

CITY OF ST. AUGUSTINE, FLORIDA

Regular Planning and Zoning Board Meeting  
March 4, 2003

The Planning and Zoning Board met in formal session at 2:00 p.m., Tuesday, March 4, 2003, in the City Commission Meeting Room at City Hall. The meeting was called to order by Bruce Dufresne, Chairman, and the following were present.

**1. ROLL CALL**

Bruce Dufresne, Chairman  
Matthew Baker  
Gerald Dixon  
Leanna Freeman  
Roxanne Horvath  
James Solana

Excused: Harvey Simms

Also Present: James Wilson, Esq., City Attorney  
Mark Knight, Director, Planning and Building Department  
David Birchim, Senior Planner  
Pam Halterman, Recording Secretary

**2. APPROVAL OF MINUTES**  
**(February 4, 2003 - Regular Meeting)**

**MOTION**

**Mr. Solana moved to approve the minutes as submitted. Ms. Horvath seconded.**

**MOTION CARRIED UNANIMOUSLY BY VOICE VOTE**

Mr. Dufresne noted that Item 8A would be moved forward and asked Mr. Wilson to explain the reason to the board members and the public.

Mr. Wilson advised that Item 8A involved application #2003-2028 for Ponce Associates, owners of the property located at 4000 US 1 North. He explained that a request from an attorney to cancel the case had been received due to a verified

complaint filed in conformance with Section 28-59, which stated that any property owner listed on the tax records that should have received a notice and had not received a notice of the public hearing and had filed a verified, written complaint with the Planning and Building Division prior to any action by the board shall deem the application null and void and a new application would be processed. He noted that a person had filed a verified complaint stating that they had not received notice in which staff had confirmed the fact that notice was not sent to that person and they had been listed on the tax records and would have been entitled to receive such notice. He reiterated that the application filed by Ponce Associates was null and void, therefore, it would be necessary to remove Item 8A from the agenda. He noted that both attorneys, one for the complainant and one for owners of the property were present.

Mr. Dufresne asked if either attorney would like to address the board.

Deborah Andrews, 11 North Roscoe Blvd, Ponte Vedra Beach stated that she represented Martin and Jean Tober, who were the adjacent neighbors that had not received notice. She reiterated that the City Code stated that if notice was not properly served and the party had filed a verified complaint with the City, the application should be determined null and void. She submitted copies of the verified complaint along with a letter directed to the City attorney stating their request. As a side note, she commented that while visiting the Planning and Building Department, she had requested the documents associated with the case and had received maps, however, she was denied any written textual material by staff and had been told that they did not possess any. She added that when she received the agenda and it stated that the request involved an amendment to a PUD, she was unable to obtain from staff a copy of what the PUD amendment involved. She stated that because the information was not made available in a timely fashion would be another reason not to move forward with the case.

John Bailey, 780 North Ponce de Leon Boulevard stated that he represented Ponce Associates who owned the property at 4000 US 1 North. He commented that it was unfortunate that one notice had not been sent out, although the City had mailed over 150 notices for that case. He stated that they understood what the Code stated and respected the opinions of the City attorney and board, however, they were ready to

proceed that day. He noted that a team of five people would be available in the courtyard to answer any questions the public might ask. Unless Ms. Andrews' client would like to withdraw their complaint, he said they would agree to the City attorneys' opinion regarding the case.

Mr. Dufresne asked Mr. Wilson if a motion would be necessary to withdraw the application.

Mr. Wilson affirmed that to be correct.

#### **MOTION**

**Ms. Horvath moved to accept withdrawal of the application. Mr. Dixon seconded.**

#### **MOTION CARRIED UNANIMOUSLY**

Mr. Dufresne advised the public that Item 8A had been withdrawn and would not be heard that day.

Ms. Horvath questioned whether the response forms would be carried over to the next application.

Mr. Dufresne stated that a reason did not exist to prevent the response forms from being carried forward. He noted that those responders had been correctly notified.

Mr. Knight advised that staff would again mail out response forms to the surrounding properties.

Mr. Dufresne noted that the board had received another request to withdraw an item from the agenda and asked Mr. Knight to address that issue.

Mr. Knight informed the board that Item 5C would not be heard due to the applicant's request to withdraw the application.

Mr. Dixon asked if an applicant had a timeframe for withdrawing an application.

Mr. Knight reported that a timeframe did not exist if the applicant withdrew their application with good cause five days prior to the hearing.

Mr. Dixon asked what reason the applicant gave for withdrawing Item 5C.

Mr. Birchim indicated that the applicant had redesigned the plans in order to save the tree that had been requested to be removed.

#### **MOTION**

**Mr. Dixon moved to accept withdrawal of the application. Mr. Baker seconded.**

**MOTION CARRIED UNANIMOUSLY**

### **3. VARIANCE**

#### **Item 3(a) 2003-0108**

**T.K. Patel**

**42 San Marco Avenue**

**To reduce the internal landscape requirements to allow for internal drive aisle connections between parking areas.**

Kimberly Buck, 4 Lake Vista Way, Ormond Beach was sworn in.

Mr. Birchim reported that the applicant had requested a variance to reduce the internal landscape requirements for a parking lot.

He noted that by reducing the internal landscaping for the parking areas, it would allow the applicant the opportunity to connect two parking areas and reduce the potential for additional traffic entering onto Rhode Avenue. He said the Code stated that variances to the landscape requirements could be obtained if compliance would be a practical impossibility or would cause unnecessary hardship where the owner proposed an alternative, which conformed to the general intent and spirit of the regulations. After consultation with the owner of the business and neighboring property owners, he advised that it was determined that blocking access to Rhode Avenue from the western parking lot would result in less traffic from the hotel exiting onto Rhode Avenue. He reported that a drive aisle must be constructed adjacent to the hotel on the southwest corner of the new building in order to block access to Rhode Avenue, which would eliminate a portion of the internal landscaping. He stated that the applicant had indicated that the new site plan had met the internal landscaping requirements, however, the plan was not submitted earlier enough in advance to be included in staff's report. He added that the percentage given included green areas which appear to be well outside the parking lot and specifically located at the front lobby. He noted that by eliminating a portion of the internal landscaping it would relieve the hardship for Rhode Avenue. He added that the variance to the landscape rules conformed to the general intent and spirit of the guidelines, therefore, staff found that the board could approve the application.

