



City of Sanibel

800 Dunlop Road
Sanibel, FL 33957

Meeting Minutes Planning Commission

*The times are estimated, but public hearings will not commence prior to
the time stated*

Tuesday, May 22, 2018

9:00 AM

MacKenzie Hall

1. Call To Order

The meeting was called to order at 9:00 a.m.

2. Pledge of Allegiance

Commissioner Kirchner led the Pledge of Allegiance.

3. Public Comments on Items Not Appearing on the Agenda

Chair Marks welcomed those members of the public that have not attended a Planning Commission meeting.

Mike Szmanczyk, 3921 West Gulf Drive. Mr. Szmanczyk has received notice in the mail relating to 3869 West Gulf Drive for a proposed subdivision of property. He is opposed to this plan for three reasons: 1. the proposed plan provides for one lot to be divided into four (4) lots. The frontage will be approximately 78 feet of frontage v. existing homes that have at least 100 feet of frontage. 2. There are at least three other large parcels that could be eligible for a subdivision if this is allowed; and this would set the wrong precedence. 3. The MLS listing noted that this parcel could have three Single Family Residential lots; not four. The developer is just trying to squeeze more lots into the area.

Kevin Creevy, 3911 West Gulf Drive, adjacent to the property in question. Mr. Creevy has been here for two years but he is in complete agreement with the comments made by Mr. Symansyk. Mr. Creevy quoted the vision and mission statement and noted that these principles should be applied to this matter. Mr. Creevy suggested postpoing this until the Fall until more residents are here.

Steve Brown, 3819 West Gulf Drive. He was surprised to see the old Goss house being torn down. Mr. Brown further stated this should not be decided just by the Planning Department; there should be a hearing process. There is a lot of concern with neighbors and various homeowners associations in the area. Mr. Brown believes this goes against the Sanibel Plan. The goal is to decrease density and not increase intensity. He requests a hearing on that matter.

City Attorney, Ken Cuyler, clarified that this matter falls under Staff's authority to

approve or disapprove the matter; there will not be a public hearing on this application. Staff has the legal authority to schedule a hearing but they have not done so as of yet. As such, the Commission should not get involved in the specifics of the situation but are free to welcome the comments.

Mr. Brown noted that this is a slippery slope as everyone wants to be on Sanibel and developers will take advantage and overdevelop the area. If this matter is allowed, this is far too important for the Planning Department to handle by themselves.

Paul Powers, 3754 West Gulf Drive. Mr. Powers finds it absolutely ironic that Porter Goss' property is being subdivided into four parcels. It will degrade the west coast of the Island by allowing smaller homes and devalue property.

John Borkoski, 3840 West Gulf Drive. He has been visiting West Gulf Drive for the last thirty years. He understands that development happens and if someone owns a piece of property, he understands one has a right to develop it. Mr. Borkosky does not believe this is in character and harmony.

4. City Council Liaison Report

City Council Liaison Holly Smith provided an overview of the City Council meetings since Planning Commission last convened.

Councilwoman Smith provided a summary of the April 3, 2018 City Council meeting. Councilwoman Smith took her Oath of Office; Mayor Ruane and Vice Mayor Denham were re-elected to their respective positions. Council had a first reading on the draft Ordinance allowing amendments to the Elevated Swimming Pool requirements. Council had its second reading on the model Floodplain Ordinance and the proposal to amend the Building Code related to lower level partitioning allowed. Both of those ordinances were passed. Councilwoman Smith, at her request, is now the Liaison to the Contractor Review Board. She attended her first meeting last month and believes there can be a number of changes to make that Board more effective.

Councilwoman Smith provided a summary of the May 1, 2018 City Council meeting. Council had its second reading on the Elevated Swimming Pool Ordinance, which was passed. Council also held significant discussions regarding traffic issues in the Dunes and the speed control measures in place. Council discussed the Shared Use Plan including the TY Lin report and the Master Shared Use Plan study. Council did appoint the Planning Commission as the Bicycle Advisory Committee, with input from outside stakeholders. The Shared Use Path is funded by the MPO but Sanibel wanted to ensure that Sanibel can have its own input on the Shared Use Path.

Council also had significant discussions on the Farmer's Market and the need for a

RFP for the upcoming contractual years. Given the local flavor and history, Council did not believe a RFP was needed. City Attorney Cuyler is working on the contract.

Council will be contributing to a fireworks display.

Sanibel is a member of the TDC, Councilwoman Smith attends those meetings. On May 4, 2018, several Council members attended an award ceremony. Detective Eiker was celebrated as an Officer of the Year. It was a very nice luncheon to honor our Staff Member.

Commissioner Kettelman asked Councilwoman Smith about the discussions of the Farmer's Market and any particular changes in parking. Councilwoman Smith noted that the Library's construction had an impact on parking but after 9 years, both parties are doing the best they can. The Farmer's Market provides traffic control through individuals and directional controls. The traffic impact is for a very short time and they are doing the best they can. There have been no discussions regarding constructing new parking areas for this event.

Commissioner Storjohann asked if there were any discussion about allowing dogs at the Market. Councilwoman Smith stated there was discussion and the current intent is to prohibit dogs at the Market. There was an incident this year where a person was hurt and had to go to the hospital. There is a safety issue but that has not been decided as of yet. Council will be reviewing the lease at its June meeting and public comments are welcome.

5. Planning Commission Liaison to City Council Report

Vice Chair deWerff noted that since the Planning Commission had not met for the past few meetings, that there was nothing to report.

6. Consent Agenda

- a. Approval of the March 27, 2018 Planning Commission Meeting Minutes

Commissioner Storjohann moved, seconded by Commissioner Grogman to adopt the March 27, 2018 Planning Commission meeting minutes. The motion carried 7-0.

7. 9:05 - Public Hearings:

- a. Consideration of an application filed for a Conditional Use Permit pursuant to Land Development Code Section 126-82, General Requirements, and 126-94, Vehicle renting and leasing, to establish a rental business proposing the rental of no more than 7 (seven) low-speed vehicles ("street-legal" electric-powered carts). The subject property is located at 2330 Palm Ridge Road, Suite 15 (tax parcel No. 26-46-22-T2-0030A.0010). The application is submitted by Laura DeBruce and Jeffrey Blackman, of Sanibel Carts LLC, on behalf of the property owner Nancy Bass Cooke/First Cooke

Properties Florida, LLC. Application No. 18-10726 CUP.

Acting Planning Director Roy Gibson read the title into the record,

The Commissioners were polled for site visits, ex-parte communications and conflicts.

	Site Visit	Ex-Parte
Commissioner Ketteman	Yes	No
Commissioner Grogman	Yes	No
Vice Chair deWerff	Yes	No
Chair Marks	Yes	No
Commissioner Storjohann	Yes	No
Commissioner Kirchner	Yes	No
Commissioner Johnson	Yes	No

Planning Commission Secretary Sherri Enright swore in the following witnesses:

Roy Gibson, Planning Department
Josh Ooyman, Planning Department
Larry Schopp, Resident
Jeffrey Blackman, Applicant
Laura DeBruce, Applicant
Jim Strothers, Engineer
Claudia Burns, Resident
Bruce Rogers, Resident
John Poling, Resident

Acting Planning Director Gibson noted as a preliminary matter that Staff had provided a copy of the procedures for the hearing as well as sample language for a draft motion.

