenue, could be adversely affected, as the 50/50 split turn lane turns east into Garfield Avenue and west directly into Cape Shores Condominium complex. The majority of Cape Shores Condominium residents are retirees. Also, to add to this traffic dilemma is Avis Rent A Car, a car rental business, that directly abuts the CUP property to the north. Their customers routinely turn into Avis from the 50/50 split lane dedicated for the Cape Shores entrance, heading west. Noise. There will be noise, as there is an outdoor deck under construction to the rear, east of this building, adjacent to residential property, I repeat. This deck would have patrons outside, talking, smoking, doing just what people do at a bar. That's the bottom line. The deck could also be used for outdoor entertainment, as it is quite large, 900 square feet, as estimated

by Code Enforcement. The CUP request is the first step in an attempt to eventually obtain a COP4. And as Mr. Keenan just said, he has a COP4 and wants to activate it. To obtain a COP4 from the Division of Alcoholic Beverages and Tobacco, zoning, seating and square footage requirements all must be met. My research reflects that this property does not meet any of them, as it is currently made up. There are 11 other business establishments within three-quarters of a mile of this location, in either direction, that serve or sell beer, wine or liquor. There are two others that are working towards obtaining alcohol licenses, the ability to serve liquor. Well, at least to serve beer. This shows that a 1.5-mile stretch of A1A would have 13 locations to obtain alcohol. If this CUP is approved, it will be 14. The building has one bathroom, and it was unisex under the last tenant, before he moved out. The solid waste trash generated by a bar needs to have sufficient trash receptacles for the amount of garbage produced on a business day. This has not been the case with the tenant since the fireworks store closed. In regards to that, the trash hasn't been put out since April 18<sup>th</sup>. It's still sitting by the building. This CUP needs to be disapproved, as it not compatible or conducive with RU-1 zoning, which it directly abuts. It's not the kind of business needed, as there are enough alcohol-serving establishments in the area. It isn't big enough, has enough bathrooms, or have enough parking. The alcohol-consuming clientele, noise, odor, traffic, not compatible with the character of the adjacent neighborhood and nearby properties, and will put an undue burden on the residents of the neighborhood. The bar next door will substantially interfere with the enjoyment of their homes, our neighborhood, and adversely affect our property value. Again, I ask you to recommend disapproval of this CUP request. Respectfully, Lila Gilbert." Thank you. Any questions?

Henry Minneboo – I see none. Thank you. Anybody else in the audience? Oh, I'm sorry. Clyde.

Clyde Thodey – You made some reference to value of properties. In our staff comments, it says, "Section 62-1901, impact upon property values abutting residential properties". "No." Staff has said that is not a true statement.

Cindy Fox – I'm sorry to correct you. That is actually the applicant's response. The bold is the applicant, and the italics is staff.

Robert Ludwiczak – You mentioned the 900-square-foot deck. I'm going to presume there's going to be lighting there, as well, on the deck, or no?

Lila Gilbert – I can't say, sir. It's not being built with a site review, a building plan or a permit, so there aren't any rules to have to play by. I would assume there would be, because it's a bar. It's outside.

Robert Ludwiczak – Can I ask staff - normally, noise, lighting, things of that nature, are things that we normally say we're going to disqualify on the basis of being disruptive. Since he's gone ahead and built a 900-square-foot deck without a permit, and we don't know what he's going to do at this point, I'd like to hear from the applicant as to what has just been said, and whether he wants to rebut anything, before we hear our next...

Lila Gilbert – I believe you should have – I sent pictures in to the staff at the Zoning Office. So, hopefully, you have something like this in your packages.

Robert Ludwiczak – My tendency is to vote against this, but I'd like to hear from the applicant first.

Lila Gilbert – There are also other audience members. Thank you.

Vincent Keenan – The 900-square-foot ground level deck, we didn't think it needed a permit. And, as soon as they closed it down, we submitted our engineering drawings, and it's in permitting review as we speak. It's part

of the back yard. The back yard is going to have sun lounges in there for the daytime. In the way of the internet café...

Robert Ludwiczak – How about the lighting?

Vincent Keenan – There's no lighting on the deck, proposed for the deck. It's for daytime use. It's for sun cabanas.

Robert Ludwiczak – O.K., so your patrons, then, will not go out there and drink in the evenings?

Vincent Keenan – That's not the intention. But where patrons go out and smoke, it's still on my 0.57 of a half an acre of BU-1 zone. We're going to have outside smoking, only. There's no smoking in the building.

Robert Ludwiczak – I understand that.

Vincent Keenan – Except for the deck, there is a – she's counting 900 square feet, but there is a concrete patio with a trussed roof system over it.

Robert Ludwiczak – And then she made reference to 60 seats.

Vincent Keenan – The staff, when I first brought it down there, he suggested 60 seats, and then he changed it two days later, and said, "It's better off with 40 seats. How many seats do you actually have?" And I have 20 seats.

