Fort Myers Beach Local Planning Agency

Town Hall Council Chambers
2731 Oak Street
Fort Myers Beach, FL 33931

Agenda **Tuesday, November 12, 2024** **9:00 AM**

ORDER OF BUSINESS

I. CALL TO ORDER

II. INVOCATION

III. PLEDGE OF ALLEGIANCE

IV. APPROVAL OF FINAL AGENDA

V. APPROVAL OF MINUTES

A. Local Planning Agency - October 22, 2024

B. Special Local Planning Agency - October 29, 2024

C. LPA Chair and Vice Chair

VI. PUBLIC COMMENT

VII. PUBLIC HEARINGS

A. Kahlua Beach Club Special Exception

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING/ APPROVING WITH CONDITIONS/DENYING SPECIAL EXCEPTION SEZ20240194 TO ALLOW RESTORATION OF A POOL, POOL DECK, TWO (2) CHICKEE HUTS, SHUFFLEBOARD AREA AND FENCE IN THE EC ZONING DISTRICT AS AUTHORIZED BY SECTION 6-366 OF THE TOWN OF FORT MYERS LAND DEVELOPMENT CODE FOR PROPERTY LOCATED AT 4950 AND 4952 ESTERO BOULEVARD; PROVIDING FOR SCRIVENER'S ERRORS, SEVERABILITY, AND AN EFFECTIVE DATE.

B. DCI 20230090, Pink Shell Resort CPD

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING/ APPROVING WITH CONDITIONS/ DENYING THE COMMERCIAL PLANNED DEVELOPMENT (CPD) ZONING FOR 6.02 ACRES OF THE PROPERTY LOCATED AT 275/322 ESTERO, 200 ESTERO, 192 ESTERO COMMON ELEMENT ONLY, 142 ESTERO, 171-191 ESTERO, 251-281 ESTERO, AND 309 ESTERO BLVD., GENERALLY

IDENTIFIED AS STRAP NUMBERS 24-46-23-W1-0070D.028A, 24-46-23-W1-00700.0340, 24-46-23-W1-00700.0290, 24-46-23-W1-00700.0330, 24-46-23-W1-00700.0320 , 24-46-23-W1-03700.00CE, & 24-46-23-W1-04100.00CE IN FORT MYERS BEACH, TO ALLOW EXPANSION OF AN EXISTING BEACH RESORT TO INCLUDE A NEW 40 UNIT RESORT HOTEL, 4 ADDITIONAL HOTEL UNITS IN THE WHITE SANDS BUILDING, AND A DUPLEX; PROVIDING FOR OTHER CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

C. Neptune Inn CPD, 2310 & 2316/2320 Estero Blvd, Ordinance 24-XX

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING/ APPROVING WITH CONDITIONS/ DENYING THE COMMERCIAL PLANNED DEVELOPMENT (CPD) ZONING FOR THE PROPERTY LOCATED AT 2310 ESTERO BLVD AND 2316/2320 ESTERO BLVD. GENERALLY IDENTIFIED AS STRAP NUMBERS 19-46-24-W3-0430N.0001, 19-46-24-W3-04300.00CE AND 19-46-24-W3-0110A.0010 FORT MYERS BEACH; PROVIDING FOR OTHER CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

VIII. ADMINISTRATIVE AGENDA

A. LPA Guidelines

Announcement of upcoming review of guidelines in the LPA manual at the December 2024 LPA meeting with proposed changes for discussion.

IX. LPA MEMBERS ITEMS/REPORTS

X. LPA ATTORNEY ITEMS/REPORTS

XI. COMMUNITY DEVELOPMENT ITEMS/REPORTS

A. Summary of Public Benefits

XII. ITEMS FOR NEXT MONTHS AGENDA

XIII. ADJOURNMENT

NOTE: THIS MEETING IS STREAMED LIVE ON YOUTUBE.

IF THE LOCAL PLANNING AGENCY UNANIMOUSLY APPROVES A REQUEST FOR A VARIANCE, EXTENSION OR SATISFACTION OF CONDITIONS, A REQUEST FOR AN ADDITIONAL HEARING BEFORE THE TOWN COUNCIL MAY BE MADE BY ANYONE IF THE REQUEST IS RECEIVED BY THE TOWN CLERK WITHIN 10 BUSINESS DAYS OF THE LOCAL PLANNING AGENCY DECISION PURSUANT TO SEC. 34-232 OF THE LAND DEVELOPMENT CODE.

IF A PERSON DECIDES TO APPEAL ANY DECISION MADE BY THE LOCAL PLANNING AGENCY WITH RESPECT TO ANY MATTER CONSIDERED AT SUCH MEETING OR HEARING, HE OR SHE WILL NEED A RECORD OF THE PROCEEDINGS, AND THAT, FOR

SUCH PURPOSE, HE OR SHE MAY NEED TO ENSURE THAT A VERBATIM RECORD OF THE PROCEEDINGS IS MADE, WHICH RECORD INCLUDES THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS TO BE BASED IN ACCORDANCE WITH FLORIDA STATUTE 286.0105.

In accordance with the Americans with Disabilities Act (ADA), persons needing a special accommodation to participate in the Board's proceedings should contact the Town Clerk's Office not later than three days prior to the proceedings. 239-765-0202

Fort Myers Beach Local Planning Agency

Town Hall Council Chambers
2731 Oak Street
Fort Myers Beach, FL 33931

Minutes **Tuesday, October 22, 2024** **9:00 AM**

ORDER OF BUSINESS

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I. CALL TO ORDER

Members present: Chair Cereceda, LPA Member Boan, LPA Member Dunlap, LPA Member Eckmann, LPA Member McLean, LPA Member Plummer and LPA Member Sudduth (virtually).

II. INVOCATION

Chair Cereceda.

III. PLEDGE OF ALLEGIANCE

IV. APPROVAL OF FINAL AGENDA

LPA Member Dunlap moved to election of officers to the next meeting, seconded by LPA Member Eckmann.
The motion carried unanimously.

LPA Member McLean moved to approve the final agenda, seconded by LPA Member Boan.
The motion carried unanimously.

V. NOMINATION OF OFFICERS

A. Election of Officers

Per the LPA policies and Procedures manual: Annually, at the first meeting of the Local Planning Agency, after expired member positions have been filled by the Town Council, a chair and vice chair will be chosen. Each LPA member may nominate a person for each of these positions. A second is not required. A vote is taken in the order that a candidate was nominated. The positions are filled by a majority vote. If a majority is not received on the first ballot, a second ballot is taken for the two candidates receiving the most votes from the first ballot.

Continued to October 29, 2024 Special LPA meeting.

VI. APPROVAL OF MINUTES

A. Local Planning Agency - September 3, 2024
Motion to approve minutes by LPA Member McLean, seconded by LPA Member Eckmann.
The motion passed unanimously.

VII. PUBLIC COMMENT

No public comment.

VIII. PUBLIC HEARINGS

Town Attorney Stuparich explained where the exhibits were located in the agenda packet and read the resolution that created the framework for the development agreement process. She explained the quasi-judicial procedures. Planner Propst confirmed that all agenda items were properly noticed. Town Clerk Baker swore in those providing testimony.

A. DA20240170, Seagate/Red Coconut Development Agreement

Recommendation Regarding a Proposed Development Agreement Requested by Seagate Fort Myers Beach, LLC

Town Attorney Stuparich read the title of the draft ordinance. Community Development Planner Sarah Propst listed additional addresses to cover all the properties. Town Attorney Stuparich stated that the addresses were included in the ad submitted to the newspaper. Ex parte communications: LPA Member Sudduth had a conversation before the plan was in place; LPA Member McLean spoke to the applicant, received emails and read social media; LPA Member Boan talked to the applicant, received emails and read social media; LPA Member Plummer attended a display meeting; LPA Member Eckmann met with the applicant, reviewed an exhibit in the packet and received numerous emails; LPA Member Dunlap spoke to the applicant, received emails and read social media and Chair Cereceda had many conversations with the applicant, attended the public demonstrations, received emails and read social media.

Tina Ekblad from Sage Entitlements indicated that she only received one email from Town Clerk Baker. LPA Member McLean forwarded the emails to the town clerk. LPA Member Dunlap noted that it appeared several people forwarded the same prepared communication. Town Attorney Stuparich asked LPA members to forward emails to the town clerk in the future.

Ms. Ekblad reviewed her experience in land planning.
LPA Member Dunlap moved to approve Ms. Ekblad as an expert in her field, seconded by LPA Member Eckmann.
The motion carried unanimously.

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Matt Price, applicant and CA Development Group, reviewed his experience in land development.
LPA Member Dunlap moved to approve Mr. Price as an expert in his field, seconded by LPA Member McLean.
The motion carried unanimously.
The applicant confirmed receipt of the agenda and background materials.

Mr. Price's slide presentation started with the Introduction, Stakeholder Involvement, Site Plan & Development Summary, Public Benefits Summary, Beach Park Views, View from the Restaurant, Walking Along Estero Blvd. to the West, Walking Along Donora, Requested Deviations, Aerial View Looking Northwest, Entry to the Sunset Restaurant, New Public Park East of Estero Blvd., Height and Design Slides.
Ms. Ekblad continued the presentation by discussing details of the Site Plan & Development Summary and deviations. She reiterated that the plan was conceptual and could be less than what was represented, but not more. She explained why she felt the proposal and development agreement were consistent with the town's comprehensive plan.
Public comment:
Tom Brady, resident, did not support the proposed development and would rather see all the space used up at three stories over flood. He did not see a benefit in adding a park that may not be used. He brought up increasing density and having to live in the shadow radius. He commented that there was already a beach access. He discussed the size of the units and increasing density.
Edward Aristos, resident, encouraged commercial buildings as long as they followed the existing restrictions, as he had done when he built his home. He asked that they stay within the restrictions.
Mike Dagnesse, resident, opposed the project due to the size and commented that the parks would only be used by the guests because there was no parking. He suggested that the single-family residents be built on Donora.
He said he would have to look at a 17-foot condo and live in the shadow.
Alex King commented that the average homeowner would not be able to afford to live on the beach and discussed wealthy people moving in over the past five years. He suggested they start building for the new people by offering bigger condos and more restaurants.
Mike Miller, resident and owner of The Whale, liked that they were not building beachfront condos and would like to see golf cart parking. He felt the town needed more restaurants to attract people.
Terry Persaud, business owner, supported the project and felt they needed to look forward. He agreed with the height.
Barbara Hill, resident, liked the concept in general but opposed the 17 stories because it was too much for the middle of the island. She commented that she would be affected by the shadow.
Public comment closed.

Planner Propst stated that the development agreement process did not include criteria for staff to evaluate. Town Attorney Stuparich added that the criteria in the resolution contained the minimum requirements and that had been satisfied.

The proposed development agreement was reviewed page by page. Ms. Ekblad explained the concept of transferring density. Mr. Price indicated that he did not own more property on the beach. If additional property is acquired, eight units would be transferred to the residential units in the back, as stated on page 11. After discussion, the sentence was moved to 4a. LPA Member Plummer brought up concerns regarding vehicular access on Donora. Chair Cereceda was concerned about rentals, especially since Mr. Price said there would not be any. Mr. Price agreed to look at the language. Ms. Ekblad stated that they were committed to 4c, meaning that rentals had to be at least one week over a month-long period. LPA Member Plummer suggested that rentals be a minimum of one month, not one week.

Mr. Price said he would commit to building a 10,000-square-foot restaurant and terrace without the additional uses. LPA Member Plummer noted that the 29,000-square-foot enclosed building did not look the same in one of the earlier presentations. The area was going to be more of a cabana bar and gathering place. Discussion was held regarding whether offering memberships to 25% of the residents was a public benefit. Mr. Price responded that most private country clubs did not allow people to buy in, but he would. He mentioned the possibility of offering a summer membership.

LPA Member Boan indicated that the fire department may require two accesses to the underground parking. Mr. Price agreed to memorialize a separate access to the park. He noted that the town would have jurisdiction over what plants would be installed. LPA Member McLean voiced concerns regarding the uncertainty of the park. Chair Cereceda and other members agreed. Mr. Price was unsure that the roundabout would be there, but if so, it could be a drop-off place for the public. Ms. Ekblad suggested adding picnic tables and bike racks in the area without concrete. Mr. Price offered to add language to provide beach access and present a list of park-like features. Suggestions included bike storage, drop-off for the public, bike racks, picnic tables and a shade structure.

LPA Member Eckmann congratulated Mr. Price on putting so much effort into the project. He did not think there was enough balance between public benefits and height. Mr. Price stated that the town council had to decide on public benefits and height. Chair Cereceda discussed the uncertainty of the project and agreed that the council had to make a decision. LPA Member Dunlap stated that he struggled with the idea that the applicant was following the process as outlined with the ambiguity built in because the town had not set specific guidelines that the applicant had to comply with. He felt the developers would adjust and react to what the town ultimately said they wanted, but the town had to define the parameters. LPA Member Plummer noted that other than the two tall buildings, the LPA did not know the other buildings' height or the units' size. Ms. Ekblad responded that the stories were in the conceptual plan, but they would happily add text to H. as Town Attorney Stuparich suggested. Mr. Price stated that the average size of the

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units would range between 2800 and 3200 square feet. Planner Propst provided language regarding height and a discussion about public benefits ensued.

LPA Member McLean felt the Comprehensive Plan was outdated due to the changed circumstances, but he was unsure that the project fit the plan due to restrictions for the public. LPA Member Eckmann responded that Red Coconut was also a restricted private development. LPA Member McLean acknowledged that the comments changed his mind. He added that height did not scare him as much as intensity and density and that he would like to see projects that enhance the island. LPA Member Dunlap stated that there was no personal freedom without economic freedom and the island was in that situation. He noted that Margaritaville got hit four times, and they were opening in two days rather than two months because of capital that can be redeployed when needed. Developers paid the bills and permanently invested in the town, which had long-term financial ramifications. He felt Seagate had been the best at going through the process, and it was time to ask whether the town wanted the project. LPA Member Sudduth still struggled with the balance and extremes of the project but appreciated Mr. Price pushing it to the edge to understand what the town would allow. Mr. Price questioned whether the LPA could approve the document to be reviewed with the council but not necessarily approve the agreement. LPA Member Sudduth endorsed the idea because he did not have a formula regarding public benefits versus height. He did not support the project. He added that they were discussing policies, but the LPA did not set policy. LPA Member Boan had a problem with the development agreement and could not support the project due to the lack of balance between public benefits and height. LPA Member Eckmann would vote no for the same reason stated.

LPA Member Boan felt that impact fees could have been negotiated and felt the town was giving something up. Ms. Ekblad replied that an ordinance had to be approved before they could write a check. Planner Propst revealed that they were working on an ordinance. Town Attorney Stuparich offered clarifying language and Mr. Price agreed.

LPA Member Boan suggested adding language to include the 21 units in the 141 units.

Chair Cereceda suggested adding a list of all known governmental permits to number 8.

LPA Member Plummer suggested adding language to q. on page 9 regarding access points on Donora, but Mr. Price noted that he had to meet with his designers first.

Discussion was held regarding Effective Date and Duration on page 13. Town Attorney Stuparich commented that Mr. Price requested 25 years, the town requested 5 years and the compromise was 10. The majority of LPA members did not have an issue with 10 years.

LPA Member Boan expressed concerns regarding the developer terminating the agreement at any time in C. on page 12. He suggested the applicant could ask for an amendment to the agreement. LPA Member Dunlap indicated Seagate could sit on the land and not do anything for 10 years.

Chair Cereceda noted they were only allowed to back out of the agreement prior to a building permit. Mr. Price replied that they intended to start as soon as possible. LPA Boan suggested adding a building permit for any portion of the project.
Town Attorney Stuparich noted that density would be added to 13. B. on page 11.
Chair Cereceda summarized the changes. Paragraph 13 was moved to 4. a. and several vehicular accesses were raised, but no language was changed. The applicant agreed to a minimum of monthly rentals, everything but restaurant was struck from the commercial section, the beach club was questioned as a public benefit to residents, park-like features were added to the beach park and text from Planner Propst would be added to the height section stating it would be as depicted in the site plan. The impact fee section will change to when the town adopts, offsite impacts addressed in the development order, add the 21 units to the total number, add known governmental permits and amendments to 13. Town Attorney Stuparich pointed out duplications in paragraphs 5 and 11 and Town Clerk Baker noted the number 13 was duplicated. Ms. Ekblad stated the two paragraphs were slightly different and could be collapsed.

LPA Member Dunlap moved to recommend approval for the proposed Seagate Development Agreement and forward it to the council for consideration with the proposed amendments made, seconded by LPA Member McLean.
The motion failed 4-2, with Chair Cereceda and LPA Members Boan, Plummer and Sudduth dissenting because they felt the public benefits were insufficient for the height request and the size of the units was unknown.

Chair Cereceda moved to deny the request for the proposed Seagate Development Agreement because the public benefit did not compensate for the request for height, seconded by LPA Member Boan.
The motion carried 4-2, with LPA Members Dunlap and McLean dissenting.

IX. ADMINISTRATIVE AGENDA

No items.

X. LPA MEMBERS ITEMS/REPORTS

LPA Member Dunlap questioned whether the LPA can restrict applicants from applying for LPA deviations, changes, etc., if they have magistrate-ordered outstanding liens or fines before coming to the LPA. Town Attorney Stuparich will research the issue. LPA Member Dunlap distributed a discussion document regarding potential public benefits. Planner Propst stated that she would forward the examples created by staff.
No items from other members.

XI. LPA ATTORNEY ITEMS/REPORTS

No items.

XII. COMMUNITY DEVELOPMENT ITEMS/REPORTS

Planner Propst will forward the public benefit document.

XIII. ITEMS FOR NEXT MONTHS AGENDA

Neptune, Pink Shell and possibly two special exceptions. Chair Cereceda asked whether they could schedule a meeting to discuss public benefits. The meeting will be on October 29, 2024, from 9 a.m. to Noon.

XIV. ADJOURNMENT

LPA Member Boan moved to adjourn, seconded by LPA Member Sudduth. The motion carried unanimously.

The meeting was adjourned at 2:17 p.m.

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Fort Myers Beach Local Planning Agency

Town Hall Council Chambers
2731 Oak Street
Fort Myers Beach, FL 33931

Minutes **Tuesday, October 29, 2024** **9:00 AM**

ORDER OF BUSINESS

DRAFT

I. CALL TO ORDER

Members present: Chair Cereceda, LPA Member Boan, LPA Member Dunlap, LPA Member Eckmann, LPA Member McLean and LPA Member Sudduth.
Excused: LPA Member Plummer

II. INVOCATION

Not recorded.

III. PLEDGE OF ALLEGIANCE

IV. APPROVAL OF FINAL AGENDA

LPA Member Dunlap moved to approve the final agenda, seconded by LPA Member Sudduth.
The motion carried unanimously.

V. NOMINATION OF OFFICERS

A. Election of Officers

Per the LPA policies and Procedures manual: Annually, at the first meeting of the Local Planning Agency, after expired member positions have been filled by the Town Council, a chair and vice chair will be chosen. Each LPA member may nominate a person for each of these positions. A second is not required. A vote is taken in the order that a candidate was nominated. The positions are filled by a majority vote. If a majority is not received on the first ballot, a second ballot is taken for the two candidates receiving the most votes from the first ballot.