Joshua Ooyman, Planner, provided an overview of the Conditional Use application and entered the application into the record as City Exhibit C 1, including a summary of Attachments A F. Mr. Ooyman stated the rental of low speed vehicles is permitted as a conditional use of the Sanibel Code, pursuant to general and specific conditional use requirements. The proposed business is located at 2330 Palm Ridge Road, a commercial center in the Town Center General District. The applicants propose to rent seven (7) low speed vehicles. The inventory would be two (2) four seat carts and five (5) two seat carts. All carts would be stored on the property, accessed through an entrance at the rear of the unit. The inventory is limited to seven and if all seven are rented, there will be no additional inventory rented.

The proposed vehicles contain all safety features required. The vehicles will be white in color, with a small logo of the Company. The vehicles contain a solar panel. The

carts will also have an instructional card relating to driving rules, including the prohibition of driving on the shared use path.

Most of the inventory is intended to be delivered to the renter; however, a renter may pick up the vehicle at the site.

Staff has reviewed the subject application for compliance with the specific requirements, including the provision that the application comply with the Sanibel Plan. Staff has reviewed the Sanibel Plan and finds that the application is not consistent with the Transportation Element of the Sanibel Plan. Section 3.3.3 provides that certain vehicles such as motorized scooters and mopeds as rental units where drivers are generally unfamiliar with their operation and with lower average speed than automobiles and they add to traffic delays and represent a safety hazard, particularly with those unfamiliar with the Island. The proposed low speed vehicles can be considered the same as the vehicles described above, and could exacerbate traffic delays and potentially present a safety hazard with respect to interactions with faster moving traffic (i.e. tailgating, passing, etc.)

In Section 3.3.3, the Plan notes that reducing the number of vehicles is the only means to substantially improve the service of the existing transportation system, and that the desired long term approach to manage traffic is to reduce the volume of auto ridership. A subsequent measure is set forth in the Plan to reduce tourist car rental needs to facilitate the reduction of auto ridership. The proposed use to provide rental vehicles mostly geared toward a tourist clientele frustrates this provision.

Section 3.3.3 provides that the long term alternative to address traffic congestion and capacity constraints is the pursuit of reducing automobile ridership. The policies in the Transportation Element of the Sanibel Plan are directed toward reducing the volume of auto ridership. Staff believes the proposed conditional use will frustrate the provisions and policies of the Sanibel Plan by encouraging auto ridership and will contribute to additional vehicular traffic and therefore, the proposed use is inconsistent with the Sanibel Plan.

Staff has reviewed the subject application for compliance with the General Conditional Use Requirements of the Land Development Code and finds the application is inconsistent with those general requirements. Section 126 82, provides that the proposed use must not adversely impact the currently located businesses. Section 126-82 also provides that the proposed use shall not adversely impact the traffic flow more than permitted uses. Staff finds the applicants have not sufficiently demonstrated that the proposed use will not do so.

The applicant's contend that the proposed use will be of ecological benefit (compared to the common automobile) to the island and contribute to traffic calming. Staff finds

the proposed use will provide increased opportunities for tourists to rent automobiles on the Island, placing additional demand on the roadway capacity - aspects that are not inherently beneficial to the community or reasonably necessary to its convenience.

Staff notes that Section 126 82, subsection 6a; states that no conditional use shall be allowed if it is inconsistent with the Sanibel Plan.

Staff also reviewed the parking and traffic analysis provided by the Applicant's engineer, James Strothers. The traffic analysis opines that the proposed use will not adversely impact traffic and there is no issue with off street parking. The City Engineer reviewed the traffic and parking study and finds no issue with the analysis, however the City Engineer has opined that the applicant is charged with illustrating the proposed use will not adversely affect traffic flow to a significantly greater extent than permitted uses.

There are several existing non conformances of the property at the Palm Ridge site; while none of these will be furthered with this application, any prolonged vehicle storage outside of the suite could constitute commercial floor area. A loading and unloading zone may need to take place at the rear of the suite for staging. The applicant believes this staging will be limited.

Attachment F demonstrates the proposed vehicle configuration of the seven (7) carts. The Fire Marshall has no current objection to the proposed storage but a full reconfiguration of the suite will be required to accommodate electrical needs for charging the vehicles.

Staff does have some concerns of impact on adjacent businesses with noise and movement.

Staff has received public comments and those have been provided to the Planning Commission. Those public comments were entered into the record as a composite Exhibit P 1.

Staff finds the subject application does not meet the general and specific requirements of the Code and therefore, does not support the subject application.

Commissioner Grogman asked about Section 3.3.3., and noted this appears more to him as an option of alternatives. The assumption is that as an alternative to a mode of transportation, people will walk. He does not believe this is realistic in today's environment. An environmentally friendly opportunity may be a viable alternative. He believes that if not allowed, the other alternative is a rental car through Hertz or an electric bicycle rental. Acting Planning Director Gibson noted that he was unsure of the question. Commissioner Grogman clarified that it seems to be an "either/or"

approach. He believes that there are a number of options and that to assume that if no electric vehicle is available, people will walk, is unrealistic. His question is, should we begin to reflect on the current nature of today's environment with respect to the proliferation of electric vehicles that we see around us.

Acting Planning Director Gibson clarified that Staff has made findings based on the Sanibel Plan as it exists today. These provisions are current as of today. Section 3.3.3, Transportation Element does stipulate that motorized scooters must be used on the roads but notes that given that most of these are undertaken by renters unfamiliar with the Island, this can be a traffic and safety issue.

Commissioner Grogman noted that the use of the word "auto" is possibly limiting. The applicant is proposing a cart, not an auto. The applicant's intent appears to be to reduce automobile traffic by providing electric carts. Therefore, Commissioner Grogman believes the question may be confusing with the verbiage being used.

Acting Planning Director Gibson clarified that these are vehicles as defined in the Code and the business is for vehicle rental. That is the reason why the application is before the Commission and the conditional use must meet the general and specific requirements of the Code.

Commissioner Kettelman asked questions about certain assumptions being made. He asked Staff if the assumption they were using was that a tourist would drive his/her car to Island and then leave that vehicle to rent an electric cart. Acting Planning Director Gibson stated he would not necessarily have an additional car or vehicle. Commissioner Kettelman also asked Staff if they would then conclude that any business on the Island that rents a motorized vehicle would be prohibited.

Acting Planning Director Gibson noted that this use is allowed as a Conditional Use and therefore, it must meet the general and specific requirements. Acting Planning Director Gibson noted as an example of a business that may be more conforming could be where a replacement vehicle is being provided so that an additional vehicle will not be added. Commissioner Kettelman returned to his original thought that assuming a renter would have an automobile and then rent a cart may not be sound.

Commissioner Kettelman asked Staff to clarify its concerns with safety issues. Acting Planning Director Gibson noted that the vehicles may provide additional traffic impacts and create a larger potential for accidents given the speed, tailgating, passing etc. Commissioner Kettelman noted that he happens to share this safety concern, especially on San Cap Rd. Commissioner Kettelman noted that there are other low speed vehicles on the Island so how do we not do something about the other low speed vehicles that are allowed on our roads. Acting Planning Director Gibson noted that what is before the Commission today is this specific application. Commissioner

Ketteman understands this but noted that by necessity a precedent will be set and therefore, it must be dealt with as a whole.

