RESOLUTION NO. 12-02

CITY OF SANIBEL
PLANNING COMMISSION

A RESOLUTION RECOMMENDING THAT CITY COUNCIL APPROVE A CERTIFICATE OF APPROPRIATENESS FOR EITHER THE RELOCATION OR DEMOLITION OF THE SINGLE FAMILY DWELLING KNOWN AS SHOREHAVEN. THE SINGLE FAMILY DWELLING WOULD BE RELOCATED TO THE CITY'S HISTORICAL MUSEUM AND VILLAGE AT 950 DUNLOP ROAD.

IN THE MATTER OF:	Relocation or demolition of the single family dwelling known as Shorehaven to the City's Historical Museum and Village
APPLICANT:	For demolition: William Jacobelli for the property owners, Terrence J. Cassaday and Brenda R. Cassaday; for relocation: The Sanibel Historical Museum and Village, Inc. for the City of Sanibel.
APPLICATION NOS.:	11-6368CA (Demolition) 12-6616CA (Relocation)
CONCLUSION OF HEARING:	March 27, 2012
ADOPTION OF RESOLUTION:	March 27, 2012

WHEREAS, the Planning Commission heard Application Nos. 11-6368CA and 12-6616CA submitted for consideration of applications for the issuance of a Certificate of Appropriateness for the demolition or relocation of Shorehaven, a single family dwelling listed on the City's Local Register of Historical Sites and Structures. The subject structure is located at 1111 Bird Lane (tax parcel no. 18-46-23-T3-00200.0050) and is currently owned by Terrence J. Cassaday and Brenda R. Cassaday. The application for demolition is submitted by William Jacobelli for the property owners. Application No. 11-6368CA. The Sanibel Historical Museum and Village, Inc. for the City of Sanibel submitted the application for the relocation of Shorehaven to the Historical Museum and Village, 950 Dunlop Road, (tax parcel no. 26-46-22-T2-00007.0000). Application No. 12-6616CA; and

WHEREAS, the Sanibel Historic Preservation Committee has recommended relocation of the single family dwelling known as Shorehaven to the City's Historical Village and Museum; and

WHEREAS, a public hearing was legally and properly noticed and held on March 27, 2012 before the Sanibel Planning Commission; and

WHEREAS, the deliberations of the Planning Commission and this resolution constitute the Commission's site evaluation report; and

WHEREAS, the Planning Commission reviewed the relocation site plan as submitted by the Planning Department and the Historical Preservation Committee; and

WHEREAS, as a condition of the relocation approval, the single family dwelling known as Shorehaven shall be prepared in such a manner that it will survive the move from its present location at 1111 Bird Lane to the City's Historical Museum and Village; and

WHEREAS, in the event the structure is not relocated by the Sanibel Historical Museum and Village, Inc., the owners of Shorehaven may obtain a demolition permit.

NOW, THEREFORE, BE IT RESOLVED, that the Planning Commission finds, based on the totality of the testimony, documentation presented and recommendations from the Historical Preservation Committee and the Planning Department staff, that the application is consistent with the policies of the Sanibel Plan and the standards of the Land Development Code. Furthermore, the Planning Commission recommends that City Council pass a resolution granting a Certificate of Appropriateness to relocate the original single family dwelling known as Shorehaven to the City's Historical Museum and Village. In the event the relocation does not occur by August 15, 2012 a permit for demolition can be issued to the owners of Shorehaven. The Commission further directs the Chairperson to immediately execute this Resolution to avoid delay.

The foregoing Resolution was adopted by the Planning Commission upon a motion by Commission Member Michael Valiquette and seconded by Commission Member Phillip Marks, and the vote was as follows:

Christopher Heidrick	Yes	Phillip Marks	Yes
Chuck Ketteman	Yes	Holly Smith	Yes
Tom Krekel	Yes	Michael Valiquette	Yes

Paul Reynolds Resigned from the Commission effective March 8, 2012

DULY PASSED AND ADOPTED this 27th day of March, 2012

SANIBEL PLANNING COMMISSION

Signed: _____ Chairman 3/27/12 Date Signed

Approved As To Form: _____ City Attorney 3/22/12 Date Signed

Date Filed With City Manager: 3/27/12

K:Planning:stb:PCMtg 03-27-12:Resolution 12-02 Shorehaven

RESOLUTION NO. 12-03

CITY OF SANIBEL
PLANNING COMMISSION

IN THE MATTER OF:	A Conditional Use permit application to establish a Formula Retail store at 1616 Periwinkle Way.
APPLICANT:	Steven Hartsell, Esquire, Pavese Law on behalf of Heart of the Island Associates and J. McLaughlin
APPLICATION NO.:	12-6657CUP
DATE OF HEARING:	April 10, 2012
ADOPTION OF RESOLUTION:	April 10, 2012

