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July 18th, 2012

Chairman and Commissioners
Key West Planning Board
Key West, Florida

* via e-mail: csmith@keywestcity.com *

Re: Major Dev. Plan 223 Elizabeth
Agenda 07-19-12, item 4

Dear Chairman and Commissioners:

The undersigned represents certain neighbors in the Key West Bight area and persons who do not live in the area. This letter is to urge you to vote against the recommendation of the major development plan which is tomorrow night's agenda item number four. I was walking my dog this morning when I was stopped by a neighbor who lives across the street from the proposed over-dense 96 room hotel. He was horrified at last night's City Commission approval of the project. As soon as the first shovel hits the ground the value of his property will plummet.

The major development plan consists of an illegal *ultra vires* agreement(s) by the City Commission to permit the developer to avoid having to meet the stringent Constitutional requirements for variances. Further, the City cannot legislate a variance (let alone 8 variances) through a settlement, development or 380 agreement thereby allowing a developer to circumvent the Land Development Regulation 90-395. The variance ordinances, as you know, are for the benefit of the citizens and the neighborhoods and the City Government cannot legally bargain same away.

At the City Commission meeting last night the City Planner admitted that but for the agreement(s) entered into by the City, that the developer would need to obtain at least 4 variances and a deed restriction to build the planned hotel, bar, and restaurant with sufficient parking (see transcript attached). That does not include the variances necessary for the transferal of a transient unit to Parrott Key (again see transcript).

The previous City Planner, Ty Symroski identified the major stumbling block to this project (then called Watermark) nine years ago (see TyReport attached). Nothing of binding legal significance has changed since that time. To the extent this development purports to repeal, amend, or otherwise circumvent the City Comprehensive Plan and/or the LDR's it is ineffective and void *ab initio*. (see also Amended Action for Declaratory Judgment and Order Denying Defendants' Motions to Dismiss in *Kelly v. City of Key West, Parrot Key Associates et.al.* (Circuit Court of Monroe County, CAK-08-287).

Any one of the following factors is sufficient to support the rejection of the above item:

1. the project is way over dense for the property (Comp Plan pp. 1-25 and 1-39) (LDR 86-4) (without a variance they are entitled to 22 units/acre); and also see *Lee County v. Sunbelt Equities* (619 So.2d 996, 1003)
2. parking variances are required for the hotel and for the restaurant (Code 108-572);
3. development requires offsite parking agreement with deed restrictions (Code 108-576);
4. a variance is required for the substitution of over 100 bicycles (Code 108-574); and
5. this does not include the required density and parking variances required to transfer a transient unit from this property to Parrott Key.

Please go walk the neighborhood prior to the meeting and try to imagine an additional 96 unit hotel, bar and restaurant within the 1.89 acre tract. Look at the surrounding neighborhood and you'll see why the HRCC-1 development is limited to 22 units/acre. This development subverts the entire land use scheme by avoiding the public scrutiny of City Code 90-395 which is designed to protect the public.

Thank you for reading.

Very truly yours,

Robert B. Goldman

1 CITY OF KEY WEST, FLORIDA

2 CITY COMMISSION

3
4 OLD CITY HALL
5 510 GREENE STREET
6 KEY WEST, FLORIDA

7 Tuesday, July 17, 2012
8 Commencing at 6:00 p.m.

9 Re: Excerpt from Agenda Item No. 24: Quasi-Judicial
10 Hearing: Approving the attached Development Agreement
11 pursuant to Section 380.23(3), Florida Statutes, for 223
12 Elizabeth Street.

13 (Excerpt Contains Cross Examination of Mr. Craig)

14 Commissioners Present: Teri Johnston
15 Clayton Lopez
16 Billy Wardlow
17 Jimmy Weekley
18 Mark Rossi
19 Tony Yaniz

ORIGINAL

20 Also present: Mayor Craig Cates
21 Larry Erskine, City Attorney
22 Jim Scholl, City Manager

23 Stenographically Reported by:

24 Cathy H. Webster RPR
25 Courthouse Business Center
302 Southard Street, Suite 107
Key West, Florida 33040
305.295.6279

1 (The following is an excerpt of these
2 proceedings.)