Commissioner Ketteman also noted that given the large amount of vehicles that come to Sanibel in season, it would be hard to argue from a practical matter that seven (7) cars would add to the traffic impact.

Vice Chair deWerff shares Staff concerns regarding safety. Vice Chair deWerff asked Staff about the number of inconsistencies with the Sanibel Plan that Staff noted and asked Staff if alternatives were discussed with the applicant. Acting Planning Director Roy Gibson noted that Staff met with the applicant on several occasions. Staff did raise concerns with the applicant based on information they had at the time.

Once the applicant did make application, Staff did its review based on what was included in the application.

Chair Marks asked Staff about the "YOLO" rentals such as low speed vehicles and jet ski. Sanibel does not rent these types of things but Captiva does. How are we addressing the electric vehicles coming from Captiva.

Commissioner Storjohann noted she finds the Staff report compelling because everyone is frustrated by traffic on Sanibel. Anything that will contribute to a slow down of traffic when it does not need to be slowed down should be reviewed very carefully. Commissioner Storjohann also noted that there is no way to control that a renter may also have another vehicle.

Commissioner Johnson asked Staff if there was an opportunity to address some of the similar uses that are coming on the Island today. Acting Planning Director Gibson noted that at this time, the City does not have an ordinance prohibiting these vehicles but the City does not regulate businesses that are operating off Island.

Commissioner Kirchner questioned the parking spots available and noted that it does not appear that there are 30 parking spots available.

Chair Marks noted that he had been monitoring that parking lot for several years and to get a cart, the access would have to be through the back. He believes the roadway/path behind the businesses is not able to handle that traffic.

Applicant's Presentation:

Applicants Laura DeBruce and Jeff Blackman addressed the Commission and thanked them for their time. Applicants were quite surprised by the inconsistencies noted by Staff and as a result, they would like to address both their own case as well as a response to Staff.

The Applicants provided their presentation, on screen, entered as Applicants' Exhibit A 1. They have been coming to Sanibel for quite some time; in 2010 they purchased their home in Butterknife and relocated full time to Sanibel sometime later. The dominant principal of Sanibel is its sanctuary quality. The Applicant's believe that introducing electronic vehicles will help contribute to its sanctuary quality by reducing vehicular emissions.

The Applicants provided a definition of low speed vehicles and stated that street legal electric vehicles are a growing phenomenon and many progressive cities across the United States are adopting electric vehicle friendly regulations. Many residents in Sanibel use these electric carts and they are seen throughout the City including a recent event at Baileys.

The Applicants provided a summary of the safety features and regulations relating to electric vehicles. The application is limited to seven (7) carts. At their first meeting with Staff, Staff shared the previous Stewart application where the revolving inventory was an issue. Sanibel Carts commits to an inventory of seven (7) and if those are rented, there will be no further rentals at that time. The Applicant also stated that the carts are environmentally friendly and are made in Sarasota, Florida.

The Applicants noted that while there are issues with the site, the Applicant was not informed that those non conformities would impact their application. The applicants have a conditional lease at the Palm Ridge shopping center, where there are 5 6 vacant units. The proposed business will fill retail space, consistent with the Sanibel Plan. The Applicant also hopes that this business will entice other businesses.

The Applicants have retained Sanibel Architect, Amy Nowacki to design the space and have the approval of the Fire Department.

The Applicants believe there are environmental benefits for their proposal. Prior studies have noted that cars are the most polluting daily activity. The incremental reduction in reducing emissions, benefits Sanibel's wildlife and air and water quality. Visitors are also more likely to appreciate the flora and fauna of the City when traveling in an open air vehicle. This also supports the Sanibel concept of living in harmony consistent with local wildlife.

The Applicants acknowledged that Sanibel has traffic issues, including the number of cars that come over the causeway. Applicants believe that their business does help address some issues. The vehicles are smaller and do not cause fossil fuel emissions.

If one has to sit in traffic, it would seem to be more enjoyable to sit behind an electric vehicle instead of a gasoline vehicle.

The Applicants noted that the Sanibel Plan focuses on traffic calming issues and encourages measures to limit speeds. This application is consistent with this transportation goal as well as environmental goals. While there is delay all over the Island, the delay is measured in minutes; not hours. The difference traveling on Sanibel Captiva Road at 35 mph v. 25 mph is four (4) minutes.

The Applicants noted that there are benefits of slowing down traffic. Drivers should recognize they share the roads and it should be viewed as a place rather than a conveyance. A cart driver is certainly more aware of and in sync with other local users of the road, including bikers, walkers, etc.

The Applicants believe that the proposal is entirely consistent with the Sanibel vision and mission and helps to maintain Sanibel's very unique slower way of life and is in harmony with nature.

The Applicants would also like to address concerns raised by the Planning Staff and distributed the rebuttal presentation as Exhibit A 2. Until Friday, the Applicants thought they would be presenting their presentation in support of the application. The Applicants did not learn until Friday afternoon that Staff would be opposing their proposal and this was a great surprise. The Applicants do not believe it is a surprise that Staff reversed its opinion the same day that COTI came out with a statement against the application and Staff received a visit from former Planning Director Bruce Rogers.

The Applicants respect COTI and the work the organization does for the City. They offered to meet with COTI to explain their proposal and why they believe the proposal would be beneficial for the City. COTI took issue with the Traffic Study as not addressing speeds. The Applicants believe the traffic study did in fact address speeds.

COTI also stated the proposed application would violate the Sanibel Plan by adding incremental use to already congested roadways. The Applicants noted that it would not be an incremental addition because one could not drive through Ding Darling in an electric cart while at the same time driving an automobile through Ding Darling.

COTI also stated the proposed application would create a recreational use of the roadways. Applicants noted that the low speed electric vehicles could be used for many uses, such as errands. Applicants also noted that automobiles make recreational use of roadways every day.

The Applicants disagreed with COTI's allegation that the street legal vehicles would not benefit the Sanibel Community. Applicants believe the electric vehicles actually

support the enhancement of the environment.

The provisions cited in the Sanibel Plan in support of COTI's argument are specific to the reduction of automobile use. Applicants clarified that these vehicles are not defined as an automobile, are treated differently, and have entirely different characteristics of automobiles.

All of the Sanibel Plan references and measures are designed to encourage tourists to reduce the need for an automobile rental; the Sanibel Plan does not seek to reduce the use of low speed electric vehicles. With respect to safety concerns of tourists lack of familiarity with Sanibel, the carts are inherently easier to ride than mopeds. Bicycles also create similar safety concerns but are specifically allowed by Florida law.

Staff's attempt to draw attention to the low speed nature of the vehicle is unwarranted. The City Engineer's office confirmed it had no basis to object to the Traffic Study and Planning Staff's assertion appears to be contrary to these findings.

At the Planning Commission's prior hearing on the Stewart application, the City Attorney said that "If the sole issue is that they go too slow, the State Statute allows these vehicles to be on the road, our community does not prohibit it and therefore the issue of speed is not one for consideration. The Planning Commission can review the traffic into and out of the site and delivery to the site as fair areas of inquiry, however if the sole issue is that they are an annoyance because they go 25 mph in front of traffic, the State allows it and the City cannot prohibit it, if that is the sole issue..." Given this, it is extraordinary that Staff raises as its first point the speed of these vehicles. It is legally irrelevant to the application.