WHEREAS, an application was submitted for Conditional Use approval to establish a Formula Retail store known as J. McLaughlin, a retail apparel and apparel accessories store. The proposed formula retail store will occupy a 1,500 SF commercial unit in the Heart of the Island Shopping Center, located at 1616 Periwinkle Way (tax parcel no. 25-446-22-T2-00015.0000). The application is submitted for the property owner Heart of the Island Associates by Steven C. Hartsell, Esq., on behalf of J. McLaughlin; and

WHEREAS, it has been determined that the Applicants have complied with the filing requirements of Chapter 82, Article III, Division 3, Subdivision V, of the Land Development Code; and

WHEREAS, a public hearing was legally and properly advertised and held on April 10, 2012 before the Sanibel Planning Commission; and

WHEREAS, the Sanibel Planning Commission considered the recommendations of the Planning Department staff; the testimony and evidence of the Applicants and their representatives; public comments and documents on file with the City; and

WHEREAS, Chair Valiquette, Vice Chair Marks, Commissioners Chris Heidrick, Chuck Ketteman, Tom Krekel, Holly Smith and John Talmage were present at the meeting; and

WHEREAS, the Sanibel Planning Commission, after full and complete consideration of the evidence presented during the hearing, at which written minutes were taken, makes the finding that the Record (without exhibits) is substantially as follows:

Director Jordan read the title, introduced the item and stated that City Planner, Benjamin Pople would present the staff report.

Sworn: Benjamin Pople, City Planner, Planning Director Jimmy Jordan, Steven Hartsell, Esq., Representing the Applicant; Larry Schopp, Sanibel resident

Site Visits/Ex-Parte Communications: All Commissioners except Commissioner Talmage made a site visit; Commissioner Ketteman reported that he spoke with a store owner in the same shopping center but did not talk with the applicant. There were no other ex-parte communications disclosed.

Mr. Pople reviewed the application and staff report:

1. Entered the staff report into the record as City Exhibit C-1.
2. The application is for a new formula retail store located in existing developed property.
3. Formula retail is a Conditional Use under the Land Development Code (LDC) of Sanibel.
4. Conditional Uses are considered to be appropriate uses but do require additional scrutiny by the Planning Commission.
5. One of the reasons that formula retail was made a Conditional Use was to preserve local retail aspects for local island businesses.
6. The square footage for formula retail seems to be holding fairly steady at approximately 40,000sf.
7. Standard Conditions for Conditional Use applications are included in the staff report including items from the Fire Marshall.
8. Asked that these conditions be included if the application is approved.

Commissioner Krekel asked what the number is that is a limit for formula retail. Mr. Pople said there is no limit. Mr. Pople also stated that Conditions 6 through 10 included in the LDC were omitted from the conditions for this application because they apply only when formula retail reaches 50,000sf. When the 50,000sf is reached, City Council approval is required. Commissioner Krekel said with this application the square footage is under 50,000sf. Mr. Pople said it is.

Mr. Talmage asked if there are other triggers in addition to the 50,000sf that the Commission needs to be aware of. Mr. Pople said there are certain types of retail that are not permitted in the Town Center Limited Commercial District.

Commissioner Heidrick said it seems the only thing that defines this application as formula retail is the common ownership. There are no common uniforms, no common stock and no common themes. Mr. Pople said he believed so. Regarding stock - stock from J. McLaughlin product lines could be considered formula. Director Jordan stated this would be anything that has the brand name.

Commissioner Ketteman asked if every Conditional Use application has to come before the Planning Commission. Director Jordan said the Land Development Code requires that every Conditional Use application be heard by the Planning Commission. Typically Conditional Uses are not uses by right and involve issues regarding compatibility with the neighborhood or with the City's policies in general. Commissioner Ketteman asked if the Planning Commission could delegate the authority to staff to approve Conditional Use applications. Chair Valiquette said they could not.

Commissioner Smith said she believed that Mr. Pople was drawing a distinction between formula restaurants and formula retail and asked if formula restaurant applications would come before the Planning Commission. Mr. Pople stated that

formula restaurants are prohibited on Sanibel. There could be restaurants on Sanibel that have different locations under the same ownership. There are established criteria for formula restaurants. Commissioner Smith said she wanted to make sure there was consistently for restaurants and this application. Mr. Pople said there is a specific definition for formula restaurant.

Director Jordan said there are three criteria for being a formula restaurant; (1) have a common name, architectural feature or logo; (2) be a fast food restaurant (any restaurant where you stand up at the counter and the food is served in disposable containers); (3) have the same uniforms or attire. If an applicant can prove that they don't meet two of these criteria they can open a restaurant.