Cindy Fox – I can clarify that for you. When you do a straight land development calculation on how many seats that you can have...

Vincent Keenan – With the parking, it came out to 60...

Cindy Fox – It came out to 60. But then we talked about employees. And so the applicant has voluntarily limited the application to 40 seats. And he actually has less than that.

Robert Ludwiczak – And he'll have sufficient parking for 40 seats, and no more?

Cindy Fox – That's correct.

Vincent Keenan – I have sufficient parking for 60 seats.

Cindy Fox – If you don't have employees.

Vincent Keenan – If I don't have employees. So we brought it down to 40. So, really, I have sufficient parking for 54 seats, and I brought it down to 40.

Robert Ludwiczak – You're shaking your head over there, and I'm a little confused. He either has sufficient parking for 40, or 54, or 60. What...

Cindy Fox – He's not giving you the part of the equation as to how many employees he actually has. He limited it to 40. He actually has excess parking. If he has fewer employees, then he's got – he has more parking for the seats. I mean, I can run through the numbers, if you want. You take the number of – for every three seats, you need one space, and for every four employees, you need one space. So if he's got 20 seats

right now, he has excess parking. So he's agreed to limit his total seats to 40, which will allow excess for employees.

Robert Ludwiczak – And you would agree to a binding development agreement to limit to 40, and no more?

Vincent Keenan – Yes. Very simple.

Cindy Fox – Since this is a conditional use permit, you do not need a binding development plan. That's a condition of the conditional use permit.

Robert Ludwiczak – So then he could, if we were to approve this, go to 60 without any...

Cindy Fox – No, he couldn't.

Henry Minneboo – No.

Cindy Fox - If part of the approval of the conditional use permit is 40 seats, then it's 40 seats, and he can't go above that.

Vincent Keenan – So I'm not asking for a binding. This is just a conditional use of the already existing zone.

Cindy Fox – It's an extra condition added to the conditional use permit for your property.

Vincent Keenan – And it's a – yes, it was, back in – I forget when I bought it, probably 1977 – I personally ran it as Beach Exxon Radiator for ten years. And, from there, it went to a used car lot, probably for another five years. And I could show you the lease. The fireworks people are coming out of a ten-year signed lease, and they were there for three years before that. So 13 years as a fireworks store. And the business that is in there now, I didn't like how the tenant was running it, so I installed and brought all my own coffee equipment into that location. And I haven't opened the business until I get through the boards. And the ground level deck already has permitting, engineering, and everything, that was submitted as soon as they came down and said there was a problem with it.

Henry Minneboo – You've made application. You don't have a permit for that deck.

Vincent Keenan – No, because since I'm an owner/builder, which I'm not an owner/builder, because I have this in a corporation - I went down there today. They were going to issue me the permit. Now, I'll have to go get a contractor, to be determined, and add it, because we were confused that since I own the property, that it's in a corporation, I need a contractor to sign off on that. And there's two bathrooms in it from the gas station. All gas stations have two bathrooms.

Henry Minneboo – Let me go back to the audience. Thank you. Anybody else with the audience?

Jon Brazee – My name is Jon Brazee. I live at 4120 Tiwa Lane, in Titusville. And I'm one of the owners of the property immediately adjacent to the east of this parcel. Obviously, by the construction of the deck, he's put it within five feet of the fence, the property line, which is against the code. It requires a 15-foot setback. But even with the 15-foot setback, the use of this deck for people, if they're sunbathing, or drinking, or smoking, or whatever, is within a few feet of the master bedroom window, which I find very objectionable. I think that the previous operation of this facility – they had a grand opening party. The police had to be called. There was cars up and down Garfield. This indicates that it's probably not the best use of this property. A half an acre lot, to me - if you're familiar with the '60's style gas station, it's a very small building, 1,400 square feet. And, yes,

he says he's only going to have 40 people in there, but it remains to be seen. I just think that a liquor establishment that close to a residential neighborhood is unacceptable. And I appreciate your denial of his request. Thank you.

Henry Minneboo – Thank you, sir. Any questions?

Robert Ludwiczak – You mentioned there should be a 15-foot variance, and I would agree with you on that. Has Code Enforcement said that they have bought off on this because it's within five feet of your fence line?

Jon Brazee – Not that I'm aware of.

Cindy Fox – Apparently, they were cited for work without a permit, and they have come in now for the permit. So I believe there's an active case happening. The setback between BU-1 and residential property is 15 feet; however, if this deck is not elevated above four feet, it can go all the way up to the property line.

Peter Aydelotte spoke without a microphone.

Jon Brazee – People could actually stand on the deck and look over the fence, and it will certainly affect the privacy of anybody in our back yard.

Clyde Thodey – Is this a rental home you have there?

Jon Brazee – It's a family estate. And our family uses it for vacations. We don't rent it out. It's just our personal use.

