RESOLUTION NO. 03-279

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, APPROVING THE ATTACHED SETTLEMENT AGREEMENT BETWEEN THE CITY AND CAROLINE STREET PARTNERS, LLC RELATED TO THE DEVELOPMENT OF THE JABOUR CAMPGROUNDS AND TRAILER COURT LOCATED AT 223 ELIZABETH STREET; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, Caroline Street Partners, LLC has approached the City for a pre-development agreement in an effort to clarify certain development rights that have been the subject of court orders and a vested rights determination.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, AS FOLLOWS:

Section 1: That the attached Settlement Agreement is hereby approved.

Section 2: That this Resolution shall go into effect immediately upon its passage and adoption and authentication by the signature of the presiding officer and the Clerk of the Commission.

Passed and adopted by the City Commission at a meeting held this 5 day of August, 2003.

Authenticated by the presiding officer and Clerk of the Commission on August 21, 2003.

Filed with the Clerk August 21, 2003.

JIMMY WEEKLEY, MAYOR

ATTEST:

CHERYL SMITH, CITY CLERK

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT is entered into this 21 day of August, 2003 by and between Caroline Street Partners, LLC, a Florida Limited Liability Company ("CSP") and the government of the City of Key West, Florida ("CITY").

WHEREAS, CSP is the owner of certain rights to purchase the real property known as Jabour's Campground and Trailer Court, located at 223 Elizabeth Street, Key West, Florida, and more particularly described on Exhibit "A" attached hereto (the "Property"); and

WHEREAS, CSP is also the owner of certain rights to purchase the real property located at 701 Caroline Street, Key West, Florida, which shall become part of the development to be authorized by this Agreement, and more particularly described on Exhibit "B" attached hereto, and hereinafter, reference to the Property shall mean both properties and shall be considered aggregated and a "Buildable Lot and Buildable Site", as defined by Section 86-9 of the Code of Ordinances; and

WHEREAS, CITY and CSP and its predecessors in interest in the Property have been in litigation regarding the permissible development on the Property; and

WHEREAS, CITY and CSP have reached agreement on the substantial issues of contention regarding the development of the Property, including CSP's establishment of a one hundred one (101) unit transient condominium facility, associated amenity facilities for the exclusive use of the guests of the condominium and six (6) to eight (8) affordable employee housing units (collectively referred to hereafter as the "Development"); and

WHEREAS, it is in the best interests of both the CITY and CSP that the above referenced litigation be settled and that CSP be permitted to establish the Development on the Property pursuant to the terms and conditions contained herein.

NOW, THEREFORE, in consideration of the mutual promises and covenants herein contained, CSP and CITY hereby say and agree as follows:

1. All of the above recitals are true and are incorporated herein.

2. There shall be space for parking ninety (90) vehicles for the Development. Such parking spaces shall be located on the Property.

3. CSP waives, releases and surrenders to CITY any and all claim or demand it has with respect to the Lazy Way Alley. CITY shall have the right to restrict vehicular access to said alley and establish the same as a pedestrian mall. CSP agrees to build a pedestrian sidewalk on William Street along CSP's property.

4. CSP agrees to pay an amount not to exceed $5,000 for the installation of additional bicycle racks sufficient for one hundred (100) spaces in the Caroline Street Corridor and Bahama Village Redevelopment District.

5. CITY recognizes that CSP has agreed not to build the two (2), one hundred fifty (150) seat restaurants and associated commercial floor area for a general store vested by Court Order and vested rights determination by CITY. There shall be no dedicated restaurant seating within the Development.

6. CSP agrees to provide space for the construction of between six (6) and eight (8) affordable housing units on the Property subject to CITY providing Building Permit Allocation System allocations for these units and also subject to the CITY determining the appropriate approval procedure for such units. CSP will record a deed restriction requiring that the rental rates for these units meet CITY's affordability criteria for a period of thirty (30) years.

7. It is understood and agreed that pursuant to a prior vested rights determination, CSP has the right, but not the obligation, to develop a maximum of one hundred one (101) transient units on the Property. Notwithstanding the foregoing, CSP and CITY agree that the condominium portion of the Development may consist of twelve (12) units developed as full-sized, luxury condominium units, seventeen (17) two-bedroom condominium units which may be rented as two (2) one-bedroom lock-out units, and fifty-four (54) units may be one-bedroom condominium units. Each such unit shall have its own transient rental license, except for the seventeen (17) designated two-bedroom condominium units, which shall have two (2) transient licenses each. Each unit shall receive a motel/hotel transient license pursuant to Section 66-109(10)(d) of the Code of Ordinances.

8. In connection with the condominium hotel portion of the Development described in paragraph 3 above, CSP shall be permitted to build up to 12,000 square feet of amenity floor area as accessory space for the exclusive enjoyment of the guests, including but not limited to laundry, administrative offices, spa/exercise rooms, catering kitchen/room service and meeting rooms.

9. CSP shall also be permitted to build a private service bar for the exclusive non-public use of its guests. This area shall not exceed 1,000 square feet.

10. In addition to the foregoing on-site development, a portion of the Property currently being operated as a guest house (717 Caroline Street) may be divided from the Property and sold separately as a single-family residence (non-transient). The single-family home parcel will comply with all applicable building standards or require separate variances as the case may be.

11. Except as otherwise provided herein, the Development shall be subject to all applicable requirements of the Codes of Ordinances of CITY, the Land Development Regulations and the zoning regulations of CITY. The Development shall be subject to Major Development Plan Review. The Development must be substantially completed within five (5) years after the later of (a) conclusion of any appeals from CITY's development approvals and (b) final decision of any litigation challenging such development approvals.

12. CSP understands that if it proposes to develop a number of units on the Property that constitutes non-conforming density, and once the project is constructed as contemplated

by this Agreement or revisions thereto are proposed, or post disaster reconstruction is required, the Development shall be subject to Section 122-28(c) of the Code of Ordinances. Further, CSP understands and agrees that it shall not seek variances from the City, including setback variances, with the exception of those required to provide affordable housing on site.

13. This Settlement Agreement is contingent upon CITY's Historic Architectural Review Commission agreeing that the two (2) existing white, concrete buildings on the Property are not contributing historical structures, and, therefore, may be demolished as part of the Development.

14. CSP acknowledges that neighboring City property consists of outdoor bars where amplified music is played.

15. CSP shall make best efforts to meet with residents of Key West Bight Neighborhood and to acknowledge their concerns within the Major Development Plan.

16. The parties acknowledge that it is CSP's intention to complete the purchase of the Property subject to approval of the contemplated Development. In the event of the approval of the Development and CSP's closing on the purchase of the Property, CSP shall obtain from Robert S. Jabour and Richard J. Jabour, the current owners of the Property ("Jabours", herein), and deliver to CITY dismissals with prejudice of the following lawsuits, and all other lawsuits brought by Jabours against CITY pending in the Circuit Court for Monroe County, Florida. Similarly, if CSP does not close on the property, then this Agreement shall not be binding on the City. When CSP closes on the purchase of the property, the parties will submit this Agreement to the Circuit Court, Sixteenth Judicial Circuit, together with (1) a Joint Motion substituting CSP for Jabours as party to each pending action, and (2) Stipulation for entry of judgement requiring the parties to comply with the terms of this Agreement and reserving jurisdiction for enforcement.

a. 87-743-CA-18
b. 92-215-CA-18
c. 93-499-CA-18
c. 94-555-CA-18
d. 96-326-CA-09
e. 96-350-CA-18
f. 96-547-CA-18
g. 96-1087-CA-18
h. 97-005-CA-18

CITY acknowledges and agrees that Robert S. Jabour and Richard J. Jabour are accommodation signatories to this Agreement, but they will not be bound by any of its terms, nor shall this Agreement be enforceable with respect to Jabours, except in the event the Development is ultimately approved and CSP closes on the purchase of the Property.

17. The laws of Florida shall govern this Agreement.

18. If any part of this Agreement shall be deemed invalid or unenforceable by a court of competent jurisdiction, the remaining parts of this Agreement that have not been deemed invalid or unenforceable shall remain in full force and effect.

