

**SPECIAL CALL CITY COUNCIL MEETING  
MONDAY, OCTOBER 20, 2014 9:30 A.M.  
CITY HALL, COUNCIL CHAMBERS, VERO BEACH, FLORIDA**

**A G E N D A**

**1. CALL TO ORDER**

- A) Roll Call
- B) Pledge of Allegiance

**2. PUBLIC HEARING – Quasi-Judicial**

- A) Appeal by E. Steven Lauer, Cathy Padgett, Mark Tripson, and Charles Relpolge of the Approval by the Planning and Zoning Board of Site Plan Application (#SP14-000003) for Outdoor Dining at Mulligan’s Beach House, Located at 1025 Beachland Boulevard, Sexton Plaza

**3. ADJOURNMENT**

This is a Public Meeting. Should any interested party seek to appeal any decision made by Council with respect to any matter considered at such meeting or hearing, he will need a record of the proceedings and that, for such purpose he may need to ensure that a record of the proceedings is made which record includes the testimony and evidence upon which the appeal is to be based. Anyone who needs a special accommodation for this meeting may contact the City’s Americans with Disabilities Act (ADA) Coordinator at 978-4920 at least 48 hours in advance of the meeting.

# QUASI-JUDICIAL APPEAL HEARING BEFORE CITY COUNCIL

## 1. PRELIMINARY MATTERS.

- A. Mayor reads the case title.
- B. Disclosure by Councilmembers of ex parte communications, if any (including site visits).  
[If any ex parte communications – give parties opportunity to inquire of the Councilmember].
- C. Swearing in of Parties, staff, and other potential witnesses by City Clerk.
- D. Mayor makes announcement as to custody of exhibits: *“All diagrams, photographs and other exhibits referred to during the testimony or which you would like the Council to consider must be marked for identification and kept by the City Clerk.”*

## 2. CITY STAFF PRESENTATION

- A. City Staff opening statement/case background
- B. Witnesses and presentation of evidence by staff, if any  
*(Cross-examination by Council, Appellant, and Appellee, if any, allowed of each witness)*

## 3. APPELLANT PRESENTATION

- A. Appellant’s opening statement
- B. Witnesses and presentation of evidence by Appellant  
*(Cross-examination by Council, Appellee, if any, and Staff allowed of each witness.)*

## 4. PUBLIC TESTIMONY in support of Appellant *(Cross-examination by Council, any Party, and Staff)*

## 5. APPELLEE PRESENTATION (if applicable)

- A. Appellee’s opening statement
- B. Witnesses and presentation of evidence by Appellee, if any  
*(Cross-examination by Council, Appellant, and Staff allowed of each witness)*

## 6. PUBLIC TESTIMONY in support of Appellee *(Cross-examination by Council, any Party, and Staff)*

## 7. APPELLANT REBUTTAL / APPELLEE SURREBUTTAL (as applicable) – REBUTTAL is limited to evidence that explains, refutes, counteracts, or disproves evidence introduced in Appellee or public presentation. Appellant may not go into new matters not raised by Appellee or the public, nor simply repeat evidence already presented by Appellant. SURREBUTTAL is limited to matters addressed by rebuttal testimony or evidence presented by Appellant. It is not an opportunity for Appellee to present their whole case again or to go into new issues not raised in Appellant rebuttal.

## 8. APPELLANT ARGUMENT/SUMMATION

## 9. APPELLEE ARGUMENT/SUMMATION (if applicable)

## 10. CITY STAFF ARGUMENT/SUMMATION, if any

## 11. APPELLANT REBUTTAL ARGUMENT/SUMMATION, if any

## 12. COUNCIL DISCUSSION of the evidence presented and application of code requirements and law

## 13. MOTION BY COUNCILMEMBER ***“I MOVE THAT, BASED ON THE COMPETENT SUBSTANTIAL EVIDENCE PRESENTED AND THE APPLICABLE CODE PROVISIONS, WE”***:

- AFFIRM THE PLANNING BOARD DECISION (approving / denying the application); OR
- AFFIRM THE PLANNING BOARD DECISION, BUT WITH MODIFICATION (state modifications); OR
- REVERSE THE PLANNING BOARD DECISION AND (approve / deny the application).

## 14. DISCUSSION ON MOTION / ROLL CALL VOTE

## Quasi-Judicial Proceedings

Provided below for your guidance are some fundamental principles affecting a land use decision coming before the City Council for consideration on appeal from the Planning and Zoning Board.

1. What makes a matter coming before the Council “quasi-judicial” in nature?

Land use decisions are generally “**quasi-judicial**” in nature where the decision:

- (a) Impacts a limited number of persons or identifiable parties and interests; and
- (b) Can be viewed as policy *application* rather than policy setting.

Thus, decisions *implementing* or *applying* an adopted policy will be considered **quasi-judicial** and are subject to more stringent proceedings in order to protect the rights of those involved. Decisions made by the Council *adopting* policies of broad application are generally “legislative” in nature and the Council is accorded much more deference in such decisions.

2. What is the extent of a **quasi-judicial** hearing before the Council?

A **quasi-judicial** hearing before the Council for review of a land use decision is considered a “**hearing de novo**,” meaning a new hearing, contemplating an entire hearing in the same manner in which the matter was originally heard. The main difference is that in the hearing before the Council the party appealing the land use decision has the burden of showing why the decision appealed should be reversed or modified.

3. What evidence can be considered by the Council?

When a land use decision is **quasi-judicial**, the decision of the Council must be supported by **competent substantial evidence**. “**Competent substantial evidence**” is defined by the Florida Supreme Court in the case of DeGroot v. Sheffield, 95 So.2d 912 (Fla. 1957) as follows:

*Substantial evidence has been described as such evidence as will establish a substantial basis of fact from which the fact at issue can be reasonably inferred. We have stated it to be such relevant evidence as a reasonable mind would accept as adequate to support a conclusion. The evidence relied on to sustain the ultimate finding should be sufficiently relevant and material that a reasonable mind would accept it as adequate to support the conclusion reached. To this extent the “**substantial**” evidence should also be “**competent**” (emphasis added).*

4. What type of evidence will be considered “**competent substantial evidence**?”

Neither the Florida Supreme Court in the DeGroot decision nor subsequent case law has provided precise guidelines as to what type of evidence will definitively constitute **competent substantial evidence**. However, analysis of relevant court decisions provides the following

guidance on what has been found acceptable by the courts as **competent substantial evidence** on which to base a decision:

(a) Professional planning staff and planning commission opinions and testimony:

As a general rule according to applicable case law, local government professional staff testimony and opinions and planning commission opinions constitute **competent substantial evidence** upon which a decision may be based. However, there must be *facts* entered in the record to support such opinions relied upon for the final decision.

(b) Professional expert testimony and opinions:

Expert testimony from non-staff professionals can constitute **competent substantial evidence**. Therefore, persons testifying that are to be considered an “expert” or professional in a particular field of expertise should be encouraged to state on the record their applicable education and experience which they may have in order to assure that the proper weight may be given by the Council to their testimony and opinions. As with city staff, opinions of non-staff qualified experts must be supported by *facts* entered in the record.

(c) Non-expert opinion and public comments:

Opinions and testimony of non-experts/lay persons may or may not be considered **competent substantial evidence** depending on the circumstances. Mere statements of public support or opposition, without *factual* basis in the record, does not constitute **competent substantial evidence**. For highly technical and scientific matters, the opinion of non-experts also would not appear to be an adequate basis upon which to make a determination. However, *fact-based* testimony from lay persons which does not require technical or scientific expertise to establish the facts stated could constitute **competent substantial evidence**, again, depending on the particular circumstances. Case law decisions are not consistent on this issue.

(d) Argument vs. testimony from attorneys:

*Arguments* by attorneys representing parties in **quasi-judicial** hearings have *not* generally constituted **competent substantial evidence**. The Fourth District Court of Appeal has emphatically stated that “...argument of counsel does not constitute evidence.” However, many attorneys have post-graduate degrees and significant amounts of employment or professional experience that may qualify them as experts on a particular subject, therefore it may be possible for a court to find comments of legal counsel to **constitute substantial evidence** in a situation if the expertise was adequately established on the record and/or the attorney is testifying under oath as a fact witness.

(e) Petitions and other communications:

Petitions, letters, email messages, and other communications, whether in support or opposition to the matter being reviewed, are *not* considered **competent substantial**

**evidence** and would not be accorded evidentiary value. Plus, such communications may also be considered “ex parte” communications as more fully discussed below. Such communications do not provide the parties in the matter with requisite due process, including the opportunity to cross-examine the source of such communications. Typically such communications also face the issue of being mere lay opinion rather than evidence supported by facts established in the record

5. What is **due process** and how does it relate to land use decisions?

**Due process** of law means the conduct of legal proceedings according to established rules and principles for the protection and enforcement of private rights, including notice and the right to a fair hearing before a tribunal or other body with the power to decide the case.

**Quasi-judicial** hearings must meet procedural **due process** requirements, although such hearings do not require the same procedural requirements as a judicial hearing. Case law suggests that a **quasi-judicial** hearing generally meets basic **due process** requirements if the parties are provided notice of the hearing and an opportunity to be heard. The parties must also be able to present evidence and to cross-examine witnesses.

6. Are there restrictions on pre-hearing communications in quasi-judicial proceedings?

**Quasi-judicial** decisions are required to be made based on **competent substantial evidence** presented before the Council at the hearing on the matter where all parties whose rights are being determined are present. Communications with a party or other person in a matter that will be coming before the Council in a **quasi-judicial** proceeding are called “**ex parte**” communications, meaning “on one side only.” An **ex parte communication** is a communication made outside of the hearing and off the record between a councilmember and a party or other interested person concerning the **quasi-judicial** matter to come before the Council. Being a “one-sided” communication outside of the hearing, an **ex parte** communication implicates prejudice to the right to due process and a fair hearing of any party on the “other” side of the matter that is under **quasi-judicial** consideration.

The court decision in Jennings v. Dade County, 589 So.2d 1337 (Fla. 3<sup>rd</sup> DCA 1991), rev. denied, 598 So.2d 75 (Fla. 1992), established that an ex parte communication or contact with a decision maker prior to a quasi-judicial hearing (not a legislative hearing) makes any decision of the deciding body subject to a presumption of prejudice. This case states that quasi-judicial officers should avoid all ex parte communications where they are identifiable. Ex parte communications include *all* communications, investigations, site visits, and expert opinions regarding quasi-judicial proceedings pending before the body.

The Fourth District Court of Appeal case of City of Hollywood v. Hakanson, 866 So. 2d 106 (Fla. 4<sup>th</sup> DCA 2004) holds that Florida Statutes section 286.0115 requires public officials to disclose ex parte communications in order to assure an adverse party the opportunity to confront, respond, and rebut any such disclosures so as to prevent any appearance of impropriety. This disclosure must be made by the public official either before or during the meeting at which final action is taken. However, such disclosure does not remove the

presumption of prejudice arising from the ex parte communications, but only alleviates the appearance of impropriety.

7. What are findings of fact and why are they important?

A finding of fact is a specific setting forth of every ultimate fact necessary to be found to sustain the final decision.

Although the Florida Supreme Court in the 1993 Snyder case declared that findings of fact are not *required* in **quasi-judicial** land use proceedings, the Court's view on this issue may be changing as indicated in more recent cases. A hearing record that includes a finding of facts and clearly stated basis for the decision reached is appropriate and encouraged. If the final decision is appealed, courts tend to uphold the findings made by the lower tribunal as to issues of fact. For this reason, a discussion by the Council of the evidence and testimony presented as it relates to or spells out the facts and the applicable land use regulations and criteria, and a decision based upon such specific, stated, factual findings, is recommended to support the decision entered.

8. What are the Council's options in deciding the appeal?

After hearing and considering the testimony and other evidence presented at the hearing, the Council may affirm the land use decision under review, affirm the decision with modification, or reverse the decision, so long as whatever decision the Council makes is supported by **competent substantial evidence** in the record made at the hearing before the Council and the decision is consistent with the comprehensive plan and applicable land use regulations.

## DEPARTMENTAL CORRESPONDENCE

TO: Mayor Richard Winger and City Councilmembers

FROM: Timothy J. McGarry, AICP  
Director of Planning and Development 

DATE: October 10, 2014

SUBJECT: **Appeal by E. Steven Lauer, Cathy Padgett, Mark Tripson, and Charles Relpolge of the Approval by the Planning and Zoning Board of Site Plan Application (#SP14-000003) for Outdoor Dining at Mulligan's Beach House, Located at 1025 Beachland Boulevard, Sexton Plaza**

### Overview

This report provides the Planning and Development Department staff analysis and recommendations for consideration by the City Council in the matter of the above referenced appeal of the decision by the City Planning and Zoning Board to approve Site Plan Application #SP 14-000003 involving a 3,280 square foot outdoor dining area for Mulligan's Beach House restaurant.

As the City Council's consideration of this appeal will be conducted as a "de novo" quasi-judicial hearing, appropriate background documents and public hearing records that should be considered in the City Council's decisions, as part of the official record before the City Council, are presented in the following Appendices to this report:

- Appendix A: Staff's Supporting Exhibits to This Report
- Appendix B: Appeal Application
- Appendix C: Planning and Zoning Board Hearing Record
  - o Minutes of Planning and Zoning Board Hearing
  - o Staff Report to Planning and Zoning Board on Site Plan Application
  - o Site Plan Application

### Decision Making Criteria

As the appellant body, the City Council is required to review the Planning and Zoning Board's decision after which it may affirm, reverse, or modify the decision of that body. The City Council shall review and take into consideration the Board's decision; however, as the appeal hearing is a "de novo" hearing, the City Council's decision should be based on the competent

substantial evidence provided in this staff report, including exhibits, and the testimony of the appellant, expert witnesses, and public as provided before the City Council at the appeal hearing. Section 64.08(j) of the Code requires that this decision be based on plan review standards of Section 64.10 of the Code.

In making its decision on the appeal, if the City Council finds that the site plan meets the requirements of the City's Land Development Regulations based on the competent substantial evidence presented at the public hearing on the appeal, the City Council must affirm the Planning and Zoning Board decision to approve the site plan application. To reverse the Planning and Zoning Board decision, the City Council must find that based on the substantial competent evidence presented that the site application does not comply with the City's Land Development Regulations.

### **Project Background**

The site plan application was submitted to obtain after-the-fact approval of the expansion of the outdoor dining area at Mulligan's Beach House restaurant to resolve an on-going code compliance issue. A \$50 civil penalty had been issued for the expansion of outdoor dining without prior development approval.

The Code requires that any expansion of outdoor dining of more than 1,000 square feet in area must be approved by the Planning and Zoning Board at a public hearing. Any expansion of outdoor dining area of 1,000 square feet or less requires only administrative (staff) approval. In this case, the outdoor dining expansion was 3,280 square feet, triggering the Planning and Zoning Board review.

The unauthorized expansion of the outdoor dining was brought to the attention of the Planning and Development Department's staff by a representative of the owner of the restaurant. An informal compliance agreement was reached with the owner of Mulligan's to bring the restaurant into compliance. The restaurant was allowed to continue the outdoor dining on an interim basis, contingent upon the owner committing to move forward in an expeditious manner to receive formal development approval.

Exhibit 1 of Appendix A to this report provides a project description and fact sheet including general background and site information and details on project development specifications. The major site plan development order approved by the Planning and Zoning Board may be found in Exhibit 2 of Appendix A. The site plan application may be found in Appendix D.

### **Site Plan Evaluation**

Section 64.10 of the Code requires that all approved site plans and amendments to site plans meet certain pertinent general review, performance, and development standards. The Planning and Zoning Board, upon recommendation of staff and testimony at the public hearing, found that the proposed site plan meets all of those standards and, therefore, approved the site plan.

In particular, the two relevant standards to reviewing this project are the project's compliance with all pertinent provisions of the Land Development Regulations and performance standards for the proposed use and layout of the development. The staff's specific analysis and findings upon which the Planning and Zoning Board reached its decision regarding compliance with these two standards are discussed below:

- *Compliance with Land Development Regulations (Sec. 64.10(a)(6))*

Analysis. The site plan's compliance with all development regulations was reviewed by the Planning and Development Department, Public Works Department, and Indian River County Traffic Engineering Division. Exhibit 1 of Appendix A provides information on how the site plan meets open space and parking standards, which are affected by the expansion of the outdoor dining area.

As discussed in Comment 2 on page 2 of the Project Description and Fact Sheet (Exhibit 1), the hotel property on which the restaurant is located, received a parking exception by the Board of Adjustment in 1967 that significantly reduced on-site parking requirements for both the hotel and accessory commercial uses.

Of the 3,280 square feet of outdoor dining area requested for approval, only 475 square feet is subject to off-street parking requirements as this dining is under the overhanging roof; the City's off-street parking regulations exempt outdoor dining. Of this total, 200 square feet is automatically exempted pursuant to Section 63.03(c)(2), leaving only 275 square feet. Therefore, the additional parking needed is only 3 spaces, which is clearly met by the more than 10 on-street parking spaces along the frontage of restaurant. [The staff report to the Planning and Zoning Board only listed 7 such parking spaces, but the aerial shows 10 parking spaces.]

The appellants erroneously contend that the City's off-street parking regulations do not exempt outdoor dining. The staff's rebuttal to this contention is covered later in this staff report.

A traffic impact study prepared by the applicant's engineering consultant was reviewed and approved by all three reviewing agencies. This study documented that the additional vehicle trips expected to be generated by the additional outdoor dining meet road concurrency requirements of the Code. A copy of the Traffic Impact Executive Summary is included in the site plan application in Appendix D.

The Public Works Department reviewed the site plan and found that it met the City's stormwater regulations. Other than making sure drainage is not an issue,

no special drainage improvements are required due to the limited amount of impervious surface added with the outdoor dining.

Finding. The staff found the site plan compliant with all pertinent provisions of the Land Development Regulations.

- *Site design performance standards (Sec. 64.10(b))*

Analysis. The outdoor dining area is bounded on the west and north by a multi-story wing of the Holiday Inn on the property and on the east by the ocean. To the south, the outdoor dining is separated from restaurant and retail establishments by Sexton Plaza and parking area. This location of the outdoor dining is well situated to reduce the potential for creating noise and other possible disruptive impacts on neighboring businesses.

Disruptive traffic to neighboring properties is not an issue as documented in the traffic impact study. The amount of additional traffic in peak hour times (36 vehicular trips) that may be expected to be generated by the outdoor dining will be insignificant to the amount of existing background traffic in this highly commercial area.

Finding. The staff found the proposed site plan compliant with the performance standards of Section 64.10(b).

### **Staff Rebuttal to Appellants' Arguments**

The appellants presented several arguments as the basis of their appeal (see Appendix B); however, the only argument presented in the appeal application package material to this appeal is the alleged lack of compliance of the site plan with the parking regulations of the Code. The appellants contend that the staff misinterpreted the parking regulations regarding the exemption of outdoor dining and misrepresented the "law" to the Planning and Zoning Board and public.

The record for the process to review and approve the parking regulations clearly rebuts the appellants' contention, which was appropriately dismissed as unfounded by the Planning and Zoning Board in approving the site plan. The comprehensive revisions to the City's off-street parking regulations, including the outdoor dining exemption from off-street parking requirements, were thoroughly vetted through a process that included two advertised Planning and Zoning Board public workshops and a public hearing before that body and a first reading and adoption public hearing by the City Council.

Exhibits 3 through 6 of Appendix A clearly and unequivocally demonstrate that the regulations were drafted *to exempt outdoor dining and retail display areas from the off-street parking requirements of the Code*. The relevant language is noted by "arrows" in each of the exhibits.

The sources for each of the exhibits are from materials provided at the following public workshops and public hearings:

- Exhibit 3: From annotated version of proposed revisions to City's off-street parking regulations provided to the Planning and Zoning Board for its May 19, 2011, public workshop;
- Exhibit 4: From Exhibit 1 of staff report to Planning and Zoning Board for its July 7, 2011, public hearing on draft revisions to parking regulations.
- Exhibit 5: From Exhibit 1 of staff report to Interim City Manager Monte Falls as agenda backup for first reading before the City Council of the draft ordinance to amend the parking regulations on July 19, 2011.
- Exhibit 6: From the PowerPoint presentation made by staff at the August 16, 2011, adoption public hearing on the draft ordinance amending the parking regulations.

To further attempt to bolster their case that outdoor dining is not exempt from off-street parking requirements, the appellants bring up the parking issues in the Ocean Drive/Cardinal Drive commercial district; however, important these issues, they are not relevant in the consideration of this appeal which rests solely on compliance of the site plan with the City's Land Development Regulations. Unless competent substantial evidence is provided to demonstrate otherwise, the City Council must affirm the decision of the Board to approve the site plan for Mulligan's Beach House.

### **Recommendation**

The Planning and Development Department staff recommends that the City Council, based on the competent substantial evidence presented in this report, affirm the Planning and Zoning Board's decision approving Site Plan #SP14-000003.

TJM/tf  
Attachments

## **APPENDIX A**

### **STAFF'S SUPPORTING EXHIBITS TO THIS REPORT**

**EXHIBIT I  
EXPANSION OF OUTDOOR DINING AREA  
MULLIGAN'S BEACH HOUSE  
PROJECT DESCRIPTION AND FACT SHEET**

**GENERAL INFORMATION**

**PROJECT DESCRIPTION:** Addition of a 3,280 square foot outdoor dining area including 7 paver areas with tiki huts/tables and numerous Adirondack chairs.

**LOCATION:** 1025 Beachland Boulevard, Sexton Plaza

**OWNER:** Velogan, Inc. (aka Logan Acquisitions Corporation)

**APPLICANT:** George Hart

**ARCHITECT:** None

**ENGINEER:** MBV Engineering, Inc.

**TAX ID NUMBER:** 32-40-32-00006-0200-00009.1

**SITE INFORMATION**

**ZONING:** C-1A

**EXISTING USES:** 104-unit hotel, restaurant ( $\pm 6,400$  s.f.), and retail ( $\pm 1,600$  s.f.)

**AREA OF DEVELOPMENT:** Restaurant portion of site -  $\pm 9,680$  square feet;  
Entire site - 138,844 s.f.

**SURROUNDING ZONING AND EXISTING LAND USES:**

North – C-1A: Commercial retail, offices, and Reef Ocean Resort  
East - Atlantic Ocean  
South – C-1A: Commercial retail and Ocean Grill  
West - C-1A: Commercial retail

**RELEVANT DEVELOPMENT SPECIFICATIONS**

Note: As the proposed development does not involve any change in building floor area with no required landscaping requirements, only information relevant to demonstrating that the proposed outdoor dining meets development standards are shown below:

<b>Development Specs./ Code Citation</b>	<b>Required/ Allowed</b>	<b>Proposed</b>	<b>Existing</b>	<b>Comment</b>
Open area (%) [Sec. 62.38]	25	43.4	45.5	1.
Parking [Sec. 63.04]	95	99	92	2.

Comments:

1. The entire site includes land to the average mean high water line.
2. Property granted a parking exception by the Board of Adjustment on February 6, 1967, establishing a parking requirement as follows:
  - Hotel at 1 space/2 rooms (104 rooms) = 52 spaces
  - Accessory commercial at 1 space/299 s.f. (8,000 s.f.) = 40 spaces
  - Total spaces required = 92 spaces

Of the proposed outdoor dining area, only 475 s.f. is subject to off-street parking requirements, as this dining is under roof. Of the 475 s.f., 200 s.f. is exempt from parking requirements, leaving 275 s.f. The additional parking required for this outdoor dining area is one space per 100 s.f., which results in 3 additional spaces needed.

Therefore, the total parking requirement is 95 spaces. The applicant receives credit for 7 public parking spaces in Sexton Plaza along the frontage of the restaurant, which results in a total of 99 parking spaces to be provided. A copy of aerial photograph is attached to this exhibit that shows the parking along the frontage of the restaurant.





**BEFORE THE PLANNING & ZONING BOARD  
OF THE CITY OF VERO BEACH, FLORIDA  
1053 20<sup>TH</sup> PLACE  
VERO BEACH, FLORIDA 32960**

In the Matter of:

Mulligan's Beach House  
1025 Beachland Boulevard, Sexton Plaza  
Vero Beach, FL 32963

Major Site Plan  
Application #SP 14-000003

Velogan, Inc. (Property Owner)  
1001 East Atlantic Avenue, Suite 202  
Delray Beach, FL 33483

Mulligans Beach House, (Applicant)  
George Hart (Business Owner)

**ORDER GRANTING APPROVAL OF  
A MAJOR SITE PLAN**

The above-styled matter came before the Planning and Zoning Board of the City of Vero Beach ("Board") on Thursday, August 7, 2014, for public hearing on the Applicant's request for after-the-fact approval of 3,280 square feet of outdoor dining area of which 475 square feet is located beneath the awning of the restaurant. This approval includes pavers and a fire pit that result in an additional 573 square feet of impervious surface.

Parcel ID Numbers:	32-40-32-00006-0200-00009.1
Zoning District:	C-1A (Tourist Commercial)
Area of Site:	±9,680 square feet-Restaurant portion of site

The Board, having fully heard and considered the testimony, evidence, and arguments of the Planning and Development Department staff, Applicant, and public, and being fully advised in the premises, finds that in this matter competent substantial evidence and facts were presented which, in its judgment, show that the criteria of Section 64.10 of the Zoning Ordinance have been satisfied.

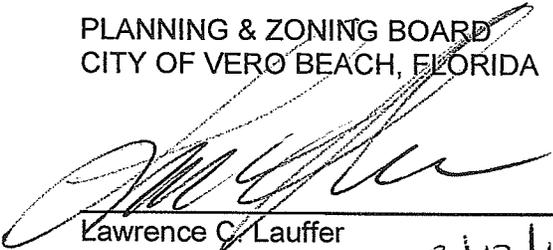
**BASED ON THE FOREGOING**, the Board finds that the Applicant has satisfied the requirements of Section 64.10 of the Zoning Ordinance as stated above, and hereby grants approval of Site Plan Application #SP14-000003 (Site documents attached),

DONE AND ORDERED at Vero Beach, Indian River County, Florida, this 7<sup>th</sup> day of August, 2014.