Henry Minneboo – Any other questions of this gentleman? Is there anybody in the audience? Yes, ma'am.

Thomazine Whitehead – My name is Thomazine Whitehead, and I have written a letter to Ms. Hanselman. I'm sorry if you don't have a copy. I didn't think it would be necessary for me to bring a copy, so I'm going to ad lib a little bit. I happen to be the resident that is two doors east of the said property. I live at 162 Garfield. I live 70 feet from the property line of said property. I have lived there for approximately four months. I have rented, with the option to purchase in the next year. And I never thought that I'd be living next to a full bar. I have gone through the advent of the coffee shop. I went through the opening party. I heard the noise. I thought the back door had been open, but it hadn't. They were in the building. Because of my proximity to A1A, I've had parking problems at night, as well as during the day, if there are trucks delivering in the property, so that my property is jeopardized, and the cars that are parked – because I am, as I say, about maybe 120 feet from A1A. There is another concern besides the noise, that I'm going to be in jeopardy of my health, safety and welfare, as far as I'm concerned, is being threatened. And I am being forced to consider where I'm living. My health is being jeopardized because of the future accumulation of garbage, and vermin, and so forth, as well as the noise. My safety, because of the kind of traffic that's going to be brought in to that area, and the parking problems. And then, of course, my welfare, due to the sanity, and my physical safety, and lack of sleep that I'm going to get from either the light or the noise. I am aware that the owner has been ignorant of following the proper guidelines that you and your board has passed. I'm a little appalled at that. And I'm asking you to reconsider and deny this CUP. Thank you.

Henry Minneboo – Thank you. Any questions of the lady?

Clyde Thodey – I'm confused. You're saying this is an active property, and there's – what are they serving?

Thomazine Whitehead – Well, up until two weeks ago, to the best of my knowledge, they were only serving coffee. I was a guest there on many occasions, and they were serving coffee and Panini sandwiches, period. And they closed approximately, I believe, at 6:00 o'clock at night. And that was the end.

Clyde Thodey – And when is the traffic? If they close at 6:00 o'clock at night, is the traffic after 6:00 o'clock, before 6:00 o'clock?

Thomazine Whitehead – Well, it's definitely before. And there have been times when parking – and I have not gone out to check why the parking is coming from that property when the parking lot is full. The cars are parked up along Garfield, and they have gone almost to the next block, not quite. But they are right in front of my lot. And, as you know, my drive is maybe 22 feet wide.

Clyde Thodey – And you can hear the noise clearly?

Thomazine Whitehead – Oh, absolutely. Absolutely.

Clyde Thodey – Thank you.

Henry Minneboo – Anybody else in the audience? Yes, sir.

David Hord – My name is David Hord. I'm a resident at 275 Garfield. I've been there about four years. I plan on being there another 30 or 40, God willing. And I do object to having this type of business here at the end of our street. He keeps saying it's not a raised deck, but this deck is two and a half, three, feet off the ground. The fence adjacent to it is only six feet tall, six and a half at the most. And anybody that's standing on that deck is going to be looking over into their property. And that's just not right. I can't see that this board could recommend this to the Board for approval. I'm 400-500 feet away, and I really don't want this in my neighborhood.

Henry Minneboo – Thank you.

Clyde Thodey – I got a question for you, sir. Is the parking coming up as far as 500 feet?

David Hord – Not that I'm aware of. But I'm sure the noise will. He says there will be smoking, and that kind of thing, on the deck, but I can't imagine there not being music, and lights at night, and that kind of thing.

Henry Minneboo – Yes, ma'am.

Gina Bradley – Hi, I'm Gina Bradley, and I live at 204 Garfield. We're just four houses east of the location. And I have children in elementary school and high school, and it just really concerns me, because I'm not the only one. There's people on the streets north and south of Garfield that even have lot younger children, even prior to grade school. So I just believe, with having liquor there and all, and a bar, it will be something that turns into the evening time, night time, 2:00 in the morning. And I have kids. We wake up very, very early and get to school. So that's just my concerns.

Henry Minneboo – Thank you. Anybody else? Yes, sir.

Jerald Sullivan – Good afternoon to the board. My name's Jerald Sullivan. I am renting a property at 161 Garfield Avenue, which is just across the street from my neighbor, Ms. Whitehead, I believe it is. I just moved into the neighborhood. I've only been there approximately a month and a half. I do have a two-year-old son. And my wife is from Bali, Indonesia. And we specifically picked this location. I thought I was moving

into Cocoa Beach, but I found out, no, actually you're moving into Cape Canaveral. And then I actually found out that I'm in a place called Avon By The Sea. And when I found that out, I said, "Well, this is a wonderful thing, because it's not Cocoa Beach, it's not Cape Canaveral, it's Avon By The Sea, someplace that is small, a little different from everywhere else, and this is really pleasant for my wife, as well as my son." When I found out that they are possibly planning on having a full-liquor bar there on the corner, I was a little disappointed. And I also believe that this should not be the right place for that. There are enough establishments up and down A1A that serve liquor, and people go there and smoke and do whatever they do. I would not like to have this in this neighborhood, possibly stretching out to my property, my lawn. And I also am renting with the possibility of owning the property in the future. I plan to be here for some time. I do hope that you deny this, as well.

