

**NOVEMBER 12, 2013 MINUTES
PLANNING COMMISSION
COUNCIL CHAMBERS (MACKENZIE HALL)**

DRAFT

1. Call to Order for November 12, 2013 Planning Commission Meeting

Chair Valiquette called the meeting to order at 9:03. Planning Commission Members present: Chair Valiquette, Vice Chair Marks, Commissioners Talmage, Ketteman, Smith, Heidrick and Krekel. Staff present: Ken Cuyler, City Attorney, Roy Gibson, Acting Planning Director, James Evans, Natural Resources Director, Keith Williams, Public Works Director and Meg Veraldi, Administrative Assistant. There were 11 members of the public in attendance at the Call to Order.

2. Pledge of Allegiance was led by Chair Valiquette.

3. Public Comments on non-agenda items: None.

4. City Council Liaison Report: Vice Mayor Congress spoke to the following items from the November 5 City Council Meeting:

- Introduced Civic Core to the public. Mayor to reach out to stakeholders in next few weeks.
- Tourist Development Council presented a little over \$1.7M to Sanibel as part of the Bed Tax. These funds will be for beach projects.
- Draft legislation reviewed on bus drop off at beach parking lots (more than 10 people). There are safety concerns. Possible fine being considered. It was voted in 3-1; to be continued at the next Council meeting.
 - **Chair Valiquette** inquired about bad feelings of those not allowed to disembark?
 - **Vice Chair Marks** noted that beach carrying capacity is an issue, and a bus of 50-60 people is increasing the load on the beach, and should be considered.
 - **Commissioner Ketteman** inquired if any research has been done to see if we have additional busses? **Vice Mayor Congress** noted no data to support this topic yet. Advised that those with strong feelings should plan to attend next Council Meeting.
- Planning Department fees are being reviewed to determine if reductions are possible.
- County inspecting causeway bridges every 6 months due to premature cracks; cracks have not gotten worse, County will continue to monitor. Vice Mayor Congress is keeping a close eye on ensuring the monies are expended properly.
 - **Commissioner Krekel** noted importance of monitoring expenses, in light of how our contract is designed with repair and maintenance funds coming out of our share.

5. Consent Agenda

a. Approval of October 22, 2013 Meeting Minutes: Commissioner Smith .

- **Commissioner Smith** requested details of vote tally in minutes when not unanimous.

Motion: **Commissioner Smith** moved, and **Commissioner Krekel** seconded, to approve the Consent Agenda, with the requested change to the minutes. The motion carried, 7-0.

6. Continuation of a Public Hearing and Consideration of a Resolution:

Approving an application filed for **variances** to Land Development Code Section 126-494, Required conditions, Subsection (a), maximum floor area ratio, by increasing the maximum permitted commercial floor area ratio from 10% to 15%, Subsection (e) Coverage, by increasing the maximum permitted land area permitted to be covered with impermeable surfaces from 45% to 62%, and Subsection (f), Developed area and vegetation removal, by increasing the

maximum permitted land area used as developed area and cleared of vegetation from 50% to 63%; and a variance to Land Development Code Section 122-48, Location and size of required vegetation buffers, seeking relief from the installation requirements for the front, side and rear of the subject property; and

a **conditional use permit** application to establish, within a 1,310 SF building addition, a fast-food restaurant with 24 seats and a **development permit** application to construct this building addition and to implement the proposed use and the various on-site improvements associated with these applications.

The subject property, Periwinkle Place Shopping Center, is located at 2075 Periwinkle Way (tax parcel no. 25-46-22-T1-00003.0040). The applications are submitted by Raymond Fenton, Architect and Steven Hartsell, Attorney (the applicants) on behalf of the property owner, **Dahlmann Periwinkle Place LP. Application Nos. 13-7530V, 13-7529CUP and 13-7528DP.**

Additional site visits and ex-parte communications:

Commissioner Talmage:	No site visit.	No ex-parte.
Commissioner Kettelman:	No site visit.	No ex-parte.
Commissioner Smith:	Site visit.	No ex-parte.
Chair Valiquette:	No site visit.	No ex-parte.
Commissioner Heidrick:	Site visit.	No ex-parte.
Vice Chair Marks:	Site visit.	No ex-parte.
Commissioner Krekel:	No site visit.	No ex-parte.

Sworn:

Per Ken Cuyler, those sworn in at last meeting were still under oath; new participants will need to be sworn in. Those sworn in at last hearing were: Roy Gibson; Holly Milbrandt; Ray Fenton; Steve Hartsell; Jim Banks; Claudia Burns; Larry Schopp. **New participants sworn in on 11/12:** Ben Dahlmann, property owner; James Evans, Natural Resources Director.