Ms. Buck stated that the original plan involved exiting one of the parking lots into

the alley with a parking lot exit onto Rhode Avenue. She advised that the residents had voiced concern regarding traffic on Rhode Avenue and the owner decided to move the exits and tie both lots together with exits placed on San Marco Avenue, which would provide a more pleasing atmosphere with the traffic pattern for the residents surrounding the area.

Mr. Dufresne opened the hearing to public comments.

Barbara Hodge, 14 Rhode Avenue was sworn in. She stated that she had been elected to represent the neighbors most closely affected by the proposed development of the American Inn. She noted that the owners' revised plan had taken into account most of the residents concerns. She added that three main areas existed which the owner had agreed to a compromise with the residents:

- Block direct access from the second parking lot onto Rhode Avenue
- Shield Rhode Avenue through landscaping in front of the parking area with access opened to the main parking lot through Fletcher Lane
- Construct a wall on both sides of the parking areas adjoining Fletcher and East Lanes
- Move the trash compactor away from Fletcher and East Lanes

Ms. Hodge noted that the residents were grateful that the owner had taken their concerns into account and they were in support of the board granting the variance. In order that the desired results were achieved, she asked that the owner consider

forming the barriers walls as masonry based as opposed to wood based, additionally, install a "straight ahead only" sign to avoid vehicles from the second parking lot turning right or left onto Fletcher Lane and eventually driving onto Rhode or Grove Avenues.

Mr. Dufresne closed the public comments portion of the meeting.

Ms. Buck stated that the owner would consider installing the requested signage, however, it would be the owners decision regarding the suggestion of a masonry wall.

Mr. Dufresne asked whether a masonry barrier would be more effective than a wooden barrier.

Mr. Dixon and Ms. Horvath affirmed that to be correct.

Mr. Dufresne stated that he was concerned about the mass and scale of the building. He added that it would be a huge structure in a relatively low designation area and suggested that the proposed building would fit better in a CM-2 zoned area.

Mr. Dixon stated that he concurred with Mr. Dufresne, however, the proposed design met the Zoning Code. He noted that the determination of mass and scale was not within the boards' purview, but determined by staff. He questioned whether staff would follow the newly past zoning ordinance.

Mr. Knight reported that staff had reviewed the proposal under the old code for the past six months and did not intend to switch codes half way through the process. He added that staff had already reviewed two

complete sets of plans submitted by the owner.

Ms. Freeman questioned whether the applicant had requested a building permit.

Mr. Knight advised that the applicant had not formally requested a building permit due to staff's request to return to the table and address the residents concerns.

Ms. Freeman clarified that the board would not offer a determination regarding mass and scale of the building.

Mr. Knight affirmed that to be correct.

Ms. Horvath commented that mass and scale would be tied in with parking along with the number of parking spaces.

Mr. Dixon stated that it was true, however, the applicant had not requested a variance for parking.

Ms. Horvath stated that they had requested a variance for landscaping.

Mr. Dixon noted that the request came about to address some of the concerns from the community which had been negotiated by a City Commissioner.

Ms. Horvath stated that the proposal was improved by removing traffic off Rhode Avenue, although the proposal lacked the details regarding the fence.

Ms. Buck communicated that she would speak with her client, although they had not been directed to construct a fence.

Mr. Dufresne suggested that the item be included with the motion.

Mr. Knight advised that the owner was willing to construct a six foot high wood fence, but had stated concerns regarding the cost of a concrete block fence.

Mr. Dufresne suggested that the motion be conditioned upon the agreement between the owner and residents.

Mr. Dixon stated that he would have preferred to review a written agreement.

Ms. Buck advised that her client was willing to install a six foot wood fence and suggested that the board impose additional landscaping requirements to be placed in front of the fence for additional buffering.

A discussion ensued between board members, Ms. Buck and Ms. Hodge regarding the agreement between the owner of the building and surrounding residents.

Ms. Hodge affirmed that an agreement was made for three items and she had suggested two additional items were added to the motion. She stated that the residents did not want to force the owner into a position where he would withdraw his application and redesign the site plan that would prevent the application from being reviewed by the PZB because the current situation was much better than it was six months earlier. She reiterated the following requested items:

- \* The barrier wall facing Fletcher and East Lanes be masonry based (southern end of the auxiliary

parking lot and western end of the main parking lot)

- \* Prevent vehicle traffic crossing Fletcher Lane from turning right or left by installing signage on both parking lots indicating "straight ahead only" direction

Ms. Hodge informed the board that she had spoken at a City Commission meeting on January 27<sup>th</sup> and had indicated the residents concerns regarding the revised plan submitted by the owner, which resulted in a meeting between a City Commissioner and the property owner, which resulted in a compromise between neighborhood residents and the property owner.

Ms. Freeman asked if part of the agreement included blocking off the exit to Rhode Avenue.

Mr. Knight clarified that Commissioner Crichlow, Mr. Patel and himself had met, which resulted in the agreement that the dumpster would be moved away from the neighborhood residents and placed toward the front of the property along with no access to Rhode Avenue with an internal drive connection as indicated on the site plan. He added that Mr. Patel agreed to install a six foot wood fence along Fletcher and East Lanes. He reiterated that the residents had requested two additional items, which included the masonry walls and signage for "through traffic only". He noted that Mr. Patels' representative agreed to the signage, however, was hesitant to agree on the masonry walls due to the cost.

Mr. Dixon expressed that there existed precedence for a masonry wall.

Mr. Dufresne suggested that it was an unreasonable request.

Mr. Dixon suggested that the masonry wall be stucco and painted to match the hotel.