Robert Ludwiczak – In the month and a half that you've been there, sir, have you heard loud noises that Ms. Whitehead has?

Jerald Sullivan – No, I was not there when they had this opening. I hadn't arrived as of yet. I did hear that – just like what you heard today, in regards to the opening party. I was not here then, but I heard that there was some noise. But I have not experienced it, not as of yet. I'm worried about the future, though. Thank you.

Henry Minneboo – It has been known as "no man's land." I didn't know if you – that's the official terminology.

Jerald Sullivan – That's what I found out. And, actually, I find it quite pleasant, because a little further down, a little further up, it does change.

Henry Minneboo – You'll like the taxes much better. A little tidbit for the day. Anybody else in the audience?

Cindy Fox – If you're to close it to the audience, I just have a couple things I'd like to share with the board.

Henry Minneboo – O.K. And then we can let the applicant do some closing statement, if he wants.

Christine Lepore – Mr. Chairman, I also have some questions.

Cindy Fox – In the BU-2 zoning classification, outdoor seating is permitted with conditions, and that is found in Section 62-1837.9. And it clearly states that the number of outdoor seats provided has to be counted as part of the total. So if he's limiting himself to 40 seats, indoor and outdoor is the total number that he would be limited to. And the number of outdoor seats cannot make the parking become inadequate. And it needs to appear on an approved site plan. Second of all, any lighting, noise, odors, or any other type of things that we can cover in the Zoning Code, would be done as part of the performance standards. And any of those items, if they became an issue for the neighbors, they would be subject to those, and a Code Enforcement action could be taken for those.

Henry Minneboo – Christine.

Christine Lepore – I have some questions for Mr. Keenan. Hi, Mr. Keenan. I'm Christine Lepore. I'm an Assistant County Attorney, and I have some questions about some information you provided in your application. You discussed this proposed business as being an internet café and club. Are you...

Vincent Keenan – It's a coffee shop. It's a coffee shop. And the tenant wasn't paying his rent so, two weeks ago, I asked the tenant to leave, and I put my own coffee equipment in. And I haven't reopened it yet. When I say internet, it's free Wi-Fi. So you can bring your laptop computer and open it up. And there's four computers

with a hub, where the people, actually from Avis, walk over, and we rent the time at \$5.00 an hour for internet activity.

Christine Lepore – So, right now, you don't have any business going on, because your tenant just left.

Vincent Keenan – No, I've closed it.

Christine Lepore – So you plan to have four computer stations available with internet access, pay by the hour, and also free Wi-Fi.

Vincent Keenan – Yes. And coffee, and beverage, and alcohol to complement that.

Christine Lepore – On the computers that you provide there, do you have anything to limit access to sexually-explicit material?

Vincent Keenan – Yes. I'm not really a computer guy, but those computers were installed with \$10,000 worth of software that limits everything, automatically bills the people, closes down and wipes everything off there. So, yes, they're all – you can't go to gambling sites, explicit materials. There's a whole list of stuff that's built into the \$900 software package that the computer tech put into the units.

Christine Lepore – So you're aware that the ability to view sexually-explicit material on those computers would be considered adult entertainment and subject to regulation of the adult entertainment code?

Vincent Keenan – Of course.

Christine Lepore – All right. You mentioned that you would operate this business as a private club?

Vincent Keenan – No, it's not – well, there's going to be memberships. It's open to the public, but anybody coming from the public has to be screened through MAF screening processes. Everybody with a membership has already been screened.

Christine Lepore – Tell me about the membership.

Vincent Keenan – It's \$20 a year for a membership. And those are going to all be people that we know and went through the screening process, so when they come up to the doorman with their card, we know who we're dealing with. There's also a strict dress code with this club, which would be collared shirts, dresses, no blue jeans, and those kind of activities. And there's no live music, at all, at this club. There's no deejays at this club. It's run off of commercial Pandora music. There's no live music, no deejays. It's like a coffee, and high-scale, spot where people hand out and drinks and socialize.

Christine Lepore – So, if I understand your description of the membership, that's really just a pre-screening device for access.