Staff Presentation: Roy Gibson presented the following:

- Entered Staff memorandum, dated November 12, 2013, as City Exhibit C2.
- Memorandum summarizes the status of the review since last hearing.
- The draft Resolution, 13-22, also provided with Planning Commission packets, summarizes the inspection from three weeks ago, as well as the motion the Commission made.
- The motion made and approved by the Commission, found in the draft Resolution, directs staff to prepare this draft Resolution, including 13 conditions.
- The motion indicated conditions set forth are to be in the Resolution.
- The motion directed the Applicant to prepare a revised landscape plan and have that plan reviewed by Staff.
 - Attachment A of the memorandum provides a copy of the revised landscape plan provided by the Applicant.
 - Attachment B of the memorandum is a memo from the Acting Natural Resources Director who has reviewed that revised landscape plan and has found that the plan is consistent with the recommendations that they previously made for the landscape plan.
 - Staff now finds that the plan is consistent with the recommendations of the Natural Resources Department.

- There is an additional condition that the Natural Resources Department is proposing. They are recommending that the maintenance standards from the Land Development Code be added as a condition to the approval of this revised landscape buffer plan. They are required to maintain the landscape buffer in accordance with the Land Development Code maintenance standards. Staff is recommending that Condition number 8 of the draft Resolution be amended to include the maintenance requirements as well as a reference to the specific revised landscape buffer plan.
- The motion directed Applicant to work with Staff to review other alternatives to remove or reduce floor area. Staff and the Applicant met at Periwinkle Place on October 29th.
 - Attachment C to the Memorandum is a summary of this site meeting. It summarizes the review of the conditions of the former Synergy unit and the structural hardships in removing the actual floor decking of that unit.
 - The Applicant subsequently provided a plan to install a structural truss system inside that 2nd floor unit. That would eliminate the functional ability to access that space for any commercial activity. That is denoted in Attachment D to the Memorandum.
 - The Building Official was included in the site meeting and review along with the Applicant's structural engineer. The Building Official has reviewed this plan and does find that, pursuant to the building code, this does eliminate the floor area as far as the functional use of that space.
 - We do not object to this plan as presented by the Applicant.
- The motion noted that the Commission does not require the Applicant, at this time, to implement interconnectivity.
 - However, Staff is recommending that the existing pathway that connects Forever Green with Periwinkle Place, be required to be maintained for bicycle and pedestrian movements. Staff is recommending that be an added condition.
 - Staff is also recommending that the shared use path in front of Periwinkle Place be connected by way of a pedestrian/bicycle path to the Periwinkle Place parking lot.
 - Although there is no specific plan, Staff feels they could work with the Applicant and would recommend that the Planning Commission add a condition that any such connectivity to the shared use path and the specific details for the connectivity to Forever Green be a condition and that the plans be reviewed by the City's Public Works Department and Natural Resources Department before approval.

Commission Comments and Questions for Staff:

- **Vice Chair Marks** inquired how compromise went from interconnectivity for automobiles to a pedestrian/bicycle path. **Mr. Gibson** confirmed that it was the Planning Commissions motion at the last meeting that did not require that vehicular interconnectivity. And Staff would like to see bicycle/pedestrian connection where there is already an existing pathway there today, formally maintained as part of this approval. **Vice Chair Marks** noted that it is doubtful the Applicant will do something more substantial later. **Mr. Gibson** noted Commission is still to hear from Applicant, who may not be in agreement with this part of our recommendation.
- **Commissioner Krekel** inquired if Staff feels locking and removing stairs is enough to remove the loft space of 450 square feet? **Mr. Gibson** noted that Staff position remains the same as noted in the Staff Report dated October 22, 2013.
- **Commissioner Kettelman** inquired if it is our policy to put in requirements out of the Code as Conditions? **Mr. Gibson** noted that in this case, the Natural Resources Department has

identified some issues with the current maintenance of the landscape buffers, initiating the inclusion of this condition of maintenance.