Staff first asked the applicants about the beeping noise on Thursday. This had not been a concern prior to Thursday. If the applicant knew of this concern, they would have been happy to address it. The commercial unit directly adjacent to our proposed site is a storage area with paddle boards, kayaks and other heavy equipment. These units are moved by large trucks that take more time and more space to move than it does to move the carts. The sound of the beep from backing up is 68 decibels. This is well under what are considered dangerous levels.

If the sole objection is that the business adds to the traffic in Sanibel, every Conditional Use permit should be denied because they all add to traffic, such as new restaurants, new retail businesses, etc.

In conclusion, applicants have spent four months working with Staff, including four in person meetings and over 70 e mails. Staff advised the Applicants that the carts could not be denied based on their speed and provided the City Attorney's prior

guidance. Based on Staff's advice via an email in February, of the three most important considerations, Applicants have spent an extraordinary amount of time and effort to ensure they met the three considerations. Staff provided a great deal of support and information for the specifics of Palm Ridge Place. Staff talked about traffic and the speed of the vehicles and joked that Sanibel residents needed to slow down and not worry about if they were late to a tennis or golf game. After that meeting, Applicants advised Staff they were going forward and would retain Jim Strothers to conduct the traffic study.

In April, the Applicants met with Staff to review the application. At that time, they went through the application page by page and discussed in detail the manner in which they met the requirements of the Sanibel Plan. In May, Staff advised the Applicant that its application was sufficient. Throughout all of the discussions, Planning Staff continued to advise the Applicants that the application could not be denied solely on the issue of speed. At no time prior to Friday, did Staff mention any of the issues raised in the Staff Report, including the concerns of the low speed and the inconsistencies with the Sanibel Plan.

The Applicants were quite surprised and disappointed by the Staff's turn around. The Planning Staff apologized and advised the Applicants that sometimes the Planning Commission did not follow Staff's recommendation. The Applicants encouraged the Planning Commission to have this be one of those instances and not follow Staff's recommendation.

Acting Planning Director Gibson clarified for the record, and wants to assure the Applicants, the Commission and the public that the staff reviewed the application independent of any public comments. In fact, our findings were made before we heard from the applicant who sent us the COTIs public comments regarding their application and before we received any comments from former Planning Director Bruce Rogers. Acting Planning Director Gibson also clarified that staff met with the Applicants several times and stressed the message that it was not Staff's job to prepare applications for the Planning Commission and Staff was only there to answer questions. Until such time as the application is received and reviewed, Staff is not in a position to opine on the potential success of any application. While Staff does go through applications page by page, this review is to ensure sufficiency of the submission and not to comment on the substance of the application. In this instance, Staff agreed to expedite the review of the application and that is why the Applicants did not receive Staff's recommendation until Friday.

The Planning Commission recessed for a brief break at 11:01 a.m.

The Planning Commission meeting reconvened at 11:10 a.m.

The Commissioner posed questions to the Applicants, which were answered accordingly.

Commissioner Johnson thanked the Applicants for presenting to the Commission today. He asked the applicants to describe how the proposed business is in harmony with the nature of Sanibel and would be of benefit to Sanibel. Applicants noted that the main impact of the proposed business is a reduced environmental impact. The electric carts provide a greater connection to the environment and foster more interpersonal interaction.

Acting Director Gibson noted for the record that the Permitting Process Review Subcommittee would be delayed until after the Planning Commission meeting. Commissioner Kettelman moved to continue the meeting. Subcommittee Chair Storjohann opposed the motion and suggested that the decision be delayed to determine how long the Planning Commission would be delayed.

Commissioner Kirchner asked the Applicants if they had other cart rental locations off Island. Applicants confirmed they did not and this was the only location for Sanibel Carts.

Commissioner Johnson asked if the Applicants contemplated other off island cart rental locations in the future. The Applicants answered they did not. Commissioner Johnson asked the Applicants how they planned to control someone under the age of 21 from driving once the vehicle had been rented. The Applicants are working with a rental agency for advice on that but their intent is to not allow anyone under 21 to drive the carts.

Commissioner Storjohann appreciates the Applicants' environmental concerns for Sanibel. Commissioner Storjohann believes that most residents agree with this but tourists do not. Commissioner Storjohann is very disappointed by casting aspersions and comments toward Staff. The Applicants stated that they appreciated working with Staff and found them to be of great integrity; they were simply caught by surprise by what seemed to be a complete turn around on Friday. The Applicants do not intend to cast aspersions, only that they were surprised.

Chair Marks asked if the carts had a safety horn. The Applicants confirmed that the carts did have a horn. Chair Marks asked about how the applicants are going to handle the parking of an automobile vehicle for someone who is renting the cart all day and if they would be required to park in the back. Chair Marks is also concerned about the aggressive passing of vehicles going 25 mph and the impact of more low speed vehicles. Chair Marks noted that the solar panels are nice but do not significantly add to the electrical needs of the vehicle. Chair Marks has seen injuries when a cart has rolled over and the patient ejected. The applicants confirmed the

carts have two roll over bars and a canopy, as well as federally required seat belts. Chair Marks feels personally that it is admirable to reduce automobiles by seven but in today's traffic environment that reduction will be minimal.

The Applicants noted that parking at Palm Ridge is not an issue and they would make sure their customers would not park in any spot the Commission deemed they should not. The Applicants will make the safety adjustments needed.

Vice Chair deWerff asked the applicants if they had considered continuing the public hearing once they heard the City's position. The Applicants actually did consider that but decided to take the weekend and determine its response. The Applicants are eager to get the matter resolved and decided to go forward. However, had Staff advised the Applicants that an expedited review could be detrimental to its review, the Applicants would have certainly understood and acquiesced. Vice Chair deWerff asked the City Attorney if the Applicants could in fact ask for a continuance today to further work on the issues; the City Attorney advised that either the Applicants or Staff could ask for a continuance.

The Applicants appreciate that but believe they have addressed the issues raised by the Staff report and queried if the Commission felt it had sufficient time to consider the matters, including Applicants' supplemental application.

Commissioner Kettelman asked Acting Planning Director Gibson if it is Staff's position that the business itself is against the Sanibel Plan and not just the specifics of this business model. Acting Planning Director Gibson noted that it reached the conclusion based specifically on this application and not the business itself. Commissioner Kettelman asked if the Staff could envision changes to their application that would result in Staff approval. If the position is that there is no way to change the provision to make it acceptable, we should let the Applicant know this. Based upon the current details, Staff cannot recommend this. Commissioner Kettelman asked Staff if there were any way they saw that it could work with the applicant, as it has done in past applications. Acting Planning Director Gibson noted that Staff had opined based on the current application and could not speculate without knowing the details.

Commissioner Kettelman asked if their business model worked if the vehicles would not be allowed on Sanibel Captiva Road. The Applicants stated that they had not considered that thoroughly but would be willing to review the matter further. The applicants also noted it would be difficult to distinguish this type of conveyance versus a bicycle or other vehicles that contribute to safety issues.

Chair Marks noted that some of the City's best features require access to Sanibel Captiva Road and that action might cut out some of Sanibel's best attractions.