Vincent Keenan – That's a pre-screening. And so everybody that is on the – all the people we know in town will have the card. Actually, we're giving them away. And we'll start – maybe, we'll charge next year as we come along. But we're giving them away, after they fill out their application and they're screened through the screener. Because we don't really want – there is probably – I don't know if there's 11 bars – first of all, that lot's 200 feet deep. So I don't know how they can be so close to that. The lot itself is 200 feet deep. And I don't know how many bars. I know that Izzy's across the street. Lido's is two block down. Graham's is another two blocks down. The eating establishment, which is in the City of Cape Canaveral, which is Tip-a-Few

Tavern, that serves just beer and wine, is three blocks down. So I don't know of any other establishments that close. And we're not looking to be part of the – when I said private club, we'll be renting the room out if someone wants to have a private party, also. We would close that night, if someone's having an anniversary, a birthday party for a child. And there was no grand opening party. That was my daughter's graduation party. We were not open at the time. It was my daughter's graduation party from UCF. So we haven't had any business there, whatsoever. And the coffee guy wasn't paying his rent, so I asked him to leave. And I, since then, brought my own espresso machines and full coffee equipment.

Christine Lepore – Question about people who bring their own laptops and access the free Wi-Fi. Does your security system also limit their access to adult websites?

Vincent Keenan – I'm not a computer technician. I could have my computer tech call you and answer. But these are usually during the day. First of all, at night, there's not a lot of access on computers. But, during the day, we're talking about families that come to this operation to print out boarding passes. And there's students that sit there on the couches – there's couches in the place – and they go online. I don't know what they're looking at, to be honest with you. I don't think they're going to be just coming to my place to look at porn. Can't they do that anywhere, if they wanted to?

Christine Lepore – If their parents allow them. I don't allow my child. It depends on their personal situation. But we're talking about your business. So there won't be much internet café activity until 2:00 in the morning?

Vincent Keenan – No, there's none, at all. Actually, we have boxes that go over those at night. The internet café closes at, I believe it's 7:30.

Christine Lepore – Does your liquor license allow you to serve alcohol from 8:00 in the morning to 2:00 a.m.?

Vincent Keenan – Yes.

Christine Lepore – I have no further questions.

Henry Minneboo – Jerry.

Jerry Jagrowski – Sir, what are your hours of operation?

Vincent Keenan – The hours of operation are going to be from 8:00 in the morning to 2:00 a.m.

Christine Lepore – I'm sorry, you indicated the internet café would shut down earlier.

Vincent Keenan – Yes. We have these big boxes that go on top of the internet café at night, because it closes, and we don't want anything to happen to the computers. The club was designed by the senior class at Full Sail Art School out of Orlando. So it's their brainchild. And those young people there have put together the business plan, have fabricated the room, and it's their final class project there. So I'm really, as Vincent Keenan Realtor - and I own the building - I'm sort of bankrolling, and then it will go into a management company. So it was developed as a class project.

Robert Ludwiczak – Mr. Chair, a follow-up question. When you were talking to Christine, you were talking about the fact that the deck is going to be out there for sunbathing.

Vincent Keenan – Yes, we're putting lounge chairs out there for the deck.

Robert Ludwiczak – And then you said to her, “We have a dress code. And when you come in, you have to have...

Vincent Keenan – Oh, not during the day. When you come in during the day to the coffee shop, the doors are open. At 8:00 o'clock at night, the doors close, and the doorman comes with velvet ropes, and everybody has to be dressed properly from then on. So the back yard is not being used at that time. That's only for daytime activity.

Robert Ludwiczak – So, if I come to your establishment at 8:00 o'clock at night, I got to be dressed the way I am now?

Vincent Keenan – Yes, if you're wearing – no blue jeans, collared shirt, then you'll either be MAF background screened at the door, through the machine, or you already have a membership card, and we know who you are.

Robert Ludwiczak – And what does your screening process entail?

Vincent Keenan – It's actually a rental application that we use at King Rentals, another company I own. And it's called MAF screening. It screens criminal background, nationwide, and credit.

Robert Ludwiczak – So if I have a poor credit score, but I have money to buy a coffee, I can't get in?

Vincent Keenan – No, we don't – it's not closed to the members until 8:00 o'clock at night. We want to know who's coming in the place, and that's our right.

Robert Ludwiczak – Well, but if I want to come in after 8:00 o'clock, and I got a, say a 450 credit score, I can't come in?

Vincent Keenan – Well, if you have a 450 credit score, and you got a big laundry list full of convictions for many things, you're not going to come in.

Robert Ludwiczak – Not convictions. You just happen to be – the economy has just put you in doldrums, and you got a low credit...

Vincent Keenan – It just comes out with the credit score on the application. No, credit's really not going to be the – we're really looking for criminal activity.

Robert Ludwiczak – Mr. Chair, I'm concerned about members, a criteria for selection, who gets in and doesn't get in, dress codes, alcohol...

Vincent Keenan – Well, it's only 40 sears.

Robert Keenan – ...and all we've heard from these people who live next door. I want to move for denial of this applicant.

Aneta Ott – And I second.

Henry Minneboo – There's a motion by Robert, and a second by Aneta.