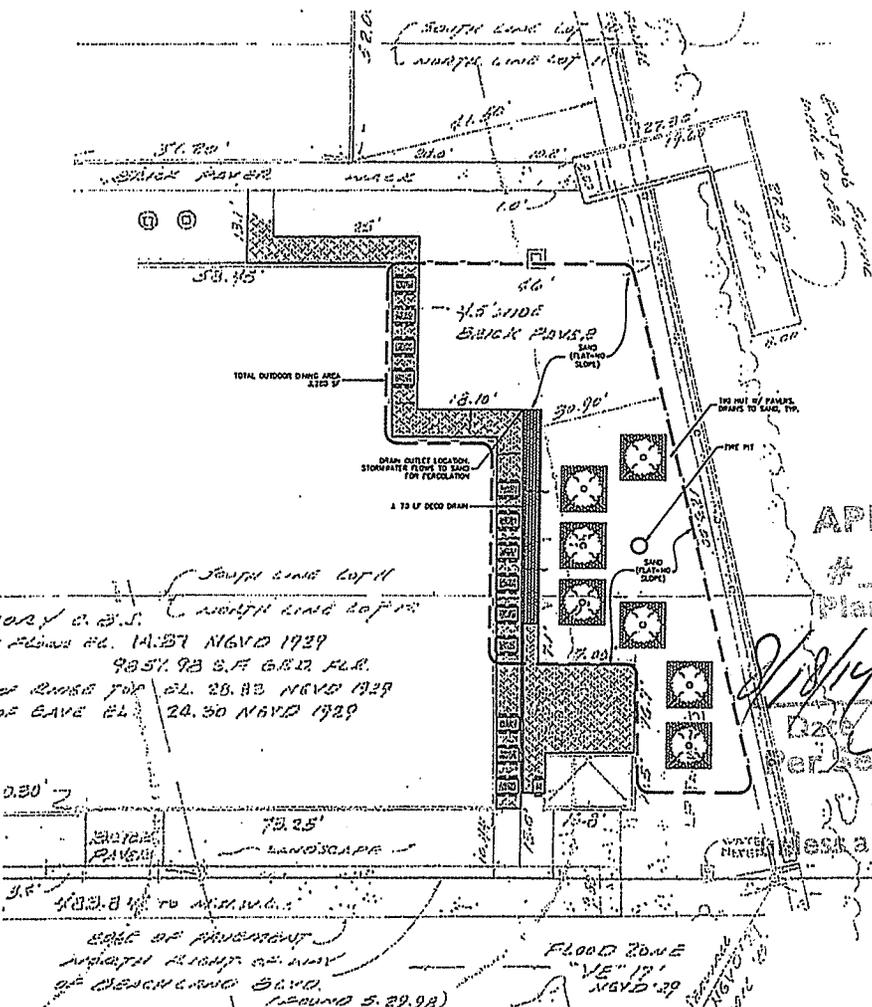
ATTEST:

PLANNING & ZONING BOARD  
CITY OF VERO BEACH, FLORIDA

  
\_\_\_\_\_  
Sherri Philo  
Clerk of the Board

  
\_\_\_\_\_  
Lawrence C. Lauffer  
Chairman  
8 | 13 | 14  
JS

XC: Monte Falls, Public Works



**SITE INFORMATION**

**OWNER/APPLICANT**  
 MULLIGAN, INC.  
 1001 E. ATLANTIC AVE., STE 207  
 DEERBEE BEACH, FLORIDA 32438

**DIVISION**  
 CIVITAS ASSOCIATES, INC.  
 1708 21TH STREET  
 VERO BEACH, FLORIDA 32910  
 PHONE (772) 341-1131

**SITE ADDRESS**  
 244 DEER BEACH  
 VERO BEACH, FLORIDA 32910

**TAX PARCEL ID. NUMBER(S)**  
 37-10-37-0000-0200-0000.1

ZONING	LAND USE
C1-A	C

**SITE DATA (EXISTING)**

OUTDOOR DINING AREA	3,780 SF = 0.073 AC = 100.00%
BRICK PAVEMENT / COVERED DINING	1,013 SF = 0.023 AC = 30.81%
TOTAL IMPAVED AREA	4,793 SF = 0.109 AC = 30.81%
TOTAL OPEN AREA	2,718 SF = 0.062 AC = 69.19%

**SITE DATA (PROPOSED)**

OUTDOOR DINING AREA	3,780 SF = 0.073 AC = 100.00%
BRICK PAVEMENT / COVERED DINING	1,013 SF = 0.023 AC = 30.81%
PROPOSED PARKING	110 SF = 0.003 AC = 3.16%
PROPOSED TRAILER / OFFICE	448 SF = 0.010 AC = 13.78%
PROPOSED FUR. PK.	13 SF = 0.000 AC = 0.35%
TOTAL IMPAVED AREA	5,352 SF = 0.123 AC = 63.30%
TOTAL OPEN AREA	3,768 SF = 0.087 AC = 36.70%
PROPOSED NET NEW IMPAVED	573 SF = 0.013 AC = 17.30%

- LEGEND**
- OUTDOOR DINING (1-SEAT TABLE)
  - OUTDOOR DINING (2-SEAT TABLE)
  - PROPOSED OUTDOOR DINING (10' x 14' w/ PAVERS)
  - EXISTING BRICK PAVERS
  - PROPOSED BRICK PAVERS
  - DRAINAGE FLOW DIRECTION

- GENERAL NOTES**
- CONTRACTOR IS RESPONSIBLE FOR CHECKING ACTUAL SITE CONDITIONS BEFORE STARTING CONSTRUCTION.
  - ANY DISCREPANCIES OR THE DIFFERENCE SHALL BE BROUGHT TO THE ATTENTION OF THE ENGINEER BEFORE COMMENCING WORK.
  - CONTRACTOR SHALL OBTAIN ALL REQUIRED PERMITS BEFORE COMMENCING WORK.
  - CONTRACTOR SHALL BE RESPONSIBLE FOR LOCATION OF ALL EXISTING UTILITIES. THE CONTRACTOR SHALL CONTACT ALL CONCERNED UTILITIES AT LEAST 72 HOURS IN ADVANCE OF CONSTRUCTION OPERATIONS.
  - NO FIELD CHANGES OR DEVIATIONS FROM DESIGN TO BE MADE WITHOUT PRIOR WRITTEN APPROVAL OF THE ENGINEER.
  - ENGINEER SHALL BE NOTIFIED AT LEAST 48 HOURS IN ADVANCE FOR ANY INSPECTION.
  - MINIMUM COVER OF ALL UTILITIES SHALL BE 36" UNLESS STATED OTHERWISE.
  - ALL DISTURBED AREAS SHALL BE RESTORED TO ORIGINAL CONDITION UNLESS OTHERWISE SPECIFIED.
  - 100% IMPAVED AREAS UPON COMPLETION.
  - CONTRACTOR SHALL BE IMMEDIATELY FAMILIAR WITH THE PROJECT, THESE PLANS AND SPECIFICATIONS, AND ALL LOCAL, STATE AND FEDERAL AGENCY REQUIREMENTS FOR CONSTRUCTION OF THE PROPOSED IMPROVEMENTS PRIOR TO CONSTRUCTION.
  - CONTRACTOR SHALL COMPLY WITH ALL OSHA REQUIREMENTS FOR CONSTRUCTION.
  - ALL EXCESS CONSTRUCTION MATERIALS AND WASTE TO BE WHELED OFF-SITE AND DISPOSED OF PROPERLY AT CONTRACTOR'S EXPENSE.
  - CONTRACTOR SHALL TAKE EXTREME CAUTION WHEN EXCAVATING NEARBY EXISTING UTILITIES.
  - CONTRACTOR SHALL NOTIFY ENGINEER OF ANY CONFLICT BEFORE ANY FURTHER WORK IS COMPLETED.
  - ALL MATERIALS AND LABOR UNDER THIS PROJECT SHALL BE IN STRICT ACCORDANCE WITH REQUIREMENTS OF THE CITY CODE, STATE MANAGEMENT CONTRACT, TFCP AND THESE PLANS AND SPECIFICATIONS.
  - MAINTENANCE OF TRAFFIC SHALL BE ACCORDING TO TFCP PROVISIONS.
  - ALL APPROVED PERMIT CONDITIONS, INCLUDING BUT NOT LIMITED TO SET, STAKE, UTILITY AND EASMENT, SHALL BE MET BY CONTRACTOR PRIOR TO COMMENCEMENT OF CONSTRUCTION BY ENGINEER.
  - ALL PARKING SPACES WITH EXCEPTION OF THE HANDICAPPED PARKING SPACES SHALL BE STRIPPED IN WHITE TRAFFIC PAINT AND BE IN STANDING CONDITION FOR FOR ROAD A BROKE CONSTRUCTION SECTION AND TRAFFIC CONTROL.
  - ALL HANDICAPPED PARKING SPACES SHALL BE PROPERLY SIGNED AND STRIPPED IN ACCORDANCE WITH TFCP STANDARD SPEC 1234L, LATEST EDITION.
  - CONDOMINIUM/RESIDENTIAL BUILDINGS SHALL POST A WARNING SIGN NEARBY ADDRESS.
  - ALL STREPPING WITHIN CITY RIGHT OF WAY SHALL BE SET TO RELATIVE TO THE FINISH PAVEMENT SURFACE.
  - ELEVATIONS RELY UPON BASED ON NORTH AMERICAN VERTICAL DATUM (NAVD) WITH REFERENCE TO THE BENCHMARK SURVEYED AT AN ELEVATION OF 25.83 FEET (MAYBE) (SURVEYATION PROVIDED BY DEER BEACH HARVEST, INC.)
  - PROPOSED METAL STRUCTURE SHALL BE CONSTRUCTED IN ACCORDANCE WITH CURRENT FLORIDA BUILDING CODE, STANDARDS AND SPECIFICATIONS.
  - PROPOSED METAL STRUCTURE EXTERIOR COLOR SHALL BE IN ACCORDANCE WITH DEER BEACH ORDINANCE AND SHALL MATCH THE EXTERIOR COLOR OF ONE OF THE EXISTING ON-SITE STRUCTURES.

**APPROVED SITE PLAN**  
 # SP 14-000003  
 Planning and Zoning Board

*[Signature]*  
 Chairman  
 Per Section 64.11, this approval expires in 6 months next a building permit has been issued

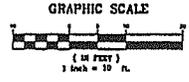
South side left  
 N. SP 14-000003  
 Planning and Zoning Board  
 9857.98 S.F. GR. FLOOR  
 ROOF RAISE FOR EL. 28.83 NAVD 1929  
 ROOF RAISE EL. 20.30 NAVD 1929

LANDSCAPE  
 73.25'

EDGE OF PAVEMENT  
 IMPROVED ALIGNMENT OF WAY  
 OF DEER BEACH SAND.  
 (ROUND 5.29.98)

FLOOD ZONE  
 "VE" 19'  
 NAVD 29

**DRAINAGE PLAN**  
 SCALE 1" = 10'



72 HOURS BEFORE DECIDE ONE FOR THE  
  
 MADE SHEET BY  
 ENGINEERING

DATE	14-254		
REVISIONS			
NO.	DATE	BY	DESCRIPTION
1	05/11/2011	AMON J. ROWLES	ISSUED FOR PERMIT
2	05/11/2011	AMON J. ROWLES	ISSUED FOR PERMIT
3	05/11/2011	AMON J. ROWLES	ISSUED FOR PERMIT
4	05/11/2011	AMON J. ROWLES	ISSUED FOR PERMIT
5	05/11/2011	AMON J. ROWLES	ISSUED FOR PERMIT
6	05/11/2011	AMON J. ROWLES	ISSUED FOR PERMIT
7	05/11/2011	AMON J. ROWLES	ISSUED FOR PERMIT
8	05/11/2011	AMON J. ROWLES	ISSUED FOR PERMIT
9	05/11/2011	AMON J. ROWLES	ISSUED FOR PERMIT
10	05/11/2011	AMON J. ROWLES	ISSUED FOR PERMIT

**MBV ENGINEERING, INC.**  
 1400 30TH STREET  
 VERO BEACH, FLORIDA 32910  
 P.O. BOX 554-0035  
 P.O. BOX 554-0035  
 VERO BEACH, FLORIDA 32910  
 PHONE (772) 564-0035  
 FAX (772) 774-3817  
 WWW.MBV-ENG.COM  
 LICENSE # 11000  
 REGISTERED PROFESSIONAL ENGINEER  
 CIVIL ENGINEERING

**DRAINAGE PLAN**

**MULLIGAN'S OUTSIDE DINING**

CITY OF VERO BEACH

AMON J. ROWLES  
 P.E. #13313

DATE

SHEET  
**02**

OF 2

14-254

NOTE: AS-BUILT INFORMATION ASSOC FROM OUTSIDE DINING CONSTRUCTION, IS BEING PROVIDED BY CIVITAS AND ASSOCIATES DATED 2/11/2011

DRAFT 5/10/2011

- (b) Where existing buildings and uses were approved under the parking requirements of a previous ordinance that required less parking than this title, the parking requirements of the less restrictive code shall be applied to those uses and floor area approved under the superseded parking regulations in any change in use or expansion of floor area. This parking computation is to be done on a use by use and floor area by floor area basis. For example, an existing 10,000 square foot building containing 7,000 square feet of retail use and 5,000 square feet of restaurant is to be expanded and redeveloped into a 12,000 square foot building with 3,000 square feet of retail use, a 6,000 square foot restaurant, and 3,000 square feet of office use. The 3,000 square feet of retail use would be calculated using the parking regulations under which retail use was approved. 5,000 square feet of the restaurant would be calculated using the parking regulations under it was approved with the remaining 1,000 square foot under the current regulations. All the office space would be calculated under the current regulations.<sup>16</sup>
- (a)(c) Floor area, as defined in Chapter 60, shall be used to calculate required parking spaces which are based on square footage. The number of off-street required parking spaces shall be calculated based on the following:<sup>17</sup>
- (1) Floor area, as defined in chapter 60; and
  - (2) Temporary or permanent covered space, such as under an arcade, awning, porch, building overhang or similar structure attached to the building, approved under a site plan for dining or retail display areas, except that the first 200 square feet of such area shall be exempt from such calculation.<sup>18</sup>
  - (3) Outdoor uses and sales displays pursuant to section 63.04.
- (b d) Where fractional spaces result, the number of spaces required shall be construed to be the next highest whole number.
- (e e) The parking requirement for any use not specified shall be the same as that required for a use of a similar nature as recognized herein or where not recognized herein ~~shall be based on criteria published by the American Society of Planning Officials and approved by the planning and zoning~~

<sup>16</sup> This language codifies the practices of the Planning and Development Department in addressing parking requirements in redevelopment situations and will ensure its consistent application to future projects.

<sup>17</sup> In Chapter 60, "floor area" is defined as the area enclosed under roof, excluding garages, open and screened porches, carports, terraces, and patios. This excludes many outdoor areas that contain usable space which generate parking demand. Historically, the City has required outdoor dining where food or beverages are served to meet off-street parking requirements even though the Code did not specifically require such parking. The proposed revision specifically excludes uncovered outdoor dining areas from meeting parking requirements.

<sup>18</sup> This provision is intended to accommodate some outdoor dining and retail uses that are not fully enclosed.

4. As an incentive to provide motorcycle parking, subsection (g) allows nonresidential projects requiring at least 50 parking spaces to substitute one required vehicle parking space with 4 motorcycle parking spaces.

#### Section 63.03, Computation of Parking Spaces.

1. Subsection (b) provides an example of how parking requirements are to be calculated where a development has been previously approved under different parking requirements.
2. Subsection (c) has been revised to include provisions that require outdoor space under temporary or permanent covered space to be considered as floor area except for the first 200 square feet under an arcade, awning, porch, building overhang or similar structure attached to the building approved under a site plan for dining or retail display areas.  
 [Note: Outdoor dining and retail areas approved under a site plan would have no parking requirements, except for areas with more than 200 square feet under cover.]

3. Subsection (g) provides that the number of off-street parking spaces is to be reduced by the number of off-street parking spaces abutting the property lines of the lot or parcel.

#### Section 63.04, Parking Ratios

The parking ratios for uses are presented in this section. A comparison of existing and proposed parking ratios for selected uses is present in Exhibit 2.

The parking ratios were based on a comprehensive review of the City's current regulations, parking regulations of the County and other jurisdictions, and the following resource documents:

- o *Shared Parking* (2005), Urban Land Institute
- o *21<sup>st</sup> Century Land Development Code* (2008), American Planning Association
- o *Planning and Urban Design Standards* (2006), American Planning Association
- o *Parking Standards* (2002, PAS 510/511), American Planning Association
- o *Model Shared Parking Ordinance from Model Smart Land Development Regulations* (2006, Interim PAS Report), American Planning Association

#### Section 63.05, Shared Parking Options.

Shared parking options available for meeting off-street parking requirements are identified with specific procedures and eligibility criteria presented in this section. The current code provides broad authority for the Planning and Zoning Board to approve flexible parking techniques, but provides little guidance.

The proposed revision provides authority for approving such shared parking options to the planning director and identifies the following specific options:

- o Shared parking for on-site uses with different hours of operation based on a "shared parking calculations matrix" in Table 1 (page 21).

2. A new requirement to provide parking for bicycles is provided in subsection (e). Any nonresidential project requiring 20 or more parking spaces would be required to provide one bicycle parking space per 20 parking spaces.

[*Commentary:* This new requirement promotes alternative transportation modes and is a significant element for any strategy to promote mixed use, pedestrian oriented development.]

3. A new requirement to provide motorcycle spaces is included in subsection (f). Any nonresidential project requiring 100 or more parking spaces would be required to provide one motorcycle space per 25 required parking spaces. Any required motorcycle parking would not be in addition to required parking spaces.

[*Commentary:* Motorcycle parking requirements based on recommendations in the report entitled *Development of Motorcycle Parking Design Guidelines* prepared by Wayne Cottrell, Associate Professor at California State Polytechnic University for inclusion in the proceedings of the 87<sup>th</sup> Annual Meeting of the Transportation Research Board, January 13-17, 2008.]

4. As an incentive to provide motorcycle parking, subsection (g) allows nonresidential projects requiring at least 50 parking spaces to substitute one required vehicle parking space with 4 motorcycle parking spaces.

#### Section 63.03, Computation of Parking Spaces.

1. Subsection (b) provides an example of how parking requirements are to be calculated where a development has been previously approved under different parking requirements.
2. Subsection (c) has been revised to include provisions that require outdoor space under temporary or permanent covered space to be considered as floor area except for the first 200 square feet under an arcade, awning, porch, building overhang or similar structure attached to the building approved under a site plan for dining or retail display areas.

[*Commentary:* Outdoor dining and retail areas approved under a site plan would have no parking requirements, except for areas with more than 200 square feet under cover. The current code never specifically addresses off-street parking requirements for outdoor dining areas; however, historically such outdoor areas have been calculated as floor area for meeting parking requirements and are considered floor area for impact fees.]

3. Subsection (g) provides that the number of off-street parking spaces is to be reduced by the number of off-street parking spaces abutting the property lines of the lot or parcel.

[*Commentary:* This proposal recognizes that available on-street parking, especially where durational parking limits are posted, handle a greater parking demand than private on-site parking due to higher turnover. Therefore, if such on-street parking is available, it reduces the need for off-street parking.]

# SUBSTANTIVE REVISIONS (CONT'D)

## ▶ SECTION 63.03, COMPUTATION OF PARKING SPACES

- CODIFIES APPLICATION OF PARKING REQUIREMENTS TO EXISTING DEVELOPMENT
- OUTDOOR DINING/RETAIL DISPLAY EXEMPTED FROM PARKING, EXCEPT FOR SPACE UNDER COVER (FIRST 200 S.F. EXCLUDED)
- PARKING REQ. REDUCED BY OFF-STREET PARKING SPACES ABUTTING PROPERTY.



**APPENDIX B**  
**APPEAL APPLICATION**



E. STEVEN LAUER, PROFESSIONAL ASSOCIATION  
ATTORNEYS AT LAW

3426 Ocean Drive  
P.O. Box 643343  
Vero Beach, FL 32964-3343  
772-234-4200  
Fax 772-234-4249  
www.verolaw.org

August 21, 2014

E. Steven Lauer  
Certified Will, Trusts & Estates Specialist  
Certified Tax Specialist  
772-234-4200  
[slauer@verolaw.org](mailto:slauer@verolaw.org)

Ms. Tammy Vock  
City Clerk  
City of Vero Beach  
1053 20<sup>th</sup> Place  
Vero Beach, FL 32960



**Re: Mulligan's Outside Dining Appeal**

Dear Ms. Vock:

Enclosed please the following:

1. An Appeal Application.
2. A check in the amount Eight Hundred Thirty Dollars (\$830.00) made payable to the "City of Vero Beach" representing the filing fee and the publication fee.

Please direct all future correspondence in this matter to my office and I will disseminate the information to the applicants.

Thank you for your attention to this matter.

Sincerely,

E. Steven Lauer

ESL/mjd  
Enclosures

---

# APPEAL APPLICATION

City of Vero Beach Planning & Development Department  
1053 20<sup>th</sup> Place - P.O. Box 1389  
Vero Beach, Florida 32961-1389  
Phone (772) 978-4550 / Fax (772) 778-3856

---

Application # SP14-000003

Check applicable request:

- Appeal of an Administrative Decision to the Planning & Zoning Board  
 Appeal of a Planning & Zoning Board Decision to the City Council  
 Appeal of a Wastewater Discharge Permits

As described in the City of Vero Beach Zoning Code, I/we request a hearing to appeal a decision rendered by the authority indicated above. The property(ies) and/or zoning code(s) pertinent to this appeal are set forth in this application.

PROPERTY ADDRESS BEING APPEALED 1025 Beachland Boulevard

PROPERTY OWNER: Velogan, Inc. PHONE: \_\_\_\_\_

OWNER ADDRESS: 1001 East Atlantic Avenue, Suite 202, Delray Beach, FL 33483

APPLICANT: Mulligan's Beach House PHONE: 772-600-7377

APPLICANT ADDRESS: 300 Colorado Avenue, #201, Stuart, FL 34994

RELATIONSHIP OF APPLICANT TO OWNER [i.e. same, attorney, engineer, architect, etc.]:

tenant

PROPERTY PARCEL ID NUMBER: 32-40-32-00006-0200-00009.1

FULL LEGAL DESCRIPTION OF THE PROPERTY [as described in the deed]:

See attached

ZONING DISTRICT: C-1A

SUBJECT OF APPEAL REQUESTED: Order of the Planning and Zoning Board Granting Approval of A Major Site Plan dated 8/13/2014

CITE RELEVANT CITY CODE SECTION(S): 66.05; 66.06; 63.03(c)(3); and 63.04

Aggrieved Persons

Owner Signature: \* See attached Date: \_\_\_\_\_

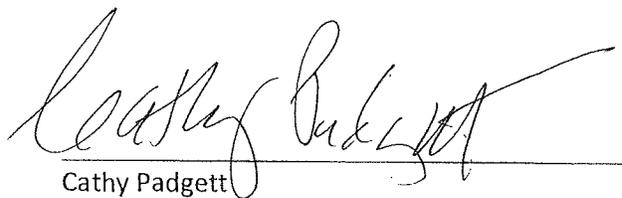
Owner: \_\_\_\_\_  
(Print Name)

\*A representative agent may sign with written authorization from the owner.

Fee: \_\_\_\_\_

Aggrieved Persons filing this Appeal:

Date: August 19, 14



Cathy Padgett  
Owner of Veranda and the property located at  
3325 Ocean Drive, Vero Beach, Florida 32963

Date: \_\_\_\_\_

Nancy Cook, Owner of the Twig and the  
property located at 3213 Ocean Drive,  
Vero Beach, Florida 32963

Date: \_\_\_\_\_

Charles Relpolge, Owner of the Ocean Grill, Inc.  
and the property located at 1050 Beachland  
Blvd., Vero Beach, Florida 32963

Date: 8-21-14



Mark Tripson, Owner & President, Sexton, Inc.  
for the property where the Ocean Grill is  
located at 1050 Beachland Blvd., Vero Beach,  
Florida 32963

Date: 8/19/14



E. Steven Lauer, lawyer and sole member of  
Lauer Enterprises, LLC owner of 3402, 3410,  
3426A, and 3426B, Ocean Drive, Vero Beach,  
Florida 32963

Aggrieved Persons filing this Appeal:

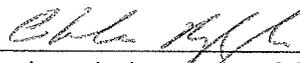
Date: \_\_\_\_\_

\_\_\_\_\_  
Cathy Padgett  
Owner of Veranda and the property located at  
3325 Ocean Drive, Vero Beach, Florida 32963

Date: \_\_\_\_\_

\_\_\_\_\_  
Nancy Cook, Owner of the Twig and the  
property located at 3213 Ocean Drive,  
Vero Beach, Florida 32963

Date: 8-20-2014

  
\_\_\_\_\_  
Charles Relpolge, Owner of the Ocean Grill, Inc.  
and the property located at 1050 Beachland  
Blvd., Vero Beach, Florida 32963

Date: \_\_\_\_\_

\_\_\_\_\_  
Mark Tripson, Owner & President, Sexton, Inc.  
for the property where the Ocean Grill is  
located at 1050 Beachland Blvd., Vero Beach,  
Florida 32963

Date: \_\_\_\_\_

\_\_\_\_\_  
E. Steven Lauer, lawyer and sole member of  
Lauer Enterprises, LLC owner of 3402, 3410,  
3426A, and 3426B, Ocean Drive, Vero Beach,  
Florida 32963

## LEGAL DESCRIPTION

The South ½ of Lot 9, all of Lot 10 and Lot 11 and the North ½ of Lot 12, Block 20, VERO BEACH ESTATES, according to the plat thereof recorded in Plat Book 5, Page 8, Public Records of St. Lucie County, Florida, said land now being and lying in Indian River County, Florida.

## APPEAL OF PLANNING AND ZONING BOARD DECISION TO THE CITY COUNCIL

The aggrieved owners of properties and businesses in the City of Vero Beach listed on the Application for Appeal do hereby appeal the Order granting approval of major site plan number SP14-000003 dated August 13, 2014, to the City Council pursuant to Section 66.05 of the Municipal Code of Vero Beach, Code of the City of Vero Beach ("Code").

By letter dated July 24, 2014, a copy of which is attached as **Exhibit "A"**, Timothy J. McGarry notified property owners, in accordance with Ordinance No. 2008-06, that the "City of Vero Beach Planning and Zoning Board will conduct a public hearing on an application to allow the proposed addition of a 3,280 square foot outdoor dining area, including seven (7) paver areas with tiki hut/tables, and numerous Adirondack chairs at 1025 Beachland Blvd.". The information submitted by Timothy J. McGarry to the Planning and Zoning Board dated July 25, 2014, a copy of which is attached as **Exhibit "B"**, and attached to the meeting notice provides "The approval being sought by the restaurant is an after the fact to resolve an ongoing code enforcement case". Therefore, the Notice dated July 24, 2014, which is required by Ordinance No. 2008-06, does not meet the requirements of said Ordinance since the Notice advises that the Property Owners of a "proposed addition of 3,280 square feet outdoor dining area" when the approval is, in fact, of improvements already made to the property without Planning and Zoning Board approval.