- **Commissioner Talmage** inquired if Staff envisions an MOU between the properties when there are adjoining property owners who have to cooperate to maintain an interconnection, whether pedestrian or vehicular? How do we make sure there is an equitable distribution of responsibilities? **Mr. Gibson** confirmed there are aspects to consider, including a use and maintenance agreement between the two property owners. There is a shared aspect up to the property line. There are no known issues that either party could not overcome with respect to those requirements to maintain that interconnection. On the Periwinkle Place side there are existing conditions that need review: utility structure, storm water, and native vegetation have to be looked at.
- **Commissioner Talmage** also noted there have been recommendations in the past to use City easements to add additional bicycle parking. This might be an appropriate time to go through the planning process of how that might look.
- **Commissioner Kettelman** noted there is already a shared use path that runs in front of these two shopping centers, in that sense, there is already pedestrian and bicycle connectivity. **Mr. Gibson** replied that Staff is looking for improved or enhanced connectivity between those two uses.
- **Vice Chair Marks** added that regarding the specific condition for the maintenance of the vegetation buffer, that many times once things are planted they tend not to achieve their normal shape and height.
- **Commissioner Krekel** inquired if they are already using the pedestrian connection between the two centers? **Chair Valiquette** noted that it's heavily vegetated right now, and not an easy passage.
- **Chair Valiquette** recommended that if we're going to require a cut through for bikes and pedestrians, we should give a credit for at least one parking space for if a current parking spot is used for access. In the future when requiring a vehicular cut-through to a neighboring property, the Commission should consider two or three parking space credits for those connections. **Commissioner Krekel** included, that is part of how we may be incentivizing connectivity.
- **Commissioner Kettelman** asked how we are going to ask this Applicant to implement a change for which we have not yet worked out all the rules. **Mr. Cuyler** noted that it is not unusual for an applicant to come in in the middle of some process, in this case, interconnectivity. The Planning Commission does have the ability to look at interconnectivity because that is one of the elements of your general Conditional Use. You don't have any specific Code provision to refer to on how to do it, but you do have the legal authority to play it by ear, to an extent. **Mr. Gibson** reread the general requirement for Conditional Use approval into the record. **Mr. Cuyler** included that Planning Commission deals with other issues like noise, light, traffic, and doesn't always have specific guidelines, but just has to look at that property in conjunction with their general conditions to make their determinations. **Mr. Gibson** noted that the applicant did provide a traffic and parking demand study. So as the Chair indicated, in this case, the Planning Commission could find that they could reduce parking spaces because, pursuant to their study and analysis, the Applicant has excess parking spaces for the existing uses and for the proposed use.

- **Commissioner Smith** inquired if Staff has also looked at if the adjoining property has the parking spaces available to give up for this interconnectivity? **Mr. Gibson** noted that the direct connection between Periwinkle Place and Forever Green would not require removal of any parking spaces. The connectivity with the Shared Use Path, depending on the location, could impact existing parking spaces.
- **Commissioner Talmage** requested clarification of where the connection is being proposed? And if we were to move forward with vehicular connectivity, would that be in the same area? **Chair Valiquette** identified the proposed location. **Mr. Gibson** confirmed that it was Staff's original position that the existing path that connects Forever Green and Periwinkle Place would be the location of a vehicular connection. However, at this time pursuant to the direction the Commission made at their last meeting, Staff is only looking for a pedestrian/bicycle connection. **Commissioner Talmage** also noted that it seems there would be a conflict and safety issue with the proposed connection being located where there is delivery truck activity and staff parking. From a safety perspective there may be a better location.

APPLICANT PRESENTATION: **Mr. Steve Hartsell** of Pavese Law Firm presented the following:

- Mr. Hartsell introduced Mr. Ben Dahlmann, the property owner and Mr. Ray Fenton, the owner's architect, also present, and noted they are here to answer any additional questions if needed.
- Areas where they have less concern or less disagreement: they do believe they've addressed the floor area issues satisfactorily with regard to the variances requested for floor area, developed area and coverage. Mr. Fenton met on site and the solution that was reached is included in Roy's memo to the Commission. Applicant is satisfied with that and believes the Staff is also satisfied with that.
- The vegetation buffering plan has been provided. That would be included in Condition number 8. Applicant touched base with the Natural Resources Director James Evans this morning with regard, particularly, to the question about maintenance. Director Evans was very helpful in explaining that different kinds of shrubs require different kinds of maintenance. They discussed the possibility of exchanging one kind of shrub that's proposed - for example, Director Evans suggested Wild Coffee in place of a Fire Bush. Hoping that as part of the condition today, the Applicant would have the opportunity, if they could agree with the Staff, to exchange one type of acceptable shrub for a different type of acceptable shrub. We agree with Roy that the buffering plan that we have should be included in that condition.
- Regarding the requirement that a section of the Land Development Code would be placed in this resolution: it's in the Code you must comply with it. Seems unnecessary to reiterate in the resolution that one must comply with this section of the Code, however, Applicant is willing to accept this.
- Applicant was to come up with a buffering plan that's acceptable to Natural Resources; he noted they have done that.
- Applicant was to meet with the Chief Building Inspector, Mr. Gibson and Applicant's architect and come up with a solution to the floor area; he noted they have done that.