Christine Lepore – Mr. Chairman, have we allowed sufficient time for the applicant to respond to the comments made by the public?

Henry Minneboo – No.

Vincent Keenan – This is a BU-1 property right on A1A. Now, if you're going to buy a house next to a gas station in 1965, you have to know that you're moving right next to a commercial property. So to stop the use of a use of a property, it seems beyond me, when you have Lido's Cabaret, which is in your county, a block this way, and Cheaters, and all these adult entertainments, and I'm putting in that was designed by Full Sail students, an upscale coffee and lounge. It seems – did they see any parking problems? Why would the people park, when they have plenty of parking? Noise, that would be an issue that would be taken up after-the-fact. If there's noise issues, then I would have noise complaints, and I'd be down here, and it'd be closed down. If I have parking problems. So these issues are issues that will be dealt with later. I mean, if there's lighting problems. I have an office building in Cape Canaveral, and I put on the lights – a 7,000-square-foot office building for my real estate company, and I put on the lights, and Casa Del Sol, next door, said it was too bright. That kind of situation, they brought it to the city, and I changed the lighting. Not before the fact. So I don't know what their concerns are before the facts. They're anticipating the worst, and it didn't even open.

Robert Ludwiczak – But, sir, you did intentionally build a deck with five feet of a fence, without any corporate responsibility of saying, "What's that going to do to the neighbor next door?"

Vincent Keenan – That's not true. First of all, my fence is four feet off his property line, if you look on the survey. So I could move my fence back further. And I hired a landscaping company for \$30,000, with the palm trees, and buffers, and plants, and everything. It's a luxurious place being built there, and it'd be built in BU-1 zone. Where else would you build it, if you're not going to be on A1A, directly on A1A. Where do you go? Where you have the biker bar down on Taft Street? Where do you put something like this, if you can't be on A1A? And I've owned the land for over 30 years. It's really looking like they're interfering with business, development, my business development. All the dots, everything's checked here. Everything's conforming to the use. Objections coming out about after the fact, well they can be dealt with very simply. They could call the police if they have a noise problem. People are bringing those up. And, I mean, where else do you go to put that kind of – in America, if you can't put it on A1A, right on the highway around all the existing businesses? And, to be honest with you, I didn't know I was going to be bombarded, because the lady – all the people, Pioneer Printing, all my neighbors, came to me and said that that lady Lula, or Lily – first of all, she doesn't even live near there, and her houses are like ten houses down the road. They said that she's been going around to the businesses. And I should have brought the business owners, because they're totally in favor of bringing more activity to that dead area, and lighting, so they're not smoking crack around the buildings. You know, you'd rather have a closed-down building than an upscale night club? And all those business owners said that she was coming around to them soliciting them about closing. And they told her, straight out, "What, are you kidding me? We want Vincent." I have many businesses, and they're all beautiful. And I have no complaints about any projects I do. And, actually, you know, I just don't understand why we would turn down something that is completely conforming and consistent with the zoning, with the neighborhood and direct to A1A. It's sort of like taking my rights away. So now I got to get an attorney and come back, and bring the owners of Lido's? I mean, is that what – that's what we're looking at, then, for concerns that are fabricated, and they didn't even come to light yet.

Linda Wise – I had a quick question. Between BU-1 zoning and the residential, should there be a block wall? I mean, I...

Vincent Keenan – There's a double fence.

Linda Wise – I'm an advocate of business owners, et cetera, along A1A. But if you've got a number of people that are unhappy - like our last applicant, where he had meetings with them, worked out issues. Isn't there normally a block wall between BU-1 and residential?

Vincent Keenan – By zone, I can go directly to the property line.

Cindy Fox – Well, let me answer her question. Yes, in the Code, currently, if he was building this project new, he would be required to put up a six-foot masonry wall between his property and the residential property. In fact, it could go up to ten feet tall, if he wanted it to. As far as the deck that he's constructing, a deck that is not four feet high, and that would include the rails, does not have a setback. And that's in any zoning classification. If it was elevated at four feet, or above, and that would include the rails, then he would have to adhere to that setback.

Vincent Keenan – And I just spent \$10,000 on the fence on the east side. The gentleman that came up and said he's on the east side, his fence is falling down. And now I'm going to make him get it off my property, because he's three feet on my property, according to the survey. I could go back three more feet, right into his driveway, it looks like. And I just spent \$30,000 on a landscape program that's going to landscape that whole back around the deck.

Clyde Thodey – I got just a couple of questions here, looking at this aerial. Who is to the north of you there? What property is that?

Vincent Keenan – That is Avis Car Rental.

Clyde Thodey – And what's sitting behind Avis Car Rental on...

Vincent Keenan – They're residential. We're exactly the same size. We're a quarter of the city block, all of us.

Clyde Thodey – So there is residential backing up to that fence?

Vincent Keenan – Yes.

Clyde Thodey – Let's go to the north side. What is that on the north side there on that aerial?