**MOTION**

**Ms. Freeman moved to approve the application contingent upon the agreement between the neighbors and the applicant which include the following:**

- \* **Dumpster relocated to the front of the property**
- \* **An internal drive connector to prevent access to Rhode Avenue**
- \* **Construction of a stucco masonry fence on Fletcher and East Lane borders and painted to match the main structure**
- \* **Installation of signage to prevent traffic onto Rhode Avenue**

**Mr. Dixon seconded.**

**Vote on motion.**

**In Favor**  
**Freeman**  
**Dixon**  
**Solana**  
**Horvath**  
**Baker**

**Opposed**  
**Dufresne**

**Motion carried with a 5/1 vote.**

**4. EXCEPTIONS**

**Item 4(a) 2003-0109**  
**Kathy W. Elmore**

**73 Pearl Street**

**To allow a day care center as a permissible use by exception.**

Kathy W. Elmore, 73 Pearl Street was sworn in.

Mr. Birchim reported that the applicant had requested an exception to allow a child daycare center of not more than ten children in a residential district. He noted that the property was zoned residential single-family two and any daycare center in the district would be by exception only. He stated that the daycare center would be staffed by the resident of the home and that the number of children enrolled in the center was small and did not appear that the use was incompatible with the neighborhood and would not change the essential nature of the neighborhood. He added that the small scale nature of the daycare center did not appear to negatively impact the surrounding properties and child daycare centers were important components to a healthy neighborhood. Therefore, based on the review of the application and Section 28-347, he noted that staff found that the board could approve a child daycare center at 73 Pearl Street as submitted.

Mr. Dufresne opened the public hearing but there was no response from the public. He noted that twenty response forms were sent to surrounding properties with one returned in favor and two returned opposed to the application.

**MOTION**

**Mr. Dufresne moved to approve the application as submitted. Mr. Baker seconded.**

Ms. Horvath questioned whether the daycare would be for neighborhood children or would consist of people driving into the neighborhood to drop off their children.

Ms. Elmore affirmed that some of the children would walk to the center, but some children would need to be dropped off by vehicles.

Mr. Dufresne noted that Ms. Horvath had a valid concern, although neighborhood daycare centers were an absolute necessity.

Mr. Dixon noted that it would be a small center with only ten children.

**MOTION CARRIED UNANIMOUSLY**

**5. CONSERVATION ZONE DEVELOPMENT**

**Item 5(a) 2003-0112**

**Darrell Poli**

**150 Riberia Street**

**To fill a lot in Conservation Overlay Zone Two or to grant an extension on the removal of the fill material from the property.**

Darrell Poli, Marine Supply and Oil Company at 150 Riberia Street was sworn in.

Mr. Birchim reported that the applicant had requested to fill in a lot in Conservation

Zone Two or allow a time extension on the removal of the fill material. He noted that on August 7, 2001, the PZB approved the placement of fill material on the property in question with the condition that it was removed by February 7, 2003. He stated that the fill material had been dredged from the San Sebastian River. He advised that staff found no change in the application that would necessitate a change to the board's original determination. Based on review of Section 11-29, he said staff found that the board could approve a one month extension for the removal of the fill material at 150 Riberia Street.

Mr. Poli explained that the project was in conjunction with Oyster Creek Marina located directly across from Marine Supply. He noted that the Marina had a permit from the Corp. of Engineers to dredge the San Sebastian Marina area and had asked to use the existing site, which had been used by the Corp. for over sixty years. He added that the board had approved a timeframe of eighteen months to remove the dredged material, however, the contractor was not available until nine months later, which delayed the dredging and drying process. He explained that the contractor began the work in December 2002 and a portion of the material had not dried enough to remove, although they had spread the material in an attempt to speed up the process. He noted that they had spread the material on the site to help even the surface of the lot along with using the material for driveways in the area.

Mr. Dufresne asked staff to clarify the progress of the project.

Mr. Knight reported that within the previous nine months, the contractor had dredged the material with little if any material removed from the site. As the time limit neared, he noted that a Code Enforcement Officer contacted Mr. Poli and reminded him of the approaching date, after which, Mr. Poli chose to apply for an extension from the board. He added that the DEP permit had been issued with a five year timeframe, however, the board had allowed an eighteen month time limit for removal of all the fill and to return the lot to its original graded surface.

Mr. Dufresne stated that the applicant indicated that if the contractor had started the project when it was approved by the board, eighteen months would be sufficient time for the material to settle out, although, currently the material was too wet to move. He asked staff whether the applicant had a valid point regarding the lack of time to settle out the material within nine months.

Mr. Knight agreed that the applicant's view that nine months would not be enough time to settle out the material was valid.

Mr. Dufresne opened the public hearing but there was no response from the public.

Mr. Dufresne commented that he understood the City's desire to enforce the eighteen month agreement, however, spoils generally required eighteen months to dry out, therefore, nine months would not be enough time to accomplish the task. He stated that additional time would be required to complete the project.

Mr. Dixon noted that the applicant suggested that it might be possible to use the

material on site, however, it could not be determined until the material settled out. He suggested that an extension of time be granted.

Ms. Horvath stated that she was concerned about some significant cedar trees on the property which had died after fill was placed on the site. With the suggestion that the fill be spread out on the site, she stated her concern for the remaining trees on the property. She explained that cedar trees required a long time to grow and when the original application was presented to the board, she had questioned whether the fill would be removed from the site and had been told that the applicant would remove the fill. She commented that she was not opposed to using the material for driveways, however, she did not desire to jeopardize more trees.

Mr. Dufresne stated that currently, the material was too wet for removal and suggested granting a nine month extension and revisiting the issue to determine whether the material would be removed and/or placed on the site.

Mr. Dixon suggested that the applicant needed a mitigation plan if the material would be retained on site. He noted that the City had an ordinance to protect cedar trees and Code Enforcement could review that situation.

Mr. Dufresne advised that it was not necessary to allow the fill to be used on site, although he suggested that allowing an extension of time was a reasonable request.