In Attachment "A" to the above-referenced Memo from Timothy J. McGarry, a copy of which is attached as **Exhibit "C"**, the staff concludes, without any citation to the Code, that "of the proposed outdoor dining area, only 475 square feet is subjected to off street parking requirements, as this dining is under roof. Of the 475 square feet, 200 square feet is exempt from parking requirements, leaving 275 square feet. The additional parking required for this outdoor dining area is 1 space per 100 square feet, which result in 3 additional spaces needed". In addition, at the public hearing on August 7, 2014 at 1:30 p.m., Mr. McGarry unequivocally stated that the Planning and Zoning Board had no choice but to approve the proposed site plan since City Council had amended the parking requirements in 2011 to eliminate any parking requirements for outside dining.

To the contrary, in his Memo to Monte K. Fall, Interim City Manager dated July 7, 2011, a copy of which is attached hereto as **Exhibit "D"**, Mr. McGarry is stated "*Commentary*: Outdoor dining and retail areas approved under a site plan would have no parking requirements, except for areas with more than 200

square feet under cover. The current code never specifically addresses off-street parking requirements for outdoor dining areas; however, historically such outdoor areas have been calculated as floor area for meeting parking requirements and are considered floor area for impact fees”.

Section 63.01 of the Code “Intent”, a copy of which is attached as **Exhibit “E”**, provides:

“It is the intent of this chapter to ensure that adequate off-street parking and loading spaces are provided to serve the majority of the traffic generated by development in a manner that protects public safety, protects the capacity of the road system, reduces potential adverse impacts on adjacent uses, encourages flexible approaches to meeting parking needs through shared use of parking spaces, and complements and furthers the establishment of mixed use pedestrian-oriented commercial areas within the city as identified in the comprehensive plan and other city policies”.

In addition, Section 63.03(c) of the Code, a copy of which is attached as **Exhibit “F”**, provides the following:

The number of off-street required parking spaces shall be calculated based on the following:

- (1) Floor area, as defined in chapter 60 of this title.
- (2) Temporary or permanent covered space, such as under an arcade, awning, porch, building overhang or similar structure attached to the building, approved under a site plan for dining or retail display areas, except that the first 200 square feet of such area shall be exempt from such calculation.
- (3) **Outdoor** uses and sales displays **pursuant to section 63.04**.

A review of Section 63.04 “Parking ratios”, a copy of which is attached as **Exhibit “G”**, reveals that there is no specific reference in this section to “outdoor uses” even though Section 63.03(c)(3) “Outdoor uses” provides that the number of off-street required parking spaces shall be made “pursuant to Section 63.04”. If the 2011 City Council had intended for “outdoor uses and sales displays” to have been exempt from off-street required parking space, Section 63.03(c)(3) would have written to provide “outdoor uses and sales displays are exempt from off-street required parking spaces”. By referring to Section 63.04 instead, the clear intention was to require off-street required parking spaces as provided in Section 63.04. Therefore, the closest category in 63.04 would be “Restaurants With 4COP alcoholic beverage license without SRX modifier, one space per 75 square feet of floor area”.

Since 475 square feet of the subject area is “under roof”, 2,805 square feet is “outdoor uses”. As a result, 38 additional parking spaces are needed to meet the requirements of Section 63.04. Therefore, the total required parking is 92 spaces for the hotel and accessory commercial, 3

spaces for the outside dining under roof, and 38 spaces for outside dining, for a total of 133 spaces. Since staff has calculated the total spaces to be 99, the applicant is lacking 34 parking spaces.

Further, the materials provided with the Agenda for the meeting included a "letter of authorization" dated March 14, 2014, from Velogan Inc. In this letter of authorization there was a reference to a "Vero Floor Plan". Nevertheless, this document was conspicuously missing from the materials provided with the Agenda for the meeting. Attached hereto as **Exhibit "H"**, is a copy of the "Vero Floor Plan", which was received, upon request, from the Planning and Zoning Department. As you can see, the improvements that were authorized by the Owner in this "Vero Floor Plan" differ substantially from the improvements shown on the site plan, a copy of a portion of which is attached hereto as **Exhibit "I"**. Since the Owner did not approve the improvements requested by the applicant, the applicant had no authority to request the major site plan approval.

As a result of the failure of the Planning and Zoning Board to properly notify the adjacent land owners that the application was for an "after the fact" approval, rather than a "proposed addition"; staff's misinterpretation of the parking regulations to totally exempt outside dining from off-street parking requirement, and misrepresentation of the law to the Planning and Zoning Department and the public; and the failure of the Owner to approve the site plan, the decision of the Planning and Zoning Board should be void and of no affect.

Further, it defies logic to allow a restaurant located in an area of Vero Beach that already has a significant parking problem to nearly double its serving area without a significant increase in its parking requirements. To allow this type of development, especially with after the fact approval, sets a dangerous precedent for our City.

As a result, we respectfully request that the City Council reverse the decision of the Planning and Zoning Board and deny this major site plan application.

# City of Vero Beach

1053 - 20th PLACE - P.O. BOX 1389  
VERO BEACH, FLORIDA 32961-1389



OFFICE OF THE  
PLANNING AND DEVELOPMENT DIRECTOR

July 24, 2014

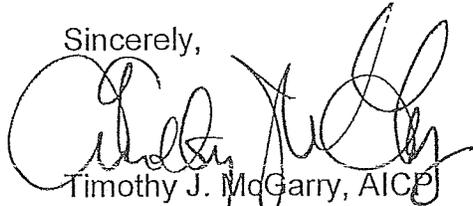
Subject: Site Plan Application #SP14-000003

Dear Property Owner:

In accordance with Ordinance No. 2008-06, you are hereby advised that the City of Vero Beach Planning and Zoning Board will conduct a public hearing on an application to allow the proposed addition of a 3,280 square foot outdoor dining area, including 7 paver areas with tiki huts/tables and numerous Adirondack chairs at 1025 Beachland Boulevard.

The public hearing will be held at 1:30 P.M., or as soon thereafter as possible, on Thursday, August 7, 2014, in the City Council Chambers, City Hall, 1053 20th Place, Vero Beach, Florida.

Sincerely,



Timothy J. McGarry, AICP  
Planning and Development Director

/tf

**DEPARTMENTAL CORRESPONDENCE**

**TO:** Chairman Larry Lauffer and Planning and  
Zoning Board Members

**FROM:** Timothy J. McGarry, AICP   
Director of Planning and Development

**DATE:** July 25, 2014

**SUBJECT:** Site Plan Application #SP14-000003 – Expansion of Outside Dining  
at Mulligan’s Beach House, Sexton Plaza

**OVERVIEW**

**Project Description**

The applicant is requesting approval of a 3,280 square foot expansion of Mulligan’s Beach House outdoor dining facilities located on the Holiday Inn hotel property. The outdoor dining area includes 7 paver areas with tiki huts/tables and numerous Adirondack chairs.

**Project Background**

The approval being sought by the restaurant is after-the-fact to resolve an on-going code enforcement case. A citation with a civil penalty had been issued regarding adding outdoor dining without development approval.

An informal compliance agreement was reached with the owner of Mulligan’s to bring the restaurant into compliance. The restaurant was allowed to continue the outdoor dining on an interim basis, contingent upon the owner committing to move forward in an expeditious manner to receive formal development approval.

Unfortunately, despite the applicant’s commitment and attempts to quickly resolve the code compliance issue, the applicant was unable to do so due to a significant delay in obtaining the property owner’s authorization. Such authorization did not come until the applicant’s lease agreement with the property owner was amended and authorization to submit a site plan application in March of this year.

Subsequently, a further delay was encountered by the applicant in responding to staff’s preliminary review comments before the site plan application was ready for public hearing and consideration by the Planning and Zoning Board. Some of this delay was due to the need to have a traffic impact study prepared and approved by the Indian River Traffic Engineering Division and the City Planning and Development and Public Works departments.

Attachment A to this report provides a project description and fact sheet including general background and site information and details on project development specifications. This attachment is followed by the site plan application and pertinent supporting materials.

## SITE PLAN EVALUATION

Section 64.10 of the Code requires that all approved site plans and amendments to site plans meet certain pertinent general review, performance, and development standards. The staff finds that the proposed site plan meets all these standards.

In particular, the two most relevant to this project are the project's compliance with all pertinent provisions of the Land Development Regulations and performance standards for the proposed use and layout of the development. The staff's specific analysis and findings regarding these two standards are discussed below:

- *Compliance with Land Development Regulations (Sec. 64.10(a)(6))*

Analysis. The site plan's compliance with all development regulations was reviewed by the Planning and Development Department, Public Works Department, and Indian River County Traffic Engineering Division. Attachment A provides information on how the site plan meets open space and parking standards, which are affected by the expansion of the outdoor dining area. Additional explanation of how the additional outdoor dining parking demand meets parking and loading standards of the Land Development Regulations is discussed under Comment 2 of Attachment A.

A traffic impact study prepared by the applicant's engineering consultant was reviewed and approved by all three reviewing agencies. This study documented that the additional vehicle trips expected to be generated by the additional outdoor dining meet road concurrency requirements of the Code. A copy of the Traffic Impact Executive Summary is included in the application package attached to this staff report.

The Public Works Department reviewed the site plan and found that it met the City's stormwater regulations. Other than making sure drainage is not an issue, no special drainage improvements are required due to the limited amount of impervious surface added with the outdoor dining.

Finding. The staff finds the site plan compliant with all pertinent provisions of the Land Development Regulations.

- *Site design performance standards (Sec. 64.10(b))*

Analysis. The outdoor dining area is bounded on the west and north by a multi-story wing of the Holiday Inn on the property and on the east by the ocean. To the

south, the outdoor dining is separated from restaurant and retail establishments by Sexton Plaza and parking area. This location of the outdoor dining is well situated to reduce the potential for creating noise and other possible disruptive impacts on neighboring businesses.

Disruptive traffic to neighboring properties is not an issue as documented in the traffic impact study. The amount of additional traffic in peak hour times (36 vehicular trips) that may be expected to be generated by the outdoor dining will be insignificant to the amount of existing background traffic in this highly commercial area.

As documented in Attachment A, the applicant meets the City's off-street parking requirements. The City has received an occasional complaint with no verification regarding the restaurant employee's actively trying to circumvent the weekday parking duration limits in Sexton Plaza, which is not relevant to any impacts from outdoor dining.

This type of complaint is routinely raised from time to time during season regarding restaurants and establishments in this beach commercial district. The applicant has stated to staff that his employees are directed to park elsewhere outside Sexton Plaza.

Finding. The staff finds the proposed site plan compliant with the performance standards of Section 64.10(b).

## FINDINGS AND RECOMMENDATIONS

Based on the above analysis and findings, the staff finds the proposed site plan application meets the provisions for site plan approval and recommends approval of the site plan.

TJM/af  
Attachments

**ATTACHMENT A  
EXPANSION OF OUTDOOR DINING AREA  
MULLIGAN'S BEACH HOUSE  
PROJECT DESCRIPTION AND FACT SHEET**

**GENERAL INFORMATION**

**PROJECT DESCRIPTION:** Addition of a 3,280 square foot outdoor dining area including 7 paver areas with tiki huts/tables and numerous Adirondack chairs.

**LOCATION:** 1025 Beachland Boulevard, Sexton Plaza

**OWNER:** Velogan, Inc. (aka Logan Acquisitions Corporation)

**APPLICANT:** George Hart

**ARCHITECT:** None

**ENGINEER:** MBV Engineering, Inc.

**TAX ID NUMBER:** 32-40-32-00006-0200-00009.1

**SITE INFORMATION**

**ZONING:** C-1A

**EXISTING USES:** 104-unit hotel, restaurant ( $\pm 6,400$  s.f.), and retail ( $\pm 1,600$  s.f.)

**AREA OF DEVELOPMENT:** Restaurant portion of site -  $\pm 9,680$  square feet;  
Entire site - 138,844 s.f.

**SURROUNDING ZONING AND EXISTING LAND USES:**

North - C-1A: Commercial retail, offices, and Reef Ocean Resort  
East - Atlantic Ocean  
South - C-1A: Commercial retail and Ocean Grill  
West - C-1A: Commercial retail

**RELEVANT DEVELOPMENT SPECIFICATIONS**

Note: As the proposed development does not involve any change in building floor area with no required landscaping requirements, only information relevant to demonstrating that the proposed outdoor dining meets development standards are shown below:

Development Specs./ Code Citation	Required/ Allowed	Proposed	Existing	Comment
Open area (%) [Sec. 62.38]	25	43.4	45.5	1.
Parking [Sec. 63.04]	95	99	92	2.

Comments:

1. The entire site includes land to the average mean high water line.
2. Property granted a parking exception by the Board of Adjustment on February 6, 1967, establishing a parking requirement as follows:
  - Hotel at 1 space/2 rooms (104 rooms) = 52 spaces
  - Accessory commercial at 1 space/299 s.f. (8,000 s.f.) = 40 spaces
  - Total spaces required = 92 spaces

Of the proposed outdoor dining area, only 475 s.f. is subject to off-street parking requirements, as this dining is under roof. Of the 475 s.f., 200 s.f. is exempt from parking requirements, leaving 275 s.f. The additional parking required for this outdoor dining area is one space per 100 s.f., which results in 3 additional spaces needed.

Therefore, the total parking requirement is 95 spaces. The applicant receives credit for 7 public parking spaces in Sexton Plaza along the frontage of the restaurant, which results in a total of 99 parking spaces to be provided.

**SITE PLAN APPLICATION (MINOR)**  
**Multifamily Residential or Nonresidential**  
 City of Vero Beach Planning & Development Department  
 1053 20<sup>th</sup> Place - P.O. Box 1389  
 Vero Beach, Florida 32961-1389  
 Phone (772) 978-4550 / Fax (772) 778-3856

*Major*

Multifamily Residential       Nonresidential       Minor Amendment to Major Site Plan

Application #: SP14-000008  
 APPLICANT: Mulligans Beach House Telephone: 772-600-7377  
 Mailing Address: 300 Colorado Ave. #201 Stuart, FL 34994 Fax or Email: MulliganMary@gmail.com  
 PROPERTY OWNER: Logan Acquisitions Corp.  
 OWNER ADDRESS: 1000 Market St. Portsmouth #03801  
 SITE ADDRESS: 1025 Beachland Blvd. Vero Beach, FL 32963  
 PARCEL I.D. NUMBER: 32-40-32-00000-0200-000091  
 ZONING DISTRICT: SS8 VERO Estates FLOOD ZONE: XVE A0  
 Floor Area Square Footage: Existing \_\_\_\_\_ Proposed 2100 sq ft 3388 sq ft  
 Multifamily - Number of Units: Existing \_\_\_\_\_ Proposed \_\_\_\_\_ *Outdoor Dining*

The following specific modification(s), as shown on the attached plans, is requested:  
zoning of tables & chairs / outdoor dining

Are trees being removed or relocated as part of this application? Yes \_\_\_\_\_ No X  
 If yes, complete a Tree Removal Application.

This application is limited only to the specifically requested development approval. No permanent structure shall be located on City easements. Additional documentation as required in the attached Multifamily and Nonresidential Minor Site Plan Submittal Requirements.

Any false statement, concealment, or misrepresentation in this application or plans, intentional or unintentional, shall be grounds for revocation of approval.

[Signature]  
 Applicant Signature \_\_\_\_\_ Date \_\_\_\_\_

See attached  
 \*Property Owner Signature \_\_\_\_\_ Date \_\_\_\_\_

George Hart  
 Applicant Name (Print) \_\_\_\_\_

\_\_\_\_\_  
 Property Owner (Print) \_\_\_\_\_

\* A letter of authorization may be provided in lieu of the property owner's signature.  
 \*\* Separate review and fee may be required by IRC Fire Prevention \*\*

Conditions: \_\_\_\_\_

Review Comments: \_\_\_\_\_

Planning Department Approval: \_\_\_\_\_

Application Fee: \$340.00 Authorized Signature \_\_\_\_\_ Date \_\_\_\_\_

VELOGAN INC.  
1001 East Atlantic Avenue  
Suite 202  
Delray Beach, Florida 33483

March \_\_\_\_, 2014

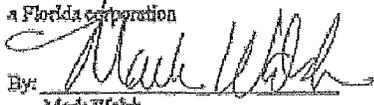
LETTER OF AUTHORIZATION

Re: Lease dated February 28, 2003, First Amendment dated May 29, 2013 and Second Amendment dated March 14, 2014 ("Lease") between Velogan Inc., a Florida corporation, as successor in interest to Logan Acquisitions Corporation, a Florida corporation and MB Hotel Properties, Inc., a Maryland corporation ("Landlord") and Shore Restaurants - Vero Beach, L.L.C., a Florida limited liability company, as successor in interest to Shore Restaurants, L.L.C., a Florida limited liability company ("Tenant")

TO WHOM IT MAY CONCERN:

This letter of authorization ("Authorization Letter") shall constitute evidence that the Landlord approves, subject to the terms of the Lease, the location by the Tenant, at the sole cost and expense of Tenant, of table seating at the eighteen (18) locations designated 501 through 518, on that certain plan which bears the designation "Vero Floor Plan" attached hereto, subject to the following conditions and stipulations: (a) that the table seating installed at the aforementioned eighteen (18) locations is constructed, installed and thereafter maintained in strict conformity with the requirements of all applicable governmental authorities, (b) that notwithstanding this approval by the Landlord, in no event shall the Landlord be liable to the Tenant or to any other person or entity for any loss, damage or injury arising out of or in any way connected with the safety of the approved table seating or the conformances of the approved table seating, with building codes or other requirements of applicable governmental authorities; it being specifically understood and agreed that the Landlord has reviewed and approved the aforementioned table seating and their locations solely on the basis of aesthetic considerations and the overall benefit or detriment which would result to the hotel owned by the Landlord (the "Hotel"), taking into consideration the aesthetic aspects of the architectural design, color schemes, materials and similar features, and (c) Tenant shall indemnify and hold Landlord harmless with respect to any liability, including, without limitation, all costs, expenses, damages or other claims of any type or nature resulting from personal injury arising or occurring as a result of or related to the fabrication, installation, maintenance or use of the aforementioned table seating, and, except as expressly set forth herein, nothing in this letter shall be deemed to otherwise amend or modify the Lease.

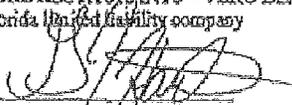
VELOGAN INC.,  
a Florida corporation

By:   
Mark Walsh  
Its President

Date: March 14, 2014

ACKNOWLEDGED AND AGREED:

SHORE RESTAURANTS - VERO BEACH, L.L.C.,  
a Florida Limited Liability company

By: 

Date: March 14, 2014



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## DEPARTMENTAL CORRESPONDENCE

TO: Monte K. Falls, PE  
Interim City Manager

FROM: Timothy J. McGarry, AICP  
Director of Planning and Development

DATE: July 7, 2011

SUBJECT: **First Reading of an Ordinance to Comprehensively Revise the City's Off-Street Parking and Loading Regulations by Amending Parking Regulations in Chapters 61 (Residential Districts), 62 (Nonresidential Districts), and 63 (Off-Street Parking and Loading) [#Z11-000004-TXT]**

### Overview

The Planning and Development Department staff requests that the attached draft ordinance be placed on the City Council's agenda for First Reading on July 19, 2011. The draft ordinance is intended to comprehensively revise the City's off-street parking and loading regulations.

### Background

The need for such a comprehensive review was called for in the City's adopted Vision Plan (2005) and more recently in the adopted Evaluation and Appraisal Report (2010) for the Comprehensive Plan. Parking and transportation experts recommend that a municipality's parking regulations should be routinely evaluated every 3 to 5 years.

The City's parking regulations have not been comprehensively reviewed or amended in over 20 years and contain numerous inconsistencies and omissions. The regulations have not kept up with changes that have occurred in the parking needs of various land uses and do not reflect the urbanized setting of the City of Vero Beach as compared to the more suburban setting upon which most of the City's parking regulations are based.

The existing regulations require more parking than needed in many cases resulting in excessive parking areas, characterized by aesthetically undesirable "seas of concrete" that further contribute to increase stormwater flows, degraded surface water quality, and higher development costs. Few incentives are provided in the current code for encouraging mixed use, pedestrian-oriented development as called for in the City's adopted Vision Plan or promoting alternative modes of transportation.

In recognition of these aforementioned issues, the City staff in conjunction with the Planning and Zoning Board has prepared the attached draft ordinance that comprehensively revises the City's parking regulations. In preparing the proposed amendments, the staff reviewed the parking

regulations of Indian River County and other Florida coastal cities in addition to consulting numerous technical documents and articles regarding parking regulations. A list of the technical references is provided in Exhibit 1.

### **Purpose of Revisions**

In preparing these comprehensive revisions to the City's parking regulations, the staff intended to achieve the following objectives:

- o Improvement in the clarity and conciseness of the text to make it easier to understand and administer.
- o Elimination of out-of-date language.
- o Elimination of the numerous inconsistencies in the current regulations relocating most parking requirements in each individual zoning district to Chapter 63, Off-Street Parking and Loading Requirements, of the City Code.
- o Provision of off-street parking requirements that better reflect the actual parking needs of development within the City of Vero Beach, to limit the needless expansion of impervious surface areas that increases the costs of development, both in terms of increased pavement and stormwater management facilities, and the degradation of the visual landscape with expansive parking areas.
- o Provision of increased flexibility in applying parking regulations to meeting vehicle parking and loading demand needs.

### **Substantive Revisions**

A summary of the substantive revisions to the parking regulations are presented in Exhibit 1 to this report. The summary includes, where appropriate, commentary or rationale for some of the changes.

Exhibit 2 provides a comparison of the existing parking ratios and those proposed in the draft ordinance for selected land uses. Only those parking ratios that are proposed for a substantial change are shown.

### **Planning and Zoning Board Action**

The Planning and Zoning Board conducted two public workshops on May 19<sup>th</sup> and June 2<sup>nd</sup> to discuss changes in the City's off-street parking and loading regulations proposed by staff. At a public hearing on July 7<sup>th</sup>, the Planning and Zoning Board unanimously recommended the consideration and approval of the attached draft ordinance by the City Council.

**Recommendation**

The Planning and Development Department staff recommends City Council approval of the scheduling and advertising of the draft ordinance for public hearing.

TJM/tf  
Attachments

**EXHIBIT 1  
SUMMARY OF SUBSTANTIVE  
PROPOSED CHANGES TO  
OFF-STREET PARKING AND LOADING REQUIREMENTS**

**Chapter 61, Articles I-V (Residential Zoning Districts) and Chapter 62 (Nonresidential Zoning Districts)**

Parking requirements for individual uses in each zoning district have been removed and consolidated in Section 63.04 of Chapter 63, Off-Street Parking and Loading Requirements.

*[Commentary:* In several instances in the current regulations, parking requirements for specific land use categories vary for no apparent reason different between districts. Some parking requirements are missing for uses permitted in the zoning district. Relocating parking requirements to the Off-Street Parking and Loading Requirements eliminates this problem and makes it both easier for staff to administer these regulations and for the public to understand what is required.]

**Chapter 63, Off-Street Parking and Loading Requirements.**

Section 63.01. Intent.

The intent section has been completely rewritten eliminating references to zoning districts that no longer exist.

*[Commentary:* The new intent language includes references to the City's Comprehensive Plan and other adopted policies (e.g. Vision Plan) to promote mixed-use, pedestrian oriented development patterns.]

Section 63.02. Required Off-Street Parking and Loading/Unloading.

1. Existing subsection (a) which contained confusing and misleading language related to restoration of demolished or damage buildings has been eliminated. New subsections (a) and (b) provides specific and clear language on how parking regulations are to be applied to new development and redevelopment of existing uses. It vests existing lawfully established uses from parking requirements as long as any deficit in number of parking spaces is not increased.

*[Commentary:* The existing language in subsection (a), which the staff believes was unintended, goes far beyond the scope of vesting parking requirements for damaged or destroyed development, by vesting such uses from the use, bulk, and dimensional requirements of the current code.]

2. A new requirement to provide parking for bicycles is provided in subsection (e). Any nonresidential project requiring 20 or more parking spaces would be required to provide one bicycle parking space per 20 parking spaces.

[*Commentary:* This new requirement promotes alternative transportation modes and is a significant element for any strategy to promote mixed use, pedestrian oriented development.]

3. A new requirement to provide motorcycle spaces is included in subsection (f). Any nonresidential project requiring 100 or more parking spaces would be required to provide one motorcycle space per 25 required parking spaces. Any required motorcycle parking would not be in addition to required parking spaces.

[*Commentary:* Motorcycle parking requirements based on recommendations in the report entitled *Development of Motorcycle Parking Design Guidelines* prepared by Wayne Cottrell, Associate Professor at California State Polytechnic University for inclusion in the proceedings of the 87<sup>th</sup> Annual Meeting of the Transportation Research Board, January 13-17, 2008.]

4. As an incentive to provide motorcycle parking, subsection (g) allows nonresidential projects requiring at least 50 parking spaces to substitute one required vehicle parking space with 4 motorcycle parking spaces.

#### Section 63.03, Computation of Parking Spaces.

1. Subsection (b) provides an example of how parking requirements are to be calculated where a development has been previously approved under different parking requirements.
2. Subsection (c) has been revised to include provisions that require outdoor space under temporary or permanent covered space to be considered as floor area except for the first 200 square feet under an arcade, awning, porch, building overhang or similar structure attached to the building approved under a site plan for dining or retail display areas.

[*Commentary:* Outdoor dining and retail areas approved under a site plan would have no parking requirements, except for areas with more than 200 square feet under cover. The current code never specifically addresses off-street parking requirements for outdoor dining areas; however, historically such outdoor areas have been calculated as floor area for meeting parking requirements and are considered floor area for impact fees.]

3. Subsection (g) provides that the number of off-street parking spaces is to be reduced by the number of off-street parking spaces abutting the property lines of the lot or parcel.