LPA Member Boan nominated Anita Cereceda as Chair. No other nominations.
LPA Member Boan nominated Jane Plummer as Vice Chair .
No other nominations.
The nominations were approved.

VI. APPROVAL OF MINUTES

No minutes.

VII. PUBLIC COMMENT

Katherine Cantlon, resident, asked that the LPA not allow tall buildings. She was not swayed by developers who added a restaurant and a park. She noted that Sanibel was sticking to their height restrictions. She encouraged the LPA to stick to their guns and follow the plan.

VIII. PUBLIC HEARINGS

No hearings.

IX. ADMINISTRATIVE AGENDA

B. Public Benefits

Discussion regarding Public Benefits.

Community Development Principal Planner Judith Frankel will compile their ideas and suggested they schedule a joint meeting with the town council afterward. She noted that it would be helpful if they defined terms such as view corridor and restaurant. Town Attorney Stuparich read a description of special benefits in Resolution 24-73.

LPA Member Dunlap explained how he created his tiered list of public benefits. He noted the applicant's responsibility was to prepare, provide, argue, demonstrate and defend what they wanted and how it benefited the town. LPA Member Sudduth liked the idea of how to quantify a public benefit and the tax benefit. He compared paying a private place to enter versus public access for a fee like the pool at Margaritaville. The view corridor and beach accesses on each side of the property should be fundamental. He did not really care what developers did as long as they were close to the plan.

LPA Member Eckmann commented that public benefit was hard to define and thought the challenge was to find a balance. He indicated that if developers ask for 17 stories, they should offer up the beachfront or part of the beachfront for a public park. The benefit had to be substantial for a substantial request, and it would be difficult, but they would have to find a compromise.

LPA Member Boan saw a difference between a public benefit and an amenity. A public benefit had to be perpetual. He noted that some benefits would be for the public and some for the developer, making it a hybrid, but it would not count as much as a true public benefit. He stated they needed a clear path to analyze the project.

LPA Member McLean thought they could recognize that there were different classes of offers from a developer and some would be in their self-interest while maybe benefiting the public, too. He used a restaurant as an example of a private enterprise that benefits the public. He felt that being open to the public free of charge in perpetuity was a top public benefit and adding beach accesses, including access to the sand behind the property, was critical.

Next would be view corridors and public parks. He felt that access to amenities would be another tier. He agreed with including the economic impact to the island.

Town Attorney Stuparich stated that private property rights were at stake and the rules created referred to a special benefit. She indicated they might want to elaborate and discuss a distinction. She stated that benefits should have a nexus to the development. She noted they cannot engage in contract zoning.

LPA Member Dunlap commented that there should be consistency among applicants and the town should amplify what they thought was important and see how developers rise to the occasion voluntarily.

Chair Cereceda questioned why public benefit was used in the LDC (Land Development Code) while special benefit was in the development agreement. Town Attorney Stuparich stated that they could change it. Chair Cereceda felt that the terms conflicted with each other in the essence of what they meant. She felt that public benefits had to be exclusive to the public. She objected to the roundabout because it was not a public park, although the public could have access. She agreed that the guiding principles were essential and noted that Margaritaville had true public in perpetuity dedicated to public improvements. She questioned who would benefit if Mr. Price dedicated the entire beachfront to the public. The property would be taken off the tax roll, and the financial element would be negative; however, the community benefit would be enormous. She wondered how to balance that. LPA Member Dunlap addressed the resolution, which said the town shall balance the public benefits. He did not read it as a noun but as a concept; it was up to the LPA to start a new conversation and make it theirs. He was surprised that there was an official requirement for view corridors with the EIBC (Estero Island Beach Club) application. Community Development Senior Planner Jason Smalley disputed that anything was forced or required and the EIBC chose the design because it worked better for them.

Principal Planner Frankel explained how planning works in Florida and read the language in the code referring to view corridors and height. She added that the staff did not want to be in the business of negotiating with developers. Defining the view corridor was discussed. Senior Planner Smalley explained that if EIBC tiered their building with setbacks on floors three to ten they could have asked for slightly more. They were allowed to build a 60-story building over 70% of the property by right. LPA Member Dunlap thought that a view corridor was where an opportunity existed to have a clear line of sight without mass blocking light and views for the public on the street. LPA Member McLean felt that the view corridor was up to the sky.

LPA Member Sudduth commented that a view corridor might be blocked on the ground but open three stories up, benefiting the property across the street. LPA Member Dunlap stated that both could be true. LPA Member Eckmann brought up developers providing a view corridor beyond the required setback and making a special effort above and beyond what they had to do anyway.

LPA Member Boan felt that a view corridor should be an unimpeded view of the beach or the bay and should be more than what was required by code.

Chair Cereceda agreed and defined the view corridor as an open, clear line of sight vertically and horizontally that opens space beyond the required setbacks. LPA Member Sudduth clarified that it could be within the property. The magnitude was significant to LPA Member Dunlap and Chair Cereceda. LPA Member McLean asked whether a three-foot wall detracted from the view corridor. LPA Member Sudduth felt that three feet should be the maximum.

Public versus special benefits were discussed. LPA Member Dunlap felt that public was general and special was to whom and in what context. LPA Member Eckmann thought a public benefit was to dedicate access to the beach for everyone to use forever. A special benefit would be opening the beach club to the public as Margaritaville does by providing a discount to residents. Another example was a deeded beach access that benefited a specific group of people.

Tier 2 examples from LPA Member Dunlap's document were discussed. Beach access improvements were deemed a public benefit and an offsite public parking garage could be public and special. LPA Member Sudduth commented that workforce housing, which enabled people to live on the island, was a special benefit. LPA Member Boan added that it was a special benefit to the employee and a public benefit on an altruistic scale because it aided with staffing businesses. Relocating utilities underground is a public benefit, along with improving public infrastructure above and beyond code.

Open-space malls are considered a public benefit. LPA Member Dunlap described an island-wide pedestrian-friendly transit system. Chair Cereceda summarized that a parking garage would be redefined and workforce housing would be considered special. The remaining items on the tier 2 list were considered public benefits. Town Attorney Stuparich questioned whether they wanted to add or public benefit rather than eliminate it.

The difference between a benefit and an amenity was discussed. LPA Member Sudduth felt that restaurants fell under special benefits. LPA Member Eckmann questioned whether all amenities fell under special benefits and LPA Member Sudduth responded that it was an amenity for the development if the public did not have access. A special benefit would be access for the public. LPA Member Boan brought up limiting access for 75 people who pay and LPA Member Sudduth felt that it was a very restrictive benefit and would throw it out of the benefit category.

The definition of blight was discussed. Principal Planner Frankel noted that the town had a process if blight referred to dilapidated buildings. LPA Member Eckmann suggested eliminating blight as a special or public benefit because it was part of the development agreement. LPA Member Dunlap discussed an economic benefit to the town after demolishing buildings.

Principal Planner Frankel responded that the developer had already agreed to clean up the property at that point in the development agreement process. LPA Member Dunlap discussed financial motivations and loss carried forward. He addressed the tax implications and benefits if the owner decided to leave the property damaged and unimproved versus scraping the property and making the land taxable without being able to claim losses against the damaged building. The LPA decided to leave that alone.

LPA Member Dunlap suggested putting numbers around what developers consider benefits. For example, the land Margaritaville donated would have a financial value to quantify it. LPA Member Sudduth added that civic organizations were looking for funding to rebuild. Town Attorney Stuparich stated that due to a recent statutory change, land use decisions would be included in a business impact estimate and that requirement might answer some of the questions presented. LPA Member Sudduth questioned whether Seagate purchasing the not-for-profit art association property across the street would be contract zoning. Town Attorney Stuparich did not think the town was involved in that. Chair Cereceda asked whether there was something they could formulate as criteria. Principal Planner Frankel was uncomfortable with defining the type of developers they wanted. The projects should be judged only on their merits. LPA Member Dunlap indicated that the Chamber of Commerce in Orlando was responsible for community outreach to potential businesses. Town Attorney Stuparich thought they could require community outreach meetings. LPA Member Sudduth asked whether Seagate's offering space in his building for a civic organization in perpetuity like the Art Association was a special benefit. LPA members agreed because it was rebuilding the community instead of one project.

Senior Planner Smalley mentioned quantifying parks and asked whether too many parks would decrease the value. Chair Cereceda commented that a passive park did not have a revenue stream and wondered if that negatively impacted the town.

Examples of public benefits provided by LPA Member Boan were discussed and examples of a permanent source of periodic funding for town infrastructure were provided. Principal Planner Frankel noted it had to have a direct nexus if required.

LPA Member Boan stated the development agreement was negotiated before the LPA saw it. LPA Member Dunlap was used to a town manager having a list of items that needed to be in negotiations and then addressing how the negotiations were added. Town Attorney Stuparich indicated that consistency with the comprehensive plan was vital to the development agreements.

Chair Cereceda stated that a public benefit was accessible to or for the benefit of all and unique in its nature or physical location for a perpetual commitment to Fort Myers Beach, as stated in LPA Member Dunlap's document. Town Attorney Stuparich will quantify the discussion and draft a document for their review on November 12, 2024.

X. LPA MEMBERS ITEMS/REPORTS

No items.

XI. LPA ATTORNEY ITEMS/REPORTS

No items.

XII. COMMUNITY DEVELOPMENT ITEMS/REPORTS

No items.

XIII. ITEMS FOR NEXT MONTHS AGENDA

No items.

XIV. ADJOURNMENT

LPA Member Dunlap moved to adjourn the meeting, seconded by LPA Member Sudduth.
The motion carried unanimously.

The meeting was adjourned at 11:24 a.m.

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Town of Fort Myers Beach
Agenda Item Summary Yellow Sheet Number: **2025-60**

1. **Request:** **Meeting Date: November 12, 2024**

Confirmation of appointment of LPA Chair and LPA Vice Chair

Why the action is necessary:

What the action accomplishes:
Ratifies the action taken at the October 29, 2024 Special LPA meeting.

2. **Agenda:** 3. **Requirement/Purpose:**

APPROVAL OF MINUTES Other

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5. **Background:**
At the October 29, 2024 Special Meeting of the LPA nominations for Chair and Vice Chair were received and voted upon by LPA members. The nominations were as follows:
LPA Member Boan nominated Anita Cereceda as Chair. Anita Cereceda accepted the nomination. LPA Member Boan nominated Jane Plummer as Vice Chair. Jane Plummer was not present to accept the nomination. A motion was made to accept the nominations and appear to have been approved 6-0. Technical issues with the meeting video occurred, therefore a confirmation of the nominations and votes are suggested so that the minutes accurately reflect the voting process. The existing LPA rules regarding the election of officers does not indicate if a member must be present to be voted in as an officer. The LPA should provide clarification of its rule.

Specifically, the rule provides the following guidance:
Annually, at the first meeting of the Local Planning Agency, after expired member positions have been filled by the Town Council, a chair and vice chair will be chosen. Each LPA member may nominate a person for each of these positions. A second is not required. A vote is taken in the order that a candidate was nominated. The positions are filled by a majority vote. If a majority is not received on the first ballot, a second ballot is taken for the two candidates receiving the most votes from the first ballot.

Attachments:

Financial Impact:

6. **Alternative Action**

7. **Staff Recommendations:**

8. **Recommended Approval:**

_____ Date: November 05, 2024
nancy stuparich, Town Attorney

_____ Date: November 05, 2024
Amy Baker, Town Clerk

Town of Fort Myers Beach
Agenda Item Summary Yellow Sheet Number: **2024-292**

1. **Request:** **Meeting Date: November 12, 2024**

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING/ APPROVING WITH CONDITIONS/DENYING SPECIAL EXCEPTION SEZ20240194 TO ALLOW RESTORATION OF A POOL, POOL DECK, TWO (2) CHICKEE HUTS, SHUFFLEBOARD AREA AND FENCE IN THE EC ZONING DISTRICT AS AUTHORIZED BY SECTION 6-366 OF THE TOWN OF FORT MYERS LAND DEVELOPMENT CODE FOR PROPERTY LOCATED AT 4950 AND 4952 ESTERO BOULEVARD; PROVIDING FOR SCRIVENER'S ERRORS, SEVERABILITY, AND AN EFFECTIVE DATE.

Why the action is necessary:
Approval of a Special Exception is required for any work to a property located in the Environmentally Critical (EC) zoning district.

What the action accomplishes:
Approval of the special exception will allow the applicant to restore a swimming pool, pool deck, two (2) chickee huts, shuffleboard area and fencing along an existing retaining wall at the property.

2. **Agenda:**
PUBLIC HEARINGS

3. **Requirement/Purpose:**
Resolution

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5. **Background:**
The applicant is proposing to restore to pre-Hurricane Ian conditions several recreational elements that are partially within the Environmentally Critical (EC) zoning district, including a swimming pool, pool deck, two (2) chickee huts, shuffleboard area and fencing along an existing retaining wall at the property. The subject property is located in the Center Island portion of the Town, on the south side of Estero Blvd. Based. No pre-Ian property survey has been located, however historic aerials and photographs demonstrate the presence of the recreation elements that the application is requesting to be restored.

Attachments:
1. Resolution 24-XXX SEZ for Kahlua Beach Club ns
2. LPA Staff Report
3. Exhibit A - Site Plan
4. Exhibit B: Property Survey 2024
5. Exhibit C: Historic Imagery
6. Exhibit D: Application
7. Declaration of Condominium 1978
8. Confirmed&Audited Rebuild Vote
9. ContinueKahluaBallotFinal
10. Attorney's letter re: Kahlua Owners' Association, Inc.

Financial Impact:
Unknown

6. **Alternative Action**
Approve with Conditions or Deny

7. **Staff Recommendations:**
Approve with Conditions

8. **Recommended Approval:**

_____ Date: October 31, 2024
Judith Frankel, Principal Planner

_____ Date: November 01, 2024
Frankie Kropacek, Operations & Compliance Director

_____ Date: November 04, 2024
nancy stuparich, Town Attorney

_____ Date: November 05, 2024
Amy Baker, Town Clerk

RESOLUTION NUMBER 24-XXX

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING/ APPROVING WITH CONDITIONS/DENYING SPECIAL EXCEPTION SEZ20240194 TO ALLOW RESTORATION OF A POOL, POOL DECK, TWO 920 CHICKEE HUTS, SHUFFLEBOARD AREA AND FENCE IN THE EC ZONING DISTRICT AS AUTHORIZED BY SECTION 6-366 OF THE TOWN OF FORT MYERS LAND DEVELOPMENT CODE FOR PROPERTY LOCATED AT 4950 AND 4952 ESTERO BOULEVARD; PROVIDING FOR SCRIVENER'S ERRORS, SEVERABILITY, AND AN EFFECTIVE DATE.

WHEREAS, Florida Statutes provide that municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal service, and exercise any power for municipal purposes, except when expressly prohibited by law; and

WHEREAS, Article X of the Town Charter of the Town of Fort Myers Beach empowers the Town to adopt, amend, or repeal such ordinances and resolutions as may be required for the proper governing of the Town; and

WHEREAS, Applicant Ink Engineering, Inc and James Ink PE on behalf of The Kahlua Beach Club is requesting a special exception to repair accessory structures in the EC zoning district per Section 6-366 of the Town of Fort Myers Land Development Code; and

WHEREAS, the STRAP numbers for the subject property are 28-46-24-W4-02400.1010 and 28-46-24-W4-02400.00CE; and

WHEREAS, the Property is located in the "Recreation" category of the Future Land Use Map of the Comprehensive Plan; and

WHEREAS, the Property is located in the "Environmentally Critical" zoning district of the Official Zoning Map of the Town of Fort Myers Beach, Florida; and

WHEREAS, a public hearing on this matter was noticed and held before the Local Planning Agency (LPA) on November 12, 2024, and at the hearing the LPA gave full and complete consideration to the request of the Applicant recommendations of staff, the documents in the record, and the testimony of all interested persons, as required by Section 34-88 of the LDC. The LPA found that the request is/ is not consistent with the comprehensive plan and the requirements of the LDC and voted __ to __ recommending approval with conditions of the Special Exception; and

WHEREAS, on the ___ day of _____, 2024 the Town Council held a duly noticed public hearing to fully consider the request of the Applicant, the recommendations of Town staff and the LPA, the documents in the record, and testimony of all interested persons as required by Section 34-88 of the LDC; and

WHEREAS, the Town Council determined it is/ is not in the best interest of the Town to approve/approve with conditions/deny the request for a Special Exception.

NOW THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AS FOLLOWS:

Section 1. The above recitals are true, correct, incorporated herein by this reference, and adopted as the legislative and administrative findings of the Town Council.

Section 2. The Town Council determines the Applicant did/ did not meet its burden of proof that the requested Special Exception does/ does not meet the requirements of the Town Comprehensive Plan and LDC, and approving the Special Exception is/ is not in the best interest of the Town to approve. Therefore, based upon the recommendations, testimony, and evidence presented by the Applicant, Town staff, and interested parties and public, the Town Council **APPROVES/APPROVES WITH CONDITIONS/DENIES** the Special Exception to allow reconstruction of a major accessory structure in the EC zoning district per section 6-366.

Section 3. In approving the Special Exception, the Town Council makes the following findings and conclusions in accordance with the requirements of Section 34-88 of the LDC:

A. Changed or changing conditions which make approval of the request appropriate.
B. The request is consistent with the goals, objectives, policies, and intent of the Fort Myers Beach Comprehensive Plan.
C. The request meets all performance and locational standards for the proposed use.
D. The request will protect, conserve, or preserve environmentally critical areas and natural resources.
E. The request will be compatible with existing or planned uses and not cause damage, hazard, nuisance, or other detriment to persons or property.
F. The requested use will be in compliance with the applicable general zoning provisions and supplemental regulations set forth in Chapter 34 of the Land Development Code; and

In accordance with the additional regulations and considerations found in Section 6-366 of the LDC:

A. Any repairs must comply with all relevant local and state floodplain regulations.
B. Repairs may not damage existing dunes or dune vegetation.
C. Repairs, other than those limited to emergency repairs to enclose a damaged structure, may not be completed during sea turtle nesting season.
D. A new special exception must be applied for each time the structure is repaired.

Section 4. If the Town Council approves/denies the requested Special Exception and the following conditions of approval are imposed on the Applicant and the subject property:

1. A new Special Exception must be applied for each time the structure is repaired.
2. Construction shall not occur during sea turtle nesting season.
3. Any repairs must comply with all relevant local and state floodplain regulations.
4. Repairs may not damage existing dunes or dune vegetation.
5. Approval of this Special Exception does not give the Applicant an undeniable right to permit approval. Development of the subject property must comply with all applicable requirements of the Fort Myers Beach Comprehensive Plan and LDC in effect at the time of permit approval, except as specifically modified herein.
6. Failure to comply with any of the above-mentioned conditions of approval for the Special Exception will render this approval null and void.

The foregoing Resolution was adopted by the Town Council upon a motion by _____ and seconded by _____ and upon being put to a vote, the result was as follows:

Dan Allers, Mayor	___
Jim Atterholt, Vice-Mayor	___
John R. King, Council Member	___
Karen Woodson, Council Member	___
Scott Safford, Council Member	___

ADOPTED this ___day of _____, 2024 by the Town Council of the Town of Fort Myers Beach, Florida.