Commissioner Kettelman appreciated the Applicants' willingness to consider alterations. The Applicants thanked Commissioner Kettelman and noted that although Staff states the devil is in the details, that Applicants really did go through the details with Staff. Commissioner Kettelman noted that he understands the inherent conflict for this application in the Sanibel Plan.

Commissioner Grogman concurs that the issue of slow moving vehicles should not be minimized. This is a community that talks about calming but goes fast. The Applicants should focus on educating the cart renters about this culture of the community.

Public Comments:

Bruce Rogers, Sanibel resident. Mr. Rogers stated he was the Sanibel Planning Director from 1978 through 2005. He is a principal author of the Sanibel Plan and the Land Development Code. During his 27 years as Planning Director he was responsible for the administration of the Plan and the Code. The application has been filed pursuant to Land Development Code Section 126 Conditional Uses. In considering a proposed conditional use, the Planning Commission shall review the proposed conditional use based on a series of factors, including it must be in accordance with the Sanibel Plan. Any proposal that puts additional motor vehicles on Sanibel roads is not in accordance with the Sanibel Plan. This proposal puts additional motor vehicles on the Sanibel roads and is therefore not in accordance with the Plan.

Mr. Rogers noted that the Plan also called for the reduction of Sanibel traffic. Adding more vehicles will not reduce Sanibel traffic.

Chair Marks stepped out at 11:46 a.m. and Vice Chair deWerff chaired the meeting during his absence. Chair Marks returned at 11:50 a.m.

Mr. Rogers stated that the reduction of Sanibel traffic can only be accomplished by reducing motor vehicles and automobile ridership. Any application, regardless of the type of vehicle, that increases vehicle capacity is inconsistent with the Plan. In this case, the Applicants' proposed use is inconsistent because it is a rental of a vehicle, not an alternative to a vehicle. By proposing to add motor vehicles, the Applicants are not exploring ways to reduce motor vehicle ridership and to the contrary, they are making access to motor vehicles more convenient. It is the Applicants' burden to demonstrate how their proposal is in accordance with the Sanibel Plan. In Mr. Rogers' opinion, the Applicant has not done so. Should the City believe the rental of such vehicles should be allowed, the City should amend the Sanibel Plan and the Land Development Code to allow these as a permitted use.

Larry Schopp, Sanibel Resident. Mr. Schopp is speaking both personally and as a Member of COTI. Mr. Schopp offered into the record his resume to establish his qualifications to give evidence on the Sanibel Plan and the Land Development Code, which was entered as Public Exhibit P 2. Mr. Schopp has submitted a longer response but summarized his concerns. Mr. Schopp noted that this proposal is not consistent with the Sanibel Plan and therefore, may not be approved as a conditional use.

The Sanibel Plan on multiple occasions references the need to reduce automobiles and motor vehicles on Sanibel. The proposal stimulates rather than restricts the use of motor vehicles on Sanibel and is not an alternative, such as a bicycle.

Claudia Burns, Sanibel Resident. Ms. Burns queried if Sanibel's major roads are owned by Lee County. City Attorney Cuyler confirmed that Lee County owns the roads but the City manages the roadways. State law prohibits the City of Sanibel from lowering the speed limits. Ms. Burns inquired of Lee County's policy of allowing low speed vehicles on its roads. Ms. Burns is primarily concerned with the safety issues, in addition to the issues with the Sanibel Plan.

The Commissioners were polled for final comments. There were no final comments.

The Applicants were polled for final comments. If the Planning Commission and/or Staff provided conditions, applicants would have agreed.

Vice Chair deWerff moved, seconded by Chair Marks to deny the applicants the Conditional Use permit and to prepare a Resolution to be considered by the Planning Commission at the June 12, 2018 meeting. The public hearing remains open. The motion carried 6-1

Opposed: 1 - Commissioner Grogman

City Attorney Cuyler added that a Resolution incorporating the Planning Commission findings and discussion will come back at the next meeting (June 12, 2018) and that the Commission's decision is not final until the Resolution is adopted.

The Commission recessed at 12:02 p.m.

The Commission reconvened at 12:07 p.m.

- b.** Consideration of an application filed pursuant to Land Development Code Section 82-138, Application and hearing, for a Variance to Land Development Code Chapter 126, Article XIV, Division 2, Subdivision II. - Accessory Marine Structures, Sections 126-875 Waterward Extension and 126-894 Location from Lot Lines, to allow an existing dock constructed pursuant to an emergency building permit to be located closer than 15 feet from the side property lines as extended into the water, to allow for the installation of a new elevator-style boat lift, located immediately adjacent to the dock, to extend approximately 9.2' farther than the maximum permitted waterward extension as measured from the approximate mean high water line, and to allow for the boat lift to be located closer than 15 feet from the extended side property lines; and

Consideration of an application for a Development Permit to implement the proposed variance and construct a boat lift immediately adjacent to an existing dock that is proposed to be modified and is located on a parcel of land serving as a dock parcel that is accessory to and that shall remain owned in common with a residential parcel located on the south side of Pine Avenue.

The subject dock parcel is located at 6428 Pine Avenue (part of Lot 24, Block B, Del Segal Unit 4 - tax parcel no. 11-46-21-T1-0030B.024A.) The applications are submitted by Steven C. Hartsell, Esquire (the applicant) for Randy Wayne White & Wendy Webb (the property owners). Application Nos. 18-10648V and 18-10649DP.

Acting Planning Director Roy Gibson read the title into the record.

The Commissioners were polled for site visit, ex parte communications and conflicts.

	Site Visit	Ex-Parte
Commissioner Kirchner	Yes	No
Commissioner Johnson	Yes	No
Commissioner Storjohann	Yes	No
Chair Marks	Yes	No
Vice Chair deWerff	Yes	No
Commissioner Kettelman	Yes	No
Commissioner Grogman	Yes	Yes

Planning Commissioner Secretary Sherri Enright swore in the following witnesses.

Roy Gibson, Acting Planning Director
Josh Ooyman, Planning Department Staff
Larry Schopp, Sanibel Resident
Caroline Peirce, Sanibel Resident
Elizabeth Goldman, Sanibel Resident
Mark Calkin, Sanibel Resident
John B. Scholz, Sanibel Resident
Bernie Ortwein, Sanibel Resident
Alicia Galante, Sanibel Resident
Bob Smith, Sanibel Resident
Steve Hartsell, Attorney for the Applicant
Matt Felton, Sanibel Resident
Randy White, Owner/Applicant
Jason & Babs Maughan, Sanibel Residents

Joshua Ooyman, Planner, provided a brief overview of applications for a variance and Development Permit. The applications and May 22, 2018 Staff Report, including attachments A-J were entered into the record as City Exhibit C1.

Mr. Ooyman reported that the installation of the dock and lift in question requires a Variance for the waterward extension and the location from side lot lines. In order to consider the requested Variance, the Planning Commission is tasked with determining if the request meets the seven requirements for a Variance and if so, what conditions should be placed on the Variance.

Mr. Ooyman further stated the subject parcel is a narrow, unbuildable vacant lot with 30' of frontage located at 6428 Pine Avenue. This parcel has historically been deeded as a boat access parcel and associated with a nearby residential Pine Avenue parent parcel that does not have canal access. It is currently owned in common with a vacant buildable residential parcel located at 6419 Pine Avenue, a parcel without any water access. The dock lot parcel has a lawfully existing but non-conforming dock that was repaired pursuant to a permit issued after Hurricane Charlie. The dock is approximately 130 sq. ft. over water and 35 sq. ft. of walkway over land. The dock is currently non-conforming to the required 15' side-yard setbacks, but given that the parcel is only 30' wide, it would not be possible for any structure to meet the side setback requirements.