- Applicant believes they have complied with the requirement of the Planning Commission's motion from the last meeting in terms of demonstrating approval and having met the standards.
- Planning Commission voted that this application did not have to meet the Condition requested by Staff for interconnectivity. Staff has not compromised on that interconnectivity issue; they still believe that interconnectivity with Forever Green is necessary. The Applicant has not changed their position regarding interconnectivity which is it is not required under the code. They still believe that should not be a condition of this application.
 - Roy cited the general requirement which says: *The developer must demonstrate that the proposed use is coordinated, to the greatest extent possible, with adjoining developments. Where applicable, this coordination shall include examination of all opportunities to share or combine drives and entry points, parking areas, sewage treatment facilities, pedestrian walkways and other service facilities.*
 - I submit, first, that there is no Land Development Code requirement for interconnectivity. Therefore, it is not applicable to require interconnection between these two projects.
 - When it says, where applicable coordination shall include examination of opportunities to share or combine drives and entry points... if you look at the entry points on Periwinkle for this project and Forever Green next door, there is no opportunity to share or combine entry points or drives or parking areas or sewage treatment facilities, and I would submit, or pedestrian walkways. There are no pedestrian walkways that are interconnecting here other than a Shared Use Path that serves both projects, that's probably 25 feet from both projects, that's been serving both projects for many years very acceptably.
 - The Staff is proposing that there should be more shared use path. It is just not required and it is just not necessary.
 - Understand City is going to be looking at this in greater detail and will reach a conclusion at some point in time about where and how interconnectivity will be required and what the standards will be. We don't have any of those things. We're premature in trying to do that on an ad hoc basis with this particular project.
 - Regarding Staff's suggestion for compromise for pedestrian connection instead of vehicular connection: there are power lines that run between those two projects. There are guide-wires from one of the power poles that look to run right through where some type of vehicular access might be required. We don't think it's possible, given the present utilities, to put vehicular access through there. There are questions about storm water drainage, questions about whether the buffers can be done. As the Chair pointed out there should possibly be credits given for parking spaces. There are parking spaces that may need to be sacrificed from either/both shopping centers. All questions that ought to be examined on the basis of an overall requirement from the Land Development Code. After other businesses that will be affected and the public have had opportunity to comment, the City Council may chose not to require interconnectivity. It may be that it just doesn't make sense. And looking at this particular project I would submit that it just doesn't make sense.
 - We're talking about an additional condition to connect this project to the Shared Use Path instead of using the driveway points that are already there that bicyclists have been using for 20 years or more to get in and out of these projects. I have seen no

evidence that there is a need for a different connection. We submit that interconnectivity is simply not necessary. It's not required under the code. That it doesn't make sense.

- The other section of the Code I would like to cite with regard to this issue has to do with traffic, that the proposed development shall not adversely affect compatibility with other uses. I submit that we have demonstrated that this project does not adversely affect compatibility with the other uses. What Staff has proposed with regard to the shared use path is for the purpose of enhancing and improving connectivity, and the Code doesn't require enhancing and improving connectivity – just not adversely affecting it. I believe we have demonstrated this doesn't adversely affect that.
- I submit that you shouldn't use this particular project as the first experiment for how new connectivity requirements are going to be added. This isn't the appropriate time to do it. The Planning Commission should wait until you've had the full public debate, and adopted the standards that would then be applied to everybody else.

Commission Questions and Comments for Applicant:

- **Commissioner Krekel** noted that Mr. Gibson was referring to the conditions for Conditional Use application. Those are conditions when obtaining a Conditional Use.
- **Chair Valiquette** asked for Mr. Cuyler to comment on the process. **Mr. Cuyler** noted that with respect to interconnectivity, we wouldn't be talking about it if it was a pure requirement in the Land Development Code. The question is whether you have the legal basis to look at it under the legal provisions of the Code. Mr. Hartsell is arguing that it's not applicable for his client in this case or they've overcome the burden of proof with respect to that issue. Staff's position is they do want you to take a look at that. The question is whether you have some legal basis to do so. I think you do have a legal basis to take a look at this, but it is clearly not a requirement.
- **Mr. Gibson** included that the applicant and Staff do disagree on this requirement. Staff has been consistent; in 1994 this was the same recommendation for Forever Green. We are looking at the Conditional Use requirement, and are looking that both Periwinkle Place and Forever Green both be required with consistent conditions.
- **Vice Chair Marks** noted that Mr. Hartsell's argument is that it's not in the Code at this point, but there is this agreement that was made in 1994.
- **Commissioner Heidrick** inquired if the Applicant has any intention of closing off or altering the unofficial existing pedestrian connection that exists today? **Mr. Dahmann:** No.
- **Commissioner Ketteman** noted surprise at Applicant's objection to the additional connection to the shared use path, as it seems there could be some real benefit to the Applicant and the use and the shopping center from having a way to get from the shared use path to the shopping center that doesn't require interacting with cars that are turning in and out. Providing a safer, easier way for pedestrians and bicycles might also help traffic in the shopping center. Commissioner Ketteman asked for clarification on this from Applicant.
- **Mr. Hartsell** noted that the Planning Commission motion stated that interconnectivity, not required by the Code, was not something we were required to comply with. Up until this moment we are not embracing that because we have not been required to do that. He noted that the Applicant has been consistent with regard to interconnectivity with Forever Green. There were not previously two alternatives that Staff was offering. At this stage, we