FORT MYERS BEACH TOWN COUNCIL

_____
Dan Allers, Mayor

ATTEST:

_____
Amy Baker, Town Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE AND RELIANCE OF THE TOWN OF FORT MYERS BEACH ONLY:

_____
Vose Law Firm, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this ___ day of November, 2024.

Town of Fort Myers Beach
COMMUNITY DEVELOPMENT DEPARTMENT
STAFF REPORT

TYPE OF CASE:	**Special Exception**
CASE NUMBER:	**SEZ20240194**
CASE NAME:	**Special Exception for restoration of a swimming pool, shuffleboard area, two (2) chickee huts, paver pool deck and fences along existing seawall portions of which are in the EC zoning district.**
LPA HEARING DATE:	**November 12th, 2024, at 9:00 AM**
STAFF RECOMMENDATION:	**APPROVAL**
PREPARED/ SUBMITTED BY:	**Judith Frankel, AICP, Principal Planner**

I. APPLICATION SUMMARY

Applicant/Owner:	Ink Engineering, Inc and James Ink PE/Kahlua Beach Club
Requests:	Special exception to restore several recreation features present pre-Hurricane Ian in the EC zoning district .
Physical Address:	4950 and 4952 Estero Blvd
STRAP #:	28-46-24-W4-02400.1010; 28-46-24-W4-02400.00CE
FLU:	Medium Residential and Recreation
Zoning:	Residential Multi-family and Environmentally Critical

Adjacent zoning and land uses:

North:	Commercial Boulevard (CB) Low Density
South:	Environmentally Critical (EC) Recreation

East:	Residential Multi-family (RM) Medium Residential
West:	Residential Planned Development (RPD) Medium Residential

II. BACKGROUND AND ANALYSIS

Background:

The applicant is proposing to restore to pre-Hurricane Ian conditions several recreational elements that are partially within the Environmentally Critical (EC) zoning district, including a swimming pool, pool deck, two (2) chickee huts, shuffleboard area and fencing along an existing retaining wall at the property. The subject property is located in the Center Island portion of the Town, on the south side of Estero Blvd. Based. No pre-Ian property survey has been located, however historic aerials and photographs demonstrate the presence of the recreation elements that the application is requesting to be restored.

The applicant provided photographs of the property from pre-Ian and coupled with aerial image records from Lee County it is apparent that the chickee structures have been at the site since 2016. The pool, deck, and retaining wall have existed substantially longer, at least since 1992. Any type of development within the EC zoning district requires a special exemption to be approved. In this case the special exception will allow for the restoration of the existing pool deck, shuffleboard court, and fencing. The chickees were completely destroyed and the applicant is seeking to rebuild. The west chickee huts and BBQ grill area huts are proposed to be of approximately similar size. The east chickee hut has been proposed to be expanded approximately 50 SF. The original pool was 1056 SF. The proposed restored pool is 1,170 SF and had been relocated farther and aligned with the seawall to allow deck chairs on waterside of pool.

The applicant must concurrently apply for the required Coastal Construction Control Line (CCCL) permit with the Department of Environmental Protection (DEP) for this proposed work scope.

The condominium has met the application criteria of providing notice to the condominium ownership of this special exception application and staff has received a list of the owners, record of vote, and notice letter. Of the 1,262 owners eligible to vote, 1,087 returned their ballots. Approximately 86% of the voting owners voted to remain as a timeshare association and apply for the necessary permit for rebuilding. The applicant has provided a letter of opinion from their attorney as required.

Analysis:

The condominium structure at The Kahlua Beach Club was built on or around 1978, per Lee County records. The Declaration of Condominium statement from Lee County

dated 1978 is available. The seawall/retaining wall and pool deck area are not mentioned in the document and permit records are not available to verify that these elements were built at the same time as the condominium, however it likely was part of the original design.

The LDC allows for repairs to existing retaining and sea wall structures. The location, seaward of the 1978 CCCL necessitates the approval of a special exception. Per LDC sec. 26-77(d), Existing seawall walls and retaining walls along the Gulf of Mexico may be maintained but may not be rebuilt. The applicant has stated that the subject wall is structurally sound and will only require aesthetic modifications.

Neighborhood Compatibility:
The pool, pool deck, retaining wall have been in the same location since at least 1998 at shown on Lee County aerial imagery. These elements appear to have been in place prior to the establishment of the 1978 CCCL although records are not available. The chickee huts have been at the site since 2016. It does not seem that the restoration and slight alteration of these recreation elements will change the character of the subject property.

Findings and Conclusions:
Section 6-366(b)(3) Regulations and Considerations
LDC Section 6-366 includes additional regulations and considerations for special exception approval of repairs in the EC zoning district:

a. *Any repairs must comply with all relevant local and state floodplain regulations.*

   The development must comply with local and state floodplain requirements.

b. *Repairs may not damage existing dunes or dune vegetation.*

   The repairs and proposed structures are proposed landward of the dune. No dunes or native vegetation will be impacted.

c. *Repairs, other than those limited to emergency repairs to enclose a damaged structure may not be completed during sea turtle nesting season.*

   Sea turtle nesting season begins May 1st and ends on October 31st.

d. *A new special exception must be applied for each time the structure is repaired.*

   This will be a condition of the special exception approval.

Special Exception Findings

LDC Sec. 34-88(b) sets forth the required findings and conclusions for the approval of a special exception:

1) *Whether there exist changed or changing conditions which make approval of the request appropriate.*

   The recreation elements in the EC were damaged or destroyed during Hurricane Ian. Construction in the EC is likely to be damaged by storm surge in the future.

2) *Whether the request is consistent with the goals, objectives, policies, and intent of the Fort Myers Beach Comprehensive Plan.*

   Policy 5-D-1 states: Development (other than minor structures) shall not be allowed seaward of the 1978 Coastal Construction Control Line. Development seaward of the 1991 Coastal Construction Control Line may be permitted provided it complies with this comprehensive plan and all state and local permitting requirements.
   The proposed work scope for this special exemption is to restore the recreation elements to pre-Hurricane Ian conditions with slight modifications. The retaining wall itself will not be removed, replaced or altered in any fashion.
   LDC Sec. 34-652(e)(3) states that a special exception may be approved for "reconstruction or renewal of any part of an existing building for the purpose of its maintenance or to correct damage to existing primary structures, which encroach into the EC district and their customary accessory uses." The subject recreation elements existed pre–Hurricane Ian and are located partially in the EC.

3) *Whether the request meets or exceeds all performance and locational standards for the proposed use.*

   The request will comply with local, state, and federal air, noise and water pollution standards. It will not adversely affect water quality and it will not create a nuisance to adjacent properties.

4) *Whether the request will protect, conserve, or preserve environmentally critical areas and natural resources.*

   The request will maintain what was previously constructed on this property. It will not have an additional negative impact.

5) *Whether the request will be compatible with existing or planned uses and not cause damage, hazard, nuisance, or other detriment to persons or property.*

   There is no anticipated negative impact or injury to surrounding properties.

6) *Whether a requested use will be in compliance with the applicable general zoning provisions and supplemental regulations set forth in Chapter 34 of the Land Development Code.*

   The EC zoning district allows only passive, movable structures, no new major structures of any kind are allowed, other than dune walkovers through a special exception. The development of minor structures are allowed in the EC through a special exception. LDC Section 26-77(d) states that, "Existing seawalls and retaining walls along the Gulf of Mexico may be maintained but may not be rebuilt." This is in line with the Fort Myers Beach Comprehensive Plan Policy 5-D-1.

III. RECOMMENDATION

Staff finds that the special exception for reconstruction of major accessory structures in the EC zoning district is in compliance with item Sec. 34-88(b)(1). Therefore, staff recommends **approval with conditions** of SEZ20240194 for the reconstruction of a partially damaged retaining wall seaward of the 1978 Lee County Line (CCCL).

If LPA recommends approval for the requests, staff has recommended conditions of approval.

IV. CONDITIONS OF APPROVAL

1. A new special exception must be applied for each time the structures are reconstructed.

2. Approval of this special exception does not give the Applicant an undeniable right to permit approval. Development of the Property must comply with all applicable requirements of the Fort Myers Beach Comprehensive Plan and LDC in effect at the time of permit approval, except as specifically modified herein.

3. The applicant must apply for and receive all state and local permits required for the reconstruction of all proposed structures.

4. Any violation of the conditions of approval shall render the special exception null and void.

5. The applicant must obtain an approved lighting plan as outlined in LDC Sec. 34-1834. The applicant must also obtain an approved landscaping plan as outlined in LDC Sec. 10-413.

Staff Report Exhibits:
Exhibit A - Site Plan
Exhibit B- Property Survey
Exhibit C – Historic Photographs
Exhibit D - Complete Application
Exhibit E – Postcards to adjacent properties

PROPERTY REGULATIONS

ADDRESS:	4950 ESTERO BLVD, FT MYERS BEACH, FL 33931
STRAP:	28-46-24-W4-024000.00CE
ZONING:	RESIDENTIAL MULTIFAMILY
LAND USE:	MIXED RESIDENTIAL
OWNER:	KAHLUA BEACH CLUB CONDO TIMESHARE 4950 ESTERO BLVD, FT MYERS BEACH, FL 33931
FEMA FLOOD:	VE: 14.00' IN BUILDABLE AREA VE: 15.00' SEAWARD OF 1978 CCCL LINE
FDEP CCCL ELEV:	19.83' LOWEST STRUCTURAL HORIZONTAL BEAM

PROPERTY REGULATIONS IN DOWNTOWN DISTRICT

FRONT (STREET) SETBACK:	25 FT
MINIMUM REAR SETBACK:	20 FT
MINIMUM SIDE SETACK:	20 FT
MAXIMUM BUILDING HEIGHT:	35 FT ABOVE DFE
MAXIMUM NUMBER OF STORIES:	3
PARKING:	RESIDENTIAL = 2 PER UNIT

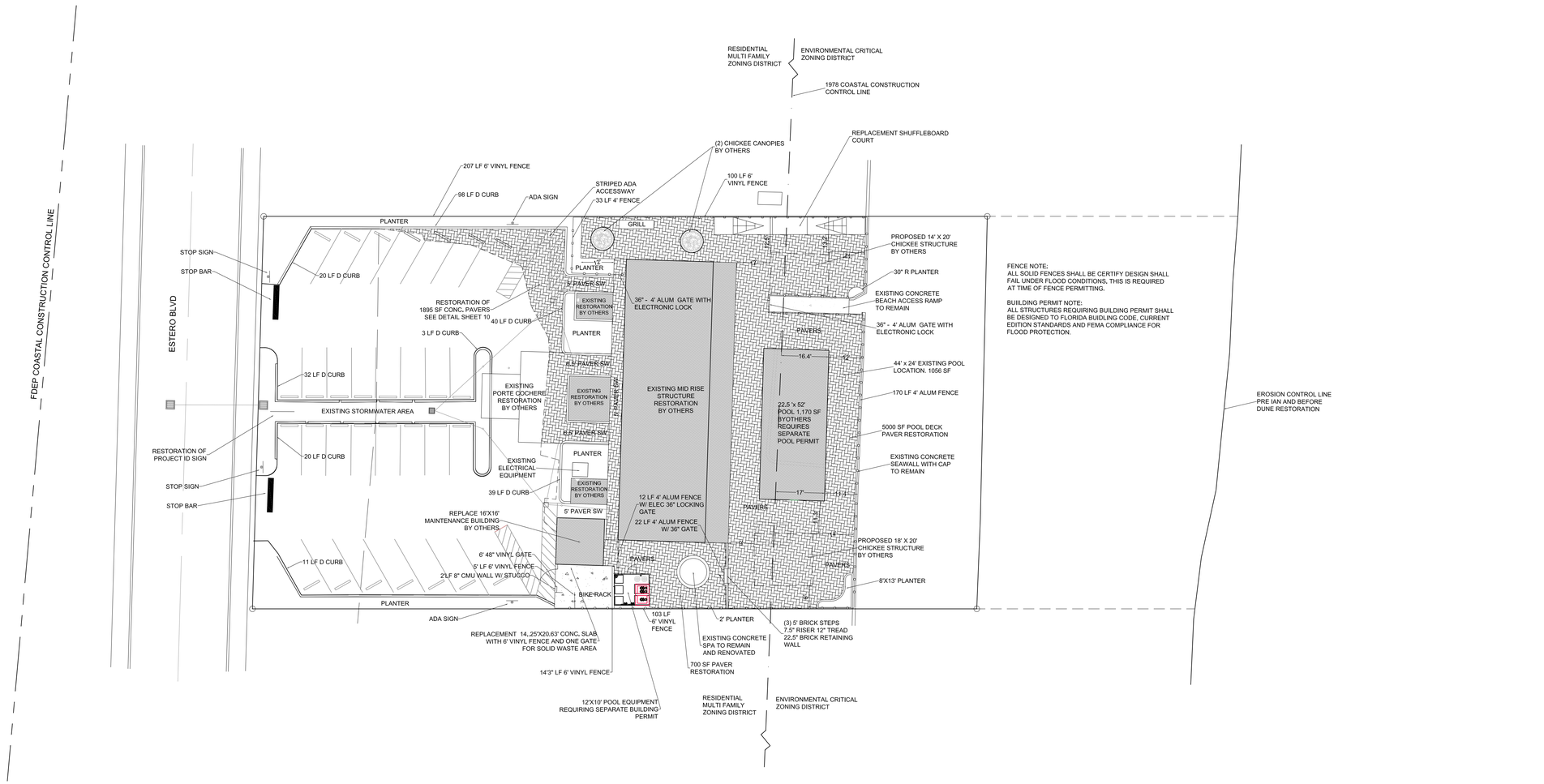
GENERAL NOTES

1. THE LOCATION OF EXISTING UTILITIES ARE APPROXIMATE. CONTRACTOR RESPONSIBLE TO LOCATE ANY EXISTING UTILITY.
2. PRIOR TO ANY WORK, CONTRACTOR SHALL CONTACT SUNSHINE STATE ONE CALL OF FLORIDA, 800-432-4770 OR 811 FOR LOCATION OF UTILITY LINES.

LEGEND

- ASPHALT
- CONCRETE
- STABILIZED GRASS FOR EMERGENCY ACCESS ONLY
- (#) PROPOSED PARKING COUNT

SCALE IN FEET
0 20' 40'



FENCE NOTE:
ALL SOLID FENCES SHALL BE CERTIFY DESIGN SHALL FAIL UNDER FLOOD CONDITIONS, THIS IS REQUIRED AT TIME OF FENCE PERMITTING.

BUILDING PERMIT NOTE:
ALL STRUCTURES REQUIRING BUILDING PERMIT SHALL BE DESIGNED TO FLORIDA BUILDING CODE, CURRENT EDITION STANDARDS AND FEMA COMPLIANCE FOR FLOOD PROTECTION.

NO.	DATE	DESCRIPTION	BY

MASTER CONCEPT PLAN - SPECIAL EXCEPTION

KAHLUA BEACH CLUB
KAHLUA BEACH CLUB CONDO TIMESHARE
4950 ESTERO BLVD, FORT MYERS BEACH, FL 33931

THESE DRAWINGS ARE NOT TO BE COPIED OR REVISED WITHOUT THE WRITTEN PERMISSION FROM INK ENGINEERING INC.

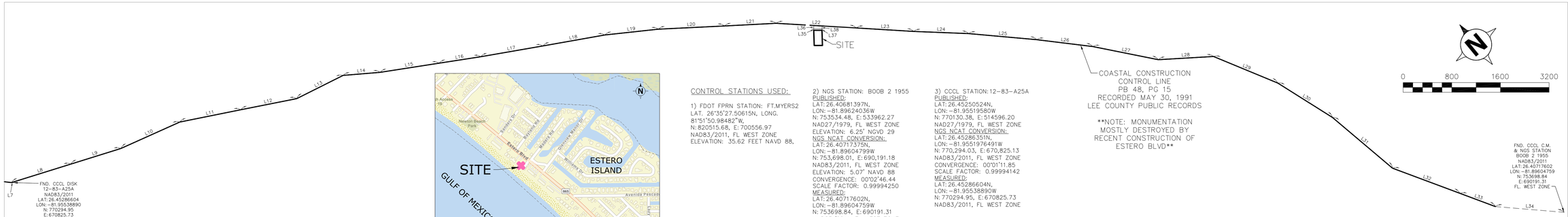
James Ink, P.E.
Florida Reg. No. 34705
DATE
(INFORMATIONAL COPY ONLY, UNLESS ENDORSED WITH REGISTERED ENGINEERS SEAL)

INK ENGINEERING INC.
CONSULTING ENGINEERS • PLANNING
2055 WEST FIRST STREET
FORT MYERS, FL 33901
JINK@INKENGINEERINGINC.NET

PROJECT NO.	23036
PROJECT MANAGER	James Ink P.E.
DRAWN BY	BWM
DATE	06.2024
SCALE	1"= 20'
SHEET NO. OF 2	1

KAHLUA BEACH CLUB - SE PERMIT APPLICATION

COASTAL CONSTRUCTION CONTROL LINE - DETAIL



VICINITY MAP
(NOT TO SCALE)

CONTROL STATIONS USED:

1) FDOT FPRN STATION: FT.MYERS2
LAT. 26°35'27.50615N, LONG. 81°51'50.98482"W,
N: 820515.68, E: 700556.97
NAD83/2011, FL WEST ZONE
ELEVATION: 35.62 FEET NAVD 88,

2) NGS STATION: BOOB 2 1955
PUBLISHED:
LAT: 26.40681397N,
LON: -81.89624036W
N: 753534.48, E: 533962.27
NAD27/1979, FL WEST ZONE
ELEVATION: 6.25' NGVD 29
NGS NCAT CONVERSION:
LAT: 26.40717375N,
LON: -81.89604799W
N: 753,698.01, E: 690,191.18
NAD83/2011, FL WEST ZONE
ELEVATION: 5.07' NAVD 88
CONVERGENCE: 00°02'46.44
SCALE FACTOR: 0.99994250
MEASURED:
LAT: 26.40717602N,
LON: -81.89604759W
N: 753698.84, E: 690191.31
NAD83/2011, FL WEST ZONE
ELEVATION: 5.07' NAVD 88