Ms. Horvath suggested that tree protection should be involved with the timeframe of the extension.

Ms. Freeman questioned how much time the applicant requested.

Mr. Poli stated that during the original hearing, they had anticipated that eighteen months would be sufficient and suggested that an additional nine month should be enough time to finish the project. He noted that they had graded the site back to its original height between 1940 and 1960. He advised that the contractor had attempted to mix the dry and wet materials, then moved the material into the open areas which helped somewhat. He explained that during the periods of high tide, there existed standing salt water on the property and they found that the vegetation was damaged. He suggested that the salt water aided in the demise of the cedar trees.

Ms. Horvath explained that the cedar trees she spoke about were very close to the mound and suggested that the run-off from the mound was causing the demise of the cedar trees.

Mr. Poli advised that the Corp. of Engineers instructed the contractor on how to handle the project.

Ms. Freeman reiterated that the DEP granted a five year permit and asked if DEP allowed a certain timeframe for the material to remain on the lot.

Mr. Poli noted that DEP did not normally follow up, although the permit allowed a specific amount of material in defining the area. He explained that the application was

obtained by the previous property owner and he was unaware of any condition placed on the permit.

#### **MOTION**

**Mr. Dixon moved to approve the application for a nine month timeframe extension with the condition that if the project was not completed within nine months, the applicant shall return to the board with a mitigation plan and documentation indicating that the permit process had begun. Mr. Solana seconded.**

Ms. Horvath asked that care be given to the remaining cedar trees on site.

**Mr. Dixon amended his motion to include the condition that due diligence was shown for the existing cedar trees and vegetation. Mr. Solana seconded the amendment.**

#### **MOTION CARRIED UNANIMOUSLY**

##### **Item 5(b) 2003-0083**

##### **Mark R. Durand**

##### **3288 Lewis Speedway**

##### **To allow tree removal in Conservation Overlay Zone Three.**

Mark Durand, 3282 Lewis Speedway was sworn in.

Mr. Birchim reported that the applicant had requested tree removal in Conservation Zone Three and had provided a tree survey with a removal and preservation plan. He noted that the plan indicated forty-nine trees on the property and the applicant planned to remove nineteen of those trees. He directed

attention to the tree survey and noted that trees number 1, 2, 7, 8, 9, 12, 13, 17-22, 28-31, 35 and 36 would be removed and all were palm trees located in the center of the property. He advised that there existed nineteen total debits with ninety-nine credits for preservation. He stated that the applicant had indicated that the tree removal was necessary in order to create a parking area for a recreation vehicle and future development of a single family home. He advised that parking RV's in the City was regulated by Section 28-337 which stated that no major recreational equipment shall be use for living, sleeping or housekeeping purposes and parked or stored in a residentially zoned lot or at any other location not approved for such use. He added that major recreational equipment could be parked or stored in the rear or side yard but not in the required front yard and not within five feet of any property line. Based on staff's review of the regulation, he said it did not appear that the parking of RV's in the area indicated for tree removal would be a violation of City Code and based on the review of Section 25-53, he noted that staff found that the board could approve the request for tree removal at 3288 Lewis Speedway as submitted.

Mr. Dufresne opened the hearing to public comments.

Deborah Andrews, 11 North Roscoe Blvd, Ponte Vedra stated that she represented Diane Mills regarding the issue of tree removal at 3288 Lewis Speedway. She indicated that she was not able to obtain the tree survey submitted by the applicant. She submitted photographs and an aerial document to the board members. She noted

that it was a very sensitive area as indicated on the aerial photograph and that approximately ½ of the lot was located in the jurisdictional wetlands area. She asked for confirmation from staff that the trees to be removed were located in Conservation Zone Two, although the zone had not been indicated on the survey map.

Mr. Birchim stated that the survey indicated the jurisdictional line along with the trees to be removal. He added that those trees were not located within the twenty-five foot buffer and not located water-ward of the jurisdictional wetlands.

Ms. Andrews stated that it would be helpful if the staffs' report had included those facts when the report was available to the public. She asked staff if the Conservation Zone Two extended beyond the twenty-five foot buffer or would it be limited to twenty-five feet.

Mr. Knight advised that Conservation Zone Two, by definition, would be the first one-hundred feet from the jurisdictional line, however, when the subdivision was approved the setbacks were established at twenty feet.

Ms. Andrews suggested that some of the trees to be removed were located in Conservation Zone Two.

Mr. Knight agreed that some of the trees were located within the one-hundred foot wetlands line, however, the setbacks had been established by the board when the subdivision was approved.

Ms. Andrews suggested that staff noticed the error regarding which zone was involved and still submitted the application for approval involving Conservation Zone Three, although it should state Zone Two. She indicated that two different sets of regulations should be reviewed regarding the removal of trees on the property.

Mr. Knight advised that Conservation Zones One, Two and Three were under the same criteria and reviewed under Section 11-29C.

Mr. Dufresne asked if Ms. Andrews was aware that only twenty feet of the property was located in Conservation Zone Two.

Ms. Andrews stated that the first one-hundred feet was located in Conservation Zone Two.

Mr. Birchim explained that when the subdivision was platted, the developer chose to obtain Conservation Zone Two approval, which involved the setbacks for the wetlands for all the lots in the development with the condition that a berm was placed at the twenty foot mark to prevent run-off into the marsh. He noted that the developer obtained that approval to prevent the requirement of returning to the PZB with the same application for each individual property owner.

Ms. Andrews suggested that they were talking about two different items. She stated that an approved twenty foot setback should not allow an exemption for Conservation Zone approvals.

Mr. Knight explained that the setback line limited where the development could occur on the property.

Mr. Baker noted that it was mitigation of the perimeters in the Code.

Mr. Knight affirmed that was correct.

Ms. Andrews questioned whether the board was suggesting that the lots were exempt from Conservation Zone requirements up to one-hundred feet.

Mr. Knight said no, because it involved tree removal that would be reviewed under the fifteen criteria of the City Code.