haven't been presented with one as an alternative to the other. We're simply being consistent in saying they're not code requirements.

- **Commissioner Ketteman** noted that his question is, isn't this an idea that could improve your applicant's business and at the same time, maybe help from a safety standpoint and create better use of the Shared Use Path?
- **Mr. Hartsell** replied that we're guessing, today, that it will be safer to have a separate bike/pedestrian connection to the Shared Use Path than the present driveways or entrances that have been used for 35 or 40 years. Unsure there is any evidence, other than the intuitive "it must be safer if you don't have to use the same driveway". Bicyclists use driveways and roadways all the time. We're presuming this is safer and better but I'm not sure there's any evidence that demonstrates that, and that's probably a reason this issue hasn't come up as a Code Requirement requiring separate pedestrian connection to the shared use paths for everybody. A solution is not required if it has not been a problem.
- **Chair Valiquette** noted that our City Manager is doing everything possible to look at anything that can be done to make that path safer for both pedestrians and bikers and cars as well, and this is an opportunity. Yes this path has been there for over 30 years, but it is constantly being changed and looked at, and this is just another way for the Staff to look at it. He agreed with Mr. Ketteman that, when bicycling he would much rather enter the Applicant's parking lot or any other parking lot continuing on a bike path to a rack as opposed to engaging with cars coming and going in those lots.
- **Vice Chair Marks** included that the Applicant could set an example as the biggest and busiest shopping center on the island. He noted that in his personal use when bicycling, he is very careful at these ingresses and egresses because many drivers forget to be aware of the inner path they must cross. There are not stop signs for the cars or the bikes to stop, so there is confusion about right of way. This is something that could be done to ensure the safety of any citizen, whether coming into the shopping center or not.
- **Commissioner Smith** agreed with fellow Commissioners. This is an opportunity for the benefit of the island. She reminded that Applicant said, if they have to do this they are not proceeding, and noted that may be a choice they will have to make. She included that she fully supports Staff's recommendations at this time for the interconnectivity at least for pedestrians and bicycles if not for vehicular looking into the future.
- **Commissioner Talmage** disagreed with the Applicant proposal that this is a solution in search of a problem. He included that, as Ken noted, it may be a case by case basis on how you get to the private-to-private connections. He included that, to the Chair's point, the Shared Use Path is an evolving system, and included that it is a regular occurrence for a car to pull out and hit a bicyclist. May rarely involve a hospital visit, but wherever there is opportunity to remove the conflict and have a dedicated pedestrian and bicycle pathway, it has to be in the public good. He noted that he would make the distinction between whether it's a public-and-private interconnected pathway or whether it's a private-to-private. And noted he will feel very strongly that there should be a public-to-private connected pathway here.
- **Commissioner Heidrick** noted that people look for predictability in government. All efforts that are being made to encourage redevelopment are not going to go anywhere if applicants have to fear that an additional requirement that they weren't anticipating is going to be placed on them. He noted that his personal position on the interconnectivity was that as much as he would love to see it improved, there is something that exists today

and that it's more important for the City to be predictable and not impose a condition that an applicant wouldn't have reasonably anticipated.

- **Commissioner Krekel** noted that this is a matter of interpretation by the Commissioners. He noted that the process is working and the Staff and Commission are doing what they are supposed to do, and included that the Planning Commission and Staff go to great lengths to help people be able to obey the Code and that we obey the Code because it's going to affect others up the line. The Commission is trying to treat everyone fairly. He noted that his vote today is going to continue as last time, to deny.
- **Mr. Hartsell** noted that the Applicant is cooperating with Staff, and that the Commission has achieved much of what they were trying to achieve. He included that it is difficult when the Staff and Applicant disagree on points, and that an Applicant's initial refusal to concede on a point until they have heard Planning Commission's view, is a positive part of the process. It should not be held against the Applicant that they don't give up their position until they have heard from a majority of those holding a position different than ours. It is the process that until the Applicant has an idea of what the Commission is going to vote, it's difficult to reach a compromise. He noted that, based on the opinion of the Commission there may be room for compromise with regard to a pedestrian connection to the Shared Use Path that would be separate from the driveways; and added there is no intention to do anything with whatever informal access there may be between Forever Green and Periwinkle Place. The connection between those is not something Periwinkle Place is willing to accept at this stage, and suggested that the pedestrian connection to the shared use path will serve the same function as any interconnectivity between those two centers.