[*Commentary:* This proposal recognizes that available on-street parking, especially where durational parking limits are posted, handle a greater parking demand than private on-site parking due to higher turnover. Therefore, if such on-street parking is available, it reduces the need for off-street parking.]

## Section 63.04. Parking Ratios

The required parking for uses is presented in this section. A comparison of existing and proposed parking ratios for selected uses is presented in Exhibit 2.

[*Commentary:* The parking ratios were based on a comprehensive review of the City's current regulations, parking regulations of the County and other jurisdictions, and the following resource documents:

- o *Shared Parking* (2005), Urban Land Institute
- o *21<sup>st</sup> Century Land Development Code* (2008), American Planning Association
- o *Planning and Urban Design Standards* (2006), American Planning Association
- o *Parking Standards* (2002, PAS 510/511), American Planning Association
- o *Model Shared Parking Ordinance from Model Smart Land Development Regulations* (2006, Interim PAS Report), American Planning Association]

The most significant changes to the parking requirements are as follows:

- o *Banks and Financial Institutions:* A 20% reduction in parking requirements for establishment without drive-thru facilities and a 50% reduction for establishments with drive-thru facilities.

[*Commentary:* This significant reduction reflects the changes in the banking industry practices including on-line banking. The staff's recent experience in the approval of the new Center State Bank confirmed the need for this type of change in the parking regulations.]

- o *Retail and Personal Services:* A 30% reduction in parking requirements.

[*Commentary:* This change reflects industry recommendations for mixed-used, pedestrian oriented development projects and urbanized areas.]

- o *Restaurants:* A 25% reduction in parking requirement for restaurants that only serve no alcoholic beverage, beer and wine only or have a 4COP license with a SRX modifier which limits the serving of alcohol only if food service is available and establishes limits as to number of seats, square footage, etc.

[*Commentary:* Restaurants that have a 4COP license with no SRX modifier would still be required to meet the current parking requirements for restaurants. This difference in parking requirements reflects the fact such establishments generally have less turnover than restaurants that serve no alcoholic beverages, serve beer and wine only, or have more restrictions on sale of alcoholic beverages.]

- o *Telemarketing/Call Centers:* A 37% increase in parking requirements.

[*Commentary:* The current code treats telemarketing call centers as a professional office use, which caused significant off-site parking issues while such a business was in existence in Royal Palm Pointe.]

- o *Places of Worship:* A 14% increase in parking requirements.

[*Commentary:* This change brings places of worship in line with the requirements for places of public assembly.]

#### Section 63.05. Shared Parking Options.

Shared parking options available for meeting off-street parking requirements are identified with specific procedures and eligibility criteria presented in this section. The current code provides broad authority for the Planning and Zoning Board to approve flexible parking techniques, but provides little guidance.

The proposed revision provides authority for approving such shared parking options to the planning director and identifies the following specific options:

- o Shared parking for on-site uses with different hours of operation based on a "shared parking calculations matrix" in Table 1 (page 21).
- o Shared parking based on the Urban Land Institute (ULI) methodology, if development has at least 20,000 square feet of floor area.
- o Shared parking using surplus or otherwise parking spaces off-site subject to an approved parking agreement or site plan approval.
- o Shared parking using off-street public parking facilities and spaces subject to City Council approval.
- o Shared parking under a unified site plan not utilizing the shared parking calculation in Table 1 or ULI methodology.

#### Section 63.06. Parking Agreements.

This section sets forth the content and approval procedures for parking agreements.

[*Commentary:* This section codifies procedures developed by the Planning Director and Acting City Attorney to address such agreements.]

Section 63.07. Valet Parking.

New provisions for accommodating valet parking to meet parking requirements are set forth in this section. To utilize this option, a "valet parking plan" would be required to be submitted and approved by the Planning Director. Valet parking plan would also be required for public or private off-street parking facilities utilizing a garage or parking lot attendant.

[*Commentary:* Valet parking allows a property owner to more efficiently meet parking requirements as such parking may be addressed through on- or off-site tandem parking or valet parking areas that can accommodate more vehicles than a self-service parking lot.]

Section 63.08. Tandem Parking.

This new provision provides for "tandem" or "stacked" parking. Tandem parking, which allows a maximum of two vehicles to be parked end-to-end, would be available for "employee only" parking spaces and "valet parking." Specific standards are proposed for the approval and design of such parking. Such parking for "employees" would be limited to one tandem parking space or the number of spaces to accommodate 20 percent of required parking spaces, whichever is greater.

Section 63.09. Guidelines for Parking and Loading Areas.

1. The specific dimensional requirements for parking spaces are included in this subsection and graphically shown in Tables 2, 3, and 4.
2. In subsection (b)(3) and (4), wheelstops have been eliminated as a requirement, except that wheelstops, curbing, wheel or bumper guards are required to protect landscaping.

[*Commentary:* The current requirement for wheelstops creates safety and liability problems; therefore, wheelstops or similar devices would now only be required to protect landscaped areas.]

3. The amount of compact parking that may be allowed is proposed for a reduction from 30% to 20% in subsection (b)(5). The authority to allow a higher percentage of compact spaces if approved by the Planning and Zoning Board has been eliminated. Additionally, no more than 8 compact spaces may be contiguous and such parking must be located away from high turnover areas near business entrances.

[*Commentary:* It was the consensus of the Planning and Zoning Board and staff that with the reduction in most parking requirements the number of compact spaces that may be allowed should be reduced. Compact spaces generally are not efficiently utilized, as non-compact vehicles tend to use these spaces which limit the number of actual available spaces. Limitations on number of contiguous compact spaces and location of compact parking are also intended to address these types of issues.]

4. In subsection (d), the authority for modification of certain parking dimensional requirements has been retained, except that the Planning Director is now given authority to modify the required number of loading spaces.
5. Subsection (e) details signage standards for designated parking spaces. Some signs such as "tandem parking" and "loading zones" would be required to have freestanding signs of a certain height and size. Signage for other spaces may be freestanding, painted on wheelstops or marked on the pavement.

#### Section 63.10. Surfacing Requirements for Parking and Loading Spaces.

This section has been completely rewritten to eliminate overly detailed technical specifications and incorporate more general construction and design criteria based on accepted industry standards and manufacturer's standards and specifications. The City Engineer, rather than the Planning Director as in the current regulations, would have primary responsibility for assuring parking lot construction meets technical specifications.

**EXHIBIT 2  
COMPARISON OF EXISTING  
PARKING RATIOS  
AND PROPOSED PARKING RATIOS  
FOR SELECTED USES**

<u>Use</u>	<u>Existing</u>	<u>Proposed</u>
<i>Retirement, independent living or adult congregate living facilities</i>	1 sp./3 beds	1 sp./unit
<i>Nursing homes, skilled nursing, intermediate care facilities and assisted living centers</i>	1 sp./3 beds	1 sp./room
<i>Financial and banking services</i>		
Without drive-thru facilities	1 sp./200 sq. ft.	1 sp./250 sq. ft.
With drive-thru facilities	1 sp./200 sq. ft.	1 sp./400 sq. ft.
<i>Business and professional offices</i>	1 sp./300 sq. ft. plus 3 spaces	1 sp./300 sq. ft. or 4 spaces, whichever is greater
<i>Hotels/Motels</i>		
Hotels and motels	1.3 sp./room	1 sp./room plus 1 sp./20 rooms
Accessory uses to hotel	one-half of ratio	½ of ratio, if entry thru lobby or ¾ of ratio
<i>Retail Sales and Personal Services</i>	1 sp./175 sq. ft.	1 sp./250 sq. ft.
<i>Gasoline Service Stations</i>	1 sp./service bay	1 sp./375 sq. ft. of non-retail area plus 1 sp./250 sq. ft.
<i>Restaurants</i>		
With 4COP without SRX modifier	1 sp./75 sq. ft.	1 sp./75 sq. ft.
Take out only restaurants	1 sp./175 sq. ft.	1 sp./200 sq. ft.
All other restaurants	1 sp./75 sq. ft.	1 sp./100 sq. ft.
<i>Telemarketing/call centers</i>	1 sp./300 sq. ft. plus 3 spaces	1 sp./100 sq. ft.

<u>Use</u>	<u>Existing</u>	<u>Proposed</u>
<i>Manufacturing, warehousing, et.al.</i>	3 sp. plus 1 sp./600 sq. ft.	1 sp./600 sq. ft. or 4 spaces whichever is greater
<i>Places of Worship</i>	1 sp./3.5 seats	1 sp./3 fixed seats or 1 sp./100 sq. ft. of floor
<i>Cultural, civic activities, and Community Centers</i>	1 sp./200 sq. ft.	1 sp./200 sq. ft. or 1 sp./3 fixed seats or 1 sp./100 sq. ft. of public assembly area, whichever is greater

### Sec. 63.01. Intent.

It is the intent of this chapter to ensure that adequate off-street parking and loading spaces are provided to serve the majority of the traffic generated by development in a manner that protects public safety, protects the capacity of the road system, reduces potential adverse impacts on adjacent uses, encourages flexible approaches to meeting parking needs through shared use of parking spaces, and complements and furthers the establishment of mixed use pedestrian-oriented commercial areas within the city as identified in the comprehensive plan and other city policies.

(Ord. No. 2011-10, § 18, 8-16-2011)

### Sec. 63.02. Required off-street parking and loading/unloading.

- (a) *Off-street parking spaces required.* Every use shall be provided with on-site parking in accordance with this title and chapter, except as expressly permitted herein. Such parking facilities shall be provided in the following situations pursuant to the requirements of this chapter:
  - (1) For construction of any new building;
  - (2) For any enlargement or addition to an existing building;
  - (3) For any new use of land or expansion of the use of land required to have off-street parking pursuant to this title and chapter; or
  - (4) For any change in the occupancy of an existing building or use of land that would create need for a greater number of parking spaces pursuant to this title.
- (b) *Existing buildings and uses.* Notwithstanding subsection (a) above, any lawfully established use that is nonconforming as to the number of off-street parking spaces required pursuant to this title and chapter, may continue, expand and/or change the approved use without coming into full compliance with the off-street parking provisions as long as all the following criteria are met:
  - (1) The deficit in the number of required off-street parking spaces is not increased;
  - (2) The off-street parking requirements for the proposed expansion or change of use have been met to the maximum extent practical as determined in the professional opinion of the planning director;
  - (3) The site plan or other development approval for the project is compliant with all other provisions of this title and part.
- (c) *Loading space required.* Every building or part thereof erected or occupied by retail, service, manufacturing, storage, hotel, funeral home, or other uses similarly involving the receipt or distribution of materials or merchandise by vehicles, shall provide and maintain loading spaces in accordance with the following criteria:
  - (1) Loading spaces are optional for buildings of 5,000 or less square feet in floor area.
  - (2) One loading space shall be provided for each 10,000 square feet or fraction thereof of floor area for buildings over 5,000 square feet in floor area.
- (d) *Accessible parking spaces required.* Accessible parking spaces designed for use by persons with disabilities shall be required and provided pursuant to the applicable provisions of the Florida Building Code. Such spaces shall not be in addition to, but shall substitute for required parking.
- (e)

- (k) *Parking in yard areas.* Except for required landscape and buffer areas and as may be restricted elsewhere in this Code, side yard, rear and front yard areas may be used for required off-street parking areas.

(Ord. No. 2011-10, § 18, 8-16-2011; Ord. No. 2013-15, § 3, 9-3-2013)

### **Sec. 63.03. Computation of parking spaces.**

In computing the number of required parking spaces, the following procedures and rules shall govern:

- (a) Off-street parking space requirements shall be pursuant to the schedule for uses presented in this chapter, except as may be modified elsewhere in this title under the individual zoning districts.
- (b) Where existing buildings and uses were approved under the parking requirements of a previous ordinance that required less parking than this title, the parking requirements of the less restrictive code shall be applied to those uses and floor area approved under the superseded parking regulations in any change in use or expansion of floor area. This parking computation is to be done on a use by use and floor area by floor area basis. For example, an existing 10,000 square foot building containing 5,000 square feet of retail use and 5,000 square feet of restaurant is to be expanded and redeveloped into a 12,000 square foot building with 3,000 square feet of retail use, a 6,000 square foot restaurant, and 3,000 square feet of office use. The 3,000 square feet of retail use would be calculated using the parking regulations under which retail use was approved. 5,000 square feet of the restaurant would be calculated using the parking regulations under it was approved with the remaining 1,000 square foot under the current regulations. All the office space would be calculated under the current regulations.
- (c) The number of off-street required parking spaces shall be calculated based on the following:
  - (1) Floor area, as defined in chapter 60 of this title.
  - (2) Temporary or permanent covered space, such as under an arcade, awning, porch, building overhang or similar structure attached to the building, approved under a site plan for dining or retail display areas, except that the first 200 square feet of such area shall be exempt from such calculation.
  - (3) Outdoor uses and sales displays pursuant to section 63.04.
- (d) Where fractional spaces result, the number of spaces required shall be construed to be the next highest whole number.
- (e) The parking requirement for any use not specified shall be the same as that required for a use of a similar nature as recognized herein. Where not recognized herein, the parking requirement, subject to approval by the planning director, shall be based on criteria in the most current edition of Parking Generation published by the Institute of Transportation Engineers or the 21st Century Land Development Code published by the American Planning Association or other appropriate reference document, or a specialized parking study prepared by an applicant for a specific use and site. The specialized parking study shall be prepared by a licensed professional engineer or transportation planner certified by the American Planning Association.
- (f) In the case of two or more separate uses are on site, the parking spaces shall be equal to the sum of the several uses computed separately, except when a shared

parking calculation option is used to determine the number of parking spaces pursuant to section 63.05.

- (g) The required number of off-street parking spaces shall be reduced by the number of on-street parking spaces abutting the property lines of the lot or parcel.

(Ord. No. 2011-10, § 18, 8-16-2011)

**Sec. 63.04. Parking ratios.**

- (a) Applicability. The required off-street parking requirements in subsection (b) shall apply to all zoning districts, except where expressly stated otherwise in this title.
- (b) The following are the required parking ratios by use:

	Required Parking
<i>Residential Uses</i>	
Single family	2 spaces
Duplexes	2 spaces/unit
Efficiency (<500 sq. ft. of floor area)	One space/unit
Mobile homes	2 spaces/unit
Multiple family	
One bedroom	1.5 spaces/unit
Two or more bedrooms	2.0 spaces/unit
Community Residential	One space/3 beds
Independent living or adult congregate living facilities	One space/unit
<i>Commercial and Service Uses</i>	
Boarding Houses	One space/room plus 2 spaces
Financial and banking services	
With drive-thru facilities	One space/400 sq. ft. of floor area and stacking for 4 vehicles per drive-thru window or automatic teller machine
Without drive-thru facilities	One space/250 sq. ft. of floor area
Business and professional offices	One space/300 sq. ft. of floor area or 4 spaces, whichever is greater
Hotels/motels	One space/rentable room plus one space/20 rentable rooms; one-half of the standard parking ratio for each accessory retail or restaurant use where entry is through the hotel lobby; ¾ of the standard parking ratios for all other retail or restaurant accessory uses
Retail sales and services	One space/250 sq. ft. of floor area
Automobile, boat, and trailer sales	One space/500 sq. ft. of floor area plus one space/2,500 sq. ft. of outdoor sales area
Veterinary hospitals, boarding kennels	One space/300 sq. ft. of floor area
Automobile repair, automobile body, and diagnostic shops	One space/400 sq. ft. of floor area including service bays or 6 spaces whichever is greater; service bays are not included as parking spaces
Automobile tire and parts stores	One space/400 sq. ft. of floor area including service bays and retail sales/display area; service bays are not included as parking spaces
Gasoline service stations	One space/375 sq. ft. of non-retail floor area, including service bays and car tunnels plus 1 space/250 sq. ft. of retail floor area
Furniture and appliance stores, lawn and garden supplies, wholesale establishments, building supplies machinery, and equipment sales and service	One space/400 sq. ft. of floor area
Contractor's offices	One space/400 sq. ft. or 2 spaces, whichever is greater

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- (g) The required number of off-street parking spaces shall be reduced by the number of on-street parking spaces abutting the property lines of the lot or parcel.

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Contractor's offices	One space/400 sq. ft. or 2 spaces, whichever is greater

Art galleries	One space/400 sq. ft. of floor area
Restaurants	
With 4COP alcoholic beverage license without SRX modifier	One space/75 sq. ft. of floor area
Take out only	One space/200 sq. ft. of floor area
All other restaurants	One space/100 sq. ft. of floor area
With Drive-thru facilities	Stacking lane(s) for a minimum of 8 cars in addition to uses above
Mortuaries or funeral homes	One space/200 sq. ft. of floor area and one space/3 fixed seats or one space/100 square feet in public assembly areas, if no fixed seats plus stacking lanes for a minimum of 25 cars
Crematoria	One space/300 sq. ft. of floor area
Marina	One space/3 dry storage, wet slip or mooring, plus ½ of standard parking ratio for accessory retail uses and one space/300 sq. ft. of administrative space
Self-service storage facilities	3 spaces and a 24 ft. wide drive/access aisle to each individual storage unit
Social and Country Clubs	One space/100 sq. ft. of floor area for clubhouse and dining facilities, plus required parking spaces for each associated use or structure creating user parking demand
Telemarketing/call centers if the amount of floor area is less than 100 square feet per employee per shift	One space/100 sq. ft. of floor area
Trade and service repair uses	One space/400 sq. ft. of floor area or 2 spaces whichever is greater
Plant nurseries and landscaping services	One space/150 sq. ft. of gross floor area of enclosed buildings where merchandise is displayed and transactions occur [Note: Pole barns, mist houses, shade houses, and accessory structures shall not be included for purposing of determining parking requirements.]
<i>Industrial and Whole Trade Uses</i>	
Manufacturing or industrial establishments, research and testing laboratories, creameries, bottling plants, warehouse or similar establishments, excluding direct sales to the public	One space/600 sq. ft. of floor area or 4 spaces, whichever is greater
Wholesale establishments, excluding direct sales to the public	One space/400 sq. ft. of floor area
<i>Public Assembly Structures/Uses</i>	
Libraries and museums	One space/400 sq. ft. of floor area
Auditoriums, places of worship, live theaters, motion pictures theaters, community centers; stadiums, and other places of public assembly	One space/3 fixed seats or one space/100 sq. ft. of floor area in public assembly area, if no fixed seats
Commercial amusements (enclosed)	One space/200 sq. ft. of floor area
Racquet ball or tennis courts	3 spaces/court
Skating rinks	One space/200 sq. ft. of floor area
Swimming pool (outdoor)	One space/200 sq. ft. of pool area
Golf course	4 spaces/hole and one space/100 sq. ft. of floor area for club and pro shop
Health and exercise clubs	One space per 200 sq. ft. of floor area
Public parks and outdoor recreation uses	2 spaces per gross acre of land generating user parking demand; 40 spaces per acre of public beach; one space/100 sq. ft. of floor area for associated support buildings; plus required parking for other recreational uses and structures specified in this section
Public, private, or commercial boat ramps	

	6 spaces per ramp; all spaces shall be 14' by 55' to accommodate trailers and oversized vehicles
<i>Airport Uses and Structures</i>	
Aeronautical student dormitory	One space/sleeping room plus one space/20 rooms; plus ½ of the standard parking ratio for each accessory use
Aeronautical schools	3 spaces/classroom
T-hangars	One space/5 hangars or tie-downs except for manufacturing inventories or pilot training aircraft
Conventional hangars (excluding commercial or employment generating activities)	One space/1,000 sq. ft. of floor area up to 10,000 sq. ft. and one space/2,000 sq. ft. thereafter
<i>Institutional and Community Facilities and Uses</i>	
Hospitals	2 spaces/bed
Day care facilities	1.5 spaces/licensed employee
Medical offices and clinics	One space/175 sq. ft. of floor area
Government administrative offices	One space/300 sq. ft. of floor area
Fire station	One space/500 sq. ft. of floor area
Private colleges, universities, and technical/vocational schools	One space/2 seats of classroom seating capacity plus parking standards for accessory uses specified in this section
Private and charter high schools	One space/8 seats in the main auditorium or 3 spaces for each classroom, whichever is greater
Private and charter elementary schools	One space/10 seats in the main auditorium or 2 spaces for each classroom, whichever is greater
Public educational facilities	As set by the State Department of Education or School District
Public health services	One space/175 sq. ft. of floor area
Nursing homes, skilled nursing, intermediate care facilities and assisted living centers	One space/3 beds
Cultural and civic activities and community centers	One space/200 sq. ft. of floor area or 1 space/3 fixed seats or 1 space/100 sq. ft. of auditorium, meeting room or place of public assembly without fixed seats, whichever is greater

(Ord. No. 2011-10, § 18, 8-16-2011)

Outside AREA

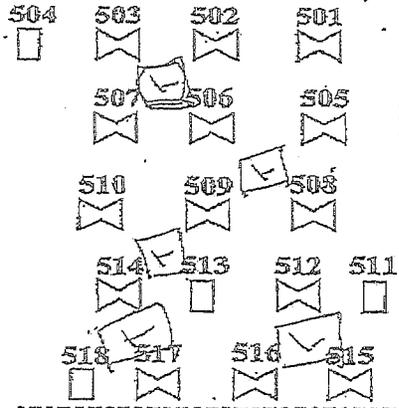
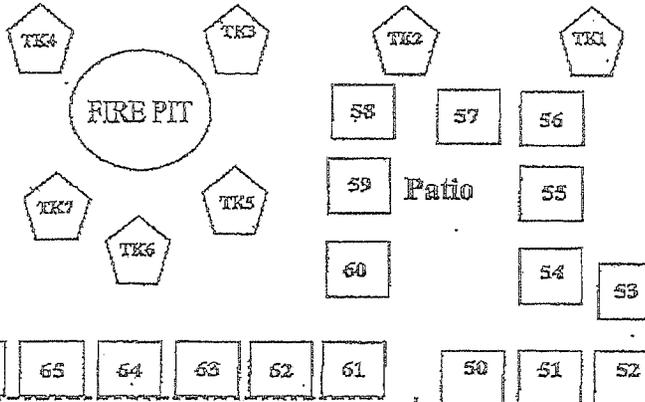
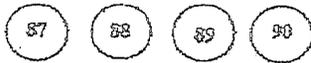


EXHIBIT "A"



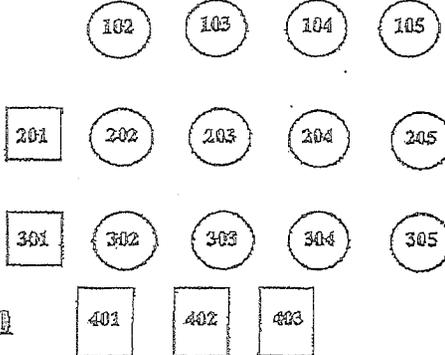
Main Dining



North Event Room



Vero Floor Plan



SERVERS

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BAR

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BUSSER/HOST

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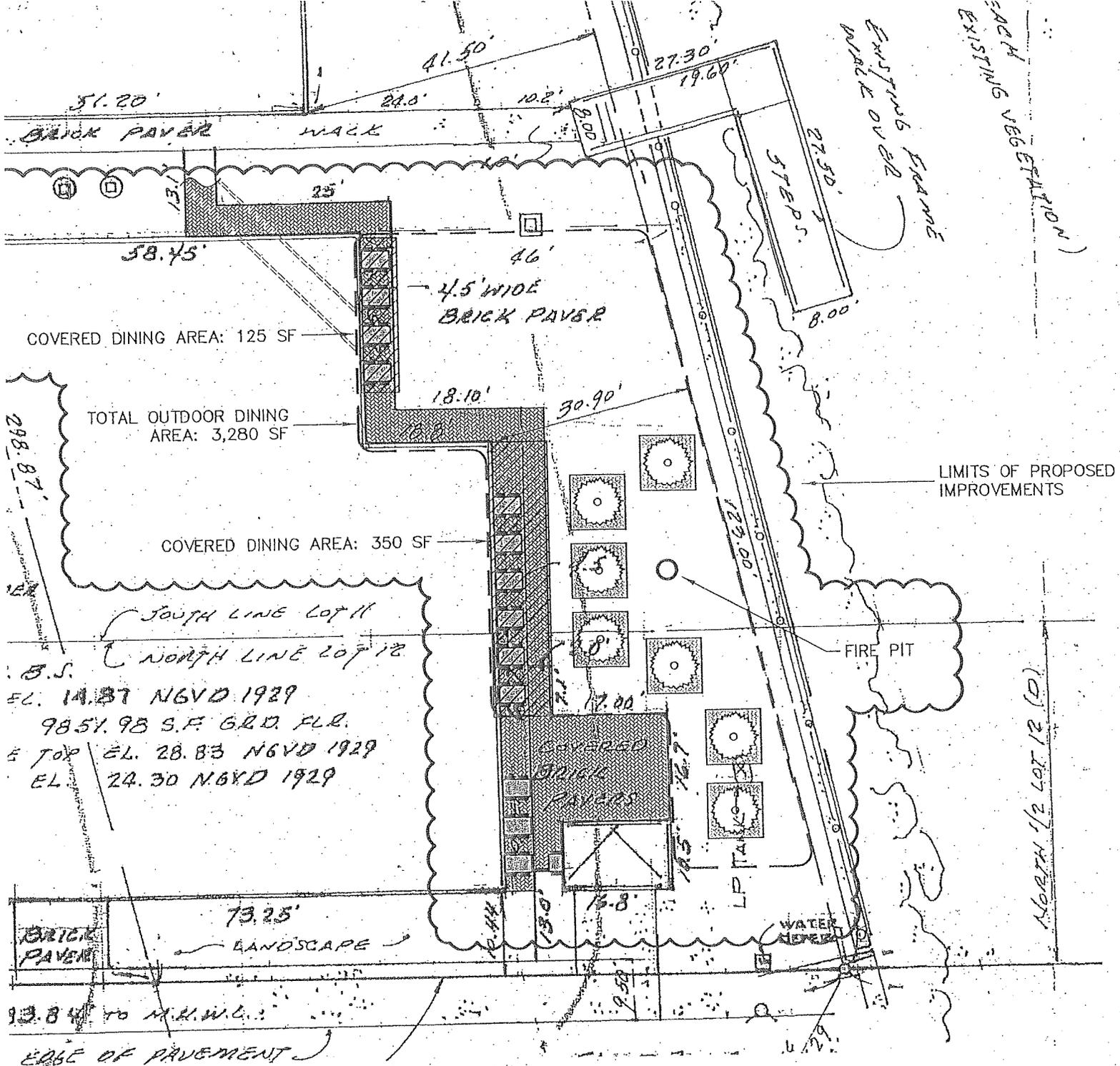
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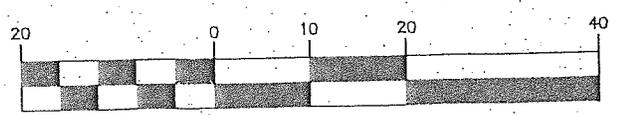
SOME EXISTING VEGETATION

EXISTING FRAME WALK OVER

LIMITS OF PROPOSED IMPROVEMENTS

(D) 21 LOT 12 (D)

GRAPHIC SCALE



( IN FEET )

EXHIBIT "1"

## **APPENDIX C**

### **PLANNING AND ZONING BOARD HEARING RECORD**

- **MINUTES OF PLANNING AND ZONING BOARD HEARING**
- **STAFF REPORT TO PLANNING AND ZONING BOARD ON SITE PLAN APPLICATION**
- **SITE PLAN APPLICATION**

**Mrs. Minuse made a motion to accept staff's recommendation with all conditions. Mr. Burke seconded the motion and it passed 5-0 with Mr. Cahoy voting yes, Mr. Burke yes, Mr. Mucher yes, Mrs. Minuse yes, Mr. Lauffer yes.**

**[Quasi-Judicial]**

- B. Site Plan Application to Allow the Proposed Addition of a 3,280 Square Foot Outdoor Dining Area Including 7 Paver Areas with Tiki Huts/Tables and Numerous Adirondack Chairs (#SP14-000003).  
Location: 1025 Beachland Boulevard**

**Verbatim**

The Chairman read Site Plan Application #SP14-000003 by title only. He said because this is quasi-judicial the Chairman has to read the title, which he did and asked for disclosures by any of the Planning and Zoning members of ex parte communications, if any.