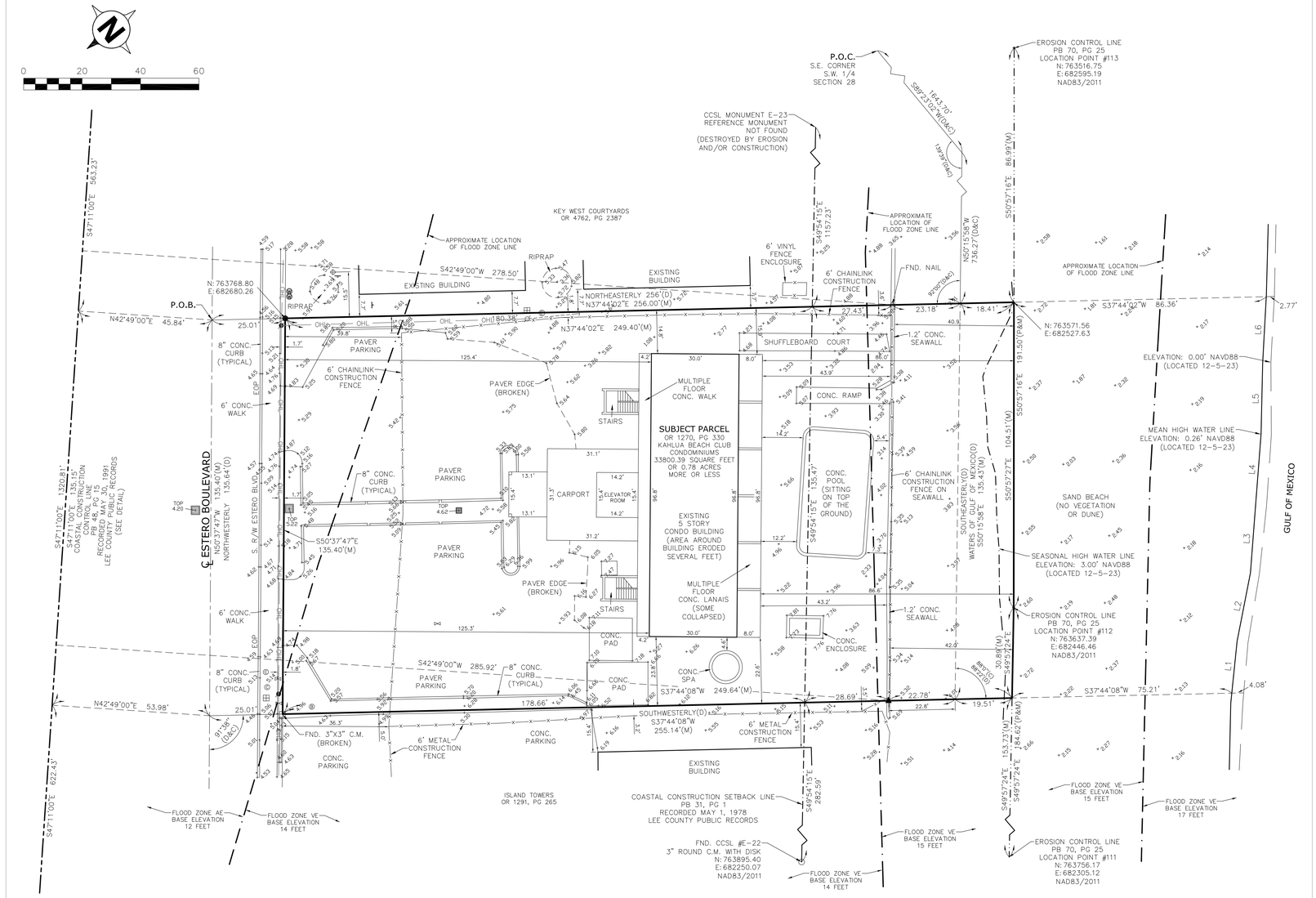
3) CCCL STATION: 12-83-A25A
PUBLISHED:
LAT: 26.45250524N,
LON: -81.95519580W
N: 770130.38, E: 514596.20
NAD27/1979, FL WEST ZONE
NGS NCAT CONVERSION:
LAT: 26.45286351N,
LON: -81.9551976491W
N: 770,294.03, E: 670,825.13
NAD83/2011, FL WEST ZONE
CONVERGENCE: 00°01'11.85
SCALE FACTOR: 0.99994142
MEASURED:
LAT: 26.45286604N,
LON: -81.95538890W
N: 770294.95, E: 670825.73
NAD83/2011, FL WEST ZONE

LINE TABLE

LINE	BEARING	DISTANCE
L1	S45°10'05"E	17.86'
L2	S39°57'30"E	23.82'
L3	S46°38'58"E	23.27'
L4	S46°35'27"E	24.31'
L5	S49°41'25"E	24.32'
L6	S47°55'38"E	22.78'
L7	N47°59'53"W	27.80'
L8	S67°47'54"E	1020.06'
L9	S67°48'19"E	863.58'
L10	S74°40'08"E	1061.70'
L11	S61°53'52"E	1023.60'
L12	S61°43'56"E	937.38'
L13	S77°05'21"E	863.58'
L14	S55°12'42"E	609.40'
L15	S59°19'43"E	981.41'
L16	S59°17'33"E	694.83'
L17	S60°21'09"E	1035.98'
L18	S60°32'12"E	1034.34'
L19	S56°40'49"E	883.60'
L20	S53°16'37"E	1089.17'
L21	S53°27'39"E	850.32'
L22	S47°11'00"E	1320.81'
L23	S47°01'45"E	945.29'
L24	S48°14'53"E	904.47'
L25	S45°23'38"E	1124.60'
L26	S43°31'06"E	927.22'
L27	S39°09'46"E	1099.56'
L28	S53°49'22"E	908.90'
L29	S28°02'21"E	1142.40'
L30	S18°21'00"E	1063.12'
L31	S10°18'49"E	1292.22'
L32	S30°03'37"E	1181.94'
L33	S30°01'09"E	623.26'
L34	S45°43'16"E	1133.31'
L35	N37°44'08"E	25.01'
L36	N42°49'00"E	53.98'
L37	N37°44'02"E	25.01'
L38	N42°49'00"E	45.84'

LEGEND

⊕	BENCHMARK
▲	SET NAIL & DISK, #LB8450
●	SET 5/8" IRON ROD, #LB8450
△	FOUND NAIL & DISK, AS NOTED
○	FOUND 5/8" IRON ROD, AS NOTED
□	FOUND CONCRETE MONUMENT, AS NOTED
▤	DRAINAGE STRUCTURE
⊙	WOOD POWER POLE
◉	CONCRETE POWER POLE
→	GUY ANCHOR
⊞	PULL BOX
Ⓔ	ELECTRIC SERVICE
Ⓑ	BACK FLOW PREVENTER
⋈	WATER GATE VALVE
◉	WATER METER
Ⓒ	COMMUNICATIONS BOX
LS	LICENSED SURVEYOR
LB	LICENSED BUSINESS
PLS	PROFESSIONAL LAND SURVEYOR
FND.	FOUND
EOP	EDGE OF PAVEMENT
FND.	IRON ROD
N/D	NAIL & DISK
C.M.	CONCRETE MONUMENT
I.D.	IDENTIFICATION
(M)	AS MEASURED
(P)	AS PER RECORD PLAT
(D)	AS PER DESCRIPTION
(C)	CALCULATED BASED ON MEASUREMENTS
OR	OFFICIAL RECORDS
ORI	OFFICIAL RECORDS INSTRUMENT
PB	PLAT BOOK
PG	PAGE
CONC.	CONCRETE
R/W	RIGHT OF WAY
O/H	OVERHEAD UTILITIES
CCCL	COASTAL CONSTRUCTION CONTROL LINE (1991)
CCSL	COASTAL CONSTRUCTION SETBACK LINE (1978)
FDEP	FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION
FDOT	FLORIDA DEPARTMENT OF TRANSPORTATION
FPRN	FLORIDA PERMANENT REFERENCE NETWORK
NGS	NATIONAL GEODETIC SURVEY
NAD	NORTH AMERICAN DATUM
NGVD29	NATIONAL GEODETIC VERTICAL DATUM OF 1929
NAVD88	NORTH AMERICAN VERTICAL DATUM OF 1988
NCAT	NGS COORDINATE CONVERSION AND TRANSFORMATION TOOL
x 5.11	ELEVATION POINT



SURVEY PLAT

OF A PARCEL LYING IN
SECTION 28, TOWNSHIP 46 SOUTH,
RANGE 24 EAST,
LEE COUNTY, FLORIDA.

DESCRIPTION

(AS PER OR 1270, PG 330)

FROM THE SOUTHEAST CORNER OF THE FRACTIONAL SOUTH EAST QUARTER (SW1/4) OF SECTION 28, TOWNSHIP 46 SOUTH, RANGE 24 EAST, RUN WESTERLY ALONG THE SOUTH LINE OF SAID SECTION 28 FOR 1643.70 FEET TO THE NORTHWESTERLY CORNER OF LOT 20 IN BLOCK 6 OF GULF HEIGHTS SUBDIVISION, ACCORDING TO THE MAP OR PLAT THEREOF RECORDED IN PLAT BOOK 6 AT PAGE 39 OF THE PUBLIC RECORDS OF LEE COUNTY; THENCE RUN NORTHWESTERLY AT AN ANGLE OF 139 DEGREES 39' EAST TO NORTHEAST FOR 736.27 FEET; THENCE RUN NORTHEASTERLY AT AN ANGLE OF 92 DEGREES 00' SOUTHWESTERLY TO NORTHWESTERLY WITH THE LAST MENTIONED COURSE ALONG THE NORTHWESTERLY LINE OF THE LANDS CONVEYED BY DEED RECORDED IN DEED BOOK 212 AT PAGE 490 OF SAID PUBLIC RECORDS FOR 256 FEET, MORE OR LESS, TO THE CENTERLINE OF ESTERO BOULEVARD (STATE ROAD NO. 865), WHICH IS THE POINT OF BEGINNING OF THE LANDS HEREBY CONVEYED. FROM SAID POINT OF BEGINNING, RUN NORTHWESTERLY ALONG SAID CENTERLINE FOR 135.64 FEET: THENCE RUN SOUTHWESTERLY AT AN ANGLE OF 91 DEGREES 38' NORTHWEST TO SOUTHWEST WITH SAID CENTERLINE TO THE WATERS OF THE GULF OF MEXICO. THENCE RUN SOUTHEASTERLY ALONG SAID WATERS TO AN INTERSECTION WITH A LINE PASSING THROUGH THE POINT OF BEGINNING AT AN ANGLE OF 88 DEGREES 221 SOUTHEAST TO SOUTHWEST WITH SAID CENTERLINE OF ESTERO BOULEVARD; THENCE RUN NORTHEASTERLY ALONG SAID LINE TO THE POINT OF BEGINNING. SUBJECT TO EXISTING RIGHT OF WAY OF ESTERO BOULEVARD.

NOTES

THIS PLAT WAS PREPARED AS A BOUNDARY AND TOPOGRAPHIC AND TIDAL WATER SURVEY.

THIS SURVEY PREPARED BASED ON THE DESCRIPTION OF RECORD, AND EXISTING MONUMENTATION.

BEARINGS ARE BASED ON NORTH AMERICAN DATUM OF 1983/2011; THE SOUTH RIGHT OF WAY LINE OF ESTERO BOULEVARD AS BEARING S50°37'47"E.

ELEVATIONS ARE BASED ON NORTH AMERICAN DATUM OF 1988, FROM NATIONAL GEODETIC SURVEY BENCHMARKS, 1) G 245, ELEVATION: 4.97 FEET AND 2) BOOB 2, ELEVATION: 5.03 FEET.

AS PER FDEP TIDAL WATER SURVEY PROCEDURAL APPROVAL, DATED 12/15/2023: TIDAL DATUM ELEVATIONS, NAVD 88, NTDE 1983–2001, AT SITE: MEAN HIGH WATER 0.26 FEET; MEAN LOW WATER -1.60 FEET; AND SEASONAL HIGH WATER 3.0 FEET.

THIS TIDAL WATER SURVEY COMPLIES WITH CHAPTER 177, PART II, FLORIDA STATUTES.

THE COASTAL CONSTRUCTION CONTROL & SETBACK LINE MONUMENTS AND THE MEAN HIGH WATER LINE, 0.00' CONTOUR AND SEASONAL HIGH WATER LINE LOCATED WITH CARLSON BRX7 ROVER GPS SYSTEM USING REAL TIME KINEMATICS METHOD; SOFTWARE: CARLSON SURVEY VERSION 6.16.

COASTAL CONSTRUCTION SETBACK LINE (CCSL) MONUMENTS E-6 THRU E-11 AND REFERENCE MONUMENTS NOT FOUND. DESTROYED BY EROSION AND/OR CONSTRUCTION OR COVERED BY STORM DEBRIS.

PARCEL LIES IN THE FLOOD ZONES WITH BASE FLOOD ELEVATIONS AS SHOWN. THIS INFORMATION TAKEN FROM FEDERAL EMERGENCY MANAGEMENT AGENCY FLOOD INSURANCE RATE MAP NO. 12071C0566G, EFFECTIVE DATE NOVEMBER 17, 2022.

UNDERGROUND IMPROVEMENTS, OTHER THAN THOSE SHOWN, IF ANY, WERE NOT LOCATED.

THIS SURVEY WAS PREPARED WITHOUT BENEFIT OF AN ABSTRACT OF TITLE AND ALL MATTERS OF TITLE SHOULD BE REFERRED TO AN ATTORNEY AT LAW. PARCEL SUBJECT TO ALL EASEMENTS AND RIGHTS OF WAY OF RECORD.

SAID PARCEL CONTAINS 33800.39 SQUARE FEET, OR 0.78 ACRES, MORE OR LESS.

SURVEYOR'S CERTIFICATION:

I HEREBY CERTIFY TO THE BEST OF MY PROFESSIONAL KNOWLEDGE, THAT THIS PLAT OF THE HEREON DESCRIBED PROPERTY IS A TRUE REPRESENTATION OF A FIELD SURVEY MADE UNDER MY DIRECTION AND CONFORMS TO THE STANDARDS OF PRACTICE FOR PROFESSIONAL SURVEYORS AND MAPPERS AS OUTLINED IN CHAPTER 5J-17, FLORIDA ADMINISTRATIVE CODE.

Kenneth E. Trask
PLS4684 State of Florida
Digitally signed by Kenneth E. Trask PLS4684 State of Florida
Date: 2023.12.19 14:08:17 -05'00'

KENNETH E. TRASK DATE:
PROFESSIONAL LAND SURVEYOR
FLORIDA LICENSE NO. LS4684

KENNETH E. TRASK LICENSE NUMBER No. 4684 STATE OF FLORIDA REGISTERED LAND SURVEYOR

NOTICE:

THIS SURVEY IS NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.

ADDITIONS OR DELETIONS TO SURVEY MAPS OR REPORTS BY OTHER THAN THE SIGNING PARTY OR PARTIES IS PROHIBITED WITHOUT WRITTEN CONSENT OF THE SIGNING PARTY OR PARTIES.

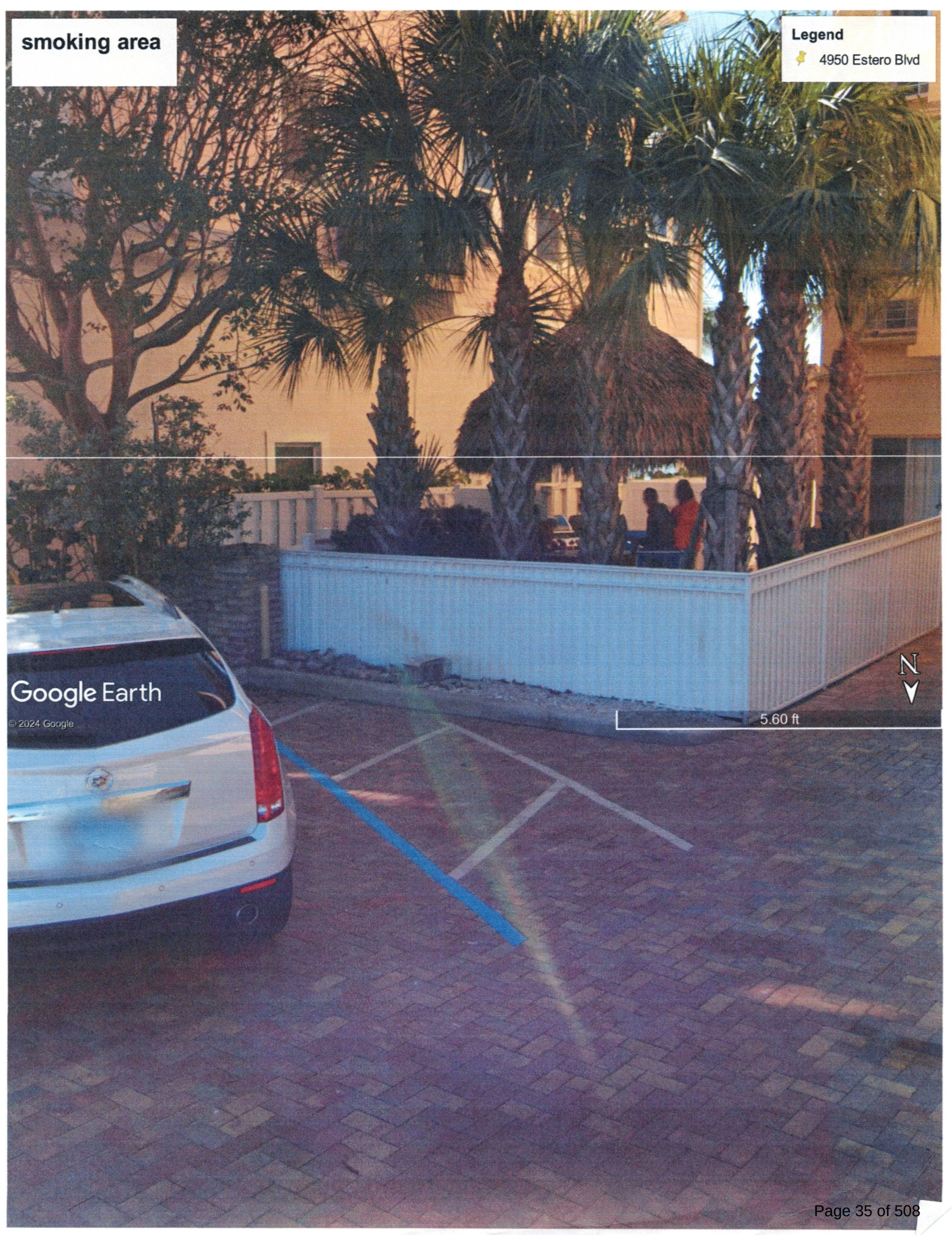
OWNER OF RECORD:
KAHLUA BEACH CLUB CONDO