Motion: Commissioner Ketteman moved, and **Commissioner Heidrick** seconded that:

The Commission approve the Resolution before them, with the conditions.

Adding in Condition 8, the requirement that Staff has suggested on what the rules are related to maintenance of the landscaping that is put in.

Only requiring the Applicant to work with Staff to add an improved pedestrian and bike connection between the Applicant's shopping center and the shared use path.

Not requiring the Applicant to do anything other than to maintain the informal connection between Periwinkle Place and Forever Green.

- **Vice Chair Marks** noted that today's draft Resolution is different than the proposed variance application submitted by the Applicant on October 22, and this is a result of what the Applicant took home from the last meeting. He included that one of the seven criteria that must be met is that the condition is of no fault of the person applying for the Variance, and this new project is something the owner wants to do, so they've really imposed the problem themselves. He noted he was pleased with the small interim meeting that happened between Staff and the Applicant and the items that were resolved, but is baffled why the Applicant is still so recalcitrant against adding a safe passage.
- **Commissioner Krekel** wished to clarify Commissioner Ketteman's motion, inquiring about the last sentence which seemed to imply that the informal existing connection between the shops is okay. Mr. Krekel noted that is not a motion for anything to be done, and if it is stated in the motion in that way, there is no reason for the Applicant to change their mind.

- **Commissioner Ketteman** clarified that portion of his motion, noting that his proposal was, that they include a requirement that they develop an improved connection between the bike path and the shopping center and that they do not require the Applicant to have any additional interconnectivity between their shopping center and Forever Green.
- **Chair Valiquette** asked about maintaining the existing path?
- **Commissioner Ketteman** noted that they received a direct answer from the Applicant that they intend to not change the informal path. He noted that he is happy to have in his motion that we acknowledge that the Applicant has agreed to not change the informal path
- **Mr. Cuyler** clarified that the original motion was to maintain the path as it exists today, which would imply that there is a requirement. He noted that Mr. Hartsell said there is not present intention to do anything other than leave it, but to clarify for Mr. Hartsell that as it's put in the motion now, there will be a condition that at least the status of the walking path continue to exist and at least be maintained. Not manicured, but maintained as passable.
- **Commissioner Krekel** noted he was glad to hear that included in the motion, but is keeping his vote the same due to the fact that he does not think there is a hardship. And the applicant's resistance to resolve the issue with the 450 square feet and that it is highly likely that space will end up being used again in the future.
- **Mr. Cuyler** reviewed the motion: We're going to close the public hearing as part of the motion. The Resolution will be changed in accordance with what you've directed. You will take a vote on that. That will leave something that still has to be done, but as you often do it will be an approval with conditions and the conditions have to be met. The only other question I have is, if there is no other way other than to lose a parking space, and I have no idea whether that's the case physically or not, as part of your motion are you approving the loss of a parking space if Staff determines that's the only way that it can happen in terms of the connection. It is a minimum of 1 parking space. If the owner and staff find that two are correct, then that would be authorized by the motion. And it will be included in the motion that the Chair is authorized to execute the Resolution without its return to Planning Commission. **Commissioners Ketteman and Heidrick** agreed to include those items in the motion.
- **Vice Chair Marks** inquired of Mr. Fenton if the measurement he acquired for the coverage to be removed to accommodate what will be put in were exact or estimated measurements, and that Mr. Fenton is very confident that what impermeable material they are removing will be more than what will be added. **Mr. Fenton** confirmed exact measurements were obtained. He noted that his client had a new survey done, to have all of these things measured by a professional surveyor. This was a \$10,000 cost and the first step that they took. They took that data which was in digital form and put it in their computer and overlaid their work over that survey so that everything is accurate.
- **Mr. Gibson** added that he had one other recommended revision to the Conditions he would like considered. Under Condition number 2, on page 31 of the draft Resolution, it states that *the development of the parcel shall be in general conformance with the site and building plans as depicted in Attachment E of Planning Department Staff Report dated 10/22/17...* and that date should read 2013, not 2017. And it should also go on to read and Attachment D of Planning Department Memorandum dated November 12,

2013. That reflects the revised floor plan for the Synergy unit, so it should be included in that 2nd Condition.

- **Mr. Cuyler** noted that the resolution will be updated to have the evidence of today's meeting included.