Vincent Keenan – The north side of me, you just asked that. That's Avis. It's the same size lot as me, and they...

Clyde Thodey – No, the south side...

Henry Minneboo – Further north of Avis, too.

Vincent Keenan – Further north, then you have a shopping center that...

Clyde Thodey – Well, you've got vacant lots in here. I'm looking at this aerial. It's very simple. I mean, you've got vacant land here. And what I want to know is, what is this property here, and what is this property here?

Vincent Keenan – O.K. Let's see. My property, and to the north, which is the same size lot, and backs up to residential, is Avis Car Rental. They wash in the back there, and they store cars. Directly to the north of that is all a shopping center. It's the same size parcel as mine, and it backs up to residential. To the north of that is another commercial building that backs up to residential. And to the north of that is my building, another one of

my buildings. That's my empty lots on Johnson. And that's my hot dog restaurant, with beer and wine. And then, just north of that, is Stan's Hardware, and the music store, and the American Legion, which is a bar, I guess.

Clyde Thodey – Well, that's fine. Let me...

Vincent Keenan – And they back up to a residential. And if you go south...

Clyde Thodey – We already discussed south.

Vincent Keenan – South, all those back up to residential. We're all the same.

Clyde Thodey – My question has been answered, and I thank you.

Vincent Keenan – Thank you, sir.

Henry Minneboo – Any other questions? Thank you, sir. Now, we're going to debate it.

Robert Ludwiczak – Mr. Chair, we have a motion on the floor.

Henry Minneboo – There's a motion, and a second, to deny the application.

A board member, off the microphone, asked to speak.

Henry Minneboo – No. Debate's over. I mean, we...

Christine Lepore – Is there discussion on the motion?

Henry Minneboo – Let me go back.

Henry Minneboo called the question, and the board recommended denial of the request. The vote was 6:4, with Wise, Minneboo, Jagrowski and Cannon voting nay.

**THE FOLLOWING ITEM WAS TABLED FROM P&Z MTGS. ON 1/10/11, 2/7/11, 3/7/11 & 4/11/11:**

**V.B.3. (Z1101202) – NICHOLAS M. & LAURA J. STIPANOVICH, CO-TRUSTEES** – (Clifford Repperger, Esq.) – request an Amendment to an existing BDP in a BU-2 zoning classification on 1.48 acres, +/- . Located on the southeast corner of Tangerine Ave. & N. Tropical Trail. (140 Tropical Trail, Merritt Island)

**P&Z Recommendation: Aydelotte/Ott – Tabled to the P&Z mtg. on July 11, 2011, with the stipulation that it not be tabled again. Vote was unanimous.**

Cindy Fox – As you'll recall, the Planning & Zoning Board has tabled this request to give the applicant more time to go back to the MIRA Board. The MIRA Board has again tabled the item. This last time, they tabled the item at the request of the applicant. The applicant did indicate that this would be the last time that they would request tabling in front of MIRA. I have a copy of the most recent submitted binding development plan, which this board has not seen yet. MIRA was given it, but they did not discuss it at their last meeting. I also have a memo from the County Attorney's Office to Greg Lugar, over the MIRA Agency. And I have a copy of those, if this board would like to see that.

Henry Minneboo – If anybody on this board would like a copy of that. I guess my concern is, we've tabled this three or four times and said let's wait until the MIRA Board makes a decision. And unless anybody else here has a problem with that, I think we're sort of obligated to continue and let them sort of make a decision before we get it, unless the board feels otherwise.

Aneta Ott – Staff, do they pay anything to have it tabled?

Cindy Fox – No, they have not actually paid, because this board sent them back to MIRA. And so it is this board that has continued to go ahead and table it. So the applicant has not paid anything, at this point, for tabling.

Aneta Ott – I have a real problem with this. I think this gentleman has had eons of time to do this. And so I don't like it that we're just making it easier and easier for him to pass in on for the rest of the year. So I really think that we ought to have a motion on this and make him pay for when he's going to do it again.

Clyde Thodey – I agree with Aneta on that. I went by there today, and I don't see anything going on. And I think it's an embarrassment to this County to let it continue three and four times. If MIRA wanted to do something, I'm sure MIRA would have done it by now. I just don't understand why we have to continue to put it on the agenda and then constantly have it waived. I'm going to make a motion that we don't accept it, and we move forward. And if the applicant wants to resubmit the application, let him pay full-bore.

Robert Ludwiczak – Mr. Chair. Mr. Chair.

Henry Minneboo – Robert.

Robert Ludwiczak – I just have a question. It is my understanding, though, that this board did tell the applicant to go back to the Merritt Island Redevelopment authorities. So we put the onus on him, rather than vice-versa. And we thought we wanted to see what MIRA would do first, before we even voted on it. I'm not so inclined to think that we should move to force him to do something on something that we forced him to do in the first place, and that's go back to MIRA. But am I wrong in that assumption? Did we not send him back there before we would do anything?