19. Upon execution of this Agreement, the City will forthwith render a copy of it to the State of Florida Department of Community Affairs. The effective date of this Agreement shall be extended during the pendency of any DCA challenge hereto.

IN WITNESS WHEREOF, the parties hereto have set their hand and seal the day and year written above.

CAROLINE STREET PARTNERS, LLC

By: _____

Witness:

_____

CITY OF KEY WEST

By: _____
JIMMY WEEKLEY, Mayor

ATTEST:

SEAL OF THE CITY KEY WEST, FLORIDA

By: _____
CHERYL SMITH, City Clerk

Additional signatories:

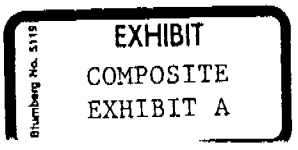
_____
Robert S. Jabour

_____
Richard J. Jabour

PARCEL A

On the Island of Key West, Monroe County, State of Florida, being known as Part of Square Eleven (11), more particularly described as follows:

Commencing at the Southerly corner of Square Eleven (11) where Caroline and Elizabeth Streets intersect and proceed along the Northeasterly side of Elizabeth Street in a Northwesterly direction a distance of One Hundred Seventy-three (173) feet to a point; proceed thence at right angles in a Northeasterly direction Fifty (50) feet; thence at right angles in a Southeasterly direction One (1) foot to the POINT OF BEGINNING; from the Point of Beginning proceed at right angles in a Northeasterly direction One Hundred Ninety-five and Six tenths (195.6) feet; thence at right angles in a Southeasterly direction One Hundred Eleven (111) feet; thence at right angles in a Southwesterly direction Thirty-eight (38) feet; thence at right angles in a Northwesterly direction Fifty-seven and Two-tenths (57.2) feet; thence at right angles in a Southwesterly direction One Hundred Fifty-seven and Six tenths (157.6) feet; thence at right angles in a Northwesterly direction Fifty-three and Seven tenths (53.7) feet to the Point of Beginning.



PARCEL B

On the Island of Key West and known on William A. Whitehead's Map delineated in February, A.D. 1829, as a parcel of land in Square Eleven (11) more particularly described as follows: Commencing at the Northwesterly corner of the intersection of Caroline and William Streets move Northwesterly a distance of 118.15 feet to the point or place of beginning. Thence at right angles in a Southwesterly direction a distance of 156.44 feet; thence at right angles in a Northwesterly direction a distance of 53.85 feet; thence at right angles in a Northeasterly direction a distance of 156.44 feet; thence at right angles in a Southeasterly direction along William Street a distance of 53.85 feet to the point or place of beginning on William Street.

PARCEL C

On the Island of Key West and known on William A. Whitehead's Map delineated in February, A.D. 1829, as a parcel of land in Square Eleven (11) more particularly described as follows: Commencing at the Northwesterly corner of the intersection of Caroline and Elizabeth Streets move Northwesterly along Elizabeth Street a distance of 173 feet to the point of beginning. Thence continue in a Northwesterly direction along Elizabeth Street a distance of 27 feet to a point; thence at right angles in a Northeasterly direction parallel to Caroline Street a distance of 200 feet to a point; thence at right angles in a Southeasterly direction a distance of 9 feet to a point; thence at right angles in a Northeasterly direction a distance of 200 feet to a point on the Westerly right-of-Way of William Street; thence at right angles in a Southeasterly direction along the Westerly boundary line of William Street a distance of 20 feet to a point; thence at right angles in a Southwesterly direction parallel to Caroline Street a distance of 352.04 feet to a point on the property line owned by the Veterans of Foreign Wars; thence at right angles in a Northwesterly direction a distance of 2 feet to a point; thence at right angles in a Southwesterly direction a distance of 50 feet to the point of beginning.

PARCEL D

On the Island of Key West and is part of Square 11 according to William A. Whitehead's map of said Island delineated in 1829 and is more particularly described as follows: From the intersection of the southeasterly line of Greene Street and the northeasterly line of Elizabeth Street go southeasterly along the northeasterly line of Elizabeth Street a distance of 95.50 feet to a point; thence at right angles and northeasterly a distance of 100 feet to a point; which point is the point of beginning; thence continue northeasterly along the previously described course a distance of 79.04 feet to a point; thence at right angles and northwesterly a distance of 47.10 feet to a point; thence at right angles and northeasterly a distance of 52.44 feet to a point; thence at right angles and southeasterly a distance of 62.20 feet to a point; thence at right angles and southwesterly a distance of 6.00 feet to a point; thence at right angles and southeasterly a distance of 89.40 feet to a point; thence at right angles and southwesterly a distance of 125.48 feet to a point; thence at right angles and northeasterly a distance of 104.50 feet back to the point of beginning.

PARCEL E

Parcel E-1:

A parcel of land in the Island of Key West, Monroe County, Florida, said parcel being a Part of Lot 1 of Square 11 of Whitehead's Map of the said Island as delineated in February 1829 and the said parcel being more particularly described by metes and bounds as follows: COMMENCE at the intersection of the NW'ly right-of-way-line (ROWL) of Caroline Street with the SW'ly ROWL of William Street and run thence in a SW'ly direction along the NW'ly ROWL of the said Caroline Street for a distance of 201.00 feet; thence NW'ly and at right angles for a distance of 191.00 feet to the POINT OF BEGINNING of the parcel of land being described herein; thence continue NW'ly along a prolongation of the preceding course for a distance of 9.00 feet; thence NE'ly and at right angles for a distance of 24.48 feet; thence SE'ly and at right angles for a distance of 9.00 feet; thence SW'ly and at right angles for a distance of 24.48 feet back to the POINT OF BEGINNING, said parcel containing 220 square feet.

Parcel E-2:

A parcel of land on the Island of Key West, Monroe County, Florida, said parcel being a Part of Lot 1 of Square 11 of Whitehead's Map of the said island as delineated in February 1829 and the said parcel being more particularly described by metes and bounds as follows: COMMENCE at the intersection of the NW'ly right-of-way-line (ROWL) of Caroline Street with the SW'ly ROWL of William Street and run thence in a SW'ly direction along the NW'ly ROWL of the said Caroline Street for a distance of 201.00 feet; thence NW'ly and at right angles for a distance of 60.00 feet to the POINT OF BEGINNING of the parcel of land being described herein; thence continue NW'ly along a prolongation of the preceding course for a distance of 57.20 feet; thence NE'ly and at right angles for a distance of 6.50 feet; thence SE'ly and at right angles for a distance of 57.20 feet; thence SW'ly and at right angles for a distance of 6.50 feet to the POINT OF BEGINNING, said parcel containing 372 square feet.

Parcel E-3:

A parcel of land on the Island of Key West, Monroe County, Florida, said parcel being a Part of Lot 1 of Square 11 of Whitehead's Map of the said island as delineated in February 1829 and the said parcel being more particularly described by metes and bounds as follows: COMMENCE at the intersection of the NW'ly right-of-way-line (ROWL) of Caroline Street with the SW'ly ROWL of William Street and run thence in a SW'ly direction along the NW'ly ROWL of the said Caroline Street for a distance of 156.50 feet to the POINT OF BEGINNING of the parcel of land being described herein; thence continue SW'ly along the NW'ly ROWL of the said Caroline Street for a distance of 4.50 feet; thence NW'ly and at right angles for a distance of 60.00 feet; thence NE'ly and at right angles for a distance of 4.50 feet; thence SE'ly and at right angles for a distance of 60.00 feet back to the POINT OF BEGINNING, the said parcel containing 270 square feet.

PARCEL F

On the Island of Key West and is part of Square 11 according to William A. Whitehead's map of said Island delineated in 1829 and is more particularly described as follows:

From the intersection of the northwesterly line of Caroline Street and the southwesterly line of William Street go northwesterly along the said southwesterly line of William Street a distance of 191 feet to a point; which point is the Point of Beginning; thence continue northwesterly along said southwesterly line of William Street a distance of 105 feet to a point; thence southwesterly and at right angles a distance of 176.52 feet to a point; thence southeasterly and at right angles a distance of 105 feet to a point; thence northeasterly and at right angles a distance of 176.52 feet back to the point of beginning.