Public Comment:

- **Claudia Burns** noted she is having difficulty understanding the reluctance of the owner of this shopping center to allow interconnectivity with the adjoining shopping center. She hopes the Planning Commission will not give up on the idea of enforcing the agreement that Forever Green made at the time that they developed their property; it would benefit all to have interconnectivity allowing cars to go from one parking lot to another without having to go back out onto Periwinkle Drive.
- **Larry Schopp** noted that variances should only be granted to relieve true hardship, and that there has been no demonstration of true hardship here. Also, it is clearly defined in the code that floor area ratio is calculated by taking into account floor area. Not floor area for certain purposes. In this case floor area is not being eliminated and therefore there is no compliance with the Land Development Code.
- **Thomas Puma** questioned what type of fast food restaurant this will be, and is it going to be a formula restaurant? When he and his wife opened their business on Sanibel they had to sign two affidavits affirming that they were not putting in a formula retail business or restaurant, and he wanted to know if that part of the City Code was going to continue to be enforced? **Roy Gibson** noted that Fast Food Restaurant is defined in the Sanibel Code as an eating place primarily engaged in the sale of pre-prepared or quickly prepared food and beverages, usually in disposable containers and wrappers, selected by patrons from a limited line of specialized items such as hamburgers, chicken, pizza, tacos, hotdogs, ice cream or yogurt, for example, for consumption either on or off premises in a facility in which a major portion of sales to patrons is at a stand-up type counter. With respect to your question about a formula restaurant, formula restaurants are prohibited on Sanibel and a Condition is included in the Planning Commission's draft resolution that the use is not permitted to be a formula restaurant. **Mr. Puma** noted that we referenced "primarily take-out food", but there are 24 seats. He also inquired if the applicant has indicated the name or what type of restaurant this will be? **Mr. Gibson** confirmed that fast food restaurants are allowed on-site seating. And the name or type of restaurant has not been indicated at this time, nor is it required to be.

Planning Commission Questions or Comments:

- **Commissioner Heidrick** replied to Ms. Burns comments, noting that the timing with regard to interconnectivity is unfortunate and that the Commission is committed to enhancing interconnectivity, but the decision on this application is just due to the timing and the fact that this application was presented to the Commission prior to their work on Interconnectivity.
- **Commissioner Talmage** noted that he aligns himself with Larry's comments; that we need to understand floor ratio area more, and to hold the line on that in the future. He noted that he would appreciate a primer or updated memo on how we currently deal with the floor ratio today per the Sanibel Code. He appreciates that Commissioner Ketteman intentionally left the portion of his motion vague regarding the location of the bike path allowing the Applicants and Staff to be able to review that and make a thoughtful

decision about the best location. He also noted that we need to revisit what "substantial" means, in our definition of substantial impact from a nuisance perspective and we need to go ahead and move forward with those regulations. He noted that it may be valuable to have a separate meeting where the Planning Commission can identify what they mean by interconnectivity, and review some of these properties and determine where is it realistic and not realistic, which would lead to a better outcome, than doing this on an individual basis. **Chair Valiquette** asked that Staff add that for the Land Development Code Subcommittee review.

- **Mr. Hartsell** noted that he just wanted to be sure that Conditions 11 and 12 are directed to new signs and new lighting and that these aren't to be interpreted as Conditions that say existing signs and existing lighting all have to be brought up to the current code.
- **Mr. Gibson** noted for the record that Conditions 11 and 12 are for new signage and new lighting – that all new signage and lighting must be in conformance with current standards. He included that all existing outdoor lighting will be required to be brought into compliance with current standards on January 1, 2015. That is an existing Code requirement.
- **Mr. Hartsell** confirmed they are aware of that existing Code requirement but just wanted to make that one clarification.

Mr. Hartsell had a question in relation to the expiration of the Variance and Conditional Use Permits and the Development permit, which talks about a period of 12 months. He requested that the date of November 1, 2015 be specified as a construction completion date as the owner has a concern about getting the construction done or started by the summer, and he doesn't want to be forced to do construction during the season due to an expiration date.