PROPERTY ADDRESS:
4950 ESTERO BLVD
FORT MYERS BEACH, FL 33931

NO.	DATE	REVISION DESCRIPTION	BY

K.E. Trask, P.A.
Land Surveyors
Florida Licensed Business No. LB8450
12345 Blasingim Road
Fort Myers, Florida 33966
(239) 980-1495

date	dwg	scale	job#	sheet
12-7-23	23-48SR	1"=20'	23-48	1 of 1


smoking area
Legend
4950 Estero Blvd
Google Earth
© 2024 Google
N
5.60 ft

EXTERIOR VIEW OF RESIDENTIAL BUILDING

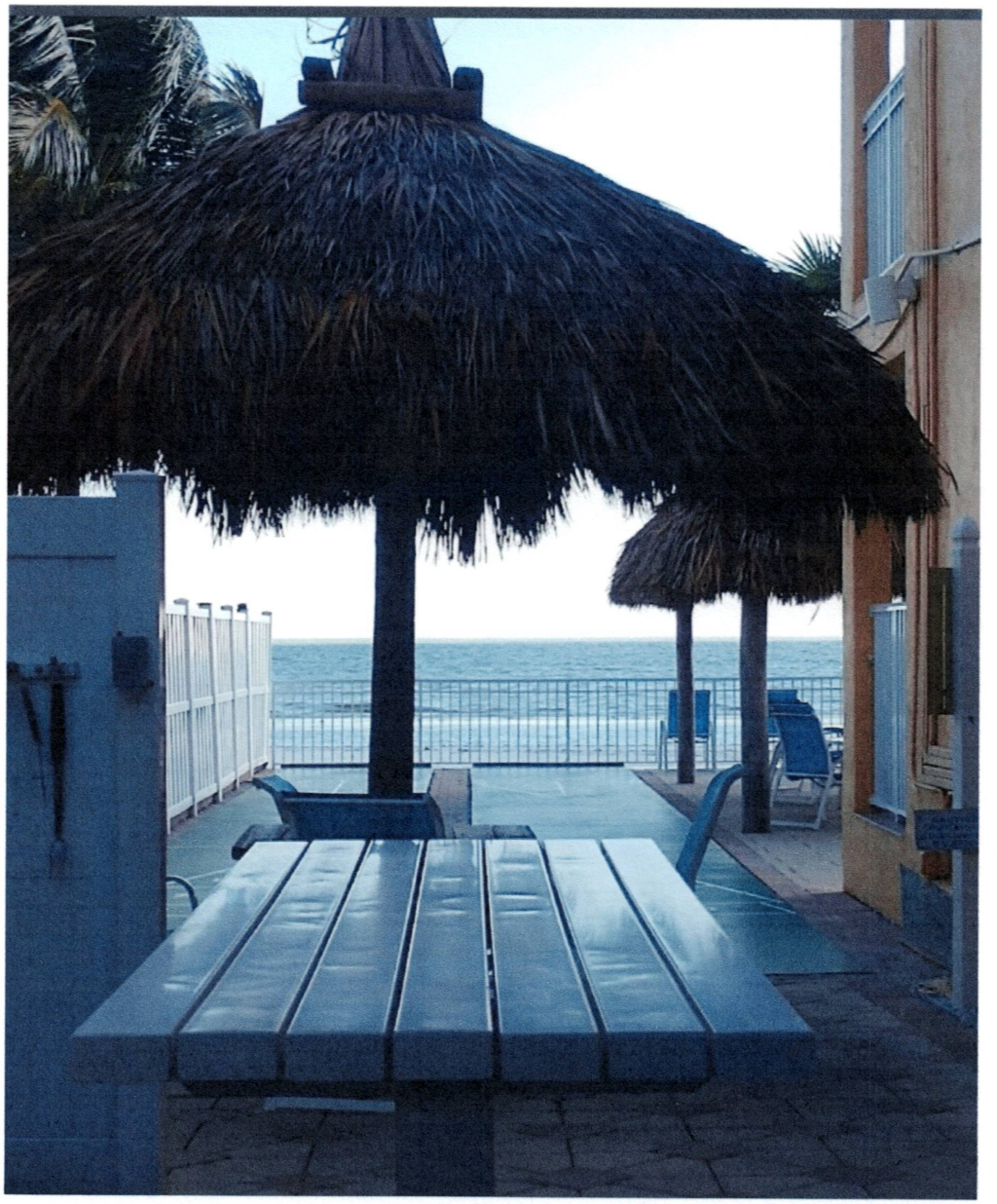
EXTERIOR VIEW OF RESIDENTIAL BUILDING

← Kahlua Beach Club

ew Prices Reviews Location Photos

Rooms Exterior Amenities Food &

Images may be subject to copyright



Mar 29 – 30 View prices

Kahlua Beach Club

ew Prices Reviews Location Photos

Rooms Exterior Amenities Food &

Images may be subject to copyright

Mar 29 – 30 View prices

COMMUNITY DEVELOPMENT DEPARTMENT
APPLICATION for PUBLIC HEARING

This is a first part of a two-part application. Please be sure to fill out this form, which requires general information, as well as the Supplemental Form application specific to action requested for the subject property. Please submit a complete Public Hearing application with required, supplemental information, exhibits and documents to zoningpermits@fmbgov.com. Please do not submit the instructions at the end of the application.

Site Address: 4950 Estero Blvd

STRAP Number: 28-46-24-W4-02400.00CE

Applicant: Ink Engineering, Inc Phone: 239-940-2504

Contact Name: James Ink PE Phone: _____

Email: jink@inkengineeringinc.net Fax: _____

Current Zoning District: RM

Future Land Use Map (FLUM) Category: Mixed Residential

FLUM Density Range: 6 u/a Platted Overlay: ☐ YES ☐ NO

ACTION REQUESTED	SUPPLEMENTAL FORM REQUIRED
☑ Special Exception	PH-A
☐ Variance	PH-B
☐ Conventional Rezoning	PH-C
☐ Planned Development ☐ Commercial ☐ Residential	PH-D
☐ Master Concept Plan Extension	PH-E
☐ Appeal of Administrative Action	PH-F
☐ Vacation of Platted Right-of-way and Easement	PH-G
☐ Other – cite LDC Section: _____	attach on separate sheet

PART I – General Information

A. Applicant*: Ink Engineering, James Ink PE Phone: 239-940-2504

**Applicant must submit a statement under oath that he/she is the authorized representative of the property owner. Please see PART III to complete the appropriate Affidavit form for the type of applicant.*

Applicant Mailing Address: 2055 West First Street, Fort Myers, FL 33901

Email: jink@inkengineeringinc.net Fax: _____

Contact Name: James Ink PE Phone: 239-940-2504

B. Relationship of Applicant to subject property:

☐ Owner* ☐ Land Trust* ☐ Partnership*
☐ Corporation* ☐ Association* ☐ Condominium*
☐ Subdivision* ☐ Timeshare Condo* ☐ Contract Purchaser*
■ Authorized Representative* ☐ Other* (please indicate)_____

**Applicant must submit a statement under oath that he/she is the authorized representative of the property owner. Please see PART III to complete the appropriate Affidavit form for the type of applicant.*

C. Authorized Agent(s). Please list the name of Agent authorized to receive correspondence Agents

Name: _____ Phone: _____

Address: _____

Email: _____ Fax: _____

D. Other Agent(s). Please list the names of all Authorized Agents (attach extra sheets if necessary)

Name: _____ Phone: _____

Address: _____

Email: _____ Fax: _____

Name: _____ Phone: _____

Address: _____

Email: _____ Fax: _____

PART II – Nature of Request

Requested Action (each request requires a separate application)

■ Special Exception

☐ Variance from LDC Section _____ - _____

☐ Conventional Rezoning from _____ to _____

☐ Planned Development

☐ Rezoning from _____ to ☐ Commercial PD ☐ Residential PD

☐ Amendment. List the project number: _____

☐ Extension/reinstatement of Master Concept Plan. List project number: _____

Town of Fort Myers Beach 2525 Estero Blvd Fort Myers Beach, Florida 33931
Phone: 239-765-0202 zoningpermits@fmbgov.com Fax: 239-765-0909

☐ Appeal of Administrative Action

☐ Vacation ☐ Right-of-Way ☐ Easement

☐ Other. Please Explain: _____

_____

_____

PART III – Waivers

Please indicate any specific submittal items that have been waived by the Director for the request. Attach a copy of the signed approval as Exhibit 3-1. (Use additional sheets if necessary)

Code Section: _____ Description: _____

_____

Code Section: _____ Description: _____

_____

Code Section: _____ Description: _____

_____

PART IV – Property Ownership (Single Owner)

☐ Single Owner (individual or husband and wife)

Name: _____ Phone: _____

Mailing Address: _____

Email: _____ Fax: _____

AFFIDAVIT
APPLICATION IS SIGNED BY AN INDIVIDUAL OWNER OR APPLICANT

I, _____ swear or affirm under oath, that I am the owner or the authorized representative of the owner(s) of the property and that:

I have full authority to secure the approval(s) requested and to impose covenants and restrictions on the referenced property as a result of any action approved by the Town of Fort Myers Beach in accordance with this application and the Land Development Code;
All answers to the questions in this application and any sketches, data or other supplementary matter attached hereto and made a part of this application are honest and true;

I have authorized the staff of the Town of Fort Myers Beach Community Development to enter upon the property during normal working hours for the purpose of investigating and evaluating the request made thru this application; and that
The property will not be transferred, conveyed, sold or subdivided unencumbered by the conditions and restrictions imposed by the approved action.

_____ _____
Signature Printed Name

STATE OF _____ COUNTY OF _____

The foregoing instrument was certified and subscribed before me by means of ____ physical presence OR _____ online notarization, this _____day of _____, 20_____, by _____, ☐ who is personally known to me OR ☐ who has produced _____ as identification.

(SEAL) _____
Notary Public Signature

PART V
Property Ownership (Multiple Owners)

☐ Multiple Owners (including corporation, partnership, trust, association, condominium, timeshare, or subdivision)

- ☐ Complete Disclosure of Interest Form (see below)
- ☐ Attach list of property owners as Exhibit 5-1
- ☐ Attach map showing property owners interests as Exhibit 5-2 (for multiple parcels)
- ☐ For condominiums and timeshares see Explanatory Notes Part V – Exhibit 5-3
- ☐ Letter of Opinion - Exhibit 5-4

DISCLOSURE OF OWNERSHIP INTEREST

If the property is owned in fee simple by an INDIVIDUAL, tenancy by the entirety, tenancy in common, or joint tenancy, list all parties with an ownership interest as well as the percentage of such interest.

Name and Address	Percentage Ownership
_____	_____
_____	_____
_____	_____
_____	_____

Town of Fort Myers Beach 2525 Estero Blvd Fort Myers Beach, Florida 33931
Phone: 239-765-0202 zoningpermits@fmbgov.com Fax: 239-765-0909

If the property is owned by a CORPORATION, list the officers and stockholders and the percentage of stock owned by each.

Name, Address and Office	Percentage of Stock

If the property is in the name of a TRUSTEE, list the beneficiaries of the trust with percentage of interest.

Name and Address	Percentage of Interest

If the property is in the name of a GENERAL PARTNERSHIP OR LIMITED PARTNERSHIP, list the names of the general and limited partners.

Name and Address	Percentage of Ownership

If there is a CONTRACT FOR PURCHASE, whether contingent on this application or not, and whether a Corporation, Trustee, or Partnership, list the names of the contract purchasers below, including the officers, stockholders, beneficiaries, or partners.

Name, Address and Office	Percentage of Stock

COMMUNITY DEVELOPMENT DEPARTMENT
APPLICATION for PUBLIC HEARING

Date of Contract: _____

If any contingency clause or contract terms involve additional parties, list all individuals or officers, if a corporation, partnership, or trust.

Name	Address
_____	_____
_____	_____
_____	_____
_____	_____

For any changes of ownership or changes in contracts for purchase subsequent to the date of the application, but prior to the date of final certificate of compliance, a supplemental disclosure of interest must be filed.

The above is a full disclosure of all parties of interest in this application, to the best of my knowledge and belief.

_____ _____

Signature Printed Name

AFFIDAVIT

APPLICATION IS SIGNED BY A CORPORATION, LIMITED LIABILITY COMPANY (L.L.C.), LIMITED COMPANY (L.C.), PARTNERSHIP, LIMITED PARTNERSHIP, OR TRUSTEE

I, DEBORAH L. CIMINSKI (name), as RESORT MANAGER (title) of Kahlua Owners Association, IncK (company), swear or affirm under oath, that I am the owner or the authorized representative of the owner(s) of the property and that:

1. I have full authority to secure the approval(s) requested and to impose covenants and restrictions on the referenced property as a result of any action approved by the Town of Fort Myers Beach in accordance with this application and the Land Development Code;
2. All answers to the questions in this application and any sketches, data or other supplementary matter attached hereto and made a part of this application are honest and true;
3. I have authorized the staff of Fort Myers Beach Community Development to enter upon the property during normal working hours for the purpose of investigating and evaluating the request made thru this application; and that
4. The property will not be transferred, conveyed, sold or subdivided unencumbered by the conditions and restrictions imposed by the approved action.

Town of Fort Myers Beach 2525 Estero Blvd Fort Myers Beach, Florida 33931
Phone: 239-765-0202 zoningpermits@fmbgov.com Fax: 239-765-0909

COMMUNITY DEVELOPMENT DEPARTMENT
APPLICATION for PUBLIC HEARING

Kahlua Owners Association, Inc

Name of Entity (corporation, partnership, LLP, LLC, etc)

Deborah L Ciminski — RESORT MANAGER

Signature — Title

DEBORAH L. CIMINSKI — 6/14/2024

Typed or Printed Name — Date

STATE OF FL **COUNTY OF** lee

The foregoing instrument was certified and subscribed before me by means of X physical presence OR ☐ online notarization, this 14th day of June, 2024, by Deborah Ciminski ☐ who is personally known to me OR ☒ who has produced FL DL as identification.

Seal

CELINE L. PRIETO MORALES NOTARY PUBLIC MY COMMISSION EXPIRES 1-18-2026 STATE OF FLORIDA COMMISSION NUMBER HH 482465

Notary Public Signature

PART II - Property Information

A. Legal Description:

STRAP: 28-46-24-W4-02400.00CE

Property Address: 4950 Estero Blvd

Is the subject property within a platted subdivision recorded in the official Plat Books of Lee County?

☒ No. Attach a legible copy of the legal description as Exhibit 6-1.

☐ Yes. Property identified in subdivision: _____

Book: _____ Page: _____ Unit: _____ Block: _____ Lot(s): _____

B. Boundary Survey:

☒ Attach a Boundary Survey of the property meeting the minimum standards of Chapter 61G17-6 of the Florida Administrative Code. A Boundary Survey must bear the raised seal and original signature of a Professional Surveyor and Mapper licensed to practice Surveying and Mapping by the State of Florida. Attach and label as Exhibit 6-2.

Town of Fort Myers Beach 2525 Estero Blvd Fort Myers Beach, Florida 33931
Phone: 239-765-0202 zoningpermits@fmbgov.com Fax: 239-765-0909

C. Property Dimensions:

Width (please provide an average width if irregular in shape) 135 feet

Depth (please provide an average width if irregular in shape) 256 feet

Frontage on street: 135 feet. Frontage on waterbody: 135 feet

Total land area: 0.78 ☒ acres ☐ square feet

D. General Location of Subject Property (from Sky Bridge or Big Carlos Pass Bridge):

south on Estero Blvd, Gulfside at intersection of Estero Blvd and Madera Road

☒ Attach Area Location Map as Exhibit 6-3

E. Property Restrictions (check applicable):

☒ There are no deed restrictions and/or covenants on the subject property.

☐ A list of deed restrictions and/or covenants affecting the subject property is attached as Exhibit 6-4.

☐ A narrative statement detailing how the restrictions/covenants may or may not affect the request is attached as Exhibit 6-5.

F. Surrounding Property Owners (these items can be obtained from the Lee County Property Appraiser):

☒ Attach a list of surrounding property owners within 500 feet as Exhibit 6-6.

☒ Attach a map showing the surrounding property owners as Exhibit 6-7.

☒ Provide Staff with two (2) sets of surrounding property owner mailing labels.

G. Future Land Use Category (see Future Land Use Map):

☐ Low Density	☐ Marina
☒ Mixed Residential	☐ Recreation
☐ Boulevard	☐ Wetlands
☐ Pedestrian Commercial	☐ Platted Overlay

Town of Fort Myers Beach 2525 Estero Blvd Fort Myers Beach, Florida 33931
Phone: 239-765-0202 zoningpermits@fmbgov.com Fax: 239-765-0909

LETTER OF AUTHORIZATION

The undersigned do hereby swear or affirm that they are the fee simple title holders and owners of record of property commonly known as

Kahlua Owners Association, Inc
4950 Estero Blvd
Fort Myers Beach FL 33931

legally described in exhibit A attached hereto.

The property described herein is the subject of an application for development. We hereby designate ***James Ink, c/o Ink Engineering, Inc, 2055 West First Street, Fort Myers, FL 33901*** *as the legal representative of the property and as such, this individual is authorized to legally bind all owners of the property in the course of seeking the necessary approvals to obtain enititlement authorization from Lee County for comprehensive plan amendment, bonus density, zoning, development orders, and code enforcement mitigation on the subject property. This representative will remain the only entity to authorize development activity on the property until such time as a new or amended authorization is delivered to Lee County.*

Deborah L Ciminski
Owner (signature)

DEBORAH L. CIMINSKI
Printed Name, Title Resort MANAGER

STATE OF FL
COUNTY OF lee

The foregoing instrument was sworn to (or affirmed) and subscribed before me this 14th day on June **(date)**, 2024 by Deborah Ciminski (name of person providing oath or affirmation), who is personally known to me or who has produced FL DL as identification.

(SEAL)

CELINE L. PRIETO MORALES NOTARY PUBLIC MY COMMISSION EXPIRES 1-18-2028 STATE OF FLORIDA COMMISSION NUMBER HH 482465

Signature of Notary Public

Case# _____ Date Received: _____

Town of Fort Myers Beach

COMMUNITY DEVELOPMENT DEPARTMENT

Supplement PH-A

Additional Required Information for a Special Exception Application

This is the second part of a two-part application. This part requests specific information for a special exception. Include this form with the Request for Public Hearing form.

Project Name: Kahlua Beach Club
Authorized Applicant: Ink Engineering, Inc / James Ink PE
LEEPA STRAP Number(s): 28-46-24-W4-02400.00CE

Current Property Status:
Current Zoning: RM
Future Land Use Map (FLUM) Category: Mixed Residential
Platted Overlay? ☐ **yes** ☐ **no** **FLUM Density Range:**

Requested Action:

☑ Use of premises in the EC (Environmentally Critical) zoning district for:
Restore to pre-Ian conditions a swimming pool, shuffle board, chickee huts (2)
paver pool deck, fences. Pool equipment is proposed to be relocated .
behind 78 line. All improvements located behind existing seawall that will remain
☐ Use of premises in the _____zoning district for:

Town of Fort Myers Beach 2525 Estero Blvd. Fort Myers Beach, FL 33931
Phone 239 765-0202 Zoningpermits@fmbgov.com Fax 239 765-0909

Case# _____ Date Received: _____

PART I
Narrative Statements

A. **Request for:** (indicate the proposed use that requires a special exception)

Swimming Pool
Chickee Huts (2)
Shuffleboard court (1), second existing court is not being replaced
fencing on property line and atop existing seawall for pool security

B. **Reasons for request:** (state how the property qualifies for a special exception and what impact granting the request could have on surrounding properties. Direct these statements toward the guidelines in LDC Section 34-88)

The property qualifies for a Special Exception because:
Restore uses to pre-Ian condition for an existing time share development

Granting the requested Special Exception could impact surrounding properties as follows:
No impact as all improvements are substantially the same as what was
existing before Hurricane Ian.

PART 2
Submittal Requirements

All applications for a special exception must submit fourteen (14) copies of this application form and all applicable exhibits.

Required Items

- Public Hearing Request Form
- Supplemental form PH-A
- Site Plan (to scale) including the current use of all existing structures on the site, and those on adjacent properties within 100 feet of the perimeter; all proposed structures and uses for the site; and any proposed fencing and screening.
- Fee in the amount of $3800.00/$3300.00 for an amendment

For New Communication Towers:

a. Lee County Application for Communication Tower
b. Shared-Use Plan Agreement

For Consumption of Alcoholic Beverages (COP) license approval:

a. Notarized authorization from the Property Owner to apply for permit
b. A statement indicating the type of establishment, the type of state license to be acquired, and the planned hours of operation. Also indicate if the request includes outdoor seating areas and indicate the seating areas and capacity on the site plan.
c. A map showing the locations of other properties within 500 feet of the request where consumption-on-premises uses are already in operation.
d. The site plan must include the public entrances and exits to the building, the floor area and proposed seating capacity, and floor area and seating capacity of any areas within the building subdivided between restaurant and bar/lounge areas. The site plan should also indicate the parking area, including the spacing and the locations of entrances and exits.

For transit terminals:

The site plan must indicate the location of the bus stalls; commuter parking areas, if provided; taxi waiting stalls; circulation pattern for buses including the entrances and exits; and the location of any building(s) housing the terminal and waiting areas.