EXHIBIT "B" TO SETTLEMENT AGREEMENT

In the City of Key West and is known as Part of Lot 2, of Square 11, according to the Map or Plan of the Island of Key West delineated in February A.D. 1829, by William A. Whitehead, and being more particularly described as follows:

BEGINNING at the point of intersection of the Northerly right-of-way boundary line of Caroline Street with the Easterly right-of-way boundary line of Elizabeth Street and thence Northeasterly along Caroline Street 120 feet to a point; thence Northwesterly at right angles 120 feet to a point; thence Southwesterly at right angles 69.75 feet to a point; thence Southeasterly at right angles 60 feet to a point; thence Southwesterly at right angles 50.25 feet to a point on the Easterly right-of-way boundary line of said Elizabeth Street; thence Southeasterly along the said line of Elizabeth Street 60 feet back to the Point of Beginning.

MEMORANDUM

To: Key West City Commission

From: Ty Symroski, City Planner

Date: July 8, 2003

RE: Jabours Campground Redevelopment

1. Issue

Redevelopment of the Jabour's Campground. The general question is what is consistent with the Vested Rights Determination of Ted Strader, prior agreements with the city, and prior trial stipulations as well as complying with current regulations? What are the rights to deviate from these prior approvals?

1. A prospective purchaser of the property has proposed:
   - A. 90 transient units.
     1) 12 would be full size residences with many rooms
     2) 30 would be created by 15 units each having a lock-out room
     3) 48 would be one bedroom
   - B. Single family home on 717 Caroline Street (converted from current Walden Guest House)
   - C. 150 seat restaurant and attendant commercial retail space in a maximum of 10,000 sq. ft. The consumption area of the restaurant/pool bar shall not exceed the maximum square footage provided for a 150-seat restaurant and the commercial retail space shall be approximately, 3,00 sq. ft.
   - D. 3,000 sq. ft. of amenity space for the exclusive use of the guests, including but not limited to laundry, administrative offices, exercise rooms and meeting rooms.
   - E. The precise number of parking spaces to be provided on site is not specified. The applicant believes a total of 89 parking spaces is required and proposes to meet this by providing some of these off site and by mitigating parking demand by:
     1) Providing $160,000 for affordable housing that can be used in the area.
     2) Building sidewalk along Elizabeth Street
     3) Waiving claims to Lazy Way and the right of access from Lazy Way
     4) Paying for the installation of 100 bicycle spaces in the Caroline Street Redevelopment District.

2. The current owner has claims for:

A. Total of 101 units
   1) 74 existing trailer Licenses. These have been used transiently.
   2) 6 existing units in the Walden Guest House.
   3) 21 new vested rights units
      (a) 12 units Converted from two existing duplexes (Parking not required)
      (b) 1 New cottage (parking required)
      (c) 7 unit new hotel (parking required)
      (d) 1 New manager's apartment into an existing CBS building (parking required)

B. Non-residential Development Rights
   1) Vested rights determination to:
      (a) Convert existing CBS building into a new 150 seat restaurants (parking not required)
      (b) Convert existing CBS building into a General store and 150 seat restaurant (parking required)

C. Requirement to add 68 parking spaces due to vested rights determination.

The Planning Department acknowledges the total of the rights listed above but questions both the continued claim and the ability to deviate from the projects that received vested status.

2. Background

1. Previous City Actions

A. November 1984 to March 1985. Peter Horton of the City of Key West conducts site visits and concludes there are 74 trailer spaces able to be rented. Since then the City's occupational license and utility accounts reflect this number. Note: twenty-two (22) of these spaces are underneath 11 trailers. At that time Mr. Horton also changed the term from "R.V." spaces to "Trailer".

B. November 1985. Building Permit Applications:
   1) Parcel A. (Convert 2 duplexes to 12 guest units)
      (a) Convert side by side duplex to 6 guest units
      (b) Convert up and down duplex to 6 guest units
   2) Parcel D.
      (a) Remove shed and replace with new cottage
      (b) Convert existing CBS building into 150 seat restaurant
   3) Parcel F.
      (a) Convert existing CBS building into:
         (i) One general store to include manager's office/apt.
         (ii) One 150 seat restaurant
         (iii) 7 unit hotel

C. 1990 to 1991. Trial Stipulations, Pretrial Stipulations Final Judgment and Order denying rehearing and clarifying Final Judgment. The conclusion is:
   1) A Community Impact Assessment Statement (CIAS) will be required if the entire site is developed, then.
   2) Parking is not required for the added development on Parcels A & D but is required for the additional development on Parcel F.

D. November 23, 1994. Ted Strader, Key West City Planner determines:
   1) The property has obtained final judicial order or decrees and is incorporated as exhibit A. (Final Judgment Jan 29, 1991, Order denying motion for rehearing and clarifying the final judgment May 7, 1991, Pre-trial Stipulation, Trial Stipulations Jan. 14, 1990.
   2) Vested rights hearing not necessary but must comply with 6-month requirement (sec. 7.03). The actual vested rights are not specified.

E. January 5, 1995. Letter from Charlene G. Browning to Ted Strader. Claims that 6-month limit does not apply due to court determination. Claims City agreed to allow the permits to be pulled on these units until a reasonable time after the proposed development agreement is rejected by the City or it complies with the agreement. Note: this may only apply to proposed dev. in the documents.

F. February 10, 1997. Unsigned memorandum from Ted Strader and Bob Tischenkel to Julio Avael, City Manager. Discusses elements of a proposed Development Agreement:
   1) Total of 66,000 sq. ft. of development (floor area ratio of 1.0) including all uses such as hotel, restaurant, bar & lounge, retail.
   2) Up to 101 transient units or 59 residential apartment building

G. February 11, 1997. DCA attorney, Karen Brodeen specifies DCA is very concerned with approved density.

H. July 14, 1997. Letter from Charles Pattison, Director of Division of Resource Planning and Management of the Department of Community Affairs.
   1) Cannot support the proposed agreement.
   2) Desire comprehensive, City Wide approach to non-conforming density.

I. November 12, 1997. Resolution 97-471. City resolves:
   1) To enter into agreement whereby the Jabours will stay all pending litigation,
   2) To enter into agreement whereby the City and CRA shall agree from taking the property.
   3) To enter into mutually acceptable Easement Agreement or License Agreement to provide the Jabours ingress and egress for service, customer and pedestrian access to their property from Lazy Way.
   4) Authorizes the City Manager to execute the above-referenced agreement or agreements on behalf of the City. Please note that

no copy of an actual agreement has been found. Therefore it is possible that the vested rights may have expired.

J. April 1998. Ted Strader, City Planner dies. Alls negotiations appear to cease.

2. Relevant Code Citations.

A. Zoned HRCC-1

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

B. Parking Requirements [1]

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

C. Section 122-28. Replacement or reconstruction.

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

[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.

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

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

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

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

3. Analysis of Code Requirements

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

2. ROGO. The proposed project has sufficient ROGO units. The 100 transient units are equivalent to 58 full ROGO units and the manager's apartment is equivalent to 0.55 ROGO units for a total of 58.55 full ROGO units.

There is a limit that small transient units may not be expanded to exceed two rooms not counting bathrooms. Additionally small apartments may not exceed 600 sq. ft. Never the less, existing units are sufficient for he proposal of 12 large units, 78 small units, and the full size house. The City will recapture a 0.31 ROGO unit.

3. Parking. Determining the required parking is not clear due to the complexities of redevelopment, vested rights, and a proposal that is different. Table 1 below compares the parking required based on various assumptions.

   A. Column A. Parking required of the vested increment (two restaurants retail and 21 units). As indicated, the vested projects are required to build a minimum of 68 parking spaces. This may be a low number because it assumes one parking space is required for three seats in a restaurant. The normal standard is 1 space per 45 sq. ft. of consumption area.
   B. Column B. Proposed project giving the applicant credit for the portions that are vested and not required to provide parking. A total of 90 parking spaces would be required. This assumes the restaurant and the first 12 units being built are the ones vested to not provide parking.
   C. Column C. Treating the project as a complete reconstruction. If there was no vested status and the project were treated as totally new or reconstructed project, then 152 parking spaces would be required.