Henry Minneboo – All your assumptions are correct. We did ask him to do that on the 10<sup>th</sup> day of January.

Cindy Fox – Initially, you sent it back to the MIRA Board, because there were issues regarding the site plan that you were not convinced MIRA had seen. And there was some language included in the original amended binding development plan that MIRA did not see. So you sent it back to them to see that. They did review it, at the time, and they tabled the item so that there could be additional language worked out between their attorney and the County Attorney's Office.

Robert Ludwiczak – So would I be correct in my assumption, then, that the reason it was tabled was not because the applicant requested it be tabled, but it was tabled by the MIRA Board because they want to do more work on it?

Cindy Fox – The applicant was ready to go forward. The MIRA Board was not ready to approve it, as it was written, so they directed the applicant to go and have their attorney work with the County Attorney's Office for better language. They did that. Then they provided another binding development plan to the MIRA Board, and the MIRA Board is still not pleased with the amended binding development plan that they have presented, at this point.

Robert Ludwiczak – Then my question, Mr. Chairman, if we were to have the applicant come before us, either accept or deny his application, would we be superseding what MIRA should do before us?

Henry Minneboo – That's my opinion, yes.

Jerry Jagrowski – I got a question of the staff. Is there any way we could put a time limit, it has to be accomplished by such and such? Can we do that?

Christine Lepore – Sure. And I wanted to call this to the board's attention. There is actually language in the Code addressing this procedure that talks about tabling. And it says that the applicant can request a tabling once. And, after that, this board is not bound or obligated to allow additional time. It's my understanding that the applicant, based on the last MIRA meeting, has asked for a tabling now. The board could consider this the one tabling which, after the next date, if you so choose to grant it, if the applicant again requests tabling, it will be considered a withdrawn application.

Henry Minneboo – We've tabled this four times.

Christine Lepore – I understand, but there's some discussion about at who's request that was tabled, is what I'm getting. It was at this board's request to have input from MIRA, and MIRA's request for additional information. They were moving forward at MIRA, although it was slower than we had hoped.

Clyde Thodey – I just want to bring to the board's attention, when I was Chairman of the variance board – this goes back to when Ron Pritchard was Chair – and we gave this gentleman a variance to do what he wanted to do. I drove past there again today, and nothing's been done. So I hope that that variance is going to go away, as well, since he hasn't done anything with it. I mean, this is just going on and on, and we're talking over four years now. And it's time that we step up to the plate and say, "It's over. If you want to come before this board again, then you serve it up with a new application and put your money up."

Henry Minneboo – There's a motion, and second, on the floor. And that motion was by Clyde, and seconded by Ronnie (Mr. McLellan's second was made without a microphone; therefore, it is not audible on the record).

Henry Minneboo called the question, and the motion failed with a 2:8 vote. Clyde Thodey and Ron McLellan were the two members voting in favor of the motion.

Henry Minneboo – In trying to address the concern of some of the board, is it possible we can – well, first of all, we need to know MIRA's next meeting.

Cindy Fox – This is where it gets a little sticky. MIRA's next meeting is May 26<sup>th</sup>. This board has chosen not to meet in June. So it would be tabled to – if MIRA makes a decision at their meeting on May 26<sup>th</sup>, this board will not hear it until the meeting in July.

Aneta Ott – That should do it. Then, for sure, my vote would be changing to then.

Robert Ludwiczak – Mr. Chair, in lieu of our attorney's comments, can we just make it a policy that applicants are aware of the fact that they will only have one tabling motion request and, after that, they're going to pay for reapplication?

Christine Lepore – That's what the Code states.

Cindy Fox – We're already there. It always seems like it doesn't exactly go that way, because staff ends up tabling, or the board does.

Robert Ludwiczak – I'm not saying staff.

Cindy Fox – We definitely have that in place.

Robert Ludwiczak – I'm saying the applicant, that they be on notice.

Henry Minneboo – I'd like a motion from this board, though, to – let's create some kind of a sunset here. If somebody will come up with something, because I'd say if we come through here by July – if he doesn't have it be then – it doesn't mean what MIRA does we're going to approve, either.

Aneta Ott – Am I understanding, in July, if he asks for tabling, then it's all over?

Christine Lepore – According to the Code, then his application is considered withdrawn. This is his one request for a table.

Henry Minneboo – Let's create a motion here.

Peter Aydelotte – I make a motion that this item not be tabled again, and it be heard at the July Planning & Zoning meeting.

Henry Minneboo – Motion. Is there a second? Second by Aneta (Ms. Ott's second was made without a microphone; therefore, it is not audible on the record).

Henry Minneboo called the question, and the board tabled the request to the P&Z meeting on July 11, 2011, as stated above. The vote was unanimous.

The meeting was adjourned at 4:27 p.m.