For use of the EC zoning district:

a. If the location of the request is in the portion of the EC zoning district between Estero Boulevard and the Gulf of Mexico, provide a survey meeting the requirements of Chapter 62B-33.0081 of the Florida Administrative Code, also including the precise location of the (1978) Coastal Construction Setback Line for Estero Island recorded in Plat Book 33, Page 3, of the Official Records of Lee County, Florida.
b. The site plan must indicate the precise location of the request on the subject property and any related details of the existing conditions or planned improvements to the subject property. For areas in the EC zoning district between Estero Boulevard and the Gulf of Mexico, the precise location of the request in relation to the (1978) Coastal Construction Setback Line must be shown on the site plan.

Case# _____ Date Received: _____

Guide to Filing Supplement PH-A for Special Exceptions

Case Number will be inserted by Community Development staff.
Project Name must be the same as the name used on the Request for Public Hearing form.
Authorized Applicant must be the same as on the Request for Public Hearing form.
STRAP numbers must be the same as on the Request for Public Hearing form.
Current status of property must be the same as on the Request for Public Hearing form.
Requested Action: Indicate the nature of the request and include the current zoning of the property.

Part 1 Narrative Statements:

"Request for…"
Indicate the nature of the request that requires a special exception, and explain why it requires a special exception. Describe the relationship of the requested use to any existing use(s) of the property, if applicable.

"The property qualifies for a special exception because…"
Explain why the request and the subject property qualify for a special exception. Address the standards for decision-making for special exceptions that are provided in the Land Development Code, as follows:

- Whether there exist changed or changing conditions which make approval of the request appropriate.

- Whether the request is consistent with the goals, objectives, policies, and intent of the Fort Myers Beach Comprehensive Plan.

- Whether the request meets or exceeds all performance and locational standards for the proposed use.

- Whether the request will protect, conserve, or preserve environmentally critical areas and natural resources.

- Whether the request will be compatible with existing or planned uses ad not cause damage, hazard, nuisance, or other detriment to persons or property.

- Whether a requested use will be in compliance with the applicable general zoning provisions and supplemental regulations set forth in Chapter 34 of the Land Development Code.

"Granting the requested special exception could impact surrounding properties as follows…"
Explain how this request, if granted for the subject property, could affect the surrounding properties and the existing or planned uses on those properties.

Submittal Requirements Check List and Filing Guide

☑ **A completed Public Hearing Application Form.**

A completed Supplemental form PH-A.

☑ **Site Plan**. The site plan should be to scale and should indicate the location of the request on the property. Existing buildings and other improvements (such as swimming pools, fences, decks, or parking lots) should also be shown on the site plan. The site plan should also indicate the existing uses on adjacent properties. Also include any additional relevant detail related to the specific request.

Guide to Filing Supplement PH-A for Special Exceptions

Case Number will be inserted by Community Development staff.
Project Name must be the same as the name used on the Request for Public Hearing form.
Authorized Applicant must be the same as on the Request for Public Hearing form.
STRAP numbers must be the same as on the Request for Public Hearing form.
Current status of property must be the same as on the Request for Public Hearing form.
Requested Action: Indicate the nature of the request and include the current zoning of the property.

Part 1 Narrative Statements: "Request for…"

Indicate the nature of the request that requires a special exception, and explain why it requires a special exception. Describe the relationship of the requested use to any existing use(s) of the property, if applicable.

"The property qualifies for a special exception because…"

Explain why the request and the subject property qualify for a special exception. Address the standards for decision-making for special exceptions that are provided in the Land Development Code, as follows:

- Whether there exist changed or changing conditions which make approval of the request appropriate.
- Whether the request is consistent with the goals, objectives, policies, and intent of the Fort Myers Beach Comprehensive Plan.
- Whether the request meets or exceeds all performance and locational standards for the proposed use.
- Whether the request will protect, conserve, or preserve environmentally critical areas and natural resources.
- Whether the request will be compatible with existing or planned uses ad not cause damage, hazard, nuisance, or other detriment to persons or property.
- Whether a requested use will be in compliance with the applicable general zoning provisions and supplemental regulations set forth in Chapter 34 of the Land Development Code.

"Granting the requested special exception could impact surrounding properties as follows…"

Explain how this request, if granted for the subject property, could affect the surrounding properties and the existing or planned uses on those properties.

EXPLANATORY NOTES

Please do not print, copy and submit these instructions

Please submit required applications, supplemental information, exhibits and documents to zoningpermits@fmbgov.com .

Application fees are set by resolution of the Town Council of the Town of Fort Myers Beach and must be paid before any materials submitted will be considered an application.

The applicant is responsible for the accuracy and completeness of this application. Time delays or additional expenses necessitated by submitting inaccurate or incomplete information will be the responsibility of the applicant. Decisions regarding requests to waive submittal requirements are at the discretion of the Community Development Director and may not be appealed.

All information submitted with the application becomes a part of the public record and will be a permanent part of the file.

Explanatory Notes – Part I

A. Applicant's name: The applicant may be the landowner or an authorized agent.
B. Relationship of applicant to property: Indicate if the applicant is the property owner, and if so, the type of ownership. If the applicant is not the owner of the property, indicate the relationship of the applicant to the owner and submit a notarized authorization from the owner(s) to the applicant.
C. Agent's name: If the applicant will have others representing him/her in processing the application, indicate name, address, and phone number.
D. Other agents: Provide contact information for any other agents that may be involved in the request.

Explanatory Notes – Part II

Indicate the requested action.

Explanatory Notes – Part III

If waiver of any application requirement has been approved by the Community Development Director, attach a copy of the approval. Please request waivers prior to applying. Exhibit 3-1

Explanatory Notes – Part IV

A. If the property owner is an individual or husband and wife, check the box and provide the information.

Explanatory Notes – Part V

A. If there are multiple property owners exhibit 5-1, complete the disclosure form and include the names and mailing addresses of all persons or entities having an ownership interest in the property, including the names of all stockholders and trust beneficiaries. Disclosure is not required of any entity whose interests are solely equity interests that are regularly traded on an established securities market in the United States or another country.
B. If more than one parcel is involved, submit a list of all property owners and their mailing addresses. Provide a map keyed to the list of property owners showing their interests. The applicant is responsible for the accuracy of the list and map Exhibit 5-2
C. Where the property is a condominium or timeshare condominium, the application must be initiated by both the condominium association and no less than 75% of the total number of unit owners. To verify ownership, the list of property owners must be identified by unit number and/or timeshare period as applicable, along with proof that the owners who did not join in the application were given actual written notice of the application by the applicants, who must verify the list and the notice by sworn affidavit. Attach this affidavit as Exhibit 5-3.
D. In addition, a letter of opinion from an attorney licensed to practice law in the State of Florida addressing the considerations in LDC Section 34-201(a)(1)b.3. must be attached as Exhibit 5-4.

Explanatory Notes – Part VI

A. Include the street address of the subject property. List STRAP number. If more than one parcel is involved, list all STRAP numbers. If you don't know the STRAP number, you can look up the property in the records of the Lee County Property Appraiser at http://www.leepa.org. If the application includes only one or more undivided platted lots within a subdivision officially recorded in the Plat Books of Lee County, Florida, identify the property by lot number(s), block if applicable, subdivision unit if applicable, subdivision name, and plat book number and page number. If the property is not one or more undivided platted lots or is in an "unrecorded" subdivision, attach a metes and bounds legal description giving accurate bearings and distances for each course. If multiple parcels are involved, the metes and bounds legal description must describe the perimeter of the entire property subject to the request. The initial point in the description must be related to at least one established identifiable real property corner, such as a government

corner or a recorded corner. The bearings used in the description must be clearly referenced to a well-established and monumented line. Exhibit 6-1

B. Submit a Boundary Survey meeting the minimum technical standards for surveying set out in Chapter 61G17-6 of the Florida Administrative Code. Make sure that the surveyor is aware of any specific needs of the survey (location of Coastal Construction Lines, locations of existing structures, locations of easements, etc) that are relevant to your request. The perimeter boundary of the entire subject property should be indicated clearly with a heavy line. Exhibit 6-2
C. Provide the property dimensions or the approximate dimensions if the property is not a regular quadrilateral.
D. Describe how to get to the property starting from either the Sky Bridge or the Big Carlos Pass Bridge (specify which). Exhibit 6-3
E. If there are any deed restrictions or covenants that might affect the requested action, provide the information. Exhibit 6-4
F. A narrative statement detailing how the restrictions/covenants may or may not affect the request is attached as Exhibit 6-5
G. Attach a list of the surrounding property owners within 500 feet of the perimeter of the area of the request. Also include two sets of mailing labels providing the names and addresses of the owners on this list, and a map showing the parcel boundaries within the 500-foot radius Exhibit 6-6. This information can be acquired for a small fee by requesting a "variance report" from the Map Sales Office at the Lee County Property Appraiser's Office. Contact information for the Property Appraiser can be found at http://www.leepa.org.
H. Indicate the Future Land Use Map category or categories of the property as shown on the Fort Myers Beach Comprehensive Plan's Future Land Use Map, and whether the property is located in the "platted overlay" on the map.
I. Indicate the current zoning of the property. In most cases the current zoning is shown on the official zoning map of the Town of Fort Myers Beach, as adopted by ordinance. If zoning actions affecting the subject property have been taken since March 2004, call Town Hall to verify the current zoning.

Explanatory Notes – Part IV & V

The applicant must have either of the affidavits in Part V & VI, notarized, signed and submit, as applicable.

INK ENGINEERING INC.
CONSULTING ENGINEERS • PLANNING
2055 WEST FIRST STREET
FORT MYERS, FL 33901
JINK@INKENGINEERINGINC.NET

Exhibit 6-3

VICINITY MAP

(NOT TO SCALE)

INK ENGINEERING INC.
CONSULTING ENGINEERS • PLANNING
2055 WEST FIRST STREET
FORT MYERS, FL 33901
JINK@INKENGINEERINGINC.NET

May 16, 2024

Town of Fort Myers Beach
Community Development Department
2525 Estero Blvd
Fort Myers Beach, FL 33931

Re: Kahlua Beach club special Exception Public Hearing (SEZ 20240194) RAI#1 Response
Strap# 28-46-24-W4-02400.00CE
4950 Estero Blvd

To whom it may concern:

The following is our response to the request for additional information dated August 1, 2024. The following documents are provided in this submittal:

- Response Cover Letter
- Revised Master Concept Plan
- Waterside view of Site Plan pre-Ian (2) pictures
- SW view of Pre-Ian chickee hut: (2) pictures
- Grilling Area: (3) pictures
- SE view of Pre-Ian chickee hut: (3) pictures

Zoning Review: 8/1/2024

- Pre-Ian survey has not been provided, only a 2022 pre-Ian aerial image. A survey would be best able to verify dimensions. Other pre-Ian permits or records for chickee huts, pool, seawall, or fences have not been provided. However, the Town recognizes that many records were destroyed by Hurricane Ian and these records may not be available.

  Response: Not pre-Ian survey can be located. However, there are many photographs that can be used for reference records for chickee huts, pool, seawall and fences. Engineering judgement has been used to best locate structures in their original position with some dimensional changes to update a 40-year-old design.

- Per LDC sec. 34-652(e)reconstruction of previously existing accessory structures is permitted with the approval of Council. The aerial image provided and those available from Lee County Property Appraiser demonstrate the existence of the

applied for structures.

Response: Substantial photographic evidence has been provided with this resubmittal.

- Dimensions for the chickees huts are noted on MCP. The southeast chickee appears nearly the same in size to the aerial image. The southwest chickee seems proposed slightly larger than the aerial image. Please provide the estimated difference in size in square feet for both chickees.

  Response: The west chickee huts and BBQ grill area huts are approximately to be similar size. The east chickee hut has been expanding approximately 50 SF to be placed in the area of existing pool equipment that has been relocated by solid waste area.

  - Additionally, were the structures authentic chickees built by members of Seminole or Miccosukee tribes or are they tikis huts? Will the newly proposed chickees be authentic or will they be tiki-style huts? Please clarify the intent of the replacements.

    Response: All chickee huts are to construction by Indian Tribes.

  - Will the chickees have utility connections? A quick disconnect may be required. The application has not been reviewed for floodplain concerns, but will be at the time of LDO/DO

    Response: The only utility proposed is lighting. The lighting will be performed at time of LDO and will be consistent with Florida building code and Turtle Lighting compliance.

- Has the seawall been determined to be structurally sound? Please confirm that it does not require reconstruction, only maintenance, as it is not a listed structure in the SEZ application. If it needs to be demolished and rebuild it should be included in the SEZ application.

  Response: The seawall has been determined to be structurally sound. No work other than cosmetic maintenance is proposed.

- Information regarding any structural elements for the shuffleboard court should be noted. MCP references Sheet 8 but a Sheet 8 was not provided.

  Response: The one shuffleboard court will be replaced of similar size in a similar location. The note has been revised.

- The swimming pool is proposed to be reconstructed in a slightly altered location and dimensions. Please provide the size difference from the existing to the reconstructed pool in square feet.

  Response: The original pool location has been added to MCP. The original pool was 1056 SF and constructed over 40 years ago. The proposed pool is 1,170 SF and had been relocated farther and aligned with seawall to allow deck chairs on waterside of pool. The pool enlargement is designed to current code which changes dimensional changes.

Environmental Review: Chadd Chustz 7/31/24

The following information will be required at the time of LDO:

- At the time of LDO a Lighting Plan will be required per LDC Secs. 34-1834 and 34-105 and Chapter 34 Division 20:

  Response: Noted and will be requesting that a photometric plan shall be provided at time of Certificate of Completion of LDO.

- Pool underwater lighting and deck lighting shall comply with Land Development Code Chapter 34, DIVISION 20: Lighting Standards and Chapter 32, ARTICLE V. Sea Turtle Conservation Code.

  Response: Noted and will be requesting that a photometric plan shall be provided at time of Certificate of Completion of LDO.

- All vegetation planted in the planter boxes in the EC zoning district must comply with LDC Sec. 34-1575

  Response: Noted and will be requesting that a photometric plan shall be provided at time of Certificate of Completion of LDO.

If you have any questions, please feel free to call.

My good will and respect,

James M Ink PE
Authorized Agent

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OFF REC 1270 PG 330 1092902

DECLARATION OF CONDOMINIUM

KAHLUA BEACH CLUB, A CONDOMINIUM

I.

SUBMISSION STATEMENT

This Condominium Declaration, made and executed this 24th day of April, 1978, by Sunset Beach Club, Inc., a Florida Corporation, (hereinafter called the "Developer") for itself, its successors, grantees and assigns, and said Developer does submit the condominium property as more particularly described and set forth on the survey exhibits attached hereto as "Exhibit No. 1", which are made a part hereof as though fully set forth herein, to condominium ownership, pursuant to the Condominium Act of the State of Florida, F.S. 718 Et Seq., and does herewith file for record this Declaration of Condominium.

Definitions: - As used in this Declaration of Condominium and By-Laws and Exhibits attached hereto, and all Amendments thereof, unless the context otherwise requires, the following definitions shall prevail:-

A. Declaration, or Declaration of Condominium, means this instrument, as it may be from time to time amended.

B. Association, means Kahlua Owners' Association, Inc., a Florida non-profit Corporation, said entity is responsible for the operation of the Condominium. During any period when a Management Agreement is in effect, any rights or responsibilities of the Association shall also be the rights and responsibilities of the Management Firm under said Management Agreement.

C. By-Laws, means the By-Laws of the Association, as they exist from time to time.

D. Common Elements, means the portions of the Condominium property not included in the Units. Common elements shall include the tangible personal property required for maintenance and operation of the Condominium, even though owned by the Association.

E. Limited Common Elements, means and includes those common elements which are reserved for the use of a certain unit or units, to the exclusion of all other units.

F. Condominium, means that form of ownership of Condominium property under which units of improvements are subject to ownership by one or more owners, and there is appurtenant to each unit, as part thereof, an undivided share in the common elements.

This Instrument was prepared by:

DAVIS AND LANGER, P.A.
BY: MARK G. LANGER
4th Floor-Security Federal Building
6075 Sunset Drive
South Miami, Florida 33143

RECORD VERIFIED - DADE COUNTY CLERK
BY G WORKINGER D.C.

G. Condominium Act, means and refers to the Condominium Act of the State of Florida (F.S. 718 Et. Seq.).

H. Common Expenses, means the expenses for which the unit owners are liable to the Association.

I. Common Surplus, means the excess of all receipts of the Association including, but not limited to, assessments, rents, profits and revenues on account of the common elements, over and above the amount of common expenses.

J. Condominium Property, means and includes the land in a Condominium, whether or not contiguous, and all improvements thereon, and all easements and rights appurtenant thereto, intended for use in connection with the Condominium.

K. Assessment, means a share of the funds required for the payment of common expenses which, from time to time, are assessed against the unit owners.

L. Condominium Parcel or Parcel means a unit, together with the undivided share in the common elements which are appurtenant to the unit.

M. Condominium Unit, or Unit, is a Unit as defined in the Condominium Act, referring therein to each of the separate and identified units delineated in the Survey attached to the Declaration as Exhibit No. 1, and when the context permits, the Condominium parcel includes such unit, including its share of the common elements appurtenant thereto.

N. Unit Owner, or Owner of a Unit, or Parcel Owner, means the owner of a Condominium parcel.

O. Developer, means Sunset Beach Club, Inc., a Florida Corporation, its successors and assigns.

P. Institutional Mortgagee, means a Bank, Savings and Loan Association, Insurance Company or Union Pension Fund authorized to do business in the United States of America, an Agency of the United States Government, a real estate or mortgage investment trust, or a lender generally recognized in the community as an Institutional type lender.

Q. Occupant means the person or persons, other than the unit owner, in possession of a unit.

R. Condominium Documents, means this Declaration, the By-Laws and all Exhibits annexed hereto, as the same may be amended from time to time.

S. Board of Administration, or Board of Directors, means the representative body responsible for administration of the Association.

T. Management Agreement, means and refers to that certain Agreement attached to this Declaration and made a part hereof, which provides for the management of the Condominium property.

U. Management Firm, means and refers to the entity identified as the Management Firm in the Management Agreement attached to this Declaration, its successors and assigns. The Management Firm shall be responsible for the management of the Condominium property as provided in the Management Agreement attached to this Declaration and made a part hereof.

V. Unless the context otherwise requires, all other terms used in this Declaration shall be assumed to have the meaning attributed to said term by Section 718.103 of the Condominium Act as of the date of this Declaration.

W. The following definitions shall refer only to those units committed to and sold under a plan of "Interval Ownership":

1. "Interval Ownership" is a concept whereby units and the share of the common elements assigned to the unit are conveyed for periods of time, the purchaser receiving a stated time period for a period of years, together with a remainder over in fee simple as tenant in common with all other purchasers of "Unit Weeks" in each such Condominium Unit in the year 2018.

2. "Unit Week" means a period of ownership in a Unit committed to Interval Ownership.

"Unit Weeks" are computed as follows:

Unit Week No. 1 is the seven (7) days commencing on the first Saturday in each year. Unit Week No. 2 is the seven (7) days succeeding. Additional weeks up to and including Unit Week No. 52 are computed in a like manner. Unit Week No. 52 contains the seven (7) days succeeding the end of Unit Week No. 51 without regard to the month or year. Unit Week No. 53 contains any excess days not otherwise assigned. Unit weeks run from noon on the first Saturday of the period to noon on the last Saturday of the period.