As related background information, it should be noted that a monthly parking pass at the garage at Grinnell and Caroline Street is $50.00. plus tax or $600.00 per year.

4. Redevelopment. The developer proposes to remove the two concrete buildings adjacent to Lazy Way and William Street if allowed by HARC. These buildings date from at least 1962 and are remnants of the commercial waterfront during the last era of commercial fishing and shrimping in Key West. They are immediately adjacent to the "Historic Seaport". Thus, in the opinion of the Planning Department they meet the definition of a historic resource as defined in Chapter 267 of the Florida Statutes and are have historic significance as defined in the HARC Guidelines. Therefore, in the staff's opinion, the negotiated settlement should include negotiations to save these buildings.

Table 1.
Automobile Parking Required Under Various Assumptions
(Required Bicycle is not shown)

	A	B	C
	New spaces Required only by increment of Vested Rights	Assuming the first units and non-residential built are the projects that are not required to provide parking.	Treating the project as a complete reconstruction of a non-conforming site and density.
74 spaces	0	12 vested units – 0 spaces 78 non vested units – 78 spaces Required for manager – 1 spaces 1 house on 717 Caroline Street – 1 spaces 80 spaces	90 transient units – 90 spaces Required for manager – 1 spaces 1 for 717 Caroline St. – 1 spaces 92 spaces [1]
Replace Walden units	0		
Vested duplexes convert to 12 guest units	0		
Vested New Cottage	0		
Vested New 7 units	7		
Vested Manager's Apt.	1		
Vested New 150 seat restaurant	0	0	50 [2]
Vested New 150 seat restaurant	50 [3]		Not proposed
Vested new general store (assumed 3,000 sq. ft.)	10	10	10
TOTAL	68	90	152

[1] A variance could not be granted to reduce this number (Sec. 122-28 (c)). However, units could be placed off site pursuant to 108-576.
[2] A variance could be granted to reduce this number Sec 122-28 (d)).
[3] Size of consumption area not known. However if standard of 15 sq. ft. per seat is used and the requirement is one space per 45 sq. ft., then 50 spaces are required

4. Conclusion

The Planning staff accepts the rights to the number of units and amount of non-residential floor area to be built assuming it is concluded that the facts support the applicant's claim that the "vested rights" have not expired. The issue is parking. In the staff's opinion, the project is entirely different from the vested rights and therefore, should be treated as a redevelopment of a non-conforming project and provide the 152 parking spaces are required. A variance may be granted for some of the spaces and the code allows spaces to be located off site is deed restricted. The applicant does not agree with the staff. The applicant believes only 89 spaces are required and that the off-site spaces do not need to be deed restricted.

The history of litigation and reliance on trial and pretrial stipulations provides the opportunity for a negotiated settlement. Such negotiations should strive for a win for the City as well as the applicant.

5. Analysis of Options

1. Option 1. Approve the settlement as proposed.

   A. Benefits of Option 1. There are several benefits of the proposed agreement:
      1) The agreement will conclude a long history of litigation.
      2) The property will convert from a campground with large recreational vehicles to a new hotel built to the new building code.
      3) The applicant acknowledges that the neighboring city property consists of outdoor bars where amplified music is played but that the property is subject to the noise ordinance and the city will enforce the noise ordinance.
      4) There are measures to mitigate the parking demand. These include:
         (a) Building a sidewalk on William Street,
         (b) Forgoing any claim and access to Lazy Way,
         (c) Contributing to affordable housing and
         (d) Contributing to 100 bicycle spaces in the area.
         (e) Additionally, while the applicant is not making a specific proposal, it is likely the applicant will desire to lease spaces from the Key West Bight.

   B. Disadvantages of Option 1. Previously, when the City negotiated settlements the City received more than just a mitigation of the extra development being sought. The negotiations resulted in projects that furthered community goals beyond the minimum requirements of the Land Development Regulations. For instance, in the case of Conch

Harbor, the developer built below the allowed density, provided more open space than required and made a financial contribution to parking.

In the current proposal, the applicant will be allowed to retain nearly triple the allowed number of units, will not provide extra open space and will demolish two building that date from a bygone era.

Additionally, the proposal does not give the actual number of on site spaces and the proposed terms of spaces to be leased from Key West Bight and thus is not truly complete.

2. Option 2. Deny the Settlement Agreement.

The advantage and disadvantage of this option is that everything stays as they are. However, this will only delay the inevitable redevelopment of the property.

3. Option 3. Direct Staff to Revise the Settlement Agreement.

This property will be redeveloped at some point. However, such redevelopment of this large site should further the goals and objectives of the Community. The Planning Department recommends:

1. Approval of the proposed number of units and non-residential areas.
2. Rehabilitate the existing concrete buildings.
3. Require no more than 30 parking spaces on the site.
4. Accept the parking mitigation proposed by the applicant.
5. Require the applicant to purchase a minimum of 60 annual parking passes from the city each year or develop a similar program. The guests of the property may then use these passes.

5. Recommendation

The Planning Department Recommends **Option 3**. This proposal would preserve property rights, preserve buildings important to the character of the "Historic Seaport", and allow parking to be centralized. Such centralized parking is most efficient in eliminating traffic congestion.

----------End of report----------

672689 REC 1153 PAGE 1870

IN THE CIRCUIT COURT OF THE 16TH JUDICIAL CIRCUIT IN AND FOR MONROE COUNTY, FLORIDA

MAURICE JABOUR, individually, and MAURICE JABOUR and FRANCES JABOUR, his wife,
Plaintiffs,

vs.

CITY OF KEY WEST, a municipal corporation under the laws of the State of Florida,
Defendant.

_____/

CASE NO. 87-743-CA-18

FILED FOR RECORD
'91 FEB 1 PM 3 00
MONROE COUNTY, FLA.
CLERK CIR. CT.

FINAL JUDGMENT

THIS CAUSE having come on for trial on November 14, 1990. On November 15, 1990, the Plaintiffs and Defendant entered into certain stipulations governing this case. It was stipulated that all exhibits marked Joint Exhibit 1 through 130 would be moved into evidence and that the Court would received memoranda from each of the parties regarding two issues as outlined herein.

The Court, after having reviewed the Memoranda submitted by each party on these issues, the pleadings, the law and the evidence submitted in this case, finds as follows:

ISSUE 1.

ISSUE 1. AT WHAT POINT IN TIME SHOULD CODE OF ORDINANCES SECTION 35.09, REGULATING OFF-STREET PARKING, BE APPLIED TO PLAINTIFFS' BUILDING PERMIT APPLICATIONS FOR PARCELS A, D, AND F?

In November 1985, Plaintiff(s) submitted building permit applications. Section 35.09 imposes certain requirements for provision of off-street parking. (See Exhibits 64, 73) At that time, a waiver of off-street parking requirements was in effect. (Exhibit 73) Subsequently, section 35.09 was amended. On July 1, 1986, Ordinance No. 86-15 was passed which provides that the waiver shall apply only so long as a "change in residential use which increased density does not occur to said existing buildings and other structures." (Exhibit 87) On August 3, 1987, Ordinance No. 87-30 was passed which removed this requirement by redrawing certain boundaries, but provided that "[t]he waiver shall apply to structures throughout [the area including the Plaintiffs' properties] only so long as any change in use does not occur to said existing buildings and other structures." (Exhibit 64, Section 35.09(c).)

Plaintiffs contend that the new parking requirements of

EXHIBIT
COMPOSITE
EXHIBIT B

To Be Recorded

Ordinance No. 87-30 should not apply to them in the instant case because: (1) plaintiff submitted applications for building permits in June, 1986 (thereby vesting) prior to the enactment of the new parking ordinance and, (2) therefore, the new parking ordinance should not be retroactively applied to them.

Defendant submits that the parking requirements should apply to Plaintiffs as of August 3, 1987.

The law in Florida is clear that a local government may apply ordinances enacted after building permit applications to developers as long as such ordinances are enacted for valid purposes. See Town of Longboat Key v. Lands End, Inc., 433 So.2d 574 (Fla. 2d DCA 1983); City of Boynton Beach v. Carroll, 272 So.2d 171 (Fla. 4th DCA 1973); City of Gainesville v. Cone, 365 So.2d 737 (Fla. 1st DCA 1978).