Mr. Dufresne asked if the area that the board reviewed was located in Conservation Zone Three.

Mr. Knight stated that by definition the area was located within Conservation Zone Two and Three. He reiterated that when the subdivision was platted, the board approved development within twenty feet of the wetlands and the trees in question were located landward beyond the twenty foot line.

Ms. Freeman asked staff if the trees to be removed were located in both, Conservation Zone Two and Three.

Mr. Knight affirmed that was correct.

Ms. Horvath added that none of the trees were located within the twenty foot setback line.

Ms. Freeman asked if the staff report addressed Conservation Zone Three only.

Mr. Birchim advised that the report only reviewed Zone Three because Conservation Zone Two approval had been obtained at plat and all criteria had been addressed with each lot when the twenty foot buffer was established and subdivision platted.

Mr. Dufresne asked Ms. Andrews to clarify her objection due to much confusion between the board, staff and herself.

Ms. Andrews articulated that she was objecting to the fact that a portion of the property where the trees were to be removed was located in Conservation Zone Two, although it was presented as tree removal in Conservation Zone Three. She stated that Conservation Zone Two was separate from Conservation Zone Three because Zone two protected Conservation Zone One which was the marsh area. She suggested that parking a RV in that area would cause the oil, brake fluid and other liquids to drip into the soil and then into the marsh. She added that Conservation Zone Two needed to be protected because it buffered the marsh. She submitted additional photographs to the board members that showed fill placed near and in the marshland. She explained that the development was too close to the marsh and should never have been allowed. She asked that the board take her comments into consideration and not allow the removal of trees in Conservation Zone Two.

Ms. Freeman stated that she was procedurally concerned because if trees existed in Conservation Zone Two and Three and a decision made by the board to

remove those trees without the board addressing both Zones might cause the decision to be invalid and inappropriate.

Mr. Birchim advised that the PZB previously approved Conservation Zone Two development for the lot at the time that it was platted. He directed attention to the site survey and noted that the entire lot was located in Conservation Zone Two. He explained that the board had considered Conservation Zone Two and all the criteria when it platted the subdivision in order to prevent future owners from completing the same process with the same questions and with the board attempting to come to the same conclusion for each individual.

Ms. Freeman questioned whether the owners were exempt from addressing Conservation Zone Two issues.

Mr. Birchim stated that the owners were not exempt, but had already been approved for Conservation Zone Two.

Ms. Freeman questioned whether the owners would be required to obtain approval for trees located outside the twenty foot setback.

Mr. Birchim reiterated that the setbacks for the wetlands had been established for the entire subdivision. He noted that at the time that the PZB reviewed the fourteen question criteria for Conservation Zone Two, it had been approved. He suggested that the board was requesting that the owner again obtain approval for Conservation Zone Two. He explained that the Conservation Zone Three review included tree canopy and would not establish the setbacks to wetlands. He added that Zone One included everything water-ward from the jurisdictional line,

Zone Two included everything one-hundred feet landward and Zone Three included the entire tree canopy in the City of St. Augustine, whether in or outside the wetlands.

Ms. Freeman asked Mr. Birchim whether he believed that staff's report accurately addressed all the necessary Zones and should not address Zone Two.

Mr. Birchim stated that his belief was that the board had already approved Conservation Zone Two when they platted the subdivision. He said that he believed that the City should not force the owner of the property to obtain Conservation Zone Two approval when the property owner had already received approval.

Ms. Andrews suggested that it was not Mr. Birchim's place as a staff member to suggest what the intention of the previous board was, however if one were to follow his logic, the application would not be in front of the board that day. She explained that there existed different steps involved with development, but then it came to the site's specific plans and for Mr. Birchim to imply that one could not complete that job was completely incorrect. She noted that when people attended the hearing and questioned the plans for trees or buffers, they were told that it would be dealt with when the site plan was reviewed.

Mr. Dufresne and Mr. Dixon each stated that they took issue with Ms. Andrews' statement because it was completely inaccurate.

Mr. Dixon reiterated that earlier, the PZB approved and permitted the development within Conservation Zone Two and Conservation Zone Three, which required certain setbacks. He noted that the application only involved tree removal and added that any lot would need tree removal approval from the board.

Ms. Horvath noted that the application involved removal of the tree canopy.

Mr. Dixon stated that he would not allow tree removal unless he reviewed a development plan for the site, even though the application only involved palm trees.

Ms. Freeman suggested that it would be helpful if the owner had a site plan for the board to review.

Ms. Andrews suggested that the site plan be reviewed by the board.

Ms. Horvath stated that tree removal was not necessary until a site plan was completed.

Mr. Dufresne stated that a motor home parked in the middle of the lot would be the epitome of ugly.

#### **MOTION**

**Mr. Dixon moved to table the application subject to a specific site plan for the board to review. Mr. Baker seconded.**

**MOTION CARRIED UNANIMOUSLY**

Mr. Dufresne stated that the board requested the owner to furnish a less crude site plan for the boards' review.<sup>1</sup>

A discussion ensued regarding the submitted tree survey and it was determined that the owner would furnish a more adequate site plan.

#### **Item 5(c) 2003-0110**

**David Smith**

**40 South Dixie Highway**

**To remove a tree in Conservation Overlay Zone Three.**

\*see page three for details and motion.

#### **6. EXCEPTION / CONSERVATION ZONE DEVELOPMENT**

#### **Item 6(a) 2003-0086**

**Compass Group, Inc.**

**231 San Marco Avenue**

**To allow tree removal, to allow a parking lot in a residential district as a use by exception and to allow a single family residence in the Commercial Medium Two (CM-2) district as a use by exception.**

Ron Flick, representative for the Compass Group and Land Development at 231 San Marco Avenue was sworn in.