3. A "Unit Committed to Interval Ownership" shall be any unit sold under a plan of Interval Ownership.

II.

NAME

The name by which this Condominium is to be identified shall be "Kahlua Beach Club, a Condominium".

III.

COMMITTING A UNIT TO INTERVAL OWNERSHIP

A unit shall become a unit committed to Interval Ownership upon the recording of the first deed in said unit, conveying unit weeks, by the Developer. No unit may be committed to Interval Ownership by any person, or other entity other than the Developer. A unit will no longer be committed to Interval Ownership any time all unit weeks are owned by the same legal entity. Notwithstanding the above, the Developer may assign its right to commit units to Interval Ownership to any other entity to which it conveys substantially all units which it owns in the Condominium property.

IV.

IDENTIFICATION OF UNITS

The Condominium property consists essentially of all units and other improvements as set forth in Exhibit No. 1 attached hereto and for purpose of identification, all units located on said Condominium property are given identifying numbers and are delineated on the Survey Exhibits, collectively identified as "Exhibit No. 1", hereto attached and made a part of this Declaration. No unit bears the same identifying number as does any other unit. The aforesaid identifying number as to the unit is also the

identifying number as to the Condominium parcel. The said Exhibit No. 1 also contains a survey of the land, graphic description of the improvements, and a plot plan and, together with this Declaration, they are in sufficient detail to identify the location, dimensions and size of the common elements and of each unit, as evidenced by the Certificate of the Registered Land Surveyor hereto attached. The legend and notes contained within the said Exhibit are incorporated herein and made a part hereof by reference.

The aforesaid units, buildings and improvements were constructed substantially in accordance with the Plans and Specification and any modification thereof on file with the Building and Zoning Department of the applicable governmental authority.

V.

IDENTIFICATION OF UNITS COMMITTED TO INTERVAL OWNERSHIP

Wherever the term "unit Owner" or "unit owners" is used anywhere within the context of this Declaration or any Amendment or Supplementary Declaration hereto, it shall be construed to include all owners of unit weeks within any unit committed to interval ownership as one unit owner. The respective interests of each owner of unit weeks within such unit committed to interval ownership with respect to each other shall be delineated on Exhibit No. 6 which is annexed to this Declaration and made a part hereof.

VI.

OWNERSHIP OF COMMON ELEMENTS

Each of the Unit Owners of the Condominium shall own an undivided interest in the Common Elements and limited Common Elements, and the undivided interest, stated as percentages of such ownership in the said Common Elements and limited Common Elements, as set forth on Exhibit No. 5 which is annexed to this Declaration and made a part hereof.

The fee title to each Condominium Parcel shall include both the Condominium Unit and the above respective undivided interest in the Common Elements, said undivided interest in the Common Elements to be deemed to be conveyed or encumbered with its respective Condominium Unit. Any attempt to separate the fee title to a Condominium Unit from the undivided interest in the Common Elements appurtenant to each Unit shall be null and void. The term "Common Elements" when used throughout this Declaration, shall mean both Common Elements and limited Common Elements unless the context otherwise specifically requires.

VII.

VOTING RIGHTS

There shall be one person with respect to each Unit who shall be entitled to vote at any meeting of the Association and such person shall be known (and is hereinafter referred to) as the "Voting Member". If a Unit is owned by more than one person, the Owners of said Unit shall designate one of them as the Voting Member, or in the case of a Corporate Unit Owner, an officer or employee thereof shall be the Voting Member. The designation of the Voting Member shall be made as provided by and subject to the provisions and restrictions set forth in the By-Laws of the Association.

Each Owner or group of Owners shall be entitled to one vote for each Unit owned. The vote of a Condominium Unit is not divisible.

Notwithstanding the above, each Owner of Unit Weeks in a Unit committed to Interval Ownership shall be entitled to vote at meetings of the Association and shall be entitled to one fifty-first (1/51st) vote for each Unit Week owned.

VIII.

COMMON EXPENSE AND COMMON SURPLUS

The common expenses of the Condominium, including the obligation of each Unit Owner under the Management Agreement attached to this Declaration, shall be shared by the Unit Owners, as specified and set forth in Exhibit No. 5. Any common surplus of the Association shall be owned by each of the Unit Owners in the same percentage specified for sharing common expense.

IX.

MAINTENANCE FEE AND PER DIEM CHARGE FOR UNITS COMMITTED TO INTERVAL OWNERSHIP

All Owners of Unit Weeks in Units committed to Interval Ownership shall pay a "maintenance fee". The maintenance fee shall include the following:

The particular Unit Week Owner's share of common expenses, as set forth in Paragraph VIII above;

Repair and upkeep of Units for normal wear and tear (example - repainting interior walls);

Repair and replacement of furniture, fixtures, appliances, carpeting and utensils;

Casualty and/or liability insurance on the Unit;

Utilities for the subject Unit;

Personal property, real estate, and any other applicable taxes;

Any other expenses incurred in the normal operations and maintenance of the Unit which cannot be attributed to a particular Unit Week Owner.

The maintenance fee shall be prorated among all Owners of Unit Weeks in a specific Unit by applying a fraction, the numerator of which is the number of Unit Weeks owned by a specific Owner, the denominator of which is fifty-one (51), to the total of all such expenses. The foregoing shall not apply to any Unit Week conveyed to the Association.

In addition to the maintenance fee all owners of Unit Weeks in Units committed to interval ownership shall pay a "per diem charge" for each day said unit is occupied.

X.

MAINTENANCE WEEK IN UNITS COMMITTED TO INTERVAL OWNERSHIP

Upon conveying thirty (30) Unit Weeks in any Unit committed to Interval Ownership, or six (6) months from the date of the first conveyance under Interval Ownership in any Unit committed to Interval Ownership, whichever date comes first, the Developer agrees to

convey and the Association agrees to accept one unit week to be used for maintenance purposes, and Unit Week No. 53 to be used for maintenance purposes or any other purpose determined by the Board of Directors. The Developer shall have the right to choose the Unit Week to be so conveyed. In the event any one person, or other legal entity, becomes holder of record title to all unit weeks in any one unit, that person, or other legal entity, may cause the Association to convey said unit weeks conveyed to the Association to it by notifying the Association, in writing, of its desire that said unit cease being a unit committed to interval ownership. The Association shall execute the necessary papers to complete said conveyance no later than sixty (60) days after notice. All expenses of said conveyance, including state stamps and recording fees, shall be borne by the person, or other legal entity, desiring such conveyance.

XI.

METHOD OF AMENDMENT OF DECLARATION

This Declaration may be amended at any regular or special meeting of the Unit Owners, called and convened in accordance with the By-Laws, by the affirmative vote of Voting Members casting not less than fifty-one percent (51%) of the total vote of the members of the Association.

All Amendments shall be recorded and certified as required by the Condominium Act. Subject to the provisions of Article VIII, no Amendment shall change any Condominium Parcel, nor a Condominium Unit's proportionate share of the common expenses or common surplus, nor the voting rights appurtenant to any Unit, unless the record Owner(s) thereof, and all record Owners of mortgages or other voluntarily placed liens thereon, shall join in the execution of the Amendment. No Amendment shall be passed which shall impair or prejudice the rights and priorities of any mortgages or change the provisions of this Declaration with respect to Institutional Mortgages without the written approval of all Institutional Mortgagees of record, nor shall the provisions of Article XVI of this Declaration be changed without the written approval of all Institutional Mortgagees of record.

No Amendment shall change the rights and privileges of the Developer without the Developer's written approval.

Notwithstanding the foregoing paragraphs of this Article XI:

A. The Developer reserves the right to change the interior design and arrangement of all Units and to alter the boundaries between Units, as long as the Developer owns the Units so altered; however, no such change shall increase the number of Units nor alter the boundaries of the Common Elements, except the party wall between any Condominium Units, without Amendment of this Declaration in the manner hereinbefore set forth. If the Developer shall make any changes in Units, as provided in this paragraph, such changes shall be reflected by the Amendment of this Declaration with a Survey attached, reflecting such authorized alteration of Units, and said Amendment need only be executed and acknowledged by the Developer and any holders of Institutional Mortgages encumbering the said altered Units. The Survey shall be certified in the manner required by the Condominium Act.

B. The Developer, so long as it owns more than twenty-five percent (25%) of the Condominium Units or Unit Weeks in the Condominium, reserves the right at any time to amend the Declaration, as may be required by any lending institution or public body, or in such manner as the Developer may determine to be necessary to carry out the purposes of the project provided that such Amendment shall not increase the proportion of common expenses nor decrease the Ownership of Common Elements borne by the Condominium Owners.

XII.

BY-LAWS

The operation of the Condominium's property shall be governed by the By-Laws of the Association which are set forth in a document which is annexed to this Declaration, marked Exhibit No. 2, and made a part hereof.

No modification of or Amendment to the By-Laws of said Association shall be valid unless set forth in or annexed to a duly recorded Amendment to this Declaration. The By-Laws may be amended in the manner provided for therein, but no Amendment to said By-Laws shall be adopted which would affect or impair the validity or priority of any mortgage covering any Condominium Parcel, or which would change the provision of the By-Laws with respect to Institutional Mortgages without the written approval of all Institutional Mortgagees of record. No Amendment shall change the rights and privileges of the Developer without the Developer's written approval. Any Amendment to the By-Laws, as provided herein, shall be executed by the parties as required in this Article and in Article XI above, and said Amendment shall be recorded in the Public Records of Lee County, Florida.

XIII.

THE OPERATING ENTITY

The operating entity of the Condominium shall be the Association, which has been organized pursuant to the Condominium Act. The said Association shall have all of the powers and duties set forth in the Condominium Act, as well as all of the powers and duties granted to or imposed upon it by this Declaration, the By-Laws of the Association and its Articles of Incorporation, a copy of said Articles of Incorporation being annexed hereto marked Exhibit No. 3, and made a part hereof, and all of the powers and duties necessary to operate the Condominium, as set forth in this Declaration and the By-Laws, and as they may be amended from time to time.

Every Owner of a Condominium Parcel, whether he has acquired his Ownership by purchase, by gift, conveyance or transfer by operation of law, or otherwise, shall be bound by the By-Laws and Articles of Incorporation of the said Association, the provisions of this Declaration and the Management Agreement.

XIV.

ASSESSMENTS

The Association, through its Board of Directors, shall have the power to fix and determine from time to time the sum or sums necessary and adequate to provide for the common expenses of the Condominium property and such other assessments as are specifically provided for in this Declaration and Exhibits attached hereto. The procedure for the determination of all such assessments shall be as set forth in the By-Laws of the Association and this Declaration, and the Exhibits attached hereto.

The common expenses shall be assessed against each Condominium Parcel Owner as provided for in Article VIII of this Declaration.

Assessments, installments and maintenance fees that are unpaid for over ten (10) days after due date shall bear interest at the rate of ten percent (10%) per annum from due date until paid, and at the sole discretion of the Board of Directors, a late charge of $25.00 shall be due and payable. Regular assessments shall be due and

payable monthly on the first of each month and monthly bills for same shall not be mailed or delivered to Unit Owners. Maintenance fees for Units committed to Interval Ownership shall be due and payable on January 1 of each year.

The Association shall have a lien on each Condominium Parcel for unpaid assessments, together with interest thereon, against the Unit Owner of such Condominium parcel, together with a lien on all tangible personal property located within said Unit, except that such lien upon the aforesaid tangible personal property shall be subordinate to prior bona fide liens of record. Reasonable attorneys' fees incurred by the Association incident to the collection of such assessments or the enforcement of such lien, together with all sums advanced and paid by the Association for taxes and payments on account of superior mortgages, liens or encumbrances which may be required to be advanced by the Association, in order to preserve and protect its lien, shall be payable by the Unit Owner and secured by such lien. The Board of Directors, may take such action as it deems necessary to collect assessments by personal action or by enforcing and foreclosing said lien, and may settle and compromise the same if deemed in its best interests. Said lien shall be effective as and in the manner provided for by the Condominium Act, and shall have the priorities established by said Act. The Association, shall be entitled to bid at any sale held pursuant to a suit to foreclose an assessment lien, and to apply as a cash credit against its bid, all sums due, as provided herein, covered by the lien enforced. In case of such foreclosure, the Unit Owner shall be required to pay a reasonable rental for the Condominium Parcel for the period of time said Parcel is occupied by the Unit Owner or anyone by, through or under said Unit Owner, and Plaintiff in such foreclosure shall be entitled to the appointment of a Receiver to collect same from the Unit Owner and/or Occupant.

In the case of a lien against an Owner of Unit Weeks in a Unit committed to Interval Ownership, said lien shall be limited to the Unit Weeks owned by said Owner and shall not encumber the property, real or personal, of any other Owner of Unit Weeks in said Unit.

Where the Mortgagee of an Institutional First Mortgage of record, or other purchaser of a Condominium Unit, obtains title to a Condominium Parcel as a result of foreclosure of the Institutional First Mortgage, or when an Institutional First Mortgagee of record accepts a Deed to said Condominium Parcel in lieu of foreclosure, such acquirer of title, its successors and assigns, shall not be liable for the shares of common expenses or assessment by the Association pertaining to such Condominium Parcel, or chargeable to the former Unit Owner of such Parcel, which became due prior to acquisition of title as a result of the foreclosure or the acceptance of such Deed in lieu of foreclosure. Such unpaid share of common expenses or assessments shall be deemed to be common expenses collectible from all of the Unit Owners, including such acquirer, his successors and assigns.

Any person who acquires an interest in a Unit, except through foreclosure of an Institutional First Mortgage of record, or by virtue of an Institutional First Mortgagee accepting a Deed to a Condominium Parcel in lieu of foreclosure, as specifically provided hereinabove including, without limitation, persons acquiring title by operation of law, including purchasers at judicial sales, shall not be entitled to occupancy of the Unit or enjoyment of the Common Elements until such time as all unpaid assessments due and owing by the former Unit Owners have been paid. The Association, acting through its Board of Directors, shall have the right to assign its claim and lien rights for the recovery of any unpaid assessments to the Developer, or to any Unit Owner or group of Unit Owners, or to any third party.

XV.

INSURANCE PROVISIONS

I. INSURANCE

A. Purchase of Insurance: The Association shall obtain fire and extended coverage insurance and vandalism and malicious mischief insuring all of the insurable improvements within the Condominium, together with such other insurance as the Association deems necessary in and for the interest of the Association, all Unit Owners and their Mortgagees, as their interests may appear, in an amount which shall be equal to the maximum insurable replacement value as determined annually; and the premiums for such coverage and other expenses in connection with said insurance shall be assessed against the Unit Owners as part of the common expense. The named insured shall be the Association, individually and as Agent for the Unit Owners, without naming them, and as Agent for their Mortgagees.

Provision shall be made for the issuance of Mortgagee endorsements and memoranda of insurance to the Mortgagees of Unit Owners. Such policies shall provide that payments for losses thereunder by the insurer shall be made to the insurance trustee hereinafter designated, and all policies and endorsements thereon shall be deposited with the insurance trustee. Unit Owners may obtain insurance coverage at their own expense upon their own personal property and for their personal liability and living expense.

B. Coverage:

(1) Casualty. All buildings and improvements upon the Condominium property shall be insured in an amount equal to the maximum insurable replacement value, excluding foundation and excavation costs, and all personal property included in the Common Elements shall be insured for its value, all as determined annually by the Board of Directors of the Association. Such coverage shall afford protection against:

(a) Loss or damage by fire and other hazards covered by a standard extended coverage endorsement; and

(b) Such other risks as from time to time shall be customarily covered with respect to buildings similar in construction, location and use as the buildings on the Condominium Parcel, including but not limited to vandalism and malicious mischief.

(2) Public Liability in such amounts and with such coverage as shall be required by the Board of Directors of the Association, including but not limited to hired automobile and non-owned automobile coverages, and with cross liability and endorsement to cover liabilities of the Unit Owners as a group to a Unit Owner.

(3) Insurance On Units Committed to Interval Ownership. The Board of Directors of the Association, shall obtain casualty and liability insurance, as needed, on all Units committed to Interval Ownership. Each such policy shall reflect the respective interests of the Association, and all Owners of Unit Weeks in each such Unit. Casualty insurance shall be in an amount equal to the maximum insurable replacement value of the Unit and the personal property therein without deduction for depreciation as determined annually by the Board of Directors of the Association. The

premiums shall be a part of the maintenance fee. All losses thereunder shall be payable to the Insurance Trustee hereinafter designated. All such proceeds shall be used for the purpose of repair or replacement of any loss, or in the event such loss is not to be repaired or replaced, as determined elsewhere, to be divided among all Owners of Unit Weeks in such Unit in accordance with their percentage interest in remainder. Any deficit or overage in such proceeds, after repair or replacement, shall be divided among all such Owners of Unit Weeks in that Unit in accordance with Exhibit 6 to this Declaration. Deficits shall be treated as part of the maintenance fee next due.

(4) Workmen's Compensation policy to meet the requirements of law.

(5) Such Other Insurance as the Board of Directors of the Association shall determine from time to time desirable.

C. Premiums: Premiums upon insurance policies purchased by the Association shall be paid by the Association as a common expense.

D. Insurance Trustee; Shares of Proceeds: All insurance policies purchased by the Association shall be for the benefit of the Association and the Unit Owners and their Mortgagees, as their interests may appear, and shall provide that all proceeds covering property losses shall be paid to the insurance trustee, which shall be designated by the Board of Directors and which shall be any bank or trust company in Florida with trust powers. The insurance trustee shall not be liable for payment of premiums nor for the renewal or the sufficiency of policies, nor for the failure to collect any insurance proceeds. The duty of the insurance trustee shall be to receive such proceeds as are paid and to hold the same in trust for the purposes elsewhere stated herein and for the benefit of the Unit Owners and their Mortgagees in the following shares, but which shares need not be set forth on the records of the insurance trustee:

(1) Common Elements. Proceeds on account of damage to Common Elements - an undivided share for each Unit Owner, such share being the same as the undivided share in the Common Elements appurtenant to his Unit.

(2) Condominium Units. Proceeds on account of damage to Units shall be held in the following undivided shares:

(a) When the Building is to be Restored - For the Owners of damaged Units in proportion to the cost of repairing the damage suffered by each Unit Owner, which cost shall be determined by the Association.

(b) When the Building is Not to be Restored - An undivided share for each Unit Owner, such share being the same as the undivided share in the Common Elements appurtenant to his Unit.

(3) Mortgagees. In the event a mortgage endorsement has been issued as to a Unit, the share of the Unit Owner shall be held in trust for the Mortgagee and the Unit Owner as their interests may appear; provided, however, that no Mortgagee shall have any right to determine or participate in the determination as to whether or not any damaged property shall be reconstructed or repaired, and no Mortgagee shall have any right to apply or have applied to the reduction of a mortgage debt any insurance proceeds except distributions thereof made to the Unit Owner and Mortgagee pursuant to the provisions of this Declaration.

E. Distribution of Proceeds: Proceeds of insurance policies received by the insurance trustee shall be distributed to or for the benefit of the beneficial Owners in the following Manner:

(1) Expense of the Trust. All expenses of the insurance trustee shall be first paid or provision made therefor.