Off-street parking is a legitimate subject for local government concern and legislation. See: Exchange Investments, Inc. v. Alachua County, 481 So.2d 1223 (Fla. 1st DCA 1985).

Generally, the doctrine of vested rights limits local governments in the exercise of their zoning powers when a property owner relying in good faith upon some act or omission of the government has substantially changed position or incurred such excessive obligations and expenses that it would be highly inequitable and unjust to destroy the rights that the owner has acquired. See: City of Key West v. R.L.J.S. Corp., 537 So.2d 641 (Fla. App. 3 Dist. 1989) See also: Hollywood Beach Hotel Co. v. City of Hollywood, 329 So.2d 10, 15 (Fla. 1976); City of Lauderdale Lakes v. Corn, 427 So.2d 239, 243 (Fla. 4th DCA 1983); Smith v. City of Clearwater, 383 So.2d 681 (Fla. 2d DCA 1980), review dismissed, 403 So.2d 407 (Fla. 1981).

The Court of Appeals for the Third District recently considered a similar vesting argument with respect to an ordinance passing impact fees. See: City of Key West v. R.L.J.S. Corp., 537 So.2d 641 (Fla. App. 3 Dist. 1989) (The Court of Appeals for the Third District discussed the doctrine of vested rights and held that a building permit, although assuring its possessor that he may safely rely on it and build in accordance with the approved plans, provides no assurance to the possessor that a taxing authority being built upon, or, as in that case, to impose fees for certain municipal services which will be especially required then the building is completed. The court held that "likewise there is no basis to conclude the action of the building department of the City in approving building plans and issuing a permit conferred any right upon the developer to expect that the legislative arm of the City - its council - would not enact an ordinance imposing impact fees where warranted.")

Moreover, in City of Key West v. R.L.J.S. Corp., supra, the Court observed that " ...a law enacted during work in progress or when work is complete is not vitiated by the invocation of the word

'retroactive.' A law is not constitutionally infirm merely because the person affected is unable to divert the effects of the law to another, or, as in that case, to pass along the unanticipated costs that result from the law. The Court cited to a long series of United States Supreme Court cases which upheld laws which operated retroactively."

In the instant case, this Court believes it is reasonable to apply the new parking requirements of Ordinance No. 87-30 as of August 3, 1987 to the plaintiffs. As of that date, plaintiffs merely possessed applications for building permits. Plaintiffs did not acquire vested rights by merely filing an application for building permits. Likewise, it is clear that the statute can be applied retroactively to them. See: City of Key West v. R.L.J.S. Corp., supra, (Government can constitutionally impose burdens which are unexpected whether or not the burdens are susceptible to being passed on to another person.)

WHEREFORE, this Court finds that Section 35.09 of the City of Key West Code of Ordinances applies to the three permit requests of the Plaintiff as of August 3, 1987.

ISSUE 2.

ISSUE 2. COULD THE CITY AT THE TIME OF APPLICATION FOR BUILDING PERMITS BY THE PLAINTIFFS AGGREGATE THE APPLICATIONS FOR PURPOSES OF CIAS REVIEW?

The City considered the applications for building permits on Parcels A, D and F together for various reasons outlined in defendant's brief: (1) physical contiguity; (2) concurrent timing of the applications; (3) similar ownership; (4) plans drawn by the same architectual firm; (5) same contractor; (6) common/overlapping usage of properties; (7) current usage by the trailer park; (8) prior "piecemealing" development; (9) shared sole access to two of parcels by private road; and (10) cumulative impact upon City services.

Plaintiffs object to this aggregation because (1) the City does not have statutory authority under the CIAS requirements of Section 34.05, City of Key West Code of Ordinances or a factual basis to do so; and (2) that Parcels A, D, and F do not meet the definition of "major development" under Section 34 of the City Code.

The CIAS ordinance creates further confusion because the terms "project" and "development" are used throughout the statute; however, the definitions of these terms do not appear within the ordinance.

It appears that a development or project must meet the CIAS requirements only if certain criteria are met as outlined herein below, in part. Plaintiffs argue that Sections A, D, E and F do not apply in this instance. The remaining provisions are:

b. Projects containing sixteen (16) or more habitable units per acre and containing a minimum of ten (10) habitable units or projects containing twenty (20) or more total habitable units; the total number of units shall include the units in all phases of the total project or development or, any residential development in which the gross residential density is ten (10) or more units per acre and the development requires rezoning, variance or special exception modifying the presently allowed density;

c. All business, commercial or industrial uses of one (1) or more acres or ten thousand (10,000) or more square feet of gross floor space.

Section 34.05 (a) would not be applicable because there is not any evidence that a building in excess of forty feet in height is involved in this case.

Section 34.05 (b) and (c) may apply if the parcels meet the definition of development as intended by the commission and if the other requirements of those sections are met.

Section 34.05 (e) would not apply to the instant case because there is not any evidence that the mayor or planning designate prepared a written finding of fact regarding such impacts prior to requiring the CIAS nor did these written facts appear in a resolution requiring same.

Section 34.05 (f) does not apply to the instant case because there is not any evidence that the plaintiffs requested a waiver under this provision nor that the city commission relieved the development from the requirements of this section by a four-fifths vote of the entire commission.

A review of the transcript of the proceedings of the Key West Commission sitting as the Board of Adjustment held at Key West City Hall, Key West, Florida on August 8, 1987 confirms that plaintiffs were not seeking a waiver of Section 35.05 under provision (f) (at pages 76, 77). The Board of Adjustment denied the Jabour's two appeals on the non-issuance of building permits by Chief Building Official Cates for 223 Elizabeth Street, Parcel A, Architect's Project No. 85024, 12 unit tourist court and for non-issuance of building permit by Chief Building Official Cates for the Jabour cottage and 150 seat restauraunt, Jabour property, Parcel D, Square 11, as per legal attached to the application. The Board reasoned that the three parcels in question constituted "major development" and that a CIAS should be submitted.

This Court agrees with the decision of the Board of Adjustment that the three parcels must be considered together, that together the parcels constitute a "major development" and that a CIAS must be filed pursuant to 34.05 for the reasons outlined below.

With respect to construction of Section 34.05, Section 34.04 states that "[words whose meaning is self-evident as used herein are not defined." Absent clear evidence to the contrary, words used in an ordinance are presumed to have their ordinary meanings. See Maryland Casualty Co. v. Sutherland, 169 So. 679 (Fla. 1936)

The State of Florida defines "development" as "the carrying out of any building activity..., the making of any material change in the use or appearance of any structure of land..." See Florida Statute Section 380.04(1)(1989).

The purpose of CIAS review is to provide information to the Planning and Building Department so that that department can make an informed decision on whether or not a project or major development is likely to make an impact on the City services. As stated at 34.03:

The purpose of this community impact assessment ordinance is to facilitate and coordinate the processing of, and the planning for intensive land uses within Key West, to assess the proposed development's favorable or unfavorable impact on the environmental, natural, economic, historic, and other resources and to determine the potential of the project to meet local or regional housing needs. Furthermore, it is the intent of the community impact assessment ordinance to provide development impact information on public facilities and the fiscal structure of Key West including without limitation, water, sewer, solid waste disposal and public transportation facilities which will help coordinate the development of, provide protection for, and maximize full utilization of the above-mentioned and natural and manmade resources.

It is not unreasonable for the Planning and Building Department to require applicants to provide such information to the department.

When the Planning and Building Department received three (3) applications for building permits on the same day with the same contractor and architect listed for each parcel and owned by plaintiffs, it was not unreasonable for the Planning and Building Department to aggregate the parcels together to determine whether this development will impact on City Services.

While there is not a formal requirement that parcels must be aggregated (especially where each parcel does not fall within any of the categories of Section 34.05); likewise, there is not a prohibition against aggregation.

The underlying purpose of aggregating the parcels is to determine the impact of these parcels relative to the other facilities owned by the same parties and located in the same vicinity. Without a master devlopment plan for the site, the Planning and Building Department would be unable to quantify the impact of the parcels together with the existing development.