- **Mr. Gibson** noted that the Code does not require that the Commission impose a deadline for completion of the development as long as the permits remain active then approval is still valid. This Condition is that you have one year to initiate the approval by issuance of a Development Permit. As long as that Development permit is active you do not have to impose a deadline on the completion of that development.
- **Mr. Hartsell** included that Mr. Dahlmann's concern is that he doesn't want to have to be doing construction that would disrupt his tenants if he pulls a permit in order to make it active. **Mr. Gibson** confirmed that there are other ways to commence the development other than the construction aspects. For example, even the landscape implementation will initiate the Development Activity. **Mr. Hartsell** inquired that if, for instance, they start the landscape buffer within 12 months... **Mr. Gibson** confirmed that will initiate the approval that's required for this Resolution to be effective. **Mr. Hartsell** inquired, so the permits wouldn't expire if they did the landscaping but waited until summer of 2015 to do the construction? **Mr. Gibson** confirmed that is correct; as long as the development activities remain active and the development permit remains active then, yes, the approval of this resolution can be extended. The deadline is one year to commence development activities.
- **Mr. Gibson** wanted to confirm that the motion included the requirement for maintenance regarding Condition number 8. **Commissioner Ketteman** confirmed that it did.

- **Commissioner Kettelman** reviewed his motion for the record:

To approve the Resolution we have before us including all of the conditions that are in the Resolution except that we will add to Condition 8, the requirement to maintain the landscaping as Staff has suggested. In relation to interconnectivity we will include a requirement that the Applicant and Staff work through where to add pedestrian and bicycle access from the Periwinkle Place shopping center to the Shared Use Path. We will not require the Applicant to develop any further connectivity between Periwinkle Place and Forever Green shopping center next door. Applicant will agree to maintain, as is, the existing informal connectivity that is there. **Mr. Cuyler** added that we also included that the hearing is closed. Chairman is authorized to execute. Regarding the parking spot, we're hopeful the Applicant won't have to lose a parking spot, but if that is the only way to do it, that the Commission will approve that. We should also include that if we need a sign for the path, that that is part of your approval as well, if you'll agree. **Mr. Gibson** included: as well as an amendment to Condition 2 to reference the revised floor plan.

Commissioners Kettelman and **Heidrick** agreed that captures the motion.

The motion to approve carried, 5-2, with Commissioner Krekel and Vice Chair Marks opposing.

[Chair Valiquette called for a brief recess – 11:07 to 11:17]

7. Report from Director of Planning

Ms. Zimomra gave a brief update on the status of Director Jordan's recovery and conveyed his thanks for all of the well-wishes. She included that Mr. Gibson, who is serving as Acting Planning Director in Director Jordan's absence, has some previously scheduled international travel so the City Manager will be standing in as Acting Director for the Planning Department during that time.

Mr. Gibson confirmed that the 11/26 Planning Commission meeting is cancelled. Mr. Gibson gave a brief update on Staff progress for Parking and Interconnectivity research, and confirmed that the next review of Parking and Interconnectivity draft standards is scheduled for the December 10, 2013 meeting. At the December 10 meeting there will also be Variance and Conditional applications for a boat dock in the Bay Beach Zone, as well as two Conditional Use applications for Segway business and a bicycle/beach equipment rental business.

Commissioner Heidrick noted that he has an 11:30 commitment on December 10th for the Chamber, but will be happy to return to the Planning Commission meeting after, if needed.

Vice Chair Marks inquired if that packet could be distributed earlier since this upcoming meeting has a very full agenda.

Ms. Zimomra noted that we have initiated a pre-agenda meeting to assist with preparation for every Planning Commission meeting. Regarding the Parking and Interconnectivity discussion, Commissioner Kettelman has requested that we set aside some time to meet and work on identifying what is the issue, what are we trying to solve. The City Attorney confirmed that Planning Commission does have the ability to have a Workshop. We will work with the Chair person and your liaison to look at the timing for this. Rather than reviewing Standards on the 10th, the Commission may want to consider dedicating some time to this problem identification. Commissioner Kettelman is also requesting a report on all items that came before Planning Commission in the last 24 months which included parking issues; what was the issue, how was it resolved. Staff will be preparing that for Planning Commission as well.

Commissioner Talmage agreed that we should have some additional framing.

Commissioner Smith motioned, and **Commissioner Heidrick** seconded, to start their December 10th meeting at 8:00am. The motion carried by a unanimous vote of 6-0, with Commissioner Ketteman excused for an early dismissal from this meeting.

8. Report from Commission Members

Commissioner Smith commended the City for doing a great job with the Veteran's Day ceremony. **Vice Chair Marks** included it was nice to see young folks there as well.

9. Report from Commission Chair - None

10. Public Comment - None

Chair Valiquette adjourned the meeting at 11:33 pm.

Respectfully submitted,

Roy Gibson,
Acting Planning Director