Mr. Pople stated that a new restaurant would be approved by staff if the restaurant occupied a location where there was a previous restaurant. If it is a new location the restaurant would have to receive Conditional Use approval.

Steve Hartsell, Attorney for the Applicant, J. McLaughlin and Heart of the Island Associates

1. The application is for a 1,500sf formula retail store.
2. This retail apparel company opened its first store 35 years ago.
3. The apparel is the Classic American Style with a flair for bold colors, luxurious fabrics and unique signature patterns and prints.
4. Each store reflects the individual character of the community.
5. No two stores are alike.
6. The name and logo are the same; however, nothing else is formula for the store on Sanibel.
7. Examples provided with the application show how the store is unique and suited for the community where they are located.
8. Retail apparel and apparel stores are permitted uses in the General Commercial District.
9. The store is not incompatible with other shops in the shopping center.
10. The store will remodel the existing interior space consistent with the plans provided with the application.
11. The exterior architecture will maintain the compatible architectural style of the Heart of the Island Shops.
12. The property location falls within the General Commercial zoning district.
13. Retail apparel and apparel accessory stores are permitted uses within the General Commercial District.
14. J. McLaughlin meets the City's definition of Formula Retail.
15. They are required to show that they meet the standards of the General Conditional Use requirements as well as the Specific Standards for Formula Retail Stores.
16. These standards are located in Section 126-82 of the LDC. Attorney Hartsell reviewed these standards.
17. The store will not adversely affect traffic flow differently than the other shops in the center.
18. The store will not adversely affect the public health, safety or welfare of the community but will serve the apparel needs of residents and visitors.
19. The site is already developed and meets Sanibel requirements.

20. A parking count report was submitted to staff.
21. The applicant understands that the Planning Commission may impose conditions for approval.
22. This location has been a commercial site since the 1960's and was expanded in 1979 after incorporation of the City and met City requirements at that time.
23. The LDC is not violated by approval of this formula retail use at this location.
24. Specific Conditional Use requirements are contained in Section 126-102. Attorney Hartsell reviewed the requirements.
25. The City set a threshold of 50,000sf for formula retail.
26. About 80% of the threshold has been used and this retail store will not exceed the 50,000sf.

Commissioner Krekel asked Mr. Pople if he had received any complaints from non-formula merchants. Mr. Pople said he had not. Notices were sent to property owners within a 300' radius and no comments were received.

There was no public comment.

MOTION: Commissioner Smith moved to approve the application, close the hearing and prepare a Resolution to be brought back to the Commission; Commissioner Krekel seconded the motion. The motion carried by a unanimous roll call vote.

Commissioner Ketteman said he didn't feel this application needed to go through the process and asked if approval authority should be granted to the Planning Department when applications are as straight forward as this one. Commissioner Ketteman said he understands the Code would have to be amended to do this. Attorney Cuyler stated that a recommendation could be made to City Council; the Commission does not have the authority to change the Code. Commissioner Ketteman said he is thinking of appropriate ways to allocate staff's and the Commission's time.

Vice Chair Marks agreed that the focus should be on making things more efficient but this is a slippery slope. When this type approval is done by staff there is no opportunity for public input. When the Planning Commission hears the application the public has the benefit of knowing what the conditions are. Fees have been reduced. He doesn't mind the time it takes the Commission to hear the application.

Commissioner Smith said she agreed with Commission Ketteman. It isn't just the time spent during the hearing; it is the cost and time spent in preparation of the hearing.

Commissioner Heidrick said this suggestion was previously discussed. It seems the issue is with Formula Retail. We were told that Council established three priorities for staff and this is not one of the priorities. Commissioner Heidrick said his suggestion is that Council revisits this. This same discussion occurs every time there is a formula retail application. It would be an appropriate use of time to figure out how to streamline this process.

Commissioner Krekel said that staff would still do the investigation and agreed with Vice Chair Marks that this process gives the public an opportunity to speak.

Chair Valiquette asked what notification is made for this type application. Director Jordan stated notification is sent to all property owners within a radius of 300'. There is a

lot of concern within the community regarding formula retail. Council developed rules and regulations to address these concerns. This is not a prohibition; it is a process. City Council said they wanted to have a balance between residential, nonresidential and resort. This is still a valid argument. It may be time consuming but we don't have many these applications and in each case they were approved.

Commissioner Ketteman said he wasn't suggesting that we would never hear a formula retail application; he was suggesting that staff would use their judgment and when there weren't any questions staff could make the approval.

Chair Valiquette said the public outside the 300' parameter would not know what was going on.

Attorney Hartsell stated to shorten the process a Resolution approving the application could be done at the same time as the hearing. Attorney Hartsell said he appreciated the timeliness with which this application was handled and scheduled for the hearing.