Indeed, it is not unreasonable to consider a 150 person restaurant as "major development".

Art Mosely testified in his deposition at page 17 that a commercial development is one in which is in excess of an acre. Paul Cates testified at the Board of Adjustment Hearing at page 47 that all of these parcels together are in excess of one acre. Thus, this could be considered a commercial endeavor within the meaning of 34.05 (c).

It is likely that the 150 person restaurant would be considered a commercial development also. Thus, it too could be considered as a commercial use within the meaning of 34.05 (c).

Last of all, looking at the intended use of all of parcels reveals that the use is purely commercial with an anticpated benefit to the plaintiffs. i.e.: a 12 unit tourist court, a 150 person restaurant, a general store and a manager's apartment. It is not unreasonable for the Planning and Building Department to wonder how seventy-four trailers fit together in an area with this much proposed development. (See Board of Adjustment Meeting at page 16.)

The City Planner determined that the proposed work on Parcels A, D, and F fell under at least one, and up to three, of the CIAS criteria: density, square footage and change in use. Exhibit 125 (Deposition of Art Mosley at page 17). The City is entitled to a presumption that its officials acted properly in interpreting the applicable ordinances. Fla. Stat. Section 90.304 (1989); Hillsborough Couny Aviation Authority v. Taller & Cooper, Inc., 245 So.2d 100 (Fla. 2d DCA 1971).

Although the defendant City of Key West cannot cite to a specific case where parcels like these have been aggregated, they do contend that aggregation is a fairly common concept at both the state and federal levels. This Court agrees with the concept of aggregation.

WHEREFORE, this Court also determines that the City acted properly in aggregating the building permit applications for Parcels A, D, and F for the purpose of CIAS review and in construing that the combined parcels constituted major development under the statute.

DONE AND ORDERED in Chambers at Key West, Monroe County, Florida this the 29 day of January, 1991.

CIRCUIT JUDGE

Copies provided to:

Michael Browning
City Attorney

IN THE CIRCUIT COURT OF THE 16TH JUDICIAL CIRCUIT IN AND FOR MONROE COUNTY, FLORIDA

MAURICE JABOUR, individually, and MAURICE JABOUR and FRANCES JABOUR, his wife,

Plaintiffs,

vs.

CASE NO. 87-743-CA-18

CITY OF KEY WEST, a municipal corporation under the laws of the State of Florida,

Defendant.

_____/

FILED for record
91 MAY 10 P4:04
MONROE

ORDER DENYING MOTION FOR REHEARING AND CLARIFYING THE FINAL JUDGMENT

Plaintiffs, MAURICE JABOUR, individually, and MAURICE JABOUR and FRANCES JABOUR, his wife, by and through their attorney of record, and pursuant to Rule 1.530 Fla. R. Civ. P. move this Court for a rehearing in the above-styled matter.

Plaintiffs cite in support of their Motion for Rehearing that two issues need further clarification, as follows:

ISSUE NO. 1

That there is an error on the face of the record resulting in a judgment contrary to the evidence in the record in that the Final Judgment entered in this case on January 29, 1991 states that Section 35.09 applies to the three permit requests (Parcels A, D, and F) as of August 3, 1987, and does not take into account both the pretrial and trial stipulations.

The Court is aware that certain pretrial and trial

108

stipulations were entered into between the parties and it is so noted in the Final Judgment. The parties requested that the Court decide two issues and framed the first issue for the Court's determination as follows: At what point in time should the code of ordinance Section 35.09, regulating off-street parking be applied to plaintiffs' building permit applications for parcels A, D, and F.

As far as this Court is aware, the pretrial and trial stipulations between the parties remain the same. The Court ascertained, as requested, that Section 35.09 should apply to the three permit requests as of August 3, 1987. The Court noted the pre-trial and trial stipulations; however, the Court resolved the issue in the case as framed by the parties.

The pre-trial stipulation and the trial stipulation stating that Parcels A and D are not subject to the parking requirements of Section 35.09 of the Code or Ordinances [Pre-trial Stipulation, Page 8, Paragraphs 13 and 14, and Trial Stipulation, made in open court November 14, 1990] are valid and enforceable between the parties as agreed. Thus, A and D are not subject to the parking requirements of Section 35.09. Therefore, according to the Final Judgment, the parking requirements in force as of August 3, 1987 should apply to the remaining Parcel F.

As to the pre-trial and trial stipulations that state that the building permits as to Parcels A and D shall be issued regardless of this Court's decision as to Parcel F, those stipulations so remain. The Court's decision should only affect Parcel F.

The Plaintiffs complain that there is error in the face of the

record resulting in a Final Judgment that is contrary to the evidence, because the Final Judgment, at Page 1, cites Ordinance 87-30, passed on August 3, 1987, by the City Commission, and refers to said ordinance as Exhibit 64.

The Court inadvertently cited to Ordinance 87-30 as Exhibit 64 as recited in Defendant City of Key West's Memorandum on Reserved Issues Before the Court. The Court reviewed the Ordinances attached that said Memorandum (see attached Ordinance 87-30) and took judicial notice that Ordinance 87-30 was read and passed on the final reading on August 3, 1987.

The Court correctly cited the language of the statute although the reference to Exhibit 64 was erroneous.

A motion for rehearing is not proper on any of these points.

ISSUE NO. 2

The Plaintiffs claim that there is error on the face of the record resulting in a Final Judgment that is contrary to the evidence because the Final Judgment in this matter, at Page 6, states that Parcels A, D, and F can be aggregated for the purposes of CIAS review and that the Court failed to take into account the Pre-Trial and Trial Stipulations in this case.

The Plaintiffs state that the Pre-Trial and Trial Stipulations in this matter state that CIAS review is not required for Parcels A and D. [Pre-Trial Stipulation, Pages 7 and 8, Paragraphs 10 - 12, and Trial Stipulation, Page 5, Lines 17 - 25] Page 6, Lines 1 - 6, and Page 7, Lines 20 - 25.]

Again, the parties reserved two issues in this matter for the Court's ruling. The parties requested that the Court determine as

Issue No. 2: Could the City at the time of the Application for Building Permits by the Plaintiffs aggregate the applications for the purpose of CIAS review?

The Court interpreted the language of the statute and construed it in this case to mean that the City could aggregate the applications for the purpose of CIAS review.

The parties agreed that CIAS review is not required as to Parcels A and D. Thus, the CIAS review should apply only to the remaining parcel F or any aggregate of A, D and F.

Plaintiffs further argue that Defendant/CITY's Amended Response to Plaintiff's First Request for Admissions filed on November 25, 1987 state that Parcels A and D taken together or separately do not constitute major development for the purposes of CIAS review. This does not affect the Court's judgment in this case.

The Plaintiffs further cite that there is error on the face of the final judgment in that it acknowledges that there is not a formal requirement for aggregation of parcels of land for CIAS review. The Court considered the language of the statute and found no prohibition against aggregation. The Court does not wish to entertain additional argument from the parties on this issue.

Additionally, the Plaintiffs reargue that the City lacks the authority to aggregate any of the parcels at issue for the purposes of CIAS review. The Court held differently.

Therefore, a rehearing on any of the above matters is not necessary. The Court believes that the parties should have been more specific in wording the issues reserved for the Court to

determine. 685532 OFF REC 1169 PAGE 1137

WHEREFORE, Plaintiffs Motion for Rehearing is denied.

ORDERED AND ADJUDGED in chambers in Key West, Monroe County, Florida, on this 2 day of May, 1991.

Circuit Court

Copies provided to:

Michael L. Browning
Leslie Dougall

(1) Floor Area Ratio (FAR) refers to the total floor area of a building(s) on any lot, parcel, or site. For purposes of calculating floor area, parking area located beneath the building shall not be counted. FAR computations shall include all uses on the lot, parcel or site, including both residential and non-residential floor area. The term "building height" as used in the Land Development Regulations shall mean the vertical distance from the crown of the nearest adjacent street to the highest point of the proposed building. The maximum FARs are further restricted by quantitative and qualitative criteria included in the Land Development Regulations, including but not limited to, such factors as minimum open space; concurrency management and level of service standards for traffic circulation; storm water management and other public facilities and services; off-street parking and internal circulation; height restrictions; landscaping; other required on-site improvements and design amenities required to achieve land use compatibility.