The dock extends into the canal between 13.4 -14' past the mean high water line. The regulations allow for extension to 13.8'. There are mangroves in the canal that extend into the canal. Attachment G illustrates the proposed site conditions. The Applicant proposes to add a 2 piling elevator vertical-style boat lift, without any outside pilings to the outer edge of the existing dock platform. The proposed boat lift is 7' 11" in width. The plan avoids any impact to the mangroves. The Applicant has reduced its initial proposal from the initial 11.5' in width to 7'11" in width and proposes to replenish the gravel shell path to access the dock.

The Variance request: Two Variances were required to accommodate the proposed lift. The proposed lift on Attachment G, L-8P will extend into the canal approximately 22' when measured from Mean High Water Line. This is 8.2' past the maximum waterward extension allowed by Code of 13.8'.

The second Variance is for a side setback. The current dock is 2.2' away from the eastern property line and 7.4' away from the western property line and it currently encroaches into both required 15' side yard setbacks. The proposed boat lift will not encroach any further into the side yard setback than the existing dock. The lift will be approximately 7' away from the nearest property line as extended into the waterway.

Staff has received and reviewed several public comments relating to the continued accessibility of the canal. The Applicant considered shortening the length of the existing dock finger pier walkway. This would have a significant impact on mangroves in the area. Alternatively, the Applicant revised the application to include a boat lift

with a width 3.5' shorter than the original proposal. The Applicant posted markers in the canal demarcating the waterward extent of the proposed boat lift that is approximately 9' from the edge of the existing dock.

Attachment H demonstrates the proposed extension of the dock. Attachment G denotes the depth.

Staff's opinion is that a reduction of the 5' width of the terminal platform would further reduce the Variance to waterward extension. However, the Applicant strongly believes the 5' width is necessary for safety precautions. It is important to note, that when the Applicants boat when currently moored at the existing dock, it extends nearly as far into the water as the outer most edge of the proposed boat lift.

Public Comments have been primarily concerned with the navigability of the subject canal. These comments are entered into the Record as composite exhibit P-1.

While Staff believes that a reduction in the width of the terminal platform could reduce the amount of Variance requested to the waterward extension, Staff also finds that the proposed boat lift does not project any further into the canal than a vessel moored at the existing dock. Should the Planning Commission find that the application meets the 7 Variance Standards Staff recommends the Conditions in the Staff report be included with the approval of a Variance and the implementation Development Permit.

Commissioner Johnson asked if similar Variances in the City have been approved? Mr. Ooyman confirmed that this type of Variance is relatively common and typically granted. Commissioner Johnson asked if any of the environmental concerns or navigability relating to mangroves had been addressed. Mr. Ooyman noted that those issues were considered but these are private canals and maintenance of such is up to the individual homeowners and not done by the City. Commissioner Johnson asked about the existing mangroves. Mr. Ooyman referred to Attachment F, demonstrating that most of the mangroves are on other properties. Mr. Ooyman further stated that in order to shorten the finger pier walkway to the dock, it would impact mangrove a on the property that Natural Resources felt needed to be protected.

Commissioner Storjohann noted once again the Planning Commission was faced with a conflict. There are mangroves in the area that have not been maintained and have been allowed to narrow the body of water, impacting the navigability of the waterway. Either property owners need to appropriately trim and maintain their mangroves or not complain about the navigability of the canal. Commissioner Storjohann asked if the regular trimming of mangroves would have allowed this dock to be moved further landward. Acting Planning Director Gibson clarified that the concerns have been regarding the width of the canal. However, it is the existing mangroves on the property that prohibit the dock from being moved further landward. The public

comments relate to mangroves in other areas causing a narrowing of the canal. As such, the Planning Department does not object to this Variance request because it does not believe it adversely impacts the canal. Commissioner Storjohann stated she understands this but is asking her questions deliberately so that property owners in the area are aware they can and should trim their mangroves and that would avoid some of their own concerns. The narrowing of the canal is in part caused by existing owners who are not trimming their mangroves. Commissioner Storjohann asked if the mangroves had been maintained, would the dock be allowed to be moved landward.

Natural Resources Director James Evans responded to the inquiry and stated that Holly Milbrandt is the Project Manager on this case but Director Evans reviewed what can and cannot be done with mangroves. The City of Sanibel issues permits for trimming mangroves. Property owners along waterbodies have a riparian right and can trim their mangroves. In this area, there are a number of birds and bird nests in this canal. Additional trimming, especially during bird nesting season, may not have solved the issue. Due to the water depth, the dock cannot be moved inward and trimming the mangroves would not make a major impact in this case. Natural Resources did review options. If you were to moor a boat there, it would not protrude any further than it would in the future with a lift. Director Evans did have a number of calls in April regarding the bird nests in the area. Natural Resources did a review and advised members of the Del Segra neighborhood of the requirements to trim in the area in regard to the bird nests.

Commissioner Storjohann asked if there were a homeowners association in this community. Commissioner Storjohann asked if this neighborhood had ever dredged and if they haven't, should the community seek dredging. Director Evans noted that he did not know if the community had dredged or even if they should dredge.

Chair Marks noted that when he did his site visit, it appeared that there had been a significant amount of mangrove trimming that was done illegally.

Vice Chair deWerff asked how many homeowners to the North would be impacted. Chair Marks responded that according to the materials, there would be approximately one-third of the docks impacted.

Commissioner Ketteman asked if other Variances had been granted in this area. Acting Planning Director Gibson confirmed the Applicant will be providing information in his exhibit of other Variances granted within this subdivision.

Commissioner Grogman confirmed that the width of the boat lift will not cause an extension further than the current boat when moored. Mr. Ooyman confirmed this to be the case. Commissioner Grogman asked if the Variance from 2004 regarding the side setback could be carried forward or if that needed to be re-decided. Acting

Planning Director Gibson confirmed that anytime something was done to a non-conforming property, a Variance must be granted.

Applicant's Presentation:

Mr. Steve Hartsell, Esq. on behalf of the Owner provided a brief summary. This is a request for a Variance for the waterward extension limitations as well as the side lot line setbacks. Mr. Hartsell provided a presentation to the Planning Commission, demonstrated on-screen and entered into the record as Applicant's Exhibit A-1.

Mr. Hartsell stated this parcel is designated as Lot 24 and is located in the Del Saga neighborhood. The lot is divided into three parts and the parcel is an accessory dock parcel to allow canal access. The owners live across the street and also own a vacant parcel across the street.

Mr. Hartsell provided an aerial photo of the vacant lot and the existing dock. The lot is a narrow 30' wide lot. The mangroves in the area extend into the canal 6-7'. The applicant provided a detailed drawing of the dock. As originally proposed, the boat lift was contemplated to be 11.5' wide. The public raised several concerns, particularly related to navigability. After reviewing the concerns, the owner and the marine contractor reviewed several options and provided alternatives. Rather than narrowing the dock and creating a safety problem, they did look at shortening the finger pier. The owner was willing to shorten the finger pier but Natural Resources expressed a concern about trimming the mangroves behind the dock and would not support shortening the finger pier. Consequently, the owner and the marine contractor agreed to shorten the boat lift itself by 3' to accommodate the owner's existing boat.