Attorney Cuyler said, since the record for this application was so clean, the Planning Commission could authorize the Chair to execute the Resolution approving this application and it would not have to be brought back to the Commission.

MOTION: Commissioner Ketteman moved to amend the previous motion and to have the Resolution prepared for the Chair's signature. It would not be necessary for the Resolution to be presented to the Planning Commission during the next meeting. Vice Chair Marks seconded the motion. The motion was approved by a unanimous voice vote.

NOW, THEREFORE, BE IT RESOLVED, by the Planning Commission of the City of Sanibel, that all Conditional Use Criteria and Application Requirements have been met and that Application No. 12-6657CUP is **APPROVED** with the following conditions:

1. The approximately 1,500sf commercial unit located at 1616 Periwinkle Way (Heart of the Island Shops) shall be permitted to operate as a formula retail store known as J. McLaughlin.
2. Any change of use at this commercial unit to anything other than a permitted use, including a different formula retail store, shall require a separate conditional use approval.
3. The J. McLaughlin store shall maintain the required conditions for a formula retail store approved as a conditional use.
4. The applicant shall obtain a business tax receipt from the City prior to opening for business.
5. The applicant shall obtain a sign permit in conformance with the requirements of Chapter 106 of the Land Development Code.
6. The applicant shall obtain a building permit for qualifying interior remodeling if required.
7. An inspection shall be performed by the Sanibel Fire and Rescue District's Fire Marshal prior to the business being open to the public.

EXPIRATION OF PLANNING COMMISSION ACTION: In accordance with Land Development Code Section 82-116, approvals of Conditional Uses shall expire if any

necessary development permit to implement such approval is not obtained within a period of twelve (12) months after Planning Commission approval, or, if a development permit is obtained within 12 months, upon expiration of the development permit. CONDITIONAL USE NO. 12-6657-CUP SHALL EXPIRE ON APRIL 10, 2013 IF THE DEVELOPMENT PERMIT NECESSARY TO IMPLEMENT PLANNING COMMISSION APPROVAL GRANTED HEREIN IS NOT OBTAINED BY THAT DATE.

EFFECTIVE DATE OF PLANNING COMMISSION ACTION: In accordance with Land Development Code Section 82-97, all actions of the Planning Commission, including those which constitute final decisions, shall be effective upon the date of filing of the adopted resolution with the City Manager, or at a later date if provided in the resolution. However, permits authorized by final decisions shall not be issued until the expiration of the time-period for filing an appeal to City Council, if applicable, has elapsed; or if an appeal has been timely filed, until the City Council has finally disposed of the matter.

RIGHT TO APPEAL PLANNING COMMISSION ACTION: In accordance with Land Development Code Section 82-98, the applicant is hereby advised that the following persons have the right to appeal a final decision of the Planning Commission adverse to their interests: 1) The applicant; 2) The owner of the property proposed for development; 3) The developer of the property proposed for development; 4) Any other person residing upon, or owning property within the City, or owning or operating a business within the City, who participated by written comment before or at the Planning Commission hearing or who participated in person or through an authorized agent at the Planning Commission hearing.

FIFTEEN DAY TIME LIMIT FOR FILING APPEALS OF PLANNING COMMISSION ACTION: In accordance with Land Development Code Section 82-98, the appeal shall be filed in writing with the City Manager within fifteen (15) days after the date that the Planning Commission decision was filed; and the appeal filing fee shall be paid as a prerequisite to filing.

The foregoing Resolution was adopted by the Planning Commission upon a motion by Planning Commission Member Holly Smith and seconded by Planning Commission Member Tom Krekel, and the vote was as follows:

Christopher Heidrick	Yes	Holly Smith	Yes
Chuck Ketteman	Yes	John Talmage	Yes
Tom Krekel	Yes	Michael Valiquette	Yes
Phillip Marks	Yes		

A second motion amending the first motion was made by Commissioner Chuck Ketteman and seconded by Vice Chair Marks to authorize the Planning Commission Chair to sign Resolution 12-03 without further review by the Planning Commission. This motion was adopted; the vote was as follows:

Christopher Heidrick	Yes	Holly Smith	Yes
Chuck Ketteman	Yes	John Talmage	Yes
Tom Krekel	Yes	Michael Valiquette	Yes
Phillip Marks	Yes		

DULY PASSED AND ADOPTED this 10th day of April 2012.

SANIBEL PLANNING COMMISSION

Signed: Michael J. Valiquette — 4/13/12
Chairman — Date Signed

Approved As To Form: Kenneth B. Cuyler — 4/13/12
City Attorney — Date Signed

Date Filed With City Manager: 4/13/12