3 * * * * *

4 CROSS EXAMINATION

5 BY MR. GOLDMAN:

6 Q Mr. Craig?

7 A Yes, sir.

8 Q You spoke of an earlier 380 agreement. What's
9 the date of that agreement?

10 A I believe in and around 2007. I don't have a
11 specific date.

12 Q Has that agreement not expired?

13 A Not to my knowledge, no.

14 Q On its own accord, it doesn't say construction
15 is not completed within three years -- I'm sorry -- it
16 says construction must be completed within three years?
17 Does that ring a bell?

18 A Yes, it does, but I don't believe that it
19 expires the Development Agreement.

20 Q Would you consider this to be redevelopment of
21 a vacant lot?

22 A No, not in the strict sense, because there are
23 allocations of units to the property that run with the
24 property.

25 Q Is this property, 96 units, not overdense?

1 A It is overdense.

2 Q Is Parrot Key overdense?

3 ASSISTANT ATTORNEY ERSKINE: Mr. Mayor, I'm
4 going to interrupt because that's not part of what
5 he testified to. That's outside the scope of it.

6 MR. GOLDMAN: I think it is, Mr. Mayor. I took
7 notes on what he said. He commented on Parrot Key,
8 the transfer of the units to Parrot Key, and he's
9 talking -- anyway --

10 ASSISTANT ATTORNEY ERSKINE: Mr. Mayor.

11 MAYOR CATES: I'm going to follow the advice of
12 our attorney.

13 ASSISTANT ATTORNEY ERSKINE: I would submit
14 that that's not relevant to this.

15 Q Mr. Craig, does City Code Section 122-28 apply
16 to this project?

17 A I haven't memorized all of the sections of the
18 Code, but if you would like me to refer to it, I will.

19 ASSISTANT ATTORNEY ERSKINE: I believe that
20 refers to nonconformities.

21 MR. GOLDMAN: I withdraw the question.

22 Q Mr. Craig, does this -- assuming the 380
23 agreement is not approved, would this require parking
24 variance for cars and restaurants?

25 A Yes.

1 Q Assuming this agreement is not approved, would
2 it require a variance for the hotel?

3 A Not for the hotel, no.

4 Q I'm sorry. For parking for the hotel?

5 A For parking for the hotel, yes.

6 Q Assuming this agreement is not approved, would
7 this development require a parking variance for offsite
8 parking requirements?

9 A It would require a parking agreement.

10 Q And does not a parking agreement require deed
11 restrictions?

12 A That's correct.

13 Q And there are no deed restrictions in this
14 agreement, are there?

15 A No, sir.

16 Q Assuming this resolution does not pass, would
17 there be required a variance for a bicycle substitution
18 for parking over 100 bicycles?

19 A Yes, that's the method by which bicycle
20 substitution is allowed.

21 Q Assuming this agreement does not pass, would
22 there be required a variance for the transient unit
23 transfer going from Jabours to Parrot Key?

24 A Not a variance, no. There is a process for
25 transferring to that area.

1 Q But the developer would have to apply for the
2 transfer of that transient unit, is that not correct?

3 A That's correct.

4 Q And you have already said Parrot Key -- or you
5 don't know if Parrot Key is overdense at this point,
6 correct?

7 A I do not at this point know. However, the
8 information is available.

9 Q Now, assuming this resolution does not pass,
10 wouldn't there be required a parking variance for Parrot
11 Key if indeed they increase the number of transient
12 units?

13 A I do not know that.

14 Q And isn't it a fact, sir, that the acreage
15 proposed for this development includes an address of 717
16 Caroline to which the developer is not including for
17 development? In other words, it's included in the 1.89
18 acres. However, they have reserved the right in this
19 resolution to develop it separately; is that correct?

20 A That's not correct.

21 MR. GOLDMAN: I have no more cross examination.

22 Thank you. I would like to speak.

23 (End of proceedings.)

24

25

COURT REPORTER CERTIFICATE


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STATE OF FLORIDA)
COUNTY OF MONROE)

I, Cathy H. Webster, Registered Professional Reporter, certify that I was authorized to and did stenographically report the foregoing proceedings, and that the transcript, pages 2 through 5, is a true and complete record of the excerpt of my stenographic notes.

I FURTHER CERTIFY that I am not a relative, employee, or attorney, or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

DATED this 17th day of July, 2012.


Cathy H. Webster, RPR
Courthouse Business Center
302 Southard Street, Suite 107
Key West, Florida 33040

1 no copy of an actual agreement has been found. Therefore it is
2 possible that the vested rights may have expired.
3 J. April 1998. Ted Strader, City Planner dies. Alls negotiations appear to
4 cease.