Mr. Birchim reported that the applicant had requested tree removal in Conservation Zone Three, to allow a parking lot in a residential district and to allow a single family residence to encroach into a

<sup>1</sup> Mr. Dufresne called a break at 3:42 PM and reconvened the meeting at 3:50 PM.

commercial medium two zoned area. He noted that the property was currently a hotel that wrapped around the property and the parking had been located in the center of the property. He explained that the new hotel design would involve a three story structure with frontage located on San Marco Avenue with the parking at the rear or eastern portion of the property. He said that the old hotel was located at the eastern most portion of the property and was zoned residential general one. With the removal of the existing hotel, he advised that it would eliminate an existing non-conformity, which was the hotel and the new parking area would involve the use by exception request. He added that the area in the northeast corner of the property was reserved for a single family house for the owner of the hotel. He noted that the corner of the house would encroach into a Commercial Medium Two lot, to the east, where a storm water retention area was proposed. He explained that tree removal for the project involved the removal of two preserved trees, 30 inch (dbh) and five protected trees between 20 and 24 inch (dbh). He advised that the replacement of those trees as well as the landscape of the site had been presented in the landscaping plans submitted to the board and appeared to meet the Code requirements; therefore, staff found that the board could approve the application with the following conditions:

1. A six-foot solid masonry wall or fence shall be erected along all property lines adjacent to residentially zoned property.
2. No source of illumination for such lot shall be directly visible from any

window in any residence in the residential district.

3. There shall be no sales or service activity of any kind on such lot.
4. Vehicles prohibited from being parked in residential districts by Section 28-336 shall not be permitted to be parked on such lot.
5. All parking lots shall be paved with erosion-resistant material in accordance with City specifications.
6. Removal of trees as proposed would be permitted with the condition that landscaping was completed according to the attached landscape plan with the addition of landscape buffering of the retention pond on the north and west sides.

Mr. Flick stated that the owner would be willing to stucco both sides of the wall and match the color of the hotel. He noted that they would also comply with staff's recommendations

Mr. Dufresne opened the hearing to public comments.

The following citizens spoke against the application:

Robert Burrell, 27 Seminole Drive  
Gina Burrell, 27 Seminole Drive  
Dave Smith, 35 San Marco Avenue  
Patricia Mahr, 33 Bay View Drive  
Norman McFarland, 37 Seminole Drive

The citizens offered the following reasons to deny the application:

- \* Project out of scale with the surrounding neighborhood

- \* Lack of sufficient parking
- \* Submitted petition of 50 names against the demolition of the San Marco Inn
- \* Additional traffic and noise
- \* Lack of demolition approval from the HARB
- \* Removal of several oak trees

Susan Fromme, 2 Bay View Drive was sworn in. She stated that she liked the idea of a single-family residence located near her home instead of the parking lot. She questioned whether the setback requirement would be five feet.

Mr. Birchim advised that the setback requirement was ten feet and the site plan indicated five feet. He explained that when the house was adjusted to meet the requirement, it would encroach into the Commercial Two lot. He added that the house would be placed ten feet from the east property line.

Ms. Fromme questioned the location of the masonry walls.

Mr. Birchim explained that staff recommended that the owner build a six foot masonry wall on their eastern property line, which they agreed to, with stucco on both sides. He stated that he was not aware of who owned the parcel on the west side of the property and suggested that the applicant address that issue.

Ms. Fromme asked if the entrance to the house would be from Bay View Drive.

Mr. Birchim advised that the entrance to the home would be from Bay View Drive, but

the entrance for the hotel would be off San Marco Avenue.

Ms. Fromme questioned whether Mr. Patel could, in the future, sell the home separately.

Mr. Knight advised that he would be able to sell the home separately, however, because the parking area for the hotel was located behind the residential lot, if the home was sold, he would not be able to expand the house and create non-conformity.

Ms. Fromme stated that she remained concerned about the size of a three story hotel in the neighborhood.

Mr. Dufresne closed the hearing to public comments.

Mr. Flick responded to the public comments by saying that the plan design was in compliance with the current ordinance for parking spaces along with other requirements for parking involved with building a hotel. He explained that the owner would enter his residence from Bay View Drive, just as any typical resident. He noted that the increase from 38 to 54 rooms would not be a significant impact with only four to five additional vehicles at peak hours. He said they were passionate with protecting trees and had incorporated several large trees with the design of the parking area. He stated that the owner expected to install a stone wall with painted stucco to match the hotel. Regarding the building height and scale, he articulated that plans had been in the works for nine months along with discussions that involved City staff and they had complied with regulations regarding height and scale. He pointed out

that if one floor of the hotel was eliminated, the hotel would consist of fewer rooms than it currently consisted of and economically, it would be an impossible task unless one desired to operate in the red in the hotel industry. In summary, he stated that they planned to provide a quality product for a quality neighborhood by removing the old hotel near the residential area and provide a buffer to separate the commercial climate from the residential area.

Mr. Dixon asked if the retention pond would be designed with timbered walls.

Mr. Flick affirmed that walls were required to maintain the volume and keep it clean.

Ms. Horvath questioned whether a fence would be installed around the retention area.

Mr. Flick advised that the retention pond would be dry, although a fence would surround the area for fall protection.

Ms. Horvath asked if they would install a chain link fence.

Mr. Flick noted that the best barrier would be a chain link fence, however, if the board asked for a more aesthetically pleasing fence, they would comply.

Ken Kazai, Compass Group representative for 231 San Marco Avenue, was sworn in. He stated that the retention pond was designed as a dry pond, although with heavy rains the pond would fill up then percolate out. He explained that due to the pond, it necessitated a fence to prevent one from falling into the pond. He agreed that the barrier did not need to be a chain link fence.

Mr. Flick noted that the pond would only become wet after a rain, otherwise it would remain dry. He reiterated that the owner would comply with another type of fencing desired by the board.

Mr. Dufresne asked staff for the number of rooms the board approved for the hotel at 42 San Marco Avenue.

Mr. Birchim advised that 42 San Marco Avenue was zoned as Commercial Low, therefore the maximum number of rooms allowed would be fifty. He noted that the hotel at 231 San Marco Avenue had been zoned Commercial Medium and would not carry the same requirement.