Mrs. Minuse said none, thank you.

Mr. Lauffer asked does anyone else on the Board have anything to disclose?

Mr. Mucher said Mr. Chairman, I have no ex parte communications. I would like to state that Mulligan's is a member of the Vero Beach Chamber of Commerce and I am the Treasurer, but I have no conflict. No voting conflict.

Mr. Lauffer said I understand. We'd like to have the swearing of the Applicant and all witnesses collectively. So if you'd like to stand we'll have that.

The Deputy City Clerk swore in staff and all witnesses testifying for today's hearing en masse.

Mr. Lauffer asked Mr. McGarry if he was going to make the presentation.

Mr. Tim McGarry, Planning and Development Director, said yes. You got me all day. The Applicant is requesting Site Plan approval of 3,280 square feet outdoor dining, which is part ... as part of its restaurant located in Sexton Plaza on the Holiday Inn property. This request is for an after the fact approval of the dining area. He pointed out that it's after the fact and what is out there currently has been under Code citation for over a year and a half. We entered into an informal agreement with the Applicant to try to get ... and they agreed immediately, they wanted to come and get site plan approval, which he could not give them as the Planning Director. It had to come before you because of the amount of outdoor area and basically it was a long process. The Applicant to our satisfaction tried the best they could, but they had issues with their landlord in reaching a contract so this carried out over a year and a half before we were able ... until March ... until we were able to get authorization for submittal of the Site Plan. So basically what is being asked today is what is currently out on that site in which we allowed to continue knowing that they would come before you at this date. We were hoping it would have been a lot sooner date than this, but it's been this date. The other think I want to point out to you and we didn't mention how many chairs are out there, but when we get into restaurants and floor area you're looking at the area, not the number of tables or anything of that, so that's something to understand on this. As I pointed out, the a ... it wasn't until

March the Applicant was able to finally submit their application because of this holdup on authorization and at a time we had to go through ... the Applicant had ... also had to provide a traffic impact study and we had some issues ... I dealt with the County on that and we finally have reached an agreeable methodology ... had that completed. The Site Plans have been reviewed by the staff and we find it in compliance with general review for performance and development standards with LBR's. Some of the more specific elements that are germane to this case is that one, the open space requirements ... there is plenty of open space on that site. You've got to remember that all beachfront properties generally are going to mean high water. So there is a lot of property. All our beachfronts do that. So there's a lot of open space that may not look on the property, but that's included. As for the parking, the 2,805 square feet is exempt from off-street parking requirements. It's not considered floor area. This is a deliberate decision we made several years ago and was approved by ... recommended by you all and approved by City Council ... that ... to encourage outdoor dining, that we wouldn't consider that as parking for that. However, there is approximately 475 feet that is located under the roofline of the restaurant and of that 275 feet is ... has to meet ... there is parking requirements to meet that. The other 200 is exempt under our Ordinance. So basically in our calculations three additional spaces are needed, however when you look at our Code again we allow some credit for public parking that is located on frontage and they have at least seven spaces in Sexton Plaza along there. So, they're allowed to qualify ... we've done it with everybody else so they clearly under our Code meet the requirements for parking. The traffic impact study was reviewed and approved. The additional outdoor dining meets the concurrency requirements. The Public Works reviewed the Site Plan and there was no problems with the mean storm drainage requirements ... the drainage meets all the requirements of that Department. Therefore, the staff finds that the plan meets the general development standards of the development regulations or standards or regulations. As for the site design standards, the outdoor dining area is fully contained on the property. It is buffered from property to the north because of the north wing of the Holiday Inn and on the south you have the Sexton Plaza and its parking that ... so it's pretty well contained. You have, obviously, the ocean on the east and the hotel itself to the west. The amount of additional traffic to be generated during peak hours has been estimated 36 vehicle trips per peak hour. As to the outdoor dining, we really received no complaints about the outdoor dining. We have received some complaints about employees actively trying to circumvent weekday parking duration requirements, which are I believe three hours in that ... two or three hours in there ... you know what? During peak season I get complaints about every hotel on ... generally along the beach. We get the same complaints from the lot that that goes on and granted parking is tight in that area, especially when you have a successful commercial district. However, that's ... that's not ... aspects, they still meet the Code for our parking requirements. So based on these findings Staff recommends approval of the Site Plan as presented.

Mr. Lauffer asked is the applicant here? If you'd like to come forward. You have been sworn in? Would you please both state your name?

Mr. George Hart said yes. He introduced himself to the Board - George Hart, Owner of Mulligan's Restaurants.

Mrs. Angie Schepers introduced herself to the Board stating I do marketing for Mulligan's.

Mr. Lauffer said okay.

Mr. Hart said good afternoon. Just to clear up the application. Approximately six or seven years ago

he couldn't give them an exact date, Jim Gabbard (previous City Manager) and I had conversations about outdoor seating. We've been using the outdoor area since the day he arrived there, twelve years ago. Mr. Gabbard knew at that time they had an overwhelming request to have seats out on the grass and on the ocean and he pointed out to Mr. Gabbard at that time that they had what they called the North Room, which is a little banquet room on the north side of the building that they use when it rains and when it doesn't rain we don't use it and we put our seating outside on the grass. The reason that is because of the size of the kitchen. It can only make so much food in an hour and if we have every seat and every possible area filled with people, we are going to have a lot of mad customers. So, when we use the grass we don't use the 30 seats in the North Room. Most of the area is seven tiki tables, which seven years ago and up to a year and a half ago it was round tables with chairs. The tiki huts is what brought the attention of the City and the people surrounding us. We always have around 25 or 30 Adirondack chairs out there. Most of the time people take a glass of wine or a drink from the bar and go sit out there and watch the sunrise or will sit out there in the evening. So impacting the kitchen or ... you know ... really is just a casual drink. A lot of those people come from the hotel or a lot of those people come from Costa d'Este or from the Vero Beach Inn. There is a lot of foot traffic from these hotels that they are out in the front yard in the evening or in the early morning. We have been using this area consistently for at least the last seven years and have really found no problems with any of our neighbors or, like Mr. McGarry says, one of my employees parks where they're not suppose to. You know, we tell them time and time again where to park and then they park ... you know ... we find one of them that makes up their own parking regulations instead of the ones that we live by in which we live by the same rules everyone lives by is park where you're required to park. You know, I don't follow them to their car every day so I don't know where some of them do find themselves parked, but we certainly ... you know ... try to follow the rules and regulations and be good neighbors and do the things that we need to do for everyone to be successful there. You know, we believe that that the hard work we do ... you know ... brings people to that area and having everyone there benefits from that. I mean I think that, you know, our customers go into the Downtown and enjoy the Downtown. It's a beautiful area so ... you know ... the things we do there we think are positive things and putting tables on the grass, I mean I think it's a positive thing. It's what the City wants, it's what the vacationers want, which makes the area a better place. So, I'll answer any questions, but ... you know ... Jim Gabbard was very helpful seven years ago. He's not here today, he's probably playing golf somewhere having a good time, where we all should be, but you can't play through lightning, but McGarry has also been very helpful to me and ... and ... you know ... we did have a ... you know ... an uncooperative landlord at times and although they are nice people and sometimes uncooperative and we did try for a year to get this application signed. And we chose to go around and finally caught up with them and ... you know ... not for the lack of effort. We wanted to get it done as soon as possible, but ... you know ... we ran into some snags in that area so. I'll answer any questions you may have.

Mr. Mucher said Tim, I remember this coming before in front of the Board before, but I don't remember the content of it.

It was stated it probably was the dumpster.

Mr. McGarry said the infamous dumpster.

Mr. Mucher said, but I mean you mentioned the North Room and the outdoor dining as well as I recall. Again, this was before your time, but, and my memory isn't what it should be, but in cases like this it would be nice to have previous minutes I think.

Mr. Hart said I recall that and I don't recall exactly what the conversation was either. It may have been just from my initial patio I ... you know ... I ...

Mr. McGarry said well there was a ... you did get something ... initial patio.

Mr. Hart said it may have been about the dumpster when we were talking about the dumpster and having efficiencies on my existing patio. That could have been the conversation when we were talking about the North Room. Because ...

Mr. Mucher said .... the dumpster is separate.... It was fun.

Mr. Hart said it is ... in our world ... yeah that was fun. Seven years of a fight that I had .... that dumpster .... Yeah, I enjoyed that.

Mrs. Minuse said several years ago, it may be too, we were looking at site plans for the Holiday Inn. Is this being impacted any way with it?

Mr. McGarry said oh you mean when we were doing the overlay district?

Mrs. Minuse said yeah.

Mr. McGarry said I get calls every now and then, but they haven't made any decision and I think that Mulligan's has a long term lease so ...

Mr. Hart said we're not going anywhere.

Mrs. Minuse said okay. I was just curious if we were doing this what is it going to impact in the future ... you know ... to the Holiday Inn.

Mr. McGarry said well, I mean they've got ... the Holiday Inn is giving him the authorization ...

Mrs. Minuse said yeah ...

Mr. McGarry said and so ... you know ... that's a business decision.

Mrs. Minuse said sure.

Mr. Mucher said I was going to say we know how to find your attorney .... been here an awful lot.

Mr. Hart said yeah, well. The owners are hard to find. The attorneys are easy to find.

Mr. Lauffer asked are there any additional questions.

Mr. Cahoy said I have a question.

Mr. Lauffer said sure.

Mr. Cahoy said recognizing that 25 to 30 of the chairs, Adirondack chairs, are movable ...

Mr. Hart said yes.

Mr. Cahoy said and removable ... Are there permanent improvements on that property now? Number one, such as the tiki hut and flooring? Number two, how long have those improvements been in place? And number three, were they properly permitted at the time?

Mr. Hart said the tiki huts ... well we had existing tables out there.

Mr. Cahoy asked are they removable.

Mr. Hart answered yes. He said those tiki tables are removable too. They're not ... they're not permanent structures.

Mr. Cahoy said so there's no permanent structures?

Mr. Hart answered no, no I can move anything that is out there. If there was a hurricane coming we would take those tiki huts and put them inside. It wouldn't be easy, but we would do it. They're pretty heavy, but they're not nailed into the ground no.

Mr. Lauffer asked are there any additional questions of the applicant? Thank you.

Mr. Hart said my pleasure.

Mr. Lauffer asked how many members of the public would like to speak? We have one, two, three, four ... please come forward. One at a time ... that's fine also, yes. Have you both been sworn in?

Ms. Conley answered yes, we have.

Mr. Lauffer said okay. Please state your name and address if you would.

Ms. Conley said I'm Lori Conley and I reside at 3010 Nassau Drive, Vero Beach.

Mr. Hickman said, yes, Trey Hickman, 830 River Trail, Vero Beach.

Ms. Conley said we are here to speak on behalf of our parents, Dee Dee Ashby and Jim Higdon, who couldn't be here today. My dad's on a buying trip and my mom is up in North Carolina for the summer. But, our parents own the Petite Shop in Sexton Plaza along with the building where Dee Dee's Shoe Salon is. My grandparents built the building in 1952 and it has been around for almost 62 years now. So, we've seen a lot of changes and one of our biggest issues is the parking problem. And we don't have a problem at all with what Mulligan's is trying to do. I ... you know ... I think it's great ... you know ... it's a nice beachy atmosphere. It is a problem with parking. I have counted the amount of spaces, I mean the number of seating outside and it is closer to 120. Um, and I haven't counted what's inside. Now I know you base your parking spaces on your square footage, which to me it doesn't make sense because if you're talking about seating for 300 people, if you count the inside and the outside, tell me ... please tell me where all those people are suppose to park in Sexton Plaza. If there allocated a certain amount of parking spaces, which I have looked at this

and I'm assuming they are, why are the store owners not allocated a certain amount of parking spaces? On a weekend or during season, you will not find parking in Sexton Plaza or on Ocean Drive. I'm on the beach pretty much every single day and there are no parking officers on the weekends so people are coming and parking in front of my parents' stores and staying at the beach the entire day. My parents' clientele is an older clientele. They are not going to park four blocks down the road in order to shop at my parents' store. And I have heard numerous times ... and I will also tell you that I was the Oceanside Business Association Event Coordinator for almost four years. Dick Cahoy and I worked a long time ... a while together in trying to revive the Downtown ... a ... the beachside area. I'm ... I probably know almost every store owner and every restaurant owner on the beach. I'm in and out of the stores and I hear the exact same complaint. The customers are circling Ocean Drive and even going down Cardinal to try to park and they're not getting parking and therefore they are not coming into our stores and it's a real real problem. And like I said, I don't have a problem with what Mulligan's is trying to do. I do have a problem with the parking that it's going to take for that restaurant and when we were sent this letter to the property owners, because my parents own the building, it did say that they're conducting a public hearing to allow the proposed addition (please see attached letter). So, as a store owner of course we are concerned that they are going to expand further. That is why we are here. We didn't know that this had already happened. In our mind ... and I took this letter around to let other store owners see it because everybody is having the same problem with parking. We thought they were putting an additional 100 seats or 75 to 100 seats already out there.

Mr. Lauffer said and that's not the case, correct Tim?

Mr. McGarry said no.

Mr. Lauffer said that's not correct.

Ms. Conley said but this ... and I will read it to you. It says, "in accordance with Ordinance number 2008 – 06 you are hereby advised that the City Council of Vero Beach Planning Zoning Board will conduct a public hearing on an application to allow the proposed addition of a 3,280 square foot outdoor dining area including seven paver areas with tiki huts, tables, and numerous Adirondack chairs at 1025 Beachland Boulevard." To me, does that not sound like they're wanting to add an additional ...

Mr. McGarry said no and I apologize, but if you read the staff report it says .... and .... should have written it that way, but the problem is they didn't have a ... I don't have authority to give that outdoor and that's why we say proposed. But, you're correct ... I mean ...

Ms. Conley said but ...

Mr. McGarry said yeah ...

Ms. Conley said but that's why ... I knew ... I mean I go to Mulligan's and I knew that they just added those tiki huts and a lot more Adirondack chairs and like I said, I don't have a problem but when you get this letter, you're thinking okay, now they're going to add another hundred spots so they're taking more parking away from the lack of parking that we already have. So, as a very concerned person, on behalf of my parents, my dad is 75 years old, my mom is pretty much retired. They ... we are going to be the next generation, okay. What is to stop us from opening a big

restaurant on that corner? Are we going to be allocated the amount ... and on the back here it says that "between the hotel and the restaurant they are allowed a total of allocation of 99 parking spaces?" Is this in Sexton Plaza?

Mr. McGarry said no, when we say the allocation, that includes their parking on site. That's how much parking they are required to have, which is 95 I believe in the thing. So, the public parking ... they don't get credit for that. There's no allocation that if you have a business there and you have front entrance parking you get credited for whatever is right in front of your store. Okay? But you don't have to meet off site ... or on site.

Mr. Hickman asked why can't there be seven, eight, ten spots for the retail shops on the beach.

Mr. McGarry said well there ...

Mr. Hickman said this is what's going to happen honestly. Here's a picture Saturday (pictures attached). This is a picture. I drove down there Saturday. There was not one spot ... If you were to go in and try to buy a handbag, forget it.

Mr. McGarry said well ...

Mr. Hickman said wait a minute. Where are you going to park? Here's pictures.

Ms. Conley said and Ocean Drive is the exact same way.

Mr. Hickman said here's pictures. There's not one spot for the merchants. What's going to happen is all the retail stores are going to close down? There's nowhere for them to park. Hey, I'm all about restaurants and more people coming to this town, but you got to take care of the merchants too.

Mr. Mucher said Mr. Chairman if I may make a comment. First of all I think the City owes you an apology and Tim apologized for the confusing nature of the letter and and perhaps bringing you down here unnecessarily, but you do get to vent about the parking. I think that the terms we use for parking and I don't know whether we use this term or not, but the parking is not dedicated to Mulligan's anymore than it is dedicated to a shop or to the beach. I think your real problem is going to be if Sexton becomes a guarded beach. But ...

Ms. Conley asked ...

Mr. Mucher asked what? I'm sorry?

Mr. Mucher said if Sexton Plaza becomes a guarded beach, that will be another issue for parking. But, ... you know ... I ... do you have any objections giving that we are going to maintain the status quo here today. Nothing is going to change.

Ms. Conley said I'm sorry. I mean as far as adding?

Mr. Mucher said we're not adding anything here. We're not subtracting. We're ... we're not doing anything with parking. We're just I guess blessing it as status quo.

Ms. Conley said we do not have an objection with Mulligan's adding the additional spots. We do have a problem with them taking spots away from us. And ... because ... they're have ... they're having ... I mean ... like I said, I go to Mulligan's. I don't know if you all do, but it is always crowded and the fact that you're saying based ... it's based on square footage, I don't understand that. It should be based on how many seats and I'm assuming it's close to 300 or more. Now a lot of them is ... are foot traffic, but there are a lot that ... you know ... are parking at Sexton Plaza. I mean Ocean Grill has their own parking lot.

Mr. Mucher said right.

Ms. Conley said so ...

Mr. Mucher said but you should understand that those parking spots in front of you and in front of them and in the middle are first come first serve and none dedicated to Mulligan's as I understand and there is none dedicated to you. If we require Mulligan's to somehow create parking .... we'd have to do the same for you. What if we said you needed five parking spaces or something?

Ms. Conley said that would be great.

Mr. Hickman asked can we do a valet service?

Mr. McGarry said .... valet service .... The comments you bring up are good comments and we need to get the business owners ... the City will work with you to come up with solutions because there has to be some solutions to this and I agree with Mr. Mucher if we go to a guarded beach ... believe it or not, I agree with you ... I think there's going to be more people and I think part of it is enforcement on this, but it takes money and we need to have ... you know... the business community working with us to do that. We want to ... we want to help that ... I think obviously last season hopefully was good for your retail stores and ...

Ms. Conley said it actually wasn't as good.

Mr. McGarry said, oh okay. Well then ...

Ms. Conley said a lot of them are staying in the hotel and they're parking on Ocean Drive and I know some of them don't want to pay for valet parking so therefore they're taking spots on Ocean Drive. I think the restaurants and the hotels had a very good season.

Mr. McGarry said okay.

Ms. Conley said but I don't know how well the retail was.

Mr. McGarry said okay. Well we would ... we would really enjoy ... we would like to work with you on those kind of solutions. Okay? Because ... you know ... I appreciate ... and again I want to sincerely apologize for any misunderstanding I created.

Mr. Mucher said it's safe to say that the parking is a separate issue.

Mr. McGarry said it is.

Mrs. Peggy Lyon, Assistant City Attorney, asked can we keep those pictures that you showed for the Clerk's records? If you don't mind.

Mr. Hickman said this is a Saturday, off season so ...

Mrs. Lyon said that's okay.

Mrs. Penny Chandler said good afternoon. My name is Penny Chandler and I'm with the Indian River County Chamber of Commerce. We represent dozens and dozens of businesses on Ocean Drive and in that district and we too have been concerned, I'll just reiterate what Lori and Trey said about the parking issues. In the next week we will be holding a meeting and have invited people from that area to come and join us in looking at solutions, which we will then bring forth to City Planning, to the City Manager and will bring it to you as well. But, I think that we have to do something about the issues that are at hand because it is ... it is hurting businesses. We are all also about ... you know ... promoting the businesses making sure that we have a viable tourism business in an industry and offseason as well. But when you can't get a parking place ... it ... it's a detriment to the area so we want to work with the businesses to be able to come up with something and we will come back with some possible solutions. Thanks.

Mr. Lauffer asked if there were any questions for Penny? The next person to speak was Bobby McCarthy and he asked sir, have you been sworn in?

Mr. Bobby McCarthy said hello folks, my name is Bobby McCarthy.

Mr. Lauffer said okay.

Mr. McCarthy said I own Bobby's Restaurant and the Reef Ocean Resort. Obviously I have been here a long time, 33 years. When I opened up Bobby's Restaurant there was certain requirements and I don't know if it was contingent on square footage, signage, but I had to have 40 parking spaces dedicated on the property at the Reef Ocean Resort. That was 33 years ago and things have changed. The landscape at Ocean Drive and Cardinal Drive area has changed dramatically as you all know. That was in 1970, you've got a ... you got new buildings, you got both retail and professional use, larger hotel facilities. The main concern for the beach is parking. Whether it be beach parking or people coming to shop or go to restaurants. I'm not ... I'm .... Getting up here and talking about parking. Nothing against Mulligan's, nothing against any other place. I'm trying to come up with an answer. Employee parking, that's a problem. Now, fortunately my employees park across the street behind Cooper and Company, so it allows ... opens up parking on my property. When I watch and I'm going to use as an example, the Vero Beach Hotel. There parking for the rooms available. They have two restaurants on site plus a banquet facility plus a day spa. No parking on the property. No employee parking. They are all parking out in the street. From the Spires all the way down to .... I can come to work at 9:00 in the morning and have full parking and yet they're out there. At 9:00 in the morning. Whether it's somebody going in the catering facility or the day spa and I don't know how this got approved. I mean that hotel, it's twice the size it was when the Picket was there back in the 80's and they did have parking available plus there were no restaurants in the Picket Hotel. Now you have two major restaurants and a catering facility with no parking, no employee parking. It's ... and then they keep the parking open for valet parking. They'll have about 25 spots for valet. Fortunately, the businesses across the street, most of them stock broker or legal offices, they're

allowing parking there. Probably because after five-o'clock no one is paying attention. But, what happens is they come and put chains on those parking lots for liability reasons or whatever. That's more parking that is going to be less available. I know Norris does it right now because on the weekends their parking lot is full and he can't ... you're taking a client out to look at property and you come back you got to walk four blocks to the office and I sympathize with him. That's the way it is. The Holiday Inn put chains up because it probably has more and more beach people parking there. And the parking is brutal. You just saw pictures. Here it is the middle of August, the middle of August and the parking areas are full. It's great the town's vibrant, there's a lot going on, people are spending money, a lot of them are going to the beach. It's a whole different time than what it was in 1980. And remember, we on the beach we are paying premium rents too. We are paying taxes and premium rents. I talked to Melinda, who owns Cooper and Company and just what Lori said, her business is off. She's got a little bit older clientele. They're not going to walk three blocks. If they can't pull right in ... maybe come back tomorrow, maybe they won't come back at all. I've got Paul from the Lemon Tree over there and he's got employees from Waldo's parking in front of his building. And we have a Meter Maid. One day we do and the next day we don't. He comes every two hours, every three hours and I watch people shuttle their cars around. He just marks their tire. And I watch it every day. I mean it's kind of a joke. But like I said, he's got to cover a lot of area, one guy. Especially on weekends when the beaches are crowded they'll park right up to Cardinal Drive. I mean ... and here it is the middle of August. You know, what is it like in the season? It just is going out of control. Now, I've owned restaurants in Nantucket and I've had restaurants out in the Hamptons. You talk about parking problems. It is just totally out of control. What they're doing in Nantucket they actually put a bus system in on the Island, basically to take employees to and from work. There is not parking downtown whatsoever, zero. You got the Hamptons on Long Island, they park at the peripheral towns, whether it be a school that is closed, or South Hampton College that is closed, they make a deal with these people. Now here in Vero Beach, as you may know, I've never approached these fellows, but you got the parking garage behind Tom's building. During the day the ground floor is full. The top two floors is basically empty and at night, at 5:00 the whole thing is empty. Why not make a deal with these people to initiate employee parking? I don't know what they would entail, I have no idea. You also have Northern Trust Bank. That parking lot ... I was just there ... empty all day long and at 5:00 empty. You got Beachland School, after school, empty. Riverside Park, dedicate an area there and run a shuttle. Not every hour, every 10 minutes. Figure out from the shop owners and the restaurant owners what the best schedule is and shuttle people back and forth. You know you're not going to walk from Riverside, but the parking garage behind Tom's building that is within walking distance. I mean it happens ... like I said, Nantucket, the Hamptons, anywhere in Cape Cod, they're not parking downtown. You're parking and you're walking. Like Penny, she's from Minneapolis. That's the same problem there. But they got the flexibility to use the Naval Academy and walk. So, it's basically your using areas that lay vacant and obviously it's private property most of the time. Or, how about behind the baseball field over there on Indian River Drive. I know it's part of the dog park. I think it's enough area there that we could dedicate for parking. Employee parking. I'm not talking about the tourists. Any ... you can take a small restaurant ... I mean a business like Nancy's, the Twig. She's probably got six employees working all day long. Where are they parking? Even a store with two employees, that's two more parking spaces. It's just ... I mean, an area that is really struggling is Delray Beach. Now all of a sudden that's the hot place to live, I mean 30 years ago it was a dump. Now, the yuppies are living there, they got restaurants, they got shops and parking is an absolute nightmare down there. I talk to people that live there. It's not a landmark situation here. I mean the tourist area, the small condensed area, it's kind of ... you know, a problem. Now, a year ago I met with Penny knowing she can't make decisions, but she can be the ... between business owners and you

folks to come up with some type of ideas, some type of theory and ... I'm not saying run ... what you do is run it from November first to May first, the height of the season. I'm not saying make a year around deal that is. But sit down and organize the bus route or the shuttle route, whatever you want to call it to conform to restaurant hours, business hours, retail hours. You know it's ... I think it can be done. I was going to ... I was going to ... I talked to ... about valet parking. He's got the building where Lee's Jewelers is. Once again they go issues and they want liability insurance at six or seven thousand dollars and you got to man the thing so it gets a little spending. I think that you the Council ... give it some thought ... approach people like Northern Trust Bank. Approach the School District that parking lays all summer. Dedicate an area at Riverside Park. I mean with the exception of Art Under the Trees or Under the Oaks, I mean the rest of the winter there's not much going on there. The boat show is in October. So we work around that. I just think the parking on the beach is not going to get any better. I mean it's at a point now where, you know, it's not going to go away next year. And like ... showing pictures here in the middle of August and there's no parking. It's a nightmare and I watch employees from the Vero Beach Hotel they go out and park their cars and move them every two hours. I see the same eight ten or twelve cars out there every day. And like you said, I'm not blaming the Meter Maid, but he was very insignificant this past season. I mean you see him one day and you wouldn't see him again. So it's a juggling act out there. But it's ... and if they have a wedding at the hotel, guess where their parked? Up and down the street. And I'm surprised there hasn't been a problem at the Spires because I know the dedicated area in front of the building they made an agreement with the City years ago because there's not enough parking on their property. If you own a condo in the Spires, you get assigned one spot, but if you make a deal with the City to use those street ... those spots right adjacent to their property. But, now I watch people parking while their working in the area so I'm surprised the Spires hasn't really made a bone of contention to that effect. But, basically the parking isn't going to get any better. It's going to ... it's just going to get progressively worse. I mean ... it's ... a ... I don't know if putting meters in makes a difference, if that ... you know ... and so you get a ticket, what's it a five dollar ticket for parking? I'll park all day for five dollars. You know, you go down to Palm Beach ... the hotel, they will valet down there and you have access behind those restaurants on North Avenue at night. Now, during the day it's a whole different animal. But I think this is something that got to be thought about because it's not going away next year. It's only going to get worse. I mean it's a ... there's got to be an answer and I really think it's the employee situation more than anything. I mean you can't ask ... tourists ... there are people shopping ... it is what it is, but I think employee parking is you know of utmost importance. So, if you want to give it some thought and I think Penny's got something planned next week I think, the 13<sup>th</sup>.