5
6 2. Relevant Code Citations.

7 A. Zoned HRCC-1

- 8 1) Permitted uses including but are not limited to:
9 (a) Commercial retail low and medium intensity less than or
10 equal to 5,000 sq. ft.
11 (b) Commercial retail high intensity less than or equal to 2,500
12 sq. ft.
13 (c) Hotel, motels, and transient lodging
14 (d) Restaurants, excluding drive-through
15 2) Conditional uses including but not limited to:
16 (a) Bars and lounges
17 (b) Commercial retail low and medium intensity greater than
18 5,000 sq. ft.
19 (c) Commercial retail high intensity greater than 2,500 sq. ft.
20 3) Density & Intensity
21 (a) FAR = 1.0 applicable to non-residential uses
22 (b) 22 dwelling units per acre
23 4) Dimensional Requirements
24 (a) Building Coverage 50%
25 (b) Impervious Surface Coverage 70%
26 (c) Front, side, and street-side setbacks of 0.0 feet and rear
27 setback of 10 feet.

28 B. Parking Requirements¹

- 29 1) Hotels: one per unit plus one for a manager
30 2) Retail: one per 300 sq. ft.
31 3) Restaurant: one per 45 sq. ft. of consumption area.
32

33 C. Section 122-28. Replacement or reconstruction.

34 "c) Dwelling units (transient). Transient dwelling units may be replaced
35 at their existing nonconforming density so long as the reconstruction or
36 replacement complies with all zoning district regulations, review
37 procedures and performance criteria contained in the land development
38 regulations. No variances shall be granted to accommodate such
39 reconstruction or replacement; provided, however, that a variance may be
40 granted to setbacks only if existing setback regulations would create
41 undue hardship."
42

¹ These code requirements are for a new project on a vacant piece of property. It is not clear how to determine parking requirements for a vested rights project.

1 “(d) Properties without dwelling units. For a proposed reconstruction or
2 replacement of a property without dwelling units, where that property is
3 either a nonconforming use or a noncomplying building or structure, (i) if
4 the property is involuntarily destroyed, reconstruction or replacement does
5 not require a variance; and (ii) if voluntarily destroyed to the extent that
6 reconstruction or replacement would exceed 50 percent of the property's
7 appraised or assessed value, the applicant must apply to the board of
8 adjustment for a variance.”
9

10 “(e) Mixed use properties. If a property contains both a dwelling unit
11 and a commercial use, its reconstruction or replacement shall be
12 governed, separately, under each applicable subsection set forth in this
13 section.”
14

15 “(f) Historic district. Notwithstanding any other subsection contained in
16 this section, if a noncomplying building or structure is a contributing
17 building or structure according to the historic architectural review
18 commission (HARC) and it is involuntarily destroyed, such building or
19 structure may be reconstructed or replaced without a variance so long as
20 it is to be rebuilt in the three-dimensional footprint of the original building
21 and built in the historic vernacular as approved by the historic
22 architectural review commission.”
23

24 “(g) Miscellaneous. With respect to subsections (a) through (f) of this
25 section, the development review committee and the board of adjustment,
26 in evaluating petitions for variance, shall balance the need to protect life
27 and property with the need to preserve the economic base of the
28 community. Under no circumstances shall a voluntarily or involuntarily
29 destroyed nonconforming use or noncomplying building or structure be
30 replaced to a degree or level that increases or expands the prior existing
31 nonconforming use or noncomplying building or structure.”
32

33 **3. Analysis of Code Requirements**

- 34
- 35 1. **Density.** This property is over dense. Only 33 units are allowed on the property
36 (based on the estimate that the property is 1.5 acres). This is far less than the
37 current 80 existing units and the 101 authorized by the vested rights order.
38 Therefore, the redevelopment of existing units may only occur as long as all the
39 redevelopment complies with the code standards. It is not clear if the realigned
40 vested units must comply with these standards. **In the planning staff's**
41 **opinion the proposal is completely different than the original vested**
42 **project and thus amounts to a redevelopment of the site. Therefore,**
43 **the entire project must comply with the land development regulations.**
44 **The applicant disputes this.**

*now: 45 units
per 1.89 acre
incl. 717
Caroline
which is
w/ drawn*



Ex-C-2