Mr. Hartsell noted that the owner had definitely attempted to address neighbor's concerns by shortening the boat lift and its extension.

Another concern raised by the public was whether there was a permit for the existing dock. There is a permit for the existing dock and although non-conforming, it is legally existing.

Mr. Hartsell provided an aerial view of the proposed dock, and proposed lift and owner's boat. This visual demonstrates that the boat extends further into the water than the lift. Additionally, the boat and dock to the west extend further than the Applicant and Property owners proposal.

Mr. Hartsell also reviewed other options considered in regard to relocating the dock itself. Those options would have required significantly more impact to the mangroves than the current proposal.

The marine contractor installed poles in the area to denote the location of the proposed boat lift. Aerial photos of these poles confirm that other boats in the area protrude further into the canal than the farthest extent of the proposed boat lift. The photo also helps illustrate that the mangroves extend further into the canal than the proposed boat lift. The existing mangroves limit navigability to that side of the canal.

The Applicant also provided an exhibit of what it might look like if the boat lift were in place and two other boats passed. This demonstrated there is significant room to pass, including 29' of navigable channel with a 4' depth.

The Applicant briefly addressed the variances and highlighted those seven standards for both the waterward extension and the side setback. The owners have agreed to reduce the width of the boat lift from 11.5' to just under 8' for the purpose of minimizing the impact. Most of the properties on this canal have docks and most of those that have docks also have lifts. The lift is going to be more consistent with protection of the mangrove fringe and the marine environment. Special conditions relate to unusual conditions specific to this lot. (1) It is a narrow 30' wide parcel; (2) It already has a non-conforming dock in place. (3) There is really only one place for the lift to occur. (4) The property is too small for any other use. The Applicant submits that this Variance is related to special conditions that are unique to this piece of property, and reasonable steps have been taken to mitigate or eliminate the requested Variance. Applicant submits that it is the minimum Variance necessary to mitigate the hardship that has been demonstrated in regard to the waterward extension and addressed the side lot line Variance. If you enforced the 15' side setback for a 30' wide lot, there would be nothing left in the middle. This is related to the unusual conditions of this specific lot and does not result from the actions of the applicant and they have taken all reasonable steps to eliminate that and it won't be adverse to the neighborhood.

The Applicant will be happy to answer any questions and states that they are in agreement with the Conditions listed in the Staff Report with a clarification to Condition 8b.

The Commissioners posed questions to the Applicant, which were answered accordingly.

Commissioner Johnson confirmed that the extension, as requested, would not extend further than the existing mangroves and there are no issues with navigability with the proposal. The Applicant confirmed this to be the case. Commissioner Johnson asked about shortening the finger pier and whether the mangroves behind it could be relocated. The Applicant noted that Natural Resources could address the specifics but in the Applicant's view, reducing the width of the boat lift addresses the issue.

Holly Milbrandt, Environmental Biologist with the Natural Resources Department stated it is Natural Resources job to look at impacts on all natural resources and make recommendations for any given site. In this particular instance, Natural Resources looked for ways to avoid impact to mangroves. In this instance, the existing mangrove is providing stabilization in the area. Natural Resources recommended not to move the finger pier and instead to shorten the boat lift.

Commissioner Kirchner asked about this parcel as a boat access parcel and questioned if there a financial hardship condition that needs to be met. Acting Planning Director Gibson noted that the hardships must be related to the subject area and not to personal, financial or other issues. Commissioner Kirchner raised the fact that the owner purchased this lot knowing the width of the lot and that the property was for sale. The Applicant noted that whether the lot is for sale is not relevant. The owner owns additional property in the area and has intended to be a good neighbor. The owner has addressed valid navigability concerns and that is the issue. Any financial impact is irrelevant to this application; the owner has demonstrated he has met the variance standards.

Commissioner Storjohann clarified when the property was platted before the City existed by Lee County and that this strip was platted and attached to the ownership of the adjacent parcel. The Applicant clarified that it was platted after several owners and a number of years prior to the current owner. This particular piece was left out appropriately when the adjacent parcels got bigger. This was left as a boat access parcel and has been conveyed 2 or 3 times to property owners on Pine Avenue, who don't have boat access, to provide them with boat access.

Chair Marks stated that in the neighborhood, there are already 32 properties with docks and believes it could just be an issue of "not in my backyard and I have mine but you cannot have yours." At this time, Chair Marks asked for public comments.

Public Comments;

Mark Calkin, Sanibel Resident. Mr. Calkin asked Ms. Milbrandt if she had visited his property and reviewed the erosion. The activity at this parcel has increased and this is causing additional erosion to his property. From an aesthetic view, there is no question that you see a canopy of mangroves but people do not worry about mangroves when navigating a canal, they are worried about boat docks. People are coming closer to his property to avoid this dock.

Bernie Ortwein, Sanibel Resident. Mr. Ortwein is confused about the discussion because he has not heard anything that would prohibit Mr. White from having a dock or a lot. Mr. White wants a lift but that requires a Variance, which should not be easily approved. In this case, there is no rationale for a Variance and it is a

divergence from what exists. Since the owner can still have a boat and have a dock, it is not a reason that he wants a different boat or different configuration. He has not heard a hardship that would allow him to change the law.

John Scholz, Sanibel Resident. Mr. Scholz has been on other Planning Boards and has dealt with a lot of pier and dock reviews. Mr. Scholz does not believe the threshold of hardship has been met in this instance. The owner bought the property knowing what could be placed on it and should be held to that. If this is allowed, it sets a precedence and a proliferation for other similar requests in the area.

Alicia Galante, Sanibel Resident. Ms. Galante questions the emergency permit issued after Hurricane Charlie and cannot understand its rationale. Acting Planning Director Gibson clarified the City's policy after Hurricane Charlie related to any structure damaged by Hurricane Charlie. This dock was rebuilt pursuant to that emergency permit. Ms. Galante asked if the same process was followed regarding inspections. Acting Planning Director Gibson noted there was a different review that was instituted by City Council to expedite repairs subsequent to the Hurricane. Ms. Galante also asked if that would have included permits of removal of mangroves. Ms. Galante has reviewed imagery of mangroves in the area through the years and does not see prior evidence of the existence as a dock. She believes that this dock did not exist prior to Hurricane Charlie and believes the dock was installed through a glitch in the permitting process. Finally, in this instance, the owner is not seeking to build a home on this lot for his own use. While the listing is not active on MLS, it has not been terminated.

Jason Maughan, Sanibel Resident. Mr. Maughan supports the application for the Variance. He and his wife live in the area. While he appreciates the neighborhood views, he has been a long time resident of this area and in fact, lived in the area when there were no canals and no mangroves. Mr. Maughan believes that people have a right to develop their land to its best potential. The dock was permitted legally at the time. The proposed lift presents no interference with navigation. Mr. Maughan lives on a lot that has to pass the dock/lift area every time he goes out. Those parcels on a canal pay extra for the privilege of living on the water and it is his personal belief that those who live on these parcels should have a right to have a dock and/or a boat lift in these circumstances.