Mr. Lauffer said before you leave the podium can I ask you a couple questions?

Mr. McCarthy answered sure.

Mr. Lauffer continued stating maybe the Board has some other questions. ... Number one is, you ... today the main thing ... the thrust of our meeting today is to talk about Mulligan's.

Mr. McCarthy said yeah.

Mr. Lauffer asked do you have any particular opinion on Mulligan's?

Mr. McCarthy said no I don't. It's just I don't know when they changed the rule I guess in 1981 I had to show 40 parking spots on my property and that was a long time ago. I mean there's probably

a handful of businesses still around since 1981 on the beach. Things change, I mean I never had a problem because it didn't reflect to me, but back then it was the way it was.

Mr. Lauffer said I would walk two blocks to get to your place by the way.

Mr. McCarthy said I wish a lot of people would. But, it's also the thing, I got a little bit of an older clientele too at night and there's walkers and canes. It looks like Lord Frances some nights, you know. But, it's a ... and a lot of times ... its, oh we pulled up and figured you were packed there's no parking and you walk in and there are eight tables because there's a function next door at the hotel. So that turns a lot of people off. So, what I'm saying is you pull up and you can't get a parking space ... a lot of my clientele ... they're not going to walk from down by the Spires. It's it's ...

Mr. Lauffer said I don't know if our Board can really deal with this. I think it's going to be the merchants and the City and a Board that has more particular authority than we do to ... We know that ... one of the comments that I heard made here between you and Terry, I mean Trey and Lori was that the outside ... the square footage is the way it is done. It may not be the greatest way to figure out the parking spaces, etcetera that is there, but that is the way it is today and until we change that we must abide by those. If you meet that criteria, which is that there is no law that we have today on the books, okay, in the City, but that's the way we have to approve it. Otherwise, the Mulligan's have the right to do it if they meet the criteria. No matter what I think or feel if its specific that they met the criteria then I have to vote for it.

Mr. McCarthy said so there's no requirement for parking on property. I mean, I'm going to use the hotel as an example.

Mr. McGarry said but they are ... part of their parking is on that Holiday Inn site that was calculated in there.

Mr. McCarthy said I'm talking about the Vero Beach Inn next door to me. I'm not talking

Mr. McGarry said oh yeah, well I ...

Mr. McCarthy said yeah, that's a nightmare.

Mr. McGarry said I understand ...

Mr. McCarthy said like I said, two restaurants and a banquet facility and a day spa and they're trying to put in a tiki bar outside with more.

Mr. McGarry said well they haven't gone anywhere with the tiki bar yet.

Mr. McCarthy said once again, how are you going to put another amenity on the property with no parking and they're promoting the public to come there and they run adds every week and you see them park it's like an entourage every Friday night heading over there.

Mr. Lauffer said I don't have a commercial venture on the beach and what I do see there the more things that you want to have on the beach I'm in favor of because it sparks and fills the community

with synergy, okay? But on the other hand, that synergy also causes problems to individuals out here on the beach and some impact more than others. So it's a balancing act and it's ...

Mr. McCarthy said yeah ... lose/lose, right.

Mr. Lauffer said its making a lose/lose situation.

Mr. McCarthy said ... retail ... you know ... I think all the restaurants flourish, but it's a different animal. Like I said, people aren't going to walk four blocks to go buy a pair of shoes or come back tomorrow. It's just I know enough of the shop owners there and they say we had a good season ... block buster. You hit a point of diminishing returns and you can only do so much business.

Mr. Lauffer said I'm hoping some of that is that if I was buying shoes I would be buying during the day and not in my dinner hour or on my lunch hour ... there may be some variable there to ... effect ... and we also have the possibility of a church coming to town and their offset hours may be ... you know sometimes you can work those things out. But, I think some of the things you mentioned in particular with the parking that is available is not being utilized effectively. I think that's going to take the different organizations to pull together to find some solutions and what you said in other places where I come from, those were possible answers. But, I don't know that we have any facts yet to say how many people are really parking there that are employees of businesses on the beach and I think it would be nice to really have some data that you could sink your teeth into.

Mr. McCarthy said and like I said, in talking to Penny last year and you've got to basically come up with a formula. Because ... restaurants are probably the biggest employers on the beach. Hotels and restaurants. And I know myself I'm fortunate to use the property across the street where Melinda Cooper's store is and the landlord is an absentee and if he comes back and says I don't want all these cars out here, put a chain across it. There you go and I'm talking about, you know about ten twelve cars a shift, give or take. That frees up more parking on my property and I'm surprised that there hasn't been, you know, some type of problem, you know, I haven't heard it, there might be, but it's very difficult. It is.

Mr. Lauffer asked any additional questions from the Board members?

Mr. Mucher said yes. Bobby thank you for your comments. I do need to remind everybody this is kind of a little off our topic, but I applaud Penny's effort to put together a meeting of the Oceanside business people to come up with a solution. I think ... I believe ... I know we've discussed a shuttle to Riverside Park before. I guess my question to you at this point is whether or not an employee only shuttle would make a big enough dent in the problem and would ... and how could it be enforced? But that's maybe something that they can talk about ... or you could talk about...

Mr. McCarthy said I think it's up to the business owners to put their foot down. It's unfortunate, it's awkward, but it's the way it is. It's just the nature of the beast. And like I said I don't care if you're here, you're in Nantucket or you're in the Hamptons. It's ... you got to go with the rules.

Mr. Lauffer said you don't work there if you don't abide by the rules.

Mr. McCarthy said yeah, I mean it's only for ... you're talking November first to May first.

Mr. Mucher said, well their telling us we've got a problem today. You know, in June, July, and August.

Mr. McCarthy said and it's not like you're walking through a snow storm either. I mean ...

Mr. Mucher said yeah, but you are walking through a rain storm.

Mr. McCarthy said yeah, pretty decent. Like I said, Penny's going to get together with ... and I guess ... I use her as kind of the middle person because ... and she can't make the decision, but she could probably put a better program together than I might. I just give her some ideas and a ... here it is, we're in August. It would be nice if we could get something going before January first for next season.

Mr. Mucher said well I sure hope you come up with something and bring it back to the City ...

Mr. McCarthy said okay.

Mr. Mucher continued stating whether we're the right place or not ...

Mr. McCarthy said as long as you realize the problem is there and a ... it's got to be dealt with you know ...

Mr. Mucher said absolutely, thank you.

Mr. McCarthy said I know that ...

Mr. Mucher said thank you.

Mr. Lauffer said thank you.

Mr. McCarthy said thank you folks. I appreciate it. I appreciate your time.

Mrs. Minuse said thank you.

Mr. Farragan said I'm Jack Farragan and I'm Bobby's landlord and I want to end with one thing. We have no idea how much money it is costing us because of the parking problem and I whole heartedly would love to see Mulligan's do much better. But, I got to tell you something gentlemen, you got to fix this. We're spending money to keep places open for Bobby and for our own people. We have roughly 2,200 owners. You need to do something. I know it's not your problem, but guess what? You do have the ears of a lot of other people.

Mr. Lauffer said and no, it is our ... we live in the City here. We're all members of the City and we want it to be successful and prosperous. So, we have an interest in it. That's for sure.

Mr. Farragan said well, most important you remember, it's costing us money. That's the important thing.

Mr. Lauffer said yes sir, have you been sworn in?

Mr. Lower said I have not.

Mr. Lauffer said okay, would you ...

The Deputy City Clerk swore in Mr. Lower.

Mr. Lauffer asked would you give us your name please?

Mr. Lower, said my name is Edward Stephen Lower and I reside at 1890 Tarpon Lane and I own the building that is just to the north of the Holiday Inn, 3402 Ocean Drive through 3426 Ocean Drive. I've owned that property since 1989 and I'm here in opposition of this ... already .... I ... my understanding is that the only ... the only reason that ... a ... this restaurant may be in compliance is because of all of the grandfathering that's been going on with the Holiday Inn since the very beginning and if that structure was built today it would have to have three times more parking than it has right now. So the grandfathering is what is causing your Planner to be able to say that this plan is feasible and can comply with the law. I don't ... I agree with everybody as far as the parking problem is concerned, but it also concerns me that a business owner would go out and put structures out on the dunes without coming before this Board and before the City to get approval. And ... I ... it seems like it's cheaper to pay the fines than it is to comply with the law and that bothers me a lot because I just did an expansion on my building. I had to come before this Board and the first question they had for me was how many parking spaces are you going to have to borrow from the City and I said zero. We're not going to have to borrow any because we meet the parking codes and I guess that's an unusual situation for you folks to hear because we actually are complying with the law. But, we did it the right way. We came before you and got permission and it bothers me that a business owner like this would assume that they could put a structure on the beach. They could put tiki huts and all kinds of other things on our dune line without getting permission from this body and from the City. Um, and I think what ... if there's any way that you can look at the ... what this building with the Holiday Inn and the restaurant would be required to have as far as parking is concerned if it was built today you're going to find out that the parking is willfully inadequate. Um, the Holiday Inn now has the north entrance blocked off on the weekends so that everybody has to come by the front door so they can monitor the parking. And the Holiday Inn has been a very good neighbor to me. I have no problems with the people over there. You know, we're in very close contact. We've got borders that are very close to each other. They have to come through my property in order to get to the back part to cut the lawn or to do maintenance or whatever and that's fine. We are all good neighbors, but this parking problem is a huge problem and allowing this addition to the restaurant is only going to exacerbate the problem. Its got to stop somewhere. Bobby was talking about the property to the north of him. I know that's not before you here today, but this is and this is your opportunity to stop the expansion of these businesses where they really can't afford to expand anymore. It would be like the Twig deciding that they were going to move all of their showcases out to the sidewalk and let people walk around ...their ... their clothes on the sidewalk. I mean, you wouldn't allow that. The Code Enforcement wouldn't allow it. If you go out there this afternoon, if it stops raining, there's going to be a bunch of people that have tents up on the sidewalk right in front of Mulligan's. I don't know what that's all about, but that's something that just sprouted up on Thursday nights a couple of weeks ago. We're going to be all the way out to the sidewalk. We're going to be on the middle of the street. We might as well close down Ocean Drive and have it a walking area because what is going to happen next is people are going to say, well Mulligan's was able to do it, why can't I do it? Why can't I move my business all the way out to the

sidewalk? Why can't I move it all the way out to the dunes? I think it's got to stop here. I'd be happy to answer any questions.

Mr. Lauffer said I have one question. When I read what has been given to me as far as their compliance with all the existing rules and regulations that the City has at this present time, they are compliant with every one of them. If you can give me one example of where they're not compliant I could possibly agree with you on it. But, I have asked that question and I read the documents and they're in compliance.

Mr. Lower said okay. What's going to stop them from moving the tiki hut a little bit further north and moving all this structure further north and moving it all the way down to my property line and having the entire front of the Holiday Inn as their little tiki bar? What's going to stop them?

Mr. Lauffer said what I think would stop them is if they did that they would be non-compliant with what we're bringing before us today.

Mr. Lower asked are they not compliant right now?

Mr. Lauffer said they are and ... but when you go back he is as a good neighbor ... when we talked about being good neighbors, I think what's happened there was just like the last one we just approved, there were things beyond people's control and this one went through a process where they were diligently trying to work with the City and the City was diligently trying to work with them and there was a lot of give and take there with the dumpsters and other things and ... It exists today, I think that's a negative. You are correct. I will totally agree with that. It shouldn't be there until it's approved, okay? The fact that they're ahead of the game ... but now that they are there and went through the process and all that they did with the complications that were reasonable complications ... this wasn't that they were dragging their feet, okay? And that's my understanding, now, not a fact, but my understanding that now they have brought us this document and they are in compliance and I don't have a reason that I can "not" vote for it.

Mr. Lower said okay, well then I would request that this body table this matter so that the business owners can hire their own experts and try to find out whether that document is correct. Whether there's a way that we can see whether that ... that document is proper. We haven't seen this documentation. All we got was a letter a week ago or so saying that ... and the letter was misleading saying that there was another 3,000 square feet that was going to be added to the already ... a beach area. That's the way I read it and I think that's the way some other people read it so I would request that giving the confusing nature of this notice that the business owners be given an opportunity to look at this documentation and see if it is in fact in compliance.

Mr. McGarry said that's part of the agenda package, which has been there for ...

Mrs. Minuse said yeah, let me just add something here. We're under obligations, as all of our professional staff, to follow established guidelines and they're legal guidelines. Back ... in our backup shows back in 1967 they provided for x number of parking spaces and that has held true ever since and that is what we're working with. That's what they have had. It's what they have used and it's the parameter that we're obligated to look at right now. I understand your concern. I have great sympathy, but ...

Mr. Lower said yeah, but was ... in 1967 were they on the beach? Did they ...

Mrs. Minuse said yeah.

Mr. Lower said they had ... actually had ...

Mrs. Minuse said oh yeah.

Mr. Lower said they had ... they actually had ... they had tables on the dune line?

Mrs. Minuse said oh no, no. No you see, that's a separate issue. What I'm saying is regarding the parking that they had established at the hotel, it's right, it's documented, what was required, what was provided and according to those same kinds of professional guidelines that we're obliged to follow ... they ... there is a requirement on parking and they're found to meet in.

Mr. Lower said and so they had access parking before they came before you?

Mrs. Minuse asked can you, can you just ...

Mr. McGarry said no. They basically got a special exception for parking. Back in ... that goes with the property, but let me ... let me point out and then they had some other changes that they provided parking on site and subsequent. Almost every business on that beach is vested and don't meet the parking requirements. Everything from Ocean Grill to ... you know ... what would not meet our current parking ... so it's a problem why everyone has to get together and work ... I agree with you ...

Mrs. Minuse said yeah, it's an issue, yeah.

Mr. McGarry said it's an issue that we need to work with.

Mr. Mucher asked Tim?

Mr. McGarry said yes.

Mr. Mucher asked the letter you sent out you mentioned ... you sent out the letter and I don't see those because I ...

Mr. McGarry said it's the one ...

Mr. Mucher continued because I don't live within 500 feet of any of these fancy places.

Mr. McGarry said right, right.

Mr. Mucher said but there was something on the back talking about the parking and some additional information, but can I suggest if it's not done already, that the letter have a link to the backup material so that it's easy to find ... you know ... this package ...

Mr. McGarry said I don't have a ...

Mr. Mucher said if they want more detail ...

Mr. McGarry said I don't have a problem with doing that. It may delay some of the projects going forward because that means I have to have a full ...

Mr. Mucher said well, something available within a week.

Mr. McGarry continued stating the full report done, but what we could do is say within a week it will be available at this link and we could do that. But that's not a bad suggestion.

Mr. Mucher said but I don't know if that would help.

Mr. McGarry said but at least they would have ...

Mr. Mucher said ... but it will help.

Mr. McGarry said yeah right.

Mr. Minuse said back, when we were ...

Mr. Lauffer said we've got a lot more data than what you have and what they've done and what they've had to go through to get to this point in time and just as you said you had to do it before and all the rigmarole you went through probably with traffic studies, etc., they did all this.

Mr. Lower said yep, and I did it before I started construction. That's the difference.

Mr. Lauffer said we accept that part, I ...

Mrs. Minuse said this is not new. I mean how long ago with the Visioning Plan did we address this and there's been charettes and ...

Mr. McGarry said well and, yeah and I just want ... anytime anyone does expansion, even if they're vested to certain parking then that expansion has to meet whatever those requirements are so that's an incremental kind of thing and with outdoor dining being excluded from the parking requirements, like I said, it's a policy decision approved by the City Council and recommended by you several years ago, it does make a change on that. Previously they held a lot of these people ... restaurants and things wouldn't allow without going through a parking thing. In fact we had ... do have evidence parking out there that would never have been approved that way, but now that we've gone there we've kind of ... it's been many years ... we've let it go by.

Mr. Mucher said I believe George Hart testified that he thought he had the City's approval to do this.

Mr. McGarry said he had on and off again approval. I'm not going to argue. It's so complicated over there moving chairs around and there were a couple times they were doing some interim improvements and I allowed them to move the tables out there, but I ... It's immaterial really to now. What we're saying is if they came in and hadn't done anything I believe you could of approved what

they were going to do now, whether it was out there or not.

Mrs. Minuse said I'm glad, I'm just glad that there's a serious effort now to address the problem in the community.

Mr. Lauffer said come to the podium. Would you give us your name? Have you been sworn in?

Mr. Replogle (spelling may be incorrect) answered yes. My name is Joey Replogle. My family runs the Ocean Grill Restaurant. Mr. Tripson is also here in the back. He represents the Sexton family, who owns the property. Everything I've looked at has been ... I agree with it is very legal on paper. They're not doing anything wrong. However, in reality they claim that they have 92 spots that are part of the Holiday Inn that is supposed to be used for Mulligan's parking. Technically that's what they're claiming to have seats. I have a picture here with me today of a sign that says Holiday Inn guest parking only, all others will be towed (please see attached). They don't have any access to those 92 spots that are supposed to be for part of their business. So, what I don't understand is how can they can claim the 92 spots if Holiday Inn doesn't let anybody else park there but Holiday Inn people. It doesn't make --- it doesn't make any sense and I have a picture of it right here to show you. If this Board does want to pass this I think they should pass it on the contingency that that sign has to come down and they have to use the parking that they're claiming.

Mr. Mucher asked isn't it true that those 92 spots are for the combination of the Holiday Inn and the restaurant?

Mr. McGarry said they were approved originally from that. You might want to talk to the applicant about what kind of lease agreement they have with the landlord on the parking.

Mr. Lauffer said please don't speak from back there (referring to a gentleman in the audience), wait until the gentleman is completed.

Mr. McGarry said because I can't, okay.

Mr. Replogle said I mean, that was my biggest argument.

Mr. McGarry said okay.

Mr. Replogle said I have a lot of other points that I was going to make, however I feel like, you know, we've gotten off subject on some other people speaking. One other thing I do want to say, I understand that the 1967 parking exception grants them to have ... 90 ... they only need to require 95 spots and with the 92 that they supposedly have from the Holiday Inn they only needed another three more, which they get from the seven they have from the Sexton parking Plaza and that's fine. There's nothing illegal about that and my biggest concern is that they should have access to a minimum of 36 spots in that parking lot. If you look up under the Code under the 1967 limitation and exception they should be allowed access to at least 36 spots that they don't have access to.

Mr. Lauffer said I think that we have to ask the applicant that question okay?

Mr. Replogle asked would you guys like ...

Mr. Lauffer said yeah, sure. Anything that you have we'd like to see it please.

Mr. Replogle said okay. You know, that's my argument is if this sign is up and they're regularly enforcing not to let anybody use this parking, how is it part of their parking?

Mr. Lauffer said thank you.

Mr. Mucher said while he is coming up, Tim?

Mr. McGarry said pardon?

Mr. Mucher asked do these seven spots, are they dedicated to Mulligan's only or are they only getting credit for seven ...

Mr. McGarry said no, no they're just getting credit.

Mr. Mucher said okay, I just wanted to understand that.

Mr. Hart said if I could, we are part of the Holiday Inn property, so when it says guests of the Holiday Inn we're considered part of the Holiday Inn.

Mr. Lauffer said if I came to your restaurant then I would be a guest of Holiday Inn, as well as Mulligan's.

Mr. Hart said you could park there, yes.

Mr. Lauffer said I can park there.

Mr. Hart said yes. Number two, all of our staff parks in that lot all the way to the north side of the lot going east and west. If you go in their parking lot go to the end east and west, all of our staff parks there. So, we do utilize the parking lot for our employee parking. So, you know, we do share the lot. There's no question that we share the lot. What a sign reads, I mean, you can interpret it any way you want to interpret it, but you know, we are part of the Holiday Inn. We serve the Holiday Inn guests, we're part of the Holiday Inn, and our employees park in that lot.

Mr. Lauffer asked if I came to your restaurant and parked in that lot would my car legally, by your definition, could it be towed if I was enjoying my meal at your restaurant?

Mr. Hart said I don't believe so. I can't answer that. I'm not the Manager of the hotel, so I don't know what the Hotel Manager would do, but I can say that I don't believe that it would be towed.

Mr. Mucher said my question would be, how would the Holiday Inn or the towing company or whoever, how would they know whether the person who parked there was not a guest and did not register their car license plate at the front desk, how would they know whether they're at your place or at the beach or across at the Ocean Grill ...

Mr. Hart said well, they wouldn't. If I was staying at a room at the Holiday Inn you were my friend in Vero Beach and came to visit me, you certainly could park in that parking lot. So, I don't think

that they're policing that lot and towing cars and to the extent that ...

Mr. Mucher said probably not.

Mr. Hart said no and I will add that I would be glad to be involved with any kind of valet or shuttle service, financial, with my time, with my efforts. I have absolutely no problem participating in that with everybody on that beach. I have restaurants on several beaches and every beach has a parking problem. There is no beach that's a good place to go that doesn't have a parking problem. A lot of them have shuttles, a lot of them have buses, a lot of them have employee parking lots, I don't think we've addressed it in Vero Beach. I think that we should all get together as merchants and come up with a solution. A lot of the parking lots do have designated spots for stores. You know, they could take five spots and put signs in front of their stores designated for their store. I mean, these are things that happen in places where I have restaurants. Where they'll have a sign right in front of their store. These are their four parking spots, or their five parking spots. We can certainly get a shuttle and bring employees back and forth. You know, there's a lot of things we could do. I'd be glad to have a valet service in front of Mulligan's if they have a place to put the cars I'd be glad financially to take that burden on and have a valet service. So there are ... we need to get together as a group and come up with a plan, but I'm certainly willing to lead that charge and to participate and try to make things better for all of us. The more parking spots, the better for everybody and the more employees we can get out of those parking lots and those parking spots the better for everybody. So, anything I can do to help I certainly will.

Mr. Lauffer said I have one piece of information I'd like to give to our Board members and this is a fact because it's my wife. She uses one of the places, whether she gets her hair done, her nails, I'm not sure which in that building and because now and then could not find a place to park she has a sticker that they give her that she can park in the Holiday Inn parking lot that has an emblem on it that she won't get in trouble.

Mr. Hart said a lot of the cities do as well have parking for the people ...

Mr. Lauffer said so there are many businesses ... my point being the businesses in that ... in at least this one case, has the ability to find a place for her to park.

Mr. Hart said there's a lot of different options on how to overcome parking. You're never going to overcome it completely. If you want to be a popular beach and have popular hotels and popular restaurants and shops it's going to be crowded, thank God it's crowded for all of us. But, there are certainly ways that we can get a lot of those cars out of there. We just need to get together and discuss it. Thank you.

Mr. Cahoy said I have a question for you sir.

Mr. Hart said yes.

Mr. Cahoy said earlier you had mentioned that your banquet room was not open to the public when your beach chairs and dining room are open.

Mr. Hart said correct.

Mr. Cahoy said okay.

Mr. Hart said we have two different banquet rooms, yes. But, neither one of them are open when the outside is open.

Mr. Cahoy said okay.

Mr. Hart said yes.

Mr. Cahoy said you also said that you had approximately 70 seats in your banquet rooms that would be closed off when you used the 70 seats out on the back patio.

Mr. Hart said yes.

Mr. Cahoy said okay. Would you be willing to stipulate that as a condition?

Mr. Hart said well ...

Mr. Cahoy continued stating number one and number two, would you be willing to stipulate no more than 70 seats beachside.

Mr. Hart said number one, yes I would be willing to stipulate that and number two, we're approving 70 additional seats. We already have a patio that's been approved twelve years ago that's outside seating. These are additional seats in the 3,200 square feet which we're discussing. This is not the initial patio that I've already been allowed since day one, which had the nice smell of my dumpster there for the first seven years I was there. So, that seating was already there. But yes, my kitchen cannot handle that kind of capacity. If we're full outside and we're full in our main dining room, and we're full in our bar we don't want any more tables because ...

Mr. Cahoy said so you're expanding ... you're suggesting expanding the outdoor dining to a total of 100 seats, 70 plus the 30 patio ...