Furthermore, the calculations of floor area ratios for determining allowable intensity in mixed developments on sites greater than one-half (1/2) acre specific shall apply specific formulas to avoid excessive intensity. Upon adoption of the Comprehensive Plan where common ownership exists on contiguous parcels, applicants for development must aggregate the land under common ownership into a single site plan. The maximum square footage which may be allocated to the residential component of a mixed use development shall be determined by the following formula:

# of Units Proposed/Maximum Permitted Units Per Gross Acre x 43,560 x Site Area in Acres

The maximum square footage which may be allocated to the commercial component of a mixed use development shall be determined by the following formula:

Maximum # of Units Allowed Per Gross Acre Less Proposed # of Units/Max. Permitted Units Per Gross Acre x 43,560 x Site Area in Acres.

(2) See Policy 1-2.3.3 for specific policies impacting density and intensity of use within the HRCC-2 area. The base density within the HRCC-2 district shall be eight (8) units per acre but may be increased through transfer of development rights/affordable housing options to higher densities (Ref. Policy 1-2.3.3).

(3) The maximum FAR for the HPS area shall be 1.0, excepting large scale regional public facilities, which require a community impact statement. The latter projects may have a higher FAR if approved by City Commission. However, prior to approving a FAR in excess of 1.0, the City Commission must render a finding that the proposed public facility requires a higher FAR in order to accommodate a regional service necessary to the general health, safety, and welfare of the City and/or County. Furthermore, the finding must indicate that the regional facility as proposed shall comply with all other qualitative and quantitative criteria of the Comprehensive Plan and the land development regulations, including, but not limited to the adopted concurrency management policies.

(4) Outside the Old Town Historic area, as designated on the Zoning District Map, the maximum FAR for all public services, excepting recreation and open space, shall be eight-tenths (.8) while the maximum FAR for recreation and open space shall be two-tenths (.2).

(5) The City of Key West cannot regulate U.S. Military Land Use.

(6) The Coastal Medium Density Residential designation is an overlay designation which embraces all medium density residential properties, or portion thereof, which are located in the coastal high hazard area. All acreage designated "medium density residential" which is located within the coastal high hazard area along the South A1A - Atlantic Boulevard Corridor shall have a maximum density of eight (8) units per acre consistent with state policies mandated that concentrations of populations be directed away from coastal high hazard areas in order to protect against loss of life.

General Footnotes:

- No agricultural uses exist within the City of Key West.
- The City has no areas reserved exclusively for industrial development.
- Jurisdictional lines delineating conservation areas are approximate boundaries based on best available information. The specific metes and bounds shall be established based on field investigations by agencies having jurisdiction.

Future Land Use Map Legend and Density and Intensity of Development

LAND USE		MAXIMUM NONRESIDENTIAL FLOOR AREA RATIO: (1,7)	MAXIMUM RESIDENTIAL DENSITY (UNITS PER GROSS ACRE)	
RESIDENTIAL DEVELOPMENT				
LDR-C	Low Density Residential - Coastal	N/A	1 u/a	I-17
SF	Single Family Units	N/A	8 u/a	I-17
MDR-C	Medium Density Residential - Coastal	N/A	8 u/a(6)	I-19
MDR	Medium Density Residential	N/A	16 u/a	I-19
HDR	High Density Residential	N/A	22 u/a	I-19
COMMERCIAL DEVELOPMENT				
CL	Limited Commercial	0.8	16 u/a	I-20
CG	General Commercial	0.8	16 u/a	I-24 2
CT	Salt Pond Tourist Commercial	0.8	16 u/a	I-21
MIXED USE NEW TOWN DEVELOPMENT				
RO	Residential/Office	0.8	16 u/a	I-20
PRD	Planned Redevelopment and Development	0.8	~~16 u/a~~ 8 u/a	I-21
OLD TOWN HISTORIC PRESERVATION				
HRO	Historic Residential/Office	1.0	16 u/a	I-29
HRCC	High Density Residential/Com'l Core (HRCC-1 & HRCC-3) High Density Residential/Com'l Core (HRCC-2)	1.0 (2) 0.50 (2)	22 u/a (2)	I-23
HMDR	Medium Density Residential	1.0	16 u/a	I-22
HPRD	Planned Redevelopment and Development	1.0	16 - 22 u/a	
HNC	Neighborhood Commercial (HNC-1/HNC-2/HNC3)	1.0	16 u/a	I-26
HCT	Tourist Commercial	1.0	22 u/a	I-28
HPS	Public Services, Incl. Recreation & Open Space	1.0 (3)	N/A	I-32
HHDR	High Density Residential	1.0	22 u/a	I-22
INSTITUTIONAL				
PS	Public Services, incl. Recreation, Schools, Public and Semi-Public lands. See Map I-7, Recreation Areas, for specific location of public recreation sites and public schools.	0.8 (4)	N/A	I-32
M	Military	N/A (5)	N/A	I-32
A	Airport	0.3	N/A	
CONSERVATION				
C-OW	Outstanding Waters of the State			
C-FW	Freshwater Wetlands			
C-TW	Tidal Wetlands of the State			
C-M	Mangrove			
C-UH	Upland Hammock			

No development is permitted within Conservation designated areas, except where state and/or federal agencies having jurisdiction provide for development rights. In such case, the Future Land Use Element stipulates procedures for ensuring governmental coordination in determining potential development rights.

1994-1995

MONROE

OCCUPATIONAL LICENSE
STATE OF FLORIDA

ACCOUNT 47144-0003634

EXPIRES SEPT. 30, 1995

MUST BE DISPLAYED IN CONSPICUOUS PLACE

FACILITIES OR MACHINES ROOMS SEATS EMPLOYEES 0-5

TYPE OF BUSINESS 47144 TRAILER PARK & CAMPGROUNDS

BUSINESS ADDRESS
223 ELIZABETH ST
01 - CITY OF KEY WEST

NAME MAILING ADDRESS
JABOURS TRLR COURT
JABOUR MAURICE,FRANCES,ROBERT
S,& RICHARD J
P O BOX 1464
KEY WEST FL 33040

X

ORIGINAL TAX	22.00
BACK TAXES	22.00
PENALTY	11.00
COLLECTION COST	10.00
TOTAL	65.00

THIS BECOMES A TAX RECEIPT WHEN VALIDATED

HARRY F KNIGHT, CFC, TAX COLLECTOR
P O BOX 1129, KEY WEST FL 33041-1129

0000000000 0000002200 0000471440003634 1001 9

1994-1995 MONROE

OCCUPATIONAL LICENSE
STATE OF FLORIDA

MUST BE DISPLAYED IN CONSPICUOUS PLACE

ACCOUNT 25130-0010744

EXPIRES SEPT. 30, 1995

FACILITIES OR MACHINES — ROOMS — SEATS 10 — EMPLOYEES

TYPE OF BUSINESS: 25130 GUEST HOUSE

BUSINESS ADDRESS:
717 CAROLINE STREET
01 - CITY OF KEY WEST

NAME MAILING ADDRESS:
WALDEN HOUSE
JABOUR ROBERT S & RICHARD J
P O BOX 1674
KEY WEST FL 33040

GUEST HOUSE

X SUPPLEMENTAL
RENEWAL
NEW TENANT
TRANSFER

	15.00
BACK TAXES	15.00
AMOUNT	
PENALTY	7.50
COLLECTION COST	10.00
TOTAL	47.50

HARRY F. KNIGH
TAX COLLECTOR
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IN THE CIRCUIT COURT OF THE 16TH
JUDICIAL CIRCUIT IN AND FOR
MONROE COUNTY, FLORIDA

MAURICE JABOUR, individually,
and Maurice Jabour and
FRANCES JABOUR, his wife,
Plaintiffs,

vs

No. 87-743-CA-18

CITY OF KEY WEST, a municipal
corporation under the laws of
the State of Florida,

Defendant.

_ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _/

Proceedings had in the above-entitled matter before the HONORABLE RICHARD J. FOWLER, Judge of the 16th Judicial Circuit Court, Key West, Florida, on November 14, 1990.

NANCY J. MALESKE, RPR, CSR
Official Court Reporter

APPEARANCES:

MICHAEL BROWNING, ESQ.
409 Applerouth Lane
Key West, Florida 33040

Appearing on behalf of the Plaintiff

LESLIE DOUGALL, ESQ.
Assistant City Attorney
424 Fleming Street
Key West, Florida 33040

Appearing on behalf of the Defendant

Key West, Florida

November 14, 1990

Morning Session

- - -

THE COURT: Jabour versus City of Key West.

MR. BROWNING: We have little for the Court to do. We have an extensive stipulation, albeit, between the parties. I will read to the Court the issues we have before the Court that you want to add to that and then sit down with a Court Reporter and go through the terms we have to deal with.

THE COURT: Okay.

MR. BROWNING: What we would like to do is to take the remaining exhibits and move them into evidence and make them a composite, to save the clerk a lot of time, so we can refer to those in the briefs.

What will be before the Court, and we will prepare an order to this effect, is two issues: Could the City of Key West at the time of application for building permits by the Plaintiff aggregate the applications and request thereon for purposes of requiring CIAS review?

The second issue that the Court would decide: At what point in time was Section 35.09 of the City of Key West Ordinances applicable to the three permit requests of the plaintiffs?

Plaintiff and defendant are to stipulate to the joint introduction of Exhibits 1 through 31 as a Composite Exhibit --

MS. DOUGALL: That is 1 through 131.

MR. BROWNING: I am sorry, 1 through 131 -- for the use of the Court in making its determination.

That we shall have 20 days from the date of the order to submit written memorandum and argument. Then the Court shall, if it so desires, have oral argument.

The Court will retain jurisdiction for the purposes of enforcing and interpreting the stipulation between the parties.

Within the stipulation itself, Your Honor, we have several provisions as to the application of the stipulation. This will be the only thing before the Court.

THE COURT: Okay, here's what: I am not going to go wandering through 139 exhibits admitted as a dump to determine what if anything

applies in your briefs. You cite the exhibits with specificity.

MR. BROWNING: Absolutely, Your Honor.

I think, without getting to the terms and stipulations, Ms. Dougall and I have a lot of them that are not applicable anymore, but rather than spend another day or two shuffling through all of the exhibits and agreeing which do go and which don't go, it is easier to do it that way and reference those in the memorandums.

THE COURT: Do you want to recite the stipulation?

MR. BROWNING: If the Court wants to listen to it, fine.

THE COURT: Yes, let me hear what you came up with.

MR. BROWNING: In regard to Parcel A and D, the parties stipulate to the following with regard to Parcel A and Parcel D:

A. That the City shall allow plaintiff to proceed with the uses of Parcel A to-wit: Renovation on two existing duplexes pursuant to the application filed in November of 1985, Exhibit 3 in the plans submitted as Exhibit 1.

B. That the City shall allow plaintiff

to proceed with the uses of Parcel D, to-wit: Renovations of existing building for a 150 seat restaurant, and demolition and replacement of a shed to be replaced by a cottage pursuant to the application filed November 1985, Exhibit 31; plans submitted as Exhibit 30.

That whether the renovations on Parcel A and D require off street parking shall be determined by Section 35.09 of the City of Key West Code of Ordinances. The Court shall determine at what point in time Section 35.09 is applicable and whether at that time any parking was required or waived.

That the plaintiff's plans shall comply with the City of Key West Building Code as to all mechanical and technical aspects, including but not limited to electrical, plumbing, structural or otherwise.

That the Court recognizes that no set back variance shall be required as to the buildings on Parcels A and D as any set back discrepancies are minor.

And the plaintiff's have met the criteria contained in City Code Section 12.02(3) for allowance of said variances.

New subsection in regard to Parcel F.

The parties hereby stipulate as to Parcel F:

(1) That the plaintiffs and defendant shall, as provided within this stipulation, argue the issue as to whether A, D, and F should have been aggregated for purposes of CIAS review. This provision shall not be applicable to the stipulations regarding A and D above.

Paragraph A within that same paragraph. In the event that the Court rules that the City could not aggregate A, D, and F, then plaintiffs shall be allowed to proceed as per the application calling for conversion of the existing CBS building into one general store; one 150 seat restaurant; and a seven unit hotel with the store to include one manager's office/apartment, pursuant to Exhibit 53 and the plans and Exhibit 52 or -- this is Sub B:

In the event that the Court rules that A, D, and F, should have been aggregated for CIAS review, then Parcel F should not proceed but instead plaintiff may reapply for renovations allowed under the Code as of the date of the final order or at such time as plaintiff complys.

(2), Plaintiff shall be allowed to proceed with Parcel F pursuant to Paragraph 1 above -- let me start this over.

The plaintiff shall be allowed to proceed with Parcel F, pursuant to Paragraph 1 above. The plaintiffs shall not commence on said renovations until plaintiff has procurred certificates of occupancy on the renovations allowed on the buildings on A and D.

(3), That whether the renovations on Parcel F require parking shall be determined by the City of Key West Code of Ordinances, Section 35.09. The Court shall determine at what point in time Section 35.09 is applicable and whether at that time any parking was required or waived.

4(B), That the Court recognizes that no set back variances shall be required as to the buildings on Parcel F as any set back discrepancies are minor and the plaintiffs have met the criteria contained in City Code Section 12.02(3).

This would be a third section, General Provisions. That all Exhibits 1-131 shall be moved into evidence for the Court's review.

(2), That plaintiff and defendant shall

have 20 days to submit arguments and memorandum as to the issues above, to-wit: Parking and aggregation.

(3), That the Court shall retain the power to retain oral arguments if necessary to aid in its decision as to the issues, to-wit:

(A), The City aggregate Parcels A, D, and F, for the purposes of requiring CIAS review.

(B), Under Section 35.09 of the City of Key West Code of Ordinances, are the plaintiffs required to provide parking on any or all parcels or are plaintiffs free from parking requirements under the waiver terms of 35.09?

(4), That this Court shall retain jurisdiction after final judgment to enforce the terms of said judgment and the terms of this stipulation.

(5), The parties shall reserve the right, following final judgment, to argue any and all issues regarding attorneys fees and costs.

(6), As to Section 35.13(B) of the City of Key West Code of Ordinances, Permitting. "For the purpose of this settlement shall mean when the plaintiff has obtained all approvals on plans required to pull final building permits.

MS. DOUGALL: Excuse me, Mike, I believe that should be 35.13 Sub (6).

MR. BROWNING: I agree. My handwriting is not good.

(7), In the event that A, D, and F, shall be required to provide parking, the plaintiff shall be allowed to provide said parking by one of the following:

A. Provide onsite parking;

B. Provide parking on any adjoining or contiguous parcel by a lease or by purchase;

C. Any property currently owned by Singleton, which plaintiff can lease or purchase; any property owned or acquired by the City for redevelopment of the waterfront by lease to the plaintiff; any property within the immediate area of A, D and F which is within reasonable serviceable proximity; or, any other property which the City shall deem as acceptable parking to accommodate parking requirements for A, D, and F.

The application of Section 35.09 shall be governing on this provision.

That's it.

THE COURT: Thank you all.

You have 20 days.

MR. BROWNING: Fine with me.

MS. DOUGALL: That's fine with me, Judge. There were six of the exhibits which I --

THE COURT: Were already admitted.

MS. DOUGALL: That were provided to the Court, which I find that I have those at the office. I wonder if I could submit those six to the clerk, they are ordinances and so forth?

THE COURT: Sure.

(Adjournment.)

CERTIFICATE

STATE OF FLORIDA)
) SS:
COUNTY OF MONROE)

I, Nancy J. Maleske, do hereby certify that I reported stenographically the proceedings had at the time and place hereinbefore set forth; that the same was thereafter reduced to typewritten form under my supervision, and that the foregoing transcript is a full, true and accurate transcription of my said stenograph notes.

Nancy J. Maleske, RPR, CSR
Court Reporter and Notary Public for
the State of Florida at Large.

Dated: January 14, 1990.