Chair Marks noted that two of the public comments focused on the hardship. In his view, if you improve something, you do not have to prove a hardship. There is a large benefit to having a boat up on a lift instead of having it in the water. When someone adds a lift, it is an improvement to the water quality.

Commissioner Storjohann asked what the norm is for boat lifts. Prior to answering, Acting Planning Director Gibson responded to the hardship question noting that there was in fact a hardship given the width of the lot. This dock parcel has historically

been accessible to a residential lot and Staff is relying on that only for its allowed use. The use of this parcel can only be maintained lawfully in the manner in which it has been. It has to remain accessory to a lot that is buildable. The Variance hardship here is the waterward extension limit for a boat lift to be added. The dock cannot be reconstructed or modified in any way without setback relief. The owner is already allowed to have his existing boat moored at this dock. The lift merely allows the existing boat to be lifted out of the water. For this reason, Staff is neutral but does not object to the request, as the Applicant has addressed the minimum necessary standards.

The Planning Commission has considered many Variances for property owners to add boat lifts to existing docks. While every application has different circumstances and the Planning Commission should base each Variance on its own merits, there are other Variances granted in this neighborhood. But, there are similarly situated properties in this subdivision and in Sanibel where the Planning Commission has found that the hardship criteria have been met and Variances granted.

Commissioner Storjohann asked if the lift were a better environmental solution than mooring a boat at a dock. In general, Staff has taken the position that lifts are a better environmental solution.

Commissioner Johnson asked the Applicant to describe the long term plans for this parcel and the adjacent property. Mr. Hartsell does not know the long range plans for the property. The immediate plan is to install the boat lift and in this case, there is a hardship because of the shape, size and location of the parcel. In today's environment, lifts are customarily part of a dock and in this case, the lift mimics and matches the existing boat that is currently sitting in the water.

Commissioner Kettelman moved, seconded by Vice Chair deWerff to approve the proposal subject to the conditions of the Staff Report, and due to the volume of public comments against the application, that the resolution be brought back at the next meeting and the public hearing for this item be closed. The motion carried 6-1.

Opposed: 1 - Commissioner Kirchner

- c. Consideration of an Ordinance amending the Code Of Ordinances, Subpart B Land Development Code, Chapter 78 General Provisions, Section 78-1 - Rules Of Construction and Definitions by adding language to define the term "Fill" for purposes of the Land Development Code Regulations; providing for conflict and severance; providing for codification; and providing an Effective Date.

Chair Marks needs to leave at 2:15 p.m. Should that go longer, Vice Chair deWerff will continue to Chair the meeting.

The Planning Commission recessed at 1:47p.m.

The Planning Commission reconvened at 1:52 p.m.

Acting Planning Director Roy Gibson read the title into the record.

Item 7c on your agenda for today this is the consideration of an ordinance amending the Code of Ordinances, Subpart B Land Development Code, Chapter 78 General Provisions, Section 78-1 - Rules of Construction and definitions by adding language to define the term "Fill" for purposes of the Land Development Code Regulations; Providing for Conflict and Severance; Providing for Codification; and Providing an Effective Date.

Acting Planning Director Roy Gibson reminded the Planning Commission that the Land Development Review Subcommittee had reviewed this draft at its November 2017 meeting.

Benjamin Pople, Planner, provided a brief background on the proposed draft Ordinance. This matter developed from a Code Enforcement case in which the City contended the homeowner added material to their property that the City considered to be fill without obtaining a Development Permit. The Hearing Examiner found that because the City had no definition of "Fill" in its Land Development Code, the matter should be found in favor of the homeowner. The Code Enforcement Officer did opine that the City could remedy future issues such as this by adopting an Ordinance and adding a definition of "Fill" to the Land Development Code.

It was Staff's opinion that adding fill to a property is a form of altering or developing property and therefore, it is not something that is prohibited, but should follow permitting procedure. There are several standards in the Land Development Code that refer to "Fill" and this Ordinance will define what the City considers as "Fill."

Chair Marks asked who provided the definition of "Fill" for the draft Ordinance. Mr. Pople noted that collaboratively Natural Resources, Public Works and the Planning Department reviewed existing definitions in multiple resources and consolidated the recommended language into a definition that will help maintain standards of the Land Development Code. One of the key considerations originally used in defining the ecological zones across the island was the existing grade elevation on the topographic maps at City Hall. One of those zones, which used to be called the "Filled Land Zone," is now called the Altered Land Zone where areas were effectively filled and cleared and prepared for development. These zones also had their original vegetation largely removed. The City's regulations in general are geared to maintaining the integrity of the remaining ecosystems on the Island.

Chair Marks asked about the inclusion of natural materials as they do bio-degrade. Mr. Pople explained that there are exceptions related to fill-type materials such as mulch, typical to landscaping areas.

Commissioner Kettelman asked about the reference to an individual plant. Staff replied that in those circumstances, fill to raise that individual plant is not included.

Commissioner Kettelman moved, seconded by Chair Marks to adopt Resolution 18-007 forwarding to City Council and recommending approval of the proposed Ordinance adding language to define the term "Fill" for purposes of the Land Development Code Regulations. The motion carried 7-0 on a roll call vote.

8. Report from Director of Planning

Matthew Kirchner asked to be excused from the June 12, 2018 meeting.

Chair Marks asked to be excused from the June 12, 2018 meeting.

Chair Marks moved, seconded by Commissioner Kettelman to postpone the Permitting Process Review Sub-Committee to June 12, 2018. The motion carried.

Permitting process Review Subcommittee meeting is continued to June 12, 2018.
The LDC Subcommittee Review will be moved to a date in the future.

Benjamin Pople noted that Staff would demonstrate the new .pdf forms.

Councilwoman Smith will be away on June 12, 2018 meeting and would like to consider moving that meeting to a time when she can attend. Councilwoman Smith will meet with Acting Director Gibson and then make further determination.

Acting Planning Director Roy Gibson noted that the agenda items were mainly a status update.

a. 2018 Planning Commission Goals

2018 Planning Commission goals. These have not changed and are attached as an agenda item.

b. Permit Activity and Code Enforcement Monthly Reports

c. Horizon - Upcoming Important Dates

NEXT PLANNING COMMISSION MEETING JUNE 12, 2018

(Note: Chair Marks and City Council Liaison Smith will be absent; Vice Chair deWerff will act as Chair and Mayor Ruane will act as City Council Liaison.)

UPCOMING SUBCOMMITTEE MEETINGS:

PERMITTING PROCESS REVIEW SUBCOMMITTEE MAY 22, 2018

LAND DEVELOPMENT CODE REVIEW SUBCOMMITTEE JUNE 12, 2018

BELOW MARKET RATE HOUSING REVIEW SUBCOMMITTEE JUNE 26, 2018

Acting Director, Roy Gibson referred the Commission to the schedule attached to the agenda.

The Resolutions cannot be signed before June 12, 2018 but can be signed after that.

The Permitting Process Review Subcommittee is 6/12 and the Land Development Code Committee will be rescheduled.

9. Report from Commission Members

Vice Chair deWerff cannot attend City Council meeting on June 5, 2018.
Commissioner Storjohann will be there Grogman will act as the liaison on July 9, 2018.

10. Report from Commission Chair

11. Public Comment

None

12. Adjourn

There being no further business, the meeting adjourned at 1:56 pm.