Mr. Hart said plus the 40 or 45 ...yeah ... about 115 ...

Mr. Cahoy said okay, 110 seats.

Mr. Hart said yeah, yeah, yeah, which it's been that way for, you know, five or six years now but, we're really not ...

Mr. Cahoy said but you, but earlier there was testimony that there had been 200 or 300 chairs and seats on that back lawn ...

Mr. Hart said no ... no ... no. We're no more than the total seating of no more than 220 inside and out and that doesn't include the Holiday Inn's big banquet room that seats 90 people that most of the time are used for auctions or small meetings. Um, but that really ... that's a Holiday Inn ... that's a Holiday Inn room. I don't have ... according to my lease I don't have any use of that room so. I provide food for it once in a while, but for the most part they use it for auctions and meetings.

Mr. Cahoy said thank you.

Mr. Hart said but yes, we're no more than 220 seats. We're not 300 seats. Thank you.

Mr. Lauffer asked do you have another comment sir?

Mr. Replogle said yeah, I would like to add that about the sign, when we have our own parking at the restaurant and we have to pay a fulltime attendant to explain to people you are welcome to park here and he makes sure they park there and they walk into our restaurant. Nobody knows that they can use the Holiday Inn parking, if they actually can. I've never heard of anybody actually parking in the Holiday Inn and then going to Mulligan's that wasn't staying there. I mean, the gentleman here, the owner, said he wasn't sure. He said he didn't think they would be towed. Mr. Replogle said that's not really a definite answer. In my opinion if you guys are going to pass this, the sign should be up that says Mulligan's and Holiday Inn parking. I mean, it's just not very clear and I'm not sure that if I park there today and walked into the restaurant that I wouldn't get towed. There's just ... there's nothing there and everything else is roped off on the other side except there's only one way in ... there's a very clear marked sign that say's Holiday Inn only. Now, I'm happy to leave the pictures here ... I mean I had some other points to make but that's the basic argument that I would really like to leave with you.

Mr. Lauffer asked Peggy, can you shed any light on what we're hearing right now?

Mrs. Peggy Lyon, Assistant City Attorney, said you mean in terms of the clarity of the sign?

Mr. Lauffer said yeah. Because part of their total acceptances the fact that that was in the initial count.

Mrs. Lyon asked Tim, is there something in your backup that says that there is no deficiency with parking?

Mr. McGarry said no, there's no deficiency but I mean the gentleman has a ... it is an argument. The question is and I haven't ... I'd have to look at the special exception and all that but I mean basically they meet the requirements. But again, remember parking requirements not only that he's been vested for how many years, but it doesn't take into account how successful restaurants are or anything else. I mean, it's the average so ... I mean ...

Mr. Replogle said yeah, they have the right amount of spots.

Mr. McGarry said I mean they have the right amount of spots so ...

Mr. Replogle said so I don't know how we ...

Mrs. Lyon said and also remember that the Holiday Inn attorney is not here.

Mr. McGarry said right.

Mrs. Lyon continued saying he is the landlord, not Mulligan's.

Mr. Mucher said I'll defer to the Attorney and the Planning Director but I don't believe that this Board has anything to say about ... you may be towed signs on anybody's property.

Mrs. Lyon said that would need to be addressed with the owner of the Holiday Inn.

Mr. Lauffer said I think that's an enforcement issue possible ... I know it's not a Board issue. I can't interpret that, you see what I'm saying? I can ... I have to interpret the documents and ...

Mr. Replogle said I understand.

Mr. Lauffer continued stating you brought a point that I think you raised a very good valid point, but I don't ... I can't do anything with it right now.

Mr. Replogle said well, that's what I was here to do, to raise the concern and the point that I don't think very many people or very many patrons of Mulligan's are having access to this parking that they're suppose to have access to.

Mr. Lauffer said I know when I attend ... when I go to your restaurant I park in your lot ...

Mr. Replogle said correct.

Mr. Lauffer continued stating it's so easy, it's wonderful. When I go to Mulligan's, which we do more for lunches and things like that ...

Mr. Replogle said sure.

Mr. Lauffer continued stating then I find a spot. I don't ... I'll usually ... some days you have to go around twice, but I'll get a spot so ...

Mr. Replogle said right.

Mrs. Lyon said perhaps this is something that Mrs. Chandler, when she convenes the group together include the Holiday Inn representative and discuss this as a possible issue and a possible solution.

Mr. Replogle said okay. Well, do you guys want me to leave the picture here or who do I leave them with?

Mrs. Lyon said that would be ... that would be great if you could just leave them with our Clerk.

Mr. Lauffer said with the Clerk.

Mr. McGarry said with the Clerk or you could just ... yeah that will be fine.

Mr. Cahoy said I have a question about this ... this sign for the City. That sign, and there are a lot of them around town, a lot of condominium projects parking lots have these towing signs and at face value you have to assume that they are in compliance with either local and/or State law that says if you violate the terms of that sign you can be towed and I look at that as a deterrent to park there unless you are a guest of the Holiday Inn and that sign doesn't say anything about Mulligan's.

Mr. Lauffer said but if I'm on the ... if I'm on the Holiday Inn property and I'm purchasing a meal I would assume ... I would assume that if ... it's like if you went into their dining hall, am I a guest for using their restroom? Am I a guest? I mean there's a lot of ways I'm a guest of Holiday Inn. If I'm going to the hairdresser, I think it's a hairdresser she goes to there, you know, she ... they just gave her the ... so that nobody would question her, okay? Because she did get questioned one day parking there and she just said where she just came from and they said okay no problem. So, they gave her a sticker after that. So I know that you can ... because there's a number of retail places right along there, not just Mulligan's, that are part of the hotel and I don't know how to validate that. Can any of those use their parking lot? I think so. At least my wife can.

Mr. Cahoy said the point is Mr. Chairman that it's a question and who's to say that the hair salon isn't a part of the Holiday Inn? It's a tenant the same as Mulligan's.

Mr. McGarry said no, it's an accessory to the Holiday Inn. All of that was approved. It was a part of that.

Mr. Cahoy said right. So, guests of the hair salon may or may not feel free to park in that lot because of that restrictive sign and I think that sign does have some influence on today's hearing. I think it does throw into question available parking places.

Mr. Mucher said I'm not sure that those signs are legally enforceable except by the property owner and ... if somebody parks on my front lawn I can ...

Mr. Cahoy said well that's true.

Mr. Mucher said I'm pretty confident I could have them towed with or without a sign. But, I don't think there's a whole lot of towing going on like someone said and the ... um ... you know, unless, you know, they were a chronic offender and they followed them down the street to somewhere completely off of the Holiday Inn property I ... you know ... when I eat at the Ocean Grill or Mulligan's I park in Sexton Plaza somewhere ...

Ms. Conley said I have kind of an answer to what you all are talking about. I did talk to a young lady the other day who works at the Holiday Inn and she works the front desk and if they are fifty-percent occupied they are not allowed to park in the parking lot. They have to park on the street.

Mr. Mucher asked the employees?

Ms. Conley said and I'm in and out of all these stores all the time. They are given a Holiday Inn sticker that goes on the front of their car. Now, they are parking in front of Sassy's and Kemps and they're taking their parking spots because they are not allowed to park in the parking lot if they are fifty-percent occupied. Now, all the hotels now, Costa d'Este, Driftwood, and the Holiday Inn all say for guests only – you will be towed. But, then they're telling staff to park on Ocean Drive and take away from the merchants. That is a fact and I know it because I've heard it from the Driftwood, they are doing it at the Driftwood and they're doing it at the Holiday Inn and I also know that the seating outside at Mulligan's is more than 75 because I've counted. It's 125. And now they're talking about adding another 70? Is that ...

Mr. Mucher said no they're not adding any more.

Ms. Conley said okay, well it is more than 75.

Mr. Lauffer said but that would be a Code Enforcement thing. If there's an issue there you should call Code Enforcement, I believe, and let them take a fact check and see what's happening. If there's ... if any problem you have in the City I think you ...

Mr. Mucher said Tim doesn't want you to call ...

Mr. McGarry said no, no, no.

Mr. Lauffer said you call the City and say that there's a violation.

Mr. McGarry said I mean, when you go by square footage and remember square footage includes the kitchen, all the other areas in the restaurant and you do that because trying to keep up with how many seats are out there would be an administrative nightmare under enforcement and that's why we do it that way. Now whether you want to ...

Mr. Lauffer said but, it's not a Board decision to check it. That's my point. It's not our Board to say. We're looking at this is what's proposed, this is what he should do. If there's something beyond that or different than that it's not this Board's decision I don't think.

Mr. Mucher said we're saying ...

Mr. McGarry said well, yeah.

Mr. Mucher continued stating we're going to permit you to have 100 and x number of seats and if he has 100 and x plus 20 then you're right. He's in violation.

Mr. McGarry said no, you're basically giving him the ability to put outdoor dining. You're not setting a limit unless you do that through a condition on it, that how many seats he can have out in that area.

Mr. Mucher said oh, all right.

Mr. Lauffer said but I don't think we have the right to do that.

Mr. McGarry said well, I mean ...

Mr. Lauffer asked can we limit it?

Mr. Mucher said and I think Penny heard your comment on ...

Mr. Lauffer asked how can you enforce it?

Mr. Mucher continued stating on, you know, employee parking policies and hopefully you can attend and hopefully she'll bring it up at the meeting as to how to solve some of those problems.

Mr. Lauffer asked Lori?

Mr. Mucher said there's not much we can do.

Mr. Lauffer asked Lori, do you want us to pass this or do you want me to reject this today/

Ms. Conley said well I just ... I feel like there's a lot more information that has been brought up. I was under the assumption when this meeting started that they were allowed to use the Holiday Inn parking lot. I think until we know for sure that they can use the Holiday Inn lot then I would say no.

Mr. Lauffer said okay. Thank you.

Ms. Conley said I mean, I don't have a problem if they can use the Holiday Inn parking lot. But it does say for Holiday Inn guests only and I know they are two completely separate landlords, I mean two separate businesses.

Mr. Mucher said right and from the practical standpoint you're not going to have Holiday Inn parking, Mulligan's parking, Rosie's Hair Salon, Joe's Insurance, and somebody's real estate ... you know, the signs can only be so big and I imagine they're not enforced anyway.

Ms. Conley said I'd just like to hear from the Holiday Inn that if I go to eat at Mulligan's that I'm allowed to park there.

Mr. Lauffer said thank you Lori.

Mr. McGarry said well, the problem ... the conundrum she brings up and I said it's a good issue ... this is outdoor dining that we don't even require parking for so if this issue came up ... this has been an issue ongoing since whenever this was approved that they ... whenever they put that sign out. So, I'm just telling you it ...

Mr. Lauffer said so there is no requirement outside ...

Mr. McGarry said I ... you know ... there's no requirement really for the outside ... for parking out there other than for those two or three extras ...

Mr. Lauffer said so if the Lemon Tree or Cravings or one of those ... we don't count that ...

Mr. McGarry said not if they put outside dining that is clearly not under a cover or something.

Mr. Mucher said in our Vision Plan, which has never been implemented, was very powerful in terms of a desire for outside dining.

Mr. McGarry said that's right, so ... I mean ...

Mr. Lauffer said okay, have you been sworn in?

Ms. Padget answered no.

Mr. Lauffer asked could you give us your name?

Ms. Padget said I'm Patty Padget.

Mr. Lauffer said okay.

Ms. Padget said I'm a store owner.

Mr. Lauffer said okay.

Ms. Padget said on Ocean Drive.

At this time, the Deputy City Clerk swore in Ms. Padget.

Ms. Padget asked with the extra seating outside that is there, have they been penalized? I mean are there penalties involved in doing something before you get a permit?

Mr. McGarry said they were fined \$50 bucks.

Ms. Padget said really.

Mr. McGarry said well no. They were willing to come into compliance and worked with us and we explained that they had a real prob ... there were issues with the landlord to get ... to be able to submit an application.

Ms. Padget said well they said that they were a part with the landlord and being a part of the Holiday Inn. Therefore, their parking was a part of the Holiday Inn in which I surmise probably is not the case.

Mr. McGarry said but again, as we're putting out, this ... the outdoor seating dining area doesn't require parking under our Code.

Ms. Padget said okay, it doesn't require parking but guess what it does require? How many employees is that going to bring into that arena to find more parking that there is none of? And I have an employee that works for me that worked for the Holiday Inn, who was told that nobody from Mulligan's was allowed to park on their premises. She worked for them for over a year and as Lori stated, that when it's fifty-percent occupancy that their employees may not park there. So, there's a problem here.

Mr. McGarry said well ...

Ms. Padget said a very very big problem.

Mr. McGarry said maam, I'm pointing out that the Code does not require parking for outdoor dining. The issues you bring up are germane issues from the standpoint of what's transpired in the past. I don't know how to rectify that ...

Ms. Padget said they're saying that they're allowed to park there. They're saying they're trying to make it feel good for us, that we have stores on Ocean Drive. It doesn't feel good by the way and you know, if the gentleman is kind enough to offer a service of trolleying his employees back and forth I think this whole thing should be tabled until he provides that for his employees, which will be quite a few employees to even implement going all over the beach serving drinks and food. I mean, he offered it. I think we ought to, you know, commend him and just say let's table this, vote on it at another time after he implements this and then deal with the parking problem at a later date. It's, you know, that's not what we're here about. We're here about a variance. If I expanded my business ... if I wanted to serve food out in front of my store? I can't even put a sign out in front of my store. If I put balloons out Code Enforcement comes to see me. Did ya'll know that?

Mr. Lauffer said yes.

Ms. Padget said that's pitiful.

Mr. Mucher said balloons yes, I believe the Oceanside Business Association turned down A Frame signs.

Ms. Padget asked do we have a balloon Policeman? She said we have a balloon Policeman. That's good. That Policeman ought to be checking cars parking overtime, all the time. He can be called the Balloon Policeman, I don't care. But, I think their variance should be tabled until they offer this as a service. He was willing to do it and I think you are responsible enough to see that is a problem and the fact that somebody can expand outside of ... in other words under air they can expand. Under roof you have to get a variance, you have to get permitting, you have to do all these things. That's something that sort of slipped behind the cracks and it is a problem. And I think Ocean Grill should just load up the beach. I think Chelsea's could get ... should get his parking lot out, get a band out there and have at it. Why not? I think Lemon Tree. He doesn't have enough tables. I think everybody ought to just have a free for all and do the same thing. Then, what are we going to deal with?

Mr. Mucher said from a practical standpoint, tabling this wouldn't help because it is an existing condition. But, and also I believe Mr. Hart testified that he has parking for his employees, so ...

Ms. Padget said he does not.

Mr. Mucher said he's shaking his head yes. He said the Holiday Inn gives him parking for his employees.

Ms. Padget said no because as we know we were just told by an attorney that isn't the case. We need to see it from the Holiday Inn ... we need their representative here or their legal team here to say, yes in fact they do have x amount of parking. We're taking his word for it. He's the one that's trying to get the variance. We're not and I think that's a valid point.

Mr. Lauffer said what I'm afraid the missing link might be here is that he doesn't have to do that. He has, by what we've done ... the research has been done by the application he's filed, he is in compliance with what we have to vote for and if I do otherwise there will be a legal suit to follow it up, I'm sure, to say because we've exceeded our abilities to do otherwise. And, whether I like it or not ... if you tell me you want to do something in your store and I don't like it or I think it's

impacting the neighborhood ... if you have the legal right to do it and we tell you can't you will find a way to make it ... to get your legal rights put to ... put out there. I'm not saying it very well I didn't plan this okay? But, my point is that I can't infringe upon your rights to do this. He has the right. Unless, there's something particular I asked for that one gentleman that was here and I can't find that yet.

Ms. Padget said I don't even know why he needs to get a variance. For fifty-bucks I'd just let that rip. Wouldn't you?

Mr. Lauffer said well, I think the ... if I'm correct, what he did ... he pled guilty to that, paid the small fine, but then agreed in that guilty plea to do just what he's done and he subsequently did that item for item for item until we come to this point where he is not complied because if he didn't agree to do that then there would be fines over fines over fines so it would keep adding up to accumulative amount, which become prohibitive after that. So, he didn't go into that category. He did this to the best of his ability and that's what we've been told by our Planning Director and if that's not accurate then I've been mislead on that. But, I think that is accurate.

Ms. Padget said well then I think it's very honorable that he wants to offer a trolley service for his employees. Thank you very much.

Mr. Lauffer said thank you.

Mrs. Schepers said hi, I just want to say that employees are able to park at Holiday Inn. I have a sticker just like your wife does so when I go there I can park at the Holiday Inn. They do ask that we don't park there, you know, when they're busy, which is unlike Costa d'Esta or Vero Beach Hotel and Spa. They can't park there at all. Our employees are allowed to park in the Holiday Inn parking lot. If you're visiting someone there, like yesterday and today we had a fashion show by Padget and .... Shoes were there and we had, you know, had the backroom and they had the fashion show and so people were walking up and seeing that. So people are allowed to park at the Holiday Inn with the sticker that your wife got as well.

Mr. Cahoy said I have a question for you maam. When they ask you, who has a sticker for your car, not to park in the Holiday Inn parking lot, where do you park?

Mrs. Schepers said I usually, sometimes Charlie lets me park at the Ocean Grill or I park in Sexton Plaza or I park on the street.

Mr. Cahoy said on the street.

Mrs. Schepers said yeah or in one of those places as, you know, people who come to Ocean Grill also park in Sexton Plaza even though they have a parking lot, they do park, you know, people just park everywhere.

Mr. Cahoy said right.

Mrs. Schepers said you know, I mean cause normally people are going from place to place, they walk around, they start at Bobby's, they come to Mulligan's to have a drink, go to Ocean Grill, walk down to Waldo's, I mean people are parking everywhere and kind of walking back and forth there in our

busy time.

Mr. Cahoy said right, but you as an employee?

Mrs. Schepers said well I don't work in the restaurant all the time, but I, as an employee park in Holiday Inn or I park in Sexton Plaza.

Mr. Cahoy said on the street.

Mrs. Schepers said on the street, but I ...

Mr. Cahoy said so you're one of the many employees that parks on the street if onsite parking is available.

Mrs. Schepers said I'm only there, like tonight I'm only there on Thursday nights. If I'm there during the day I'm in the Holiday Inn parking lot. I park there on the street after hours.

Mr. Cahoy said okay.

Mrs. Schepers said if there's not a place.

Mr. Lauffer said from just the information you gave me I believe that the merchants need to police themselves in some ways about if the parking is bad, and I believe there's some merit to that statement, that they need to become more cohesive in their own ability to make a bad situation better because we're not going create a high rise parking garage anyplace on Ocean Drive, that's for sure and with that in mind I think that it has to be something that's viable. Whether it's a transit system or whether it's a parking lot a few blocks away someplace or something like that. So, I think that my view is that ... I think that's all I'll say.

Mrs. Minuse said well, you know, I'm reminded that when we did that overlay we granted underground parking to the Holiday Inn and that will alleviate a lot ... but that's in the long term. Right now we have a short term problem. Well it's been a long problem and it's growing as we grow and I'm just very pleased that Penny Chandler is putting together a group to address this problem and I'm sure she'll be bringing it forward.

Mrs. Schepers said right. We did reach out to people and ask them if we could rent their parking lots for employees or, you know, things like that and no one was willing to do that earlier. So, I mean, George has offered to do that numerous times. I've reached out to many people on Oceanside to ask if, you know, if he can take on ... he was offering to pay the liability or anything over there just to help with the parking in general. Not, you know, just because that's just the way he is. Anything else?

Mr. Lauffer asked any questions? Thank you.

Mrs. Cook said I'm Nancy Cook and I own the Twig on Ocean Drive, the business and the building. I want to make it perfectly clear that I think everybody that was speaking here today feels like me. We are happy that Mulligan's is doing really well, really well. But, could we say that at the expense of our businesses doing as well because of the parking crush? That would not be a natural thing to

say. Although, like I say, we're very much in favor of Mulligan's and how successful it is. That's not a problem. We send people there all the time. But I think that we all have to consider our neighbors and if we do anything at this point to put more pressure on a strangling parking system, which that particular area and all the way down the street, the hotel employees do take my parking and they move their cars and I ... it's not something I hear occasionally when a customer comes in and says you haven't seen me for a long time because I can never find a place to park here, even if I'm willing to walk several blocks, I can find no place to park. So, it is hurting the commercial retailers and it's a tough combination to have a combination of the retail stores combined with unlimited beach going and successful bars and restaurants. That's a tough combination parking wise and we don't have a magic wand. We have to deal with it somehow. But every time we bring up a suggestion people say we don't want paid parking, we don't want a parking garage, or we don't want a center street park Cardinal Drive. Well, we don't have a magic wand and the stores that are paying the rents in those buildings, as far as business is concerned, probably a fairly good barometer and it was harder to do the business we normally do this year then it was the year before. We had to work harder at it. The number of sales is up, ticket items is down. So, there's a lot to think about here when you all ... they have the legal right to have more seating, which requires ... which will use more parking. Who's parking? And their employees will require more parking. Who's parking? Now, we're all in this together and what's good for one is good for all, or there's just a few isolated things that are doing well and the rest are just struggling. So, it's a major decision to pass variances that even though they're legal and they're after the fact, that's another issue. Is a precedent? Just do each one and then get it approved? I don't know. I don't admire your job right now, but we will try to come up with some plans. But know that you're going to hear some opposition to whatever we propose. So, that's ...

Mr. Mucher said Nancy ...

Mrs. Cook continued stating that's the way we feel. We're all in this together. If my business is usurping the ability of my neighbors to have good business then I have to deal with, you know, how I'm running my business.

Mr. Mucher said Nancy, I think you said that you send people to Mulligan's. I think you'd probably agree that there's a synergy and people come out of Mulligan's and see your place ...

Mrs. Cook said yeah, absolutely, absolutely, absolutely.

Mr. Mucher continued stating and go over there. Maybe after a few drinks and maybe they buy a little more ...

Mrs. Cook said well, maybe but I ...

Mr. Mucher asked but would you agree with Bobby that the employee parking situation would make a pretty good dent in this problem?

Mrs. Cook said well it would because for instance in my business and along that section of Ocean Drive you have Gloria Estefan's that doesn't have enough parking, Driftwood doesn't have enough parking, Holiday Inn doesn't have enough parking. The whole, I mean, when you just take all the employees combined, that's a lot of people.

Mr. Mucher said absolutely.

Mrs. Cook said a lot of people.

Mr. Mucher said well, again I hope you all attend this ...

Ms. Cook said I will.

Mr. Mucher continued stating this parking meeting and try to work out something on the employee parking issue.

Mrs. Cook said the fact that we need the two hour limit enforced because we are experiencing a tremendous impact from all day beach goers. They bring their coolers and their drinks they bring with them and they don't come in a store and their ...

Mr. Mucher said no and the employees don't shop at your places either. So that detracting ... synergy, but the boss of the Chief of Police is here listening to you about the .... you know about the timing issue anyway about the parking.

Mrs. Cook said and the character of the beach is at stake. We have to ... everything is either moving in a positive direction or in a negative and we want it to always be positive. We want it to get better and better so we have to solve our problems, we have to be in this together. All the merchants, the hotel, motel, restaurant owners. We're very much dependant on each other.

Mr. Mucher said Tim maybe ....

Mr. Lauffer said thank you Nancy.

Mr. Mucher continued stating after this parking session that Penny has, maybe we can have some kind of a parking workshop or something so that we don't have these all day meetings that are a little bit off topic.

Mr. Lauffer said Trey go ahead.

Mr. Hickman said real quick, real quick. A couple things Saturday ... we don't have a guy running the streets, right? Giving tickets?

Mr. Cahoy said right, yeah.

Mr. Hickman said okay, Saturday is the biggest shopping day of the week. Saturday is the biggest beach day of the week. There's one problem. So, Saturday we need a cop or someone to man the streets for two hour parking. Second, and I'm all for Mulligan's. I love Mulligan's. I'm not, you know, it's all about everyone making money. And second of all, here's a picture (had a picture on his cell phone) this past Saturday ... every spot in Sexton Plaza was taken. From Ocean Drive from the produce market up around to Bobby's up to the Spires. Not one spot. There's 25 parking spots in the Holiday Inn. So are the employees parking in the Holiday Inn? That's all I got to say.

Mr. Lauffer asked anybody else like to speak? Go ahead.

Mrs. Schepers said I just want to say that at one time at the restaurant we have maybe 20 employees working in the restaurant itself so, you know, when they talk about Costa and Hotel and Spa and all those, we only have 20 at the most Mulligan's employees at a ... you know, at a time. A lot of people are dropped off, picked up, and we do have people parking. I just want you to know that we don't have like 200 people or, you know, we only have 20 employees at a busy time.

The Chairman closed the public hearing at 3:50 p.m., with no one else wishing to be heard.

Mr. Lauffer asked the Board, have you ... are you ready to make a decision or do you want to have additional discussions.

Mr. Mucher said I believe that they're in full compliance Mr. Chairman and we don't have a choice even if we wanted one so I think we ought to move forward unless somebody else has some comments.

Mr. Cahoy said well I'm prepared to vote, but I think until the ... that signage at the Holiday Inn is dealt with I don't think our problem is solved. I don't think I can vote for this being in compliance.

Mr. Lauffer asked any comments?

Mrs. Minuse asked Tim, can you respond to that?

Mr. McGarry said well again, I get back, I don't know if that is germane to what you're looking at right now. I mean it's been an ongoing problem, if it is a problem. We've had conflicting testimony whether people can do it or not. I mean the main issue we have here is to whether this outdoor dining meets ... and he believes it does. I mean that other issue I think should be discussed later as part of this group getting into that thing with the employees. So, I ... you know, the staff still sticks by its recommendation.

Mrs. Minuse asked Peggy, do you have any comment on that?

Mrs. Lyon said what I think your Planning Director is saying is that because there is no parking requirements for the outdoor parking and that's what is in front of you in the site plan application ...

Mrs. Minuse said right.

Mrs. Lyon continued stating it's not a variance, it's a site plan application, then it's not germane. What it appears to be germane to is the overall parking for overall Mulligan's, not the outside dining, which is an entirely different issue as I understand your Planning Director.

Mr. McGarry said yeah, I would concur with what she just said, in a much better way than I did.

Mr. Mucher asked Tim, could you volunteer to ... the next time you're talking to somebody from the Holiday Inn maybe clarify this position?

Mr. McGarry said I will ... I will work ...

Mr. Mucher asked have a discussion with them?

Mr. McGarry said that I would like to have George do that... he needs to get involved since he is the tenant.