Mr. Dufresne explained to the public that the hotel at 42 San Marco Avenue was zoned Commercial Low and had previously been approved as a three story hotel. He noted that Commercial Medium, which was close to the most intense category in the City, had been zoned for that purpose. He stated that the owner would be removing a building that had been placed near a residential area and the development would be built in the Commercial Medium Two location.

Mr. Dixon noted that the owner had completed a good job saving some trees with the landscape design.

Mr. Flick noted that they had reviewed the past use along with the current investment in the property and decided to remove the un-neighborly component, which was the building located near the residential area.

Ms. Horvath stated that she did not believe a three story building was the only solution. She noted that the board was allowing additional parking in the residential area, which caused the building to be thirty-five feet in height.

Mr. Dixon questioned whether the application fell under the recently passed new City Code.

Mr. Knight advised that the applicant had submitted a full set of plans one day prior to the effective date of the new Code.

Mr. Flick pointed out that the parking did not allow for a thirty-five foot building, but it was the zoning that permitted that height. He added that they had struggled many months with the density and had remained within the current guidelines and had complied with those requirements.

Ms. Freeman stated that thirty-five feet high buildings were allowable, however, by maximizing the use on the property, it would effect all the other lots in the area. She reiterated that the applicant was asking for an exception.

Mr. Flick explained that the applicant was not requesting an exception to the height and volume of the building, but to encroach into his own property, which would result in an improved area on Bay View Drive. He added that they would remove an older building that was not compatible with good business.

Ms. Freeman stated that the primary concern was moving the commercial into the residential area.

Mr. Flick advised that the plans involved moving everything into the commercially zoned area.

Ms. Freeman noted that the parking lot would be located in the commercial area.

Mr. Baker stated that some of the contention was that in order to realize the project, the applicant needed to utilize the lots in the rear of the property for parking and one needed to weigh if the proposal would be an improvement to the current situation.

Mr. Solana stated that the applicant had presented a good package and was in compliance regarding the height of the building. He noted that although numerous neighbors were not in favor of the height of the structure, it was not within the board's purview to make a determination regarding that issue.

Mr. Baker concurred with Mr. Solana and stated that it was an improvement to the current situation.

#### **MOTION**

**Mr. Baker moved to approve the application with the condition that they abide by staffs' recommendations. Mr. Solana seconded.**

Ms. Freeman pointed out that she owned property across the street from the hotel and asked if she would be required to recuse herself from the vote.

Mr. Wilson commented that he was not aware that she had nearby property until that moment. He stated that the proposal could

impact the value of Ms. Freeman's property and advised that the decision would be left to her, although, normally the issue of whether to recuse would be brought up prior to the participation in the discussion.

Ms. Freeman commented that it was her understanding that even if she could not vote on the matter, she would be able to join the discussion. She added that she believed that she would not be financially impacted by the proposal, therefore, she would not recuse herself from the vote.

Ms. Horvath stated that her main concern was the pond, although it would be surrounded by a fence, it seemed odd for a pond to be placed in that area.

Mr. Flick advised that it was a requirement by DEP and the City.

Ms. Horvath offered that there were other ways to handle retention. She commented that she would drive down that street when it was completed and not be happy with the outcome.

Mr. Solana suggested that the owner plant hedge type shrubs in order to hide the fencing.

Mr. Flick pointed out that the request of a vegetation barrier was not unreasonable. He suggested that a retention pond was the most appropriate way to retain on the site because of water tables and root systems.

Ms. Horvath pointed out that the dry pond DOT had installed across from the carousel on San Marco Avenue did not appear as an eye sore. She indicated that what bothered her most was that the retention pond was

rectilinear and it would be better if it was free formed with additional vegetation.

Mr. Flick affirmed that the owner would accept that as a condition.

**Vote on the motion.**

**In Favor**  
**Baker**  
**Solana**  
**Horvath**  
**Dufresne**

**Opposed**  
**Freeman**  
**Dixon**

**Motion carried with a 4/2 vote.**

**7. LAND USE PLAN**  
**AMENDMENT / PLANNED**  
**UNIT DEVELOPMENT**  
**AMENDMENT**

**Item 7(a) 2003-0111**  
**Coral Landing Seaside, Inc.**  
**11 Tremerton Avenue**

**To amend the land use from Public/Semi-public to Residential Low Density-Mixed Use and to amend the Planned Unit Development (PUD).**

George McClure, 170 Malaga Street, Suite A stated that the parcel in question had been the Doctors' Building located north of the old Flagler Hospital. He noted that the building had been used as an ACLF, which was currently vacant. He explained that the designation of the site was Public/semi-

public use for governmental functions, ie: health center, hospital, etc. He proposed to designate the property as residential low density. He pointed out that the property to the south of the site was designated medium multi-family density at sixteen units per acre and the property to the north was designated low density with eight units per acre with a single family detached configuration. He noted that the concerns of the board had been the potential for an applicant to request a use that might be unacceptable or inappropriate for the neighborhood. He explained that the solution would be to modify the existing PUD and add restrictions, which would address those concerns stated by the public during the previous months' hearing. He stated that before the board was a proposal that would limit the use and only allow an ACLF, nursing home or single or multi family residential use. He directed attention to the third page of the narrative document, which stated that the applicant waved any other uses that might be allowed under the Comprehensive Plan designation, other than single family residential, multi-family residential and ACLF or nursing facility and limited the right to construct any structure over thirty-five feet in height. In addition to preserving the control by the PZB over any future configuration, he noted that one would be required to obtain site plan approval for any significant modification to the existing facility.

Mr. Dufresne asked Mr. Wilson if an additional public hearing would be required.

Mr. Wilson advised that the PUD case was new, therefore, it would require it being opened to public comments.

Mr. Dufresne opened the hearing to public comments.

Robert Kramer, 155 Marine Street, Unit #101 was sworn in. He stated that people were speaking about the units involved with the development, however, he questioned whether water access would be involved.

Mr. Dixon advised that the site was private property.

Mr. Kramer affirmed that it was private property, however, he desired to know if dockage would be included with the expensive land units.

Mr. Dixon advised that an application for any type of dockage would be required to obtain approval from the PZB. He pointed out that anyone that purchased waterfront property would desire to involve dockage at some point.

Mr. Kramer stated that, as an environmentalist, he hoped that the PZB insisted upon an environmental impact study prior to allowing dockage. He noted that one would be required to come before the PZB and the City Commission to obtain approval to build and also be required to return to PZB for the approval of the dock.

Mr. Dixon affirmed that to be correct. He explained that the board would first consider the zoning issue of the property. He reiterated that if one desired to build water-side, it would require a review from the PZB.

Ms. Horvath noted that any changes to the property, other than what currently existed would require a review by the PZB.

Mr. Dixon commented that the case before the board was a zoning clean-up issue more than anything.

Mr. Kramer commented that it was a shame that the owner could not find a better use for the property that helped the City as opposed to building residential units, especially when the City had a tremendous lack of green space south of the historic district.

Mr. Dixon noted that much green space existed by the National Guard.

Mr. Kramer noted that public use was limited in that area.

Mr. Dufresne closed the public hearing portion of the meeting.

Mr. McClure stated that language was not included regarding the Conservation Zone One approval, therefore, any application involving dockage would require Conservation Zone One approval. He noted that they were under the impression that site plans in Conservation Zone were approved by the City Commission and not the PZB, although the language in the PUD stated that should the use change and the building and site layout be significantly altered, the site development plan must be approved by the City Commission after review and recommendation of the PZB. He questioned whether between that day and it being introduced to the City Commission, they could amend that language with the board's approval.

Mr. Knight affirmed that was how the City normally handled a zoning issue.

Mr. McClure noted that they would change the text.

Ms. Horvath asked for clarification regarding site plan review and approval, because site plans for PUD's would normally include building elevations. She asked if it would include the entire development package.

Mr. Knight affirmed that it would involve the entire final development plan being reviewed by the board.

**MOTION**

**Ms. Horvath moved to approve the application as submitted. Mr. Dixon seconded.**

**MOTION CARRIED UNANIMOUSLY**

**8. PLANNED UNIT**  
**DEVELOPMENT AMENDMENT**  
**/ CONSERVATION ZONE**  
**DEVELOPMENT**  
**PRELIMINARY PLAT**  
**APPROVAL**

**Item 8(a) 2003-2028**  
**Susan L. Rudd, P.E.**  
**Ponce Associates, Inc.**  
**4000 U.S. 1 North**

**To amend the Planned Unit Development, to allow tree removal, setbacks to the wetlands and fill of wetlands in Conservation Overlay Zone One, Two**

**and Three and to approve the subdivision preliminary plat.**

\*see page one for details and motion.

## **9. OTHER BUSINESS**

Mr. Knight noted that some of the property along SR 312 had been sold and had been zoned RGO and RGOA. He advised that Thompson Bros. Realty Group possessed the property and a purchaser inquired about building a single-family residential development instead of multi-family. However, he said that in the RGOA category, single family residential would be permitted uses and was not a use by exception, which eliminated any single family residential construction along the SR 312 corridor. He noted that a request to add single family residential to the RGO and RGOA categories had been received whether it was considered a use by exception or a permitted use. He explained that the requester would prefer that the change was added to the categories that day.

Mr. Dixon questioned whether RGO allowed fifty foot high structures and RGOA allowed forty foot structures.

Mr. Knight affirmed that to be correct.

Mr. Dixon noted that single family residential would be considered less dense.

A discussion ensued between board members regarding height limitations. It was determined that the purchaser had asked that it be a permitted use.

Mr. Knight advised that the reason for a use by exception would be due to incompatible uses, such as a used car dealer placed near a single family house.

Mr. Dixon noted that Mr. Knight mentioned a good point. He stated that, in the future, due to the influx of citizenry, additional zoning issues would more frequently be presented to the board.

Mr. Knight read the permitted uses for the RGO and RGOA categories, which included multi-family, restaurants, professional office, retail, etc. He advised that if the board felt that the request would be compatible with those uses, they might consider a use by exception or permitted use.

Mr. Dixon stated that the only RGO zoning in the City was the San Sebastian property and Thompson Bros. Realty property.

Mr. Knight affirmed that to be correct.

Ms. Horvath stated that it should be approved as use by exception, which would allow the board to review the matter on a case-by-case basis.

## **MOTION**

**Mr. Dufresne moved to recommend to the City Commission that property located on SR 312 shall allow single family residential as a use by exception. Ms. Horvath seconded.**

**MOTION CARRIED UNANIMOUSLY**

## **NON-AGENDA ITEM**

Mr. Dufresne reminded the members that a workshop regarding docks and boatlifts would be held on March 28<sup>th</sup>, between 2:00 and 4:00 pm and would be advertised as a public workshop.

**10. REVIEW OF CONFLICT  
STATEMENTS FROM  
PREVIOUS MEETING**

None

**NON-AGENDA ITEM**

Mr. Wilson advised that Commissioner Crichlow had asked him to review an ordinance that would affect membership of the boards. He explained that one did not necessarily need to be a resident to be a member of certain boards and Commissioner Crichlow desired to change the requirement by allowing only residents of the City to be members of the boards. He added that the City Commission could allow an exception to that rule if a lack of qualified applicants were received. He advised that Commissioner Crichlow would like to address that issue during the March 24<sup>th</sup> City Commission meeting.

Mr. Dufresne affirmed that the City Commission had requested a recommendation from the board.

**MOTION**

**Mr. Dufresne moved to recommend to the City Commission that the requirement be changed to include only City residents for members of HARB and PZB.**

**MOTION CARRIED UNANIMOUSLY**

**11. ADJOURNMENT**

There being no further business, the meeting was adjourned at 5:00 PM.

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Bruce Dufresne, Chairman

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Pam Halterman, Recording Secretary