Mr. Mucher said you can't find him either.

Mr. Lauffer said I'm looking for a motion.

**Mrs. Minuse made a motion to accept staff's recommendation. Mr. Burke seconded the motion and it passed 4-1 with Mr. Cahoy voting no, Mr. Burke yes, Mr. Mucher yes, Mrs. Minuse yes, and Mr. Lauffer yes.**

The Board took a break at 3:54 p.m. and reconvened at 4:00 p.m.

**[Quasi-Judicial]**

**C. Site Plan Application to Allow the Proposed Construction of a 29-Unit Multiple-Family Development (#SP14-000006).  
Location: 465 18<sup>th</sup> Street**

The Chairman read Site Plan Application #SP14-000006 by title only. There were no ex parte communications.

The Deputy City Clerk swore in staff and witnesses testifying for today's hearing en masse.

Mr. McGarry briefly went over staff's report with the Board members (please see attached). He reported that the address shown on the application was incorrect and should be 401 to 457 18<sup>th</sup> Street as listed in staff's report. Staff recommends approval subject to conditions outlined in the staff report.

Mr. George Simons, Principal of Carter and Associates, said that he is the Project Manager for this project. He noted that in attendance today were representatives of the property owners, the Architect, Mr. Hal Lambert and the Contractor, Mr. Mike Moore. He said they agree with staff's analysis and recommendations.

Mr. Mucher said it shows in the backup that the single car garage is 400 square feet.

Mr. Lambert said that is incorrect. It is 266 square feet.

Mr. Burke was not sure why management would be on site. He said there were some suggestions in the questions that were raised by the attendees of the neighborhood meeting that would suggest there might be a reason for having management on site.

Mr. Francisco Gill, Owner, said they have not decided anything about inside management at this point. He said all of their projects are between Palm Beach, Port St. Lucie, and Vero Beach. They think that this project could be attended from any of the other sites.

Mr. Cahoy said the site plan shows a total of five storm water areas. He asked if that was correct.

# City of Vero Beach

1053 - 20th PLACE - P.O. BOX 1389  
VERO BEACH, FLORIDA 32961-1389



OFFICE OF THE  
PLANNING AND DEVELOPMENT DIRECTOR

July 24, 2014

Subject: Site Plan Application #SP14-000003

Dear Property Owner:

In accordance with Ordinance No. 2008-06, you are hereby advised that the City of Vero Beach Planning and Zoning Board will conduct a public hearing on an application to allow the proposed addition of a 3,280 square foot outdoor dining area, including 7 paver areas with tiki huts/tables and numerous Adirondack chairs at 1025 Beachland Boulevard.

The public hearing will be held at 1:30 P.M., or as soon thereafter as possible, on Thursday, August 7, 2014, in the City Council Chambers, City Hall, 1053 20th Place, Vero Beach, Florida.

Sincerely,

A handwritten signature in black ink, appearing to read "Timothy J. McGarry".

Timothy J. McGarry, AICP  
Planning and Development Director

/tf



Holiday Inn  
PARKING  
only

**GUEST  
PARKING  
ONLY**  
UNAUTHORIZED  
VEHICLES WILL BE  
TOWED AWAY  
AT OWNER'S RISK

HOTEL EQUIPMENT  
PARKING

## DEPARTMENTAL CORRESPONDENCE

**TO:** Chairman Larry Lauffer and Planning and  
Zoning Board Members

**FROM:** Timothy J. McGarry, AICP   
Director of Planning and Development

**DATE:** July 25, 2014

**SUBJECT:** Site Plan Application #SP14-000003 – Expansion of Outside Dining  
at Mulligan's Beach House, Sexton Plaza

### OVERVIEW

#### Project Description

The applicant is requesting approval of a 3,280 square foot expansion of Mulligan's Beach House outdoor dining facilities located on the Holiday Inn hotel property. The outdoor dining area includes 7 paver areas with tiki huts/tables and numerous Adirondack chairs.

#### Project Background

The approval being sought by the restaurant is after-the-fact to resolve an on-going code enforcement case. A citation with a civil penalty had been issued regarding adding outdoor dining without development approval.

An informal compliance agreement was reached with the owner of Mulligan's to bring the restaurant into compliance. The restaurant was allowed to continue the outdoor dining on an interim basis, contingent upon the owner committing to move forward in an expeditious manner to receive formal development approval.

Unfortunately, despite the applicant's commitment and attempts to quickly resolve the code compliance issue, the applicant was unable to do so due to a significant delay in obtaining the property owner's authorization. Such authorization did not come until the applicant's lease agreement with the property owner was amended and authorization to submit a site plan application in March of this year.

Subsequently, a further delay was encountered by the applicant in responding to staff's preliminary review comments before the site plan application was ready for public hearing and consideration by the Planning and Zoning Board. Some of this delay was due to the need to have a traffic impact study prepared and approved by the Indian River Traffic Engineering Division and the City Planning and Development and Public Works departments.

Attachment A to this report provides a project description and fact sheet including general background and site information and details on project development specifications. This attachment is followed by the site plan application and pertinent supporting materials.

## SITE PLAN EVALUATION

Section 64.10 of the Code requires that all approved site plans and amendments to site plans meet certain pertinent general review, performance, and development standards. The staff finds that the proposed site plan meets all these standards.

In particular, the two most relevant to this project are the project's compliance with all pertinent provisions of the Land Development Regulations and performance standards for the proposed use and layout of the development. The staff's specific analysis and findings regarding these two standards are discussed below:

- *Compliance with Land Development Regulations (Sec. 64.10(a)(6))*

Analysis. The site plan's compliance with all development regulations was reviewed by the Planning and Development Department, Public Works Department, and Indian River County Traffic Engineering Division. Attachment A provides information on how the site plan meets open space and parking standards, which are affected by the expansion of the outdoor dining area. Additional explanation of how the additional outdoor dining parking demand meets parking and loading standards of the Land Development Regulations is discussed under Comment 2 of Attachment A.

A traffic impact study prepared by the applicant's engineering consultant was reviewed and approved by all three reviewing agencies. This study documented that the additional vehicle trips expected to be generated by the additional outdoor dining meet road concurrency requirements of the Code. A copy of the Traffic Impact Executive Summary is included in the application package attached to this staff report.

The Public Works Department reviewed the site plan and found that it met the City's stormwater regulations. Other than making sure drainage is not an issue, no special drainage improvements are required due to the limited amount of impervious surface added with the outdoor dining.

Finding. The staff finds the site plan compliant with all pertinent provisions of the Land Development Regulations.

- *Site design performance standards (Sec. 64.10(b))*

Analysis. The outdoor dining area is bounded on the west and north by a multi-story wing of the Holiday Inn on the property and on the east by the ocean. To the

south, the outdoor dining is separated from restaurant and retail establishments by Sexton Plaza and parking area. This location of the outdoor dining is well situated to reduce the potential for creating noise and other possible disruptive impacts on neighboring businesses.

Disruptive traffic to neighboring properties is not an issue as documented in the traffic impact study. The amount of additional traffic in peak hour times (36 vehicular trips) that may be expected to be generated by the outdoor dining will be insignificant to the amount of existing background traffic in this highly commercial area.

As documented in Attachment A, the applicant meets the City's off-street parking requirements. The City has received an occasional complaint with no verification regarding the restaurant employee's actively trying to circumvent the weekday parking duration limits in Sexton Plaza, which is not relevant to any impacts from outdoor dining.

This type of complaint is routinely raised from time to time during season regarding restaurants and establishments in this beach commercial district. The applicant has stated to staff that his employees are directed to park elsewhere outside Sexton Plaza.

Finding. The staff finds the proposed site plan compliant with the performance standards of Section 64.10(b).

#### **FINDINGS AND RECOMMENDATIONS**

Based on the above analysis and findings, the staff finds the proposed site plan application meets the provisions for site plan approval and recommends approval of the site plan.

TJM/tf  
Attachments

**ATTACHMENT A  
EXPANSION OF OUTDOOR DINING AREA  
MULLIGAN'S BEACH HOUSE  
PROJECT DESCRIPTION AND FACT SHEET**

**GENERAL INFORMATION**

**PROJECT DESCRIPTION:** Addition of a 3,280 square foot outdoor dining area including 7 paver areas with tiki huts/tables and numerous Adirondack chairs.

**LOCATION:** 1025 Beachland Boulevard, Sexton Plaza

**OWNER:** Velogan, Inc. (aka Logan Acquisitions Corporation)

**APPLICANT:** George Hart

**ARCHITECT:** None

**ENGINEER:** MBV Engineering, Inc.

**TAX ID NUMBER:** 32-40-32-00006-0200-00009.1

**SITE INFORMATION**

**ZONING:** C-1A

**EXISTING USES:** 104-unit hotel, restaurant ( $\pm 6,400$  s.f.), and retail ( $\pm 1,600$  s.f.)

**AREA OF DEVELOPMENT:** Restaurant portion of site -  $\pm 9,680$  square feet;  
Entire site - 138,844 s.f.

**SURROUNDING ZONING AND EXISTING LAND USES:**

North – C-1A: Commercial retail, offices, and Reef Ocean Resort  
East - Atlantic Ocean  
South – C-1A: Commercial retail and Ocean Grill  
West - C-1A: Commercial retail

**RELEVANT DEVELOPMENT SPECIFICATIONS**

Note: As the proposed development does not involve any change in building floor area with no required landscaping requirements, only information relevant to demonstrating that the proposed outdoor dining meets development standards are shown below:

Development Specs./ Code Citation	Required/ Allowed	Proposed	Existing	Comment
Open area (%) [Sec. 62.38]	25	43.4	45.5	1.
Parking [Sec. 63.04]	95	99	92	2.

Comments:

1. The entire site includes land to the average mean high water line.
2. Property granted a parking exception by the Board of Adjustment on February 6, 1967, establishing a parking requirement as follows:
  - Hotel at 1 space/2 rooms (104 rooms) = 52 spaces
  - Accessory commercial at 1 space/299 s.f. (8,000 s.f.) = 40 spaces
  - Total spaces required = 92 spaces

Of the proposed outdoor dining area, only 475 s.f. is subject to off-street parking requirements, as this dining is under roof. Of the 475 s.f., 200 s.f. is exempt from parking requirements, leaving 275 s.f. The additional parking required for this outdoor dining area is one space per 100 s.f., which results in 3 additional spaces needed.

Therefore, the total parking requirement is 95 spaces. The applicant receives credit for 7 public parking spaces in Sexton Plaza along the frontage of the restaurant, which results in a total of 99 parking spaces to be provided.



VELOGAN INC.  
1001 East Atlantic Avenue  
Suite 202  
Delray Beach, Florida 33483

March \_\_, 2014

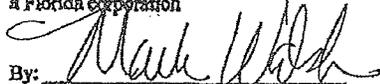
LETTER OF AUTHORIZATION

Re: Lease dated February 28, 2003, First Amendment dated May 29, 2013 and Second Amendment dated March 14, 2014 ("Lease") between Velogan Inc., a Florida corporation, as successor in interest to Logan Acquisitions Corporation, a Florida corporation and MB Hotel Properties, Inc., a Maryland corporation ("Landlord") and Shore Restaurants - Vero Beach, L.L.C., a Florida limited liability company, as successor in interest to Shore Restaurants, L.L.C., a Florida limited liability company ("Tenant")

TO WHOM IT MAY CONCERN:

This letter of authorization ("Authorization Letter") shall constitute evidence that the Landlord approves, subject to the terms of the Lease, the location by the Tenant, at the sole cost and expense of Tenant, of table seating at the eighteen (18) locations designated 501 through 518, on that certain plan which bears the designation "Vero Floor Plan" attached hereto, subject to the following conditions and stipulations: (a) that the table seating installed at the aforementioned eighteen (18) locations is constructed, installed and hereafter maintained in strict conformity with the requirements of all applicable governmental authorities, (b) that, notwithstanding this approval by the Landlord, in no event shall the Landlord be liable to the Tenant or to any other person or entity for any loss, damage or injury arising out of or in any way connected with the safety of the approved table seating or the conformance of the approved table seating, with building codes or other requirements of applicable governmental authorities; it being specifically understood and agreed that the Landlord has reviewed and approved the aforementioned table seating and their locations solely on the basis of aesthetic considerations and the overall benefit or detriment which would result to the hotel owned by the Landlord (the "Hotel"), taking into consideration the aesthetic aspects of the architectural design, color schemes, materials and similar features, and (c) Tenant shall indemnify and hold Landlord harmless with respect to any liability, including, without limitation, all costs, expenses, damages or other claims of any type or nature resulting from personal injury arising or occurring as a result of or related to the fabrication, installation, maintenance or use of the aforementioned table seating, and, except as expressly set forth herein, nothing in this letter shall be deemed to otherwise amend or modify the Lease.

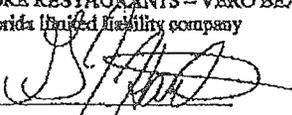
VELOGAN INC.,  
a Florida corporation

By:   
Mark Walsh  
Its President

Date: March 14, 2014

ACKNOWLEDGED AND AGREED:

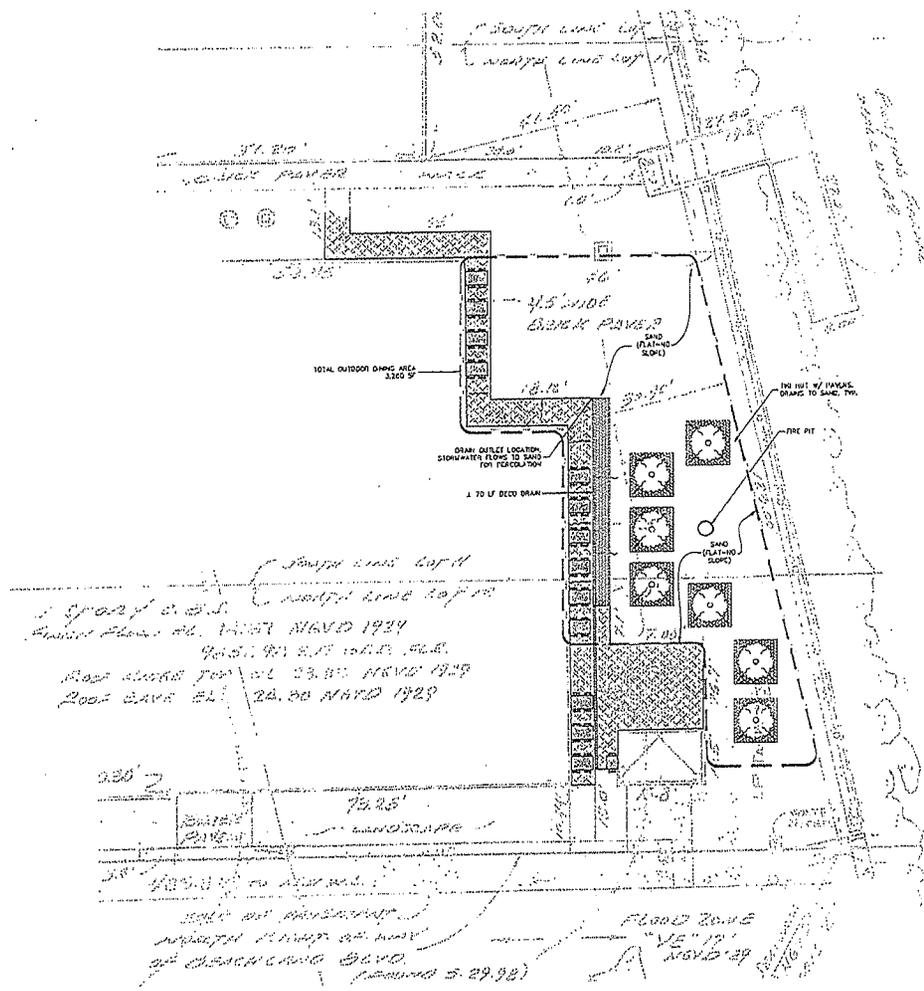
SHORE RESTAURANTS -- VERO BEACH, L.L.C.,  
a Florida limited liability company

By: 

Date: March 14, 2014

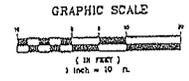
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 98. 4/15/21 O.S.S.  
 99. 4/15/21 O.S.S.  
 100. 4/15/21 O.S.S.

**DRAINAGE PLAN**  
 SCALE: 1" = 10'



**SITE INFORMATION**  
**OWNER/APPLICANT**  
 VEGON, INC.  
 1500 E. ATLANTIC AVE., STE 200  
 DELRAY BEACH, FLORIDA 33483

**SUPERVISOR**  
 GARTER ASSOCIATES, INC.  
 1100 23TH STREET  
 VERO BEACH, FLORIDA 32909  
 PHONE (772) 355-4181

**SITE ADDRESS**  
 1835 - 20TH STREET  
 VERO BEACH, FLORIDA 32909

**TAX PARCEL ID. NUMBER(S)**  
 27-10-22-0000-0200-0000.1

**ZONING**      **LAND USE**  
 C-1A              C

**LEGEND**

	OUTDOOR DINING (1-SEAT TABLE)
	OUTDOOR DINING (2-SEAT TABLE)
	HYPOCYCLOID OUTDOOR DINING UNIT (4" x 7" FINISH)
	EXISTING BRICK PAVERS
	PROPOSED BRICK PAVERS
	DRAINAGE FLOW DIRECTION

**EXISTING DATA (EXISTING)**

OUTDOOR DINING AREA	1,310 SF	=	0.023 AC	=	150.0%
BRICK PAVES / COVERED DINING	1,012 SF	=	0.024 AC	=	150.0%
TOTAL IMPERVIOUS AREA	2,322 SF	=	0.053 AC	=	30.0%
TOTAL OPEN AREA	2,218 SF	=	0.052 AC	=	46.3%

**PROPOSED DATA (PROPOSED)**

OUTDOOR DINING AREA	1,310 SF	=	0.023 AC	=	150.0%
BRICK PAVES / COVERED DINING	1,012 SF	=	0.024 AC	=	150.0%
PROPOSED PAVED DRIVEWAY	110 SF	=	0.003 AC	=	3.7%
PROPOSED 3/4" x 7" PAVES	148 SF	=	0.004 AC	=	3.7%
PROPOSED 1/2" x 7" PAVES	10 SF	=	0.000 AC	=	0.2%
TOTAL IMPERVIOUS AREA	2,580 SF	=	0.064 AC	=	48.3%
TOTAL OPEN AREA	1,815 SF	=	0.049 AC	=	31.7%
PROPOSED NET NEW IMPERVIOUS	270 SF	=	0.007 AC	=	17.5%

- GENERAL NOTES**
- CONTRACTOR IS RESPONSIBLE FOR OBTAINING ACTUAL SITE CONDITIONS BEFORE STARTING CONSTRUCTION.
  - ANY DISCREPANCIES ON THE DRAWINGS SHALL BE BROUGHT TO THE ATTENTION OF THE ENGINEER BEFORE CONSTRUCTION BEGINS.
  - CONTRACTOR SHALL OBTAIN ALL REQUIRED PERMITS BEFORE CONSTRUCTION BEGINS.
  - CONTRACTOR SHALL BE RESPONSIBLE FOR LOCATION OF ALL EXISTING UTILITIES. THE CONTRACTOR SHALL LOCATE ALL COVERED UTILITIES AT LEAST 72 HOURS IN ADVANCE OF CONSTRUCTION BEGINS.
  - NO FIELD CHANGES OR DEVIATIONS FROM DESIGN TO BE MADE WITHOUT PRIOR WRITTEN APPROVAL OF THE ENGINEER.
  - ENGINEER SHALL BE NOTIFIED AT LEAST 48 HOURS IN ADVANCE FOR ANY INSPECTION.
  - MINIMUM COVER OF ALL UTILITIES SHALL BE 36" UNLESS STATED OTHERWISE.
  - ALL UTILITIES SHALL BE RELOCATED TO ORIGINAL POSITION UNLESS NOTED OTHERWISE.
  - 500 ALL EXISTING AREAS UPON COMPLETION.
  - CONTRACTOR SHALL BE RESPONSIBLE FOR FURNISHING PERMITS WITH THE PROJECT, THESE PERMITS AND SPECIFICATIONS, AND ALL LOCAL, STATE AND FEDERAL AGENCY REQUIREMENTS FOR CONSTRUCTION OF THE PROPOSED IMPROVEMENTS PRIOR TO CONSTRUCTION.
  - CONTRACTOR SHALL COMPLY WITH ALL OSHA REQUIREMENTS FOR CONSTRUCTION.
  - ALL EXCESS CONSTRUCTION MATERIAL AND WASTE TO BE MAINTAINED OFF-SITE AND DISPOSED OF PROPERLY AT CONTRACTOR'S EXPENSE.
  - CONTRACTOR SHALL TAKE EXTREME CAUTION WHEN EXCAVATING NEARBY EXISTING UTILITIES.
  - CONTRACTOR SHALL NOTIFY ENGINEER OF ANY CONFLICT BEFORE ANY FURTHER WORK IS COMPLETED.
  - ALL MATERIALS AND LABOR UNDER THE PROJECT SHALL BE IN STRICT ACCORDANCE WITH REQUIREMENTS OF THE CITY COUNTY, WATER MANAGEMENT DISTRICT, TROP AND TRCA, PLANS AND SPECIFICATIONS.
  - MAINTENANCE OF TRAFFIC SHALL BE ACCORDING TO POST NOTICES.
  - ALL APPROVED PERMITS CONSTRUCTION INCLUDING BUT NOT LIMITED TO PERMITS FROM CITY AND COUNTY SHALL BE OBTAINED BY CONTRACTOR PRIOR TO COMMENCEMENT OF CONSTRUCTION BY OWNER.
  - ALL PARKING SPACES WITH EXCEPTION OF THE UNPAVED PARKING SPACES SHALL BE STAIRED BY WHITE TRAFFIC PAINT AND BE IN ACCORDANCE WITH REQUIREMENTS FOR PARKING SPACES SECTION 710. LATEST EDITION.
  - ALL UNPAVED PARKING SPACES SHALL BE PROPERLY STAIRED AND STAIRED IN ACCORDANCE WITH 1000 SIGNAGE BOOK 1731A, LATEST EDITION.
  - COMMERCIAL/RESIDENTIAL BULDBERS SHALL POST A MINIMUM 8' HIGH MUNICIPAL ADDRESS.
  - ALL STAIRING WITHIN CITY RIGHT OF WAY SHALL BE SET TO REFLECT TRAFFIC PAINT (THROUGHPLATE).
  - ELEVATIONS (AS-BUILT) SHALL BE BASED ON NORTH AMERICAN VERTICAL DATUM 1985 DETERMINED BY INDIAN RIVER COUNTY GEODETIC ENGINEER AT AN ELEVATION OF 24.52 FEET UNLESS OTHERWISE SPECIFIED BY INDIAN RIVER COUNTY, INC.
  - PROPOSED METAL STRUCTURES SHALL BE CONSTRUCTED IN ACCORDANCE WITH CURRENT FLORIDA BUILDING CODES, STANDARDS AND SPECIFICATIONS.
  - PROPOSED METAL STRUCTURES EXTERIOR COLOR SHALL BE IN ACCORDANCE WITH FIRM SUBMITTAL OFFERS AND SHALL MATCH THE EXTERIOR COLOR OF ONE OF THE EXISTING DRINKING STRUCTURES.

11-254

1835 - 20TH STREET  
 VERO BEACH, FL 32909  
 PHONE (772) 778-2817  
 FAX (772) 778-2817

DATE: \_\_\_\_\_

SHEET  
**C2**  
 OF 2

11-254

MBV ENGINEERING, INC.  
 CONSULTING ENGINEERS & ARCHITECTS  
 1100 23RD STREET  
 VERO BEACH, FL 32909

DRAINAGE PLAN

MULLIGAN'S  
 OUTSIDE DINING  
 CITY OF VERO BEACH  
 FLORIDA

AVON J. DOWNS  
 P.E. (25313)

DATE: \_\_\_\_\_

NOTICE: AS-BUILT INFORMATION, ASOC FROM EXISTING DRAINAGE CONFIGURATION, IS BEING PROVIDED BY OWNER AND ASSOCIATES SHOWN DATED 5/19/2021

72 HOURS BEFORE BEGINNING AND SHALL HAVE 14 DAYS TO REVIEW AND APPROVE. 2020-05-11-11:00 AM

MULLIGAN'S OUTDOOR DINING EXPANSION

TRAFFIC IMPACT EXECUTIVE SUMMARY

(July 2014)



1. Location:  
1025 Beachland Blvd.  
Vero Beach, FL 32963
2. Size:  
Existing [High-Turnover (Sit-Down) Restaurant] outdoor dining area expanded by 3,280 sf.  
As per agreement between IRC Traffic Division and COVB planning department, the trip calculations have been completed assuming a 50% reduction in daily and peak hour trip rates for exclusive outdoor dining operations.
3. Trip Generation:  
Net New Daily Trip Volume = 209 vehicular trips  
Net New A.M. Peak-Hour Volume = 36 vehicular trips  
Net New P.M. Peak-Hour Volume = 32 vehicular trips
4. Area of Influence Boundaries:  
Project is not significant on any links.
5. Significant Roads:  
Project is not significant on any links.
6. Significant Intersections:  
Project is not significant at any intersections.
7. Trip Distribution:  
See Appendix 'A'
8. Internal Capture:  
None
9. Pass-by Capture:  
High Turnover (Sit-Down) Restaurant : 43%
10. A.M. Peak Hour Directional % (ingress/egress)  
Restaurant: 55% (In) / 45% (Out)
11. P.M. Peak Hour Directional % (ingress/egress):  
Restaurant: 60% (In) / 40% (Out)
12. Traffic Count Factors Applied:  
N/A

13. Off-Site Improvements:

N/A

14. Roadway Capacities:

See Appendix 'B'

15. Assume roadway and / or intersection improvements:

Per IDRLDR, no roadway or intersection improvements are required for this project

16. Significant Dates:

a. Pre-study Conference: June 24, 2014

b. Traffic Counts: None

c. Study Approval: \_\_\_\_\_

17. SR 60 Interest Share Special Fee

The project is located within 8 miles radius of link 1920W (SR60 between 82<sup>nd</sup> Avenue and 66<sup>th</sup> Avenue).

$0.04685 \times \$4,054.00 \text{ per vehicle} = \$189.74$

18. Conclusion:

The project does not propose any significant impacts on any links, roads or intersections. Therefore, no roadway improvements are required. The SR 60 interest fee is \$189.74