(2) Reconstruction or Repair. If the damage for which the proceeds are paid is to be repaired or reconstructed, the remaining proceeds shall be paid to defray the cost thereof as elsewhere provided. Any proceeds remaining after defraying such costs shall be distributed to the beneficial Owners. Remittance to Unit Owners and their Mortgagees being payable jointly to them. This is a covenant for the benefit of any Mortgagee of a Unit and may be enforced by such Mortgagee.

(3) Failure to Reconstruct or Repair. If it is determined in the manner elsewhere provided that the damage for which the proceeds are paid shall not be reconstructed or repaired, the remaining proceeds shall be distributed to the beneficial Owners, remittances to Unit Owners and their Mortgagees being payable jointly to them. This is a covenant for the benefit of any Mortgagee of a Unit and may be enforced by such Mortgagee.

(4) Certificate. In making distribution to Unit Owners and their Mortgagees, the insurance trustee may rely upon a certificate of the Association made by its President and Secretary as to the names of the Unit Owners and their respective shares of the distribution.

F. Association as Agent: The Association is hereby irrevocably appointed Agent for each Unit Owner and for each Owner of a mortgage or other lien upon a Unit and for each Owner of any other interest in the Condominium property to adjust all claims arising under insurance policies purchased by the Association and to execute and deliver releases upon the payment of claims.

G. Notice of Insurance Coverage: In any legal action in which the Association may be exposed to liability in excess of insurance coverage protecting it and the Unit Owners, the Association will give Notice of the exposure within a reasonable time to all Unit Owners who may be exposed to the liability and they shall have the right to intervene and defend.

H. Inspection of Insurance Policy: A copy of each insurance policy obtained by the Association shall be made available for inspection by Unit Owners at reasonable times.

II. RECONSTRUCTION OR REPAIR AFTER CASUALTY

A. Determination to Reconstruct or Repair: If any part of the Condominium property shall be damaged by casualty, whether or not it shall be reconstructed or repaired shall be determined in the following manner:

(1) Common Element. If the damaged improvement is a Common Element, the damaged property shall be reconstructed or repaired, unless it is determined in the manner elsewhere provided that the Condominium shall be terminated.

(2) Condominium Units.

(a) Lesser Damage - If the damaged improvement is a building containing Condominium Units, and

if Units to which 50% of the Common Elements are appurtenant are found by the Board of Directors of the Association to be tenantable, the damaged property shall be reconstructed or repaired unless within 60 days after the casualty, it is determined by Agreement in the manner elsewhere provided that the Condominium shall be terminated.

(b) Major Damage - If the damaged improvement is a building containing Condominium Units, and if Units to which more than 50% of the Common Elements are appurtenant are found by the Board of Directors to be not tenantable, then the damaged property will not be reconstructed or repaired and the Condominium will be terminated without Agreement as elsewhere provided, unless within 60 days after the casualty, the Owners of 75% of the Common Elements agree in writing to such reconstruction or repair.

(3) Certificate. The insurance trustee may rely upon a certificate of the Association made by its President and Secretary to determine whether or not the damaged property is to be reconstructed or repaired.

B. Plans and Specifications: Any reconstruction or repair must be substantially in accordance with the plans and specifications for the original building, portions of which are attached hereto as Exhibits; or if not, then according to plans and specifications approved by the Board of Directors of the Association and if the damaged property is a building containing Condominium Units by the Owners of not less than 75% of the Common Elements, including the Owners of all damaged Units, which approval shall not be unreasonably withheld.

C. Responsibility: If the damage is only to those parts of one Unit for which the responsibility of maintenance and repair is that of the Unit Owner, then the Unit Owner shall be responsible for reconstruction and repair after casualty. In all other instances, the responsibility of reconstruction and repair after casualty shall be that of the Association.

D. Estimates of Costs: Immediately after a determination is made to rebuild or repair damage to property for which the Association has the responsibility of reconstruction and repair, the Association shall obtain reliable and detailed estimates of the cost to rebuild or repair.

E. Assessments: The amount by which an award of insurance proceeds to the insurance trustee is reduced on account of a deductible clause in an insurance policy shall be assessed against all Unit Owners in proportion to their shares in the Common Elements. If the proceeds of such assessments and of the insurance are not sufficient to defray the estimated costs of reconstruction and repair by the Association, or if at any time during reconstruction and repair, or upon completion of reconstruction and repair, the funds for the payment of the costs of reconstruction and repair are insufficient, assessments shall be made against the Unit Owners, in the case of damage to Common Elements, in sufficient amounts to provide funds for the payment of such costs. Such assessments against Unit Owners for damage to Units shall be in proportion to the cost of reconstruction and repair of their respective Units. Such assessments on account of damage to Common Elements shall be in proportion to the Owner's share in the Common Elements.

F. Construction Funds: The funds for payment of costs of reconstruction and repair after casualty, which shall consist of proceeds of insurance held by the insurance trustee and funds collected by the Association from assessments against Unit Owners, shall be disbursed in payment of such costs in the following manner:

(1) Association. If the total assessments made by the Association in order to provide funds for payment of costs of reconstruction and repair which is the responsibility of the Association is more than $5,000.00, then the sums paid upon such assessments shall be deposited by the Association with the insurance trustee. In all other cases, the Association shall hold the sums paid upon such assessments and disburse the same in payment of the costs of reconstruction and repair.

(2) Insurance Trustee. The proceeds of insurance collected on account of a casualty, and the sums deposited with the insurance trustee by the Association from collections of assessment against Unit Owners on account of such Casualty, shall constitute a construction fund which shall be disbursed in payment of the costs of reconstruction and repair in the following manner and order:

(a) Association - Lesser Damage - If the amount of the estimated costs of reconstruction and repair which is the responsibility of the Association is less than $5,000.00, then the construction fund shall be disbursed in payment of such costs upon the order of the Association; provided, however, that upon request to the insurance trustee by a Mortgagee which is a beneficiary of an insurance policy, the proceeds of which are included in the construction fund. Such fund shall be disbursed in the manner hereafter provided for the reconstruction and repair of major damage.

(b) Association - Major Damage - If the amount of the estimated costs of reconstruction and repair which is the responsibility of the Association is more than $5,000.00, then the construction fund shall be disbursed in payment of such costs in the manner required by the Board of Directors of the Association and upon approval of an architect qualified to practice in Florida and employed by the Association to supervise the work.

(c) Unit Owner - The portion of insurance proceeds representing damage for which the responsibility of reconstruction and repair lies with a Unit Owner shall be paid by the insurance trustee to the Unit Owner, or if there is a mortgage endorsement as to such Unit, then to the Unit Owner and Mortgagee jointly, who may use such proceeds as they may be advised.

(d) Surplus - It shall be presumed that the first monies disbursed in payment of costs and reconstruction and repair shall be from insurance proceeds. If there is a balance in a construction fund after payment of all costs of the reconstruction and repair for which the fund is established, such balance shall be distributed to the beneficial Owners of the fund in the manner elsewhere stated;

except, however, that the part of a distribution to a beneficial Owner which is not in excess of assessments paid by such Owner into the construction fund shall not be made payable to any Mortgagee.

(e) Certificate - Notwithstanding the provisions herein, the insurance trustee shall not be required to determine whether or not sums paid by Unit Owners upon assessments shall be deposited by the Association with the insurance trustee, nor to determine whether the disbursements from the construction fund are to be upon the order of the Association or upon approval of an architect or otherwise, nor whether a disbursement is to be made from the construction fund, nor to determine whether surplus funds to be distributed are less than the assessments paid by Owners. Instead, the insurance trustee may rely upon a certificate of the Association, made by its President and Secretary, as to any or all of such matters and stating that the sums to be paid are due and properly payable, and stating the name of the payee and the amount to be paid; provided, that when a Mortgagee is herein required to be named as payee, the insurance trustee shall also name the Mortgagee as a payee of any distribution of insurance proceeds to a Unit Owner; and further provided that when the Association or a Mortgagee which is the beneficiary of an insurance policy, the proceeds of which are included in the construction fund, so requires, the approval of an architect named by the Association shall be first obtained by the Association upon disbursements in payment of costs of reconstruction and repair.

XVI.

USE AND OCCUPANCY

A. Residential Use Restriction: The Owner of a Unit shall occupy and use his Unit as a single family private dwelling for himself and the members of his family, his social guests, lessees, licensees and invitees. Notwithstanding the foregoing, nothing in this Declaration shall be construed to restrict the Developer, or any successor in interest to the Developer, from selling and/or conveying any Unit under a plan of Interval Ownership, or any person, group of persons, corporation, partnership, or other entity, from selling, reconveying, or in any other way, transferring same, at any time under said plan of Interval Ownership.

B. Prohibited Acts: The Unit Owner shall not permit or suffer anything to be done or kept in his Unit which will increase the rate of insurance in the Condominium property, or which will obstruct or interfere with the rights of other Unit Owners, or annoy them by unreasonable noises, or otherwise, nor shall the Unit Owners commit or permit any nuisance, immoral or illegal acts in or about the Condominium property.

C. Restrictions on Alterations: The Owner of a Unit shall not cause anything to be affixed or attached to, hung, displayed or placed, on the exterior walls, doors or windows of the Units nor the limited Common Elements or the Common Elements, nor shall they cause any type of ground coverage to be installed nor shall they grow any type of plant, shrubbery, flower, vine or grass outside their Unit, nor shall they cause awnings or storm shutters, screens, enclosures and the like

to be affixed or attached to any Units, limited Common Elements or Common Elements; nor shall they place any furniture or equipment outside their Unit except with the prior written consent of the Board of Directors, and further, when approved, subject to the Rules and Regulations adopted by the Board of Directors. No clothes line or similar device shall be allowed on any portion of the Condominium property, nor shall clothes be hung anywhere except where designated by the Board of Directors of the Association.

D. Common Elements: No person shall use the Common Elements and limited Common Elements or any part thereof, or a Condominium Unit, or the Condominium property, or any part thereof, in any manner contrary to or not in accordance with such Rules and Regulations pertaining thereto, as from time to time promulgated by the Association.

E. Holdover Interval Owners: In the event any Owner of a Unit Week in a Unit committed to Interval Ownership fails to vacate his Unit at the expiration of his period of Ownership each year, or at such earlier time as may be fixed by the Rules and Regulations adopted by the Association from time to time, he shall be deemed a "holdover owner". It shall be the responsibility of the Association to take such steps as may be necessary to remove such holdover Owner from the Unit, and to assist the Owner of any subsequent Unit Week, who may be affected by the holdover Owner's failure to vacate, to find alternate accommodations during such holdover period.

In addition to such other remedies as may be available to it, the Association shall secure, at its expense, alternate accommodations for any Owner who may not occupy his Unit due to the failure to vacate of any holdover Owner. Such accommodations shall be as near in value to the Owner's own Unit as possible. The holdover Owner shall be charged for the cost of such alternate accommodations, any other costs incurred due to his failure to vacate, and an administrative fee of $50.00 per day during his period of holding over. In the event it is necessary that the Association contract for a period greater than the actual period of holding over, in order to secure alternate accommodations as set forth above, the entire period shall be the responsibility of the holdover Owner, although the $50.00 per day administrative fee shall cease upon actual vacating by the holdover Owner.

The Association shall submit a bill to the holdover Owner in accordance with this paragraph. In the event the holdover Owner fails to pay same within ten (10) days of the date of same, a lien shall be filed against said holdover Owner's Unit Weeks in accordance with the provisions of Article XIV hereof.

The above provisions of Article XVI, E, shall not abridge the Association's right to take such other action as is provided by law including, but not limited to, eviction proceedings.

XVII.

MAINTENANCE AND ALTERATIONS

A. The Board of Directors of the Association may enter into a Contract with any firm, person or Corporation, or may join with other Condominium Associations and entities in contracting for the maintenance and repair of the Condominium property and other type properties, and may contract for or may join with other Condominium Associations in contracting for the management of the Condominium property and other type properties, and may delegate to the Contractor or Manager all the powers and duties of the Association, except such as are specifically required by this Declaration, or by the By-Laws, to have the approval of the Board of Directors or the membership of the Association. The Contractor or Manager may be authorized to determine the budget, make assessments

for common expenses and collect assessments, as provided by this Declaration, By-Laws, and Exhibits to the Declaration. The Association, through its Board of Directors, has entered into a Management Agreement, attached hereto as Exhibit No. 4, which encompasses the provisions of this paragraph.

B. Each Owner of a Unit not committed to Interval Ownership agrees as follows:

(1) To maintain in good condition and repair his Unit and all interior surfaces within or surrounding his Unit (such as the surfaces of the walls, ceilings, floors) whether or not a part of the Unit or Common Elements, and maintain and repair the fixtures therein and pay for any utilities which are separately metered to his Unit.

(2) Not to make or cause to be made any structural addition, alteration, decoration, repair, replacement or change of the Common Elements or to any outside or exterior portion of the building whether within a Unit or part of the limited Common Elements without the prior written consent of the Board of Directors of the Association.

C. Each Owner of Unit Weeks in a Unit committed to Interval Ownership agrees:

(1) To pay his proportionate share of the cost of the maintenance and repair of all interior and exterior components of said Unit, the cost of maintenance, repair and replacement of all appliances, furniture, carpeting, fixtures, equipment, utensils, and other personal property within said Unit, and such other costs of repair, maintenance, upkeep and operation of the Unit as is necessary to the continued enjoyment of said Unit by all said Owners of Unit Weeks therein.

(2) Not to make, cause, or allow to be made, any repairs, modifications, alterations, or replacements to the Common Elements, limited Common Elements, outside or exterior portion of the buildings whether within a Unit or part of the limited Common Elements or Common Elements, exterior or interior of his Unit, or of the furnishings, appliances, personal property, or decor thereof, without the prior written consent of the Board of Directors of the Association, and all other Owners of Unit Weeks therein.

(3) Expenses of repairs or replacements to the Unit or its components, furnishings, carpeting, appliances, or other property, real, personal, or mixed, occasioned by the specific use or abuse of any Owner of Unit Weeks in any Unit, or any licensee or tenant of said Owner, shall be borne in their entirety by said Owner.

(4) The Association, shall determine the interior color scheme, decor and furnishings, of each such Unit, as well as the proper time for redecorating and replacements thereof.

D. All Owners of Units, including Owners of Unit Weeks in Units committed to Interval Ownership, agree as follows:

(1) To allow the Board of Directors, or the agents or employees of any Management Firm or the Association, to enter into any Unit for the purpose of maintenance, inspection, repair, replacement of the improvements within the Units, limited Common Elements or the Common Elements, or to determine in case of emergency, circumstances threatening Units, limited Common Elements or the Common Elements, or to determine compliance with the provisions of this Declaration and the By-Laws of the Association.

(2) To show no signs, advertisements or Notices of any type on the Common Elements, limited Common Elements, or his Unit, and to erect no exterior antenna or aerials, except as consented to by the Board of Directors of the Association.

E. In the event the Owner of a Unit fails to maintain the said Unit and limited Common Elements, as required herein, or makes any alterations or additions without the required written consent, or otherwise violates or threatens to violate the provisions hereof, the Association, shall have the right to proceed in a Court of equity for an injunction to seek compliance with the provisions hereof. In lieu thereof and in addition thereto, the Association shall have the right to levy an assessment against the Owner of a Unit, and the Unit, for such necessary sums to remove any unauthorized addition or alteration and to restore the property to good condition and repair. Where said failure, alteration, addition, or other violation is attributable to an Owner of Unit Weeks in a Unit committed to Interval Ownership, any such levy of an assessment shall be limited to the Unit Weeks owned by said Owner of Unit Weeks and shall be of no force and effect as to any other Owner of Unit Weeks in said Unit.

Said assessment shall have the same force and effect as all other special assessments. The Association, shall have the further right to have its employees or agents, or any subcontractors appointed by it, enter a Unit at all reasonable times to do such work as is deemed necessary by the Board of Directors of the Association, to enforce compliance with the provisions hereof.

F. The Association, shall determine the exterior color scheme of the buildings and all exteriors, and interior color scheme of the Common Elements, and shall be responsible for the maintenance thereof, and no Owner shall paint an exterior wall, door, window, or any exterior surface, or replace anything thereon or affixed thereto, without the written consent of the Board of Directors of the Association.

G. The Association shall be responsible for the maintenance, repair and replacement of the Common Elements, including but not limited to all recreation facilities, and all property not required to be maintained, repaired and/or replaced by the Unit Owners. Notwithstanding the Unit Owner's duty of maintenance, repair, replacement and the other responsibilities as to his Unit, as is provided in this Declaration and Exhibits attached thereto, the Association, may enter into an Agreement with such firms or companies as it may determine to provide certain services and/or maintenance for and on behalf of the Unit Owners whereby maintenance and service are provided on a regularly scheduled basis for air conditioning maintenance and service and appurtenances thereto, exterminating services and other types of maintenance and services as the Association deems advisable and for such period of time and on such basis as it determines. Said Agreements shall be on behalf of all Unit Owners and the monthly assessment due from each Unit Owner for common expenses shall be increased by such sum as the Association deems fair and equitable under the circumstances in relation to the monthly charge for said maintenance or service. Each Unit Owner shall be deemed a party to said Agreement with the same force and effect as though said Unit Owner had executed said Agreement and it is understood and agreed that the Association shall execute said Agreements as the Agent for the Unit Owners. The aforesaid assessment shall be deemed to be an assessment under the provisions of Article XIV of this Declaration.

XVIII.

LIMITED COMMON ELEMENTS

Those areas reserved for the use of certain Unit Owners or a certain Unit Owner, to the exclusion of other Unit Owners, are designated as "limited Common Elements", and are shown and located on the Surveys annexed hereto as "Exhibit No. 1". Any expense for the maintenance, repair or replacement relating to limited Common Elements shall be treated as and paid for as part of the common expenses of the Association unless otherwise specifically provided in this Declaration and Exhibits attached hereto. The limited Common Elements are comprised of the private balconies appurtenant to the units.

XIX.

TERMINATION

A. If all Unit Owners and holders of all liens and mortgages affecting any of the Condominium Parcels execute and duly record an instrument terminating the Condominium property, or if "major damage" occurs as defined in the insurance clauses hereunder, said property shall be deemed to be subject to termination and thereafter owned in common by the Unit Owners. The undivided interest in the property owned in common by each Unit Owner shall then become the percentage of the undivided interest previously owned by such Owner in the Common Elements upon termination of the Condominium.

B. It is understood that in the year 2018, the purchasers of Units committed to Interval Ownership shall become tenants in common. The Board of Directors of the Association shall, no less than 30 days, nor more than 60 days prior to the actual date of such conversion to tenancy in common, call a meeting of all Owners of Unit Weeks in Units committed to Interval Ownership. At such meeting, a vote shall be taken to decide the disposition of the Units committed to Interval Ownership. A quorum at such meeting shall be a majority of the total outstanding votes of all Owners of Unit Weeks in Units committed to Interval Ownership. At such meeting the Owners, by a majority vote, may vote to continue their intervals, in which case the restrictive covenants set forth below will be adopted as covenants running with the land for a period of ten (10) years. The Board of Directors of the Association shall, no less than 30 days, nor more than 60 days prior to the actual expiration of said ten year period, call a meeting of all Owners of Unit Weeks in Units committed to Interval Ownership. A quorum at such meeting shall be a majority of the total outstanding votes of all Owners of Unit Weeks in Units committed to Interval Ownership. The Owners may then vote to continue the intervals for an additional 10 year period. This process shall be repeated as the end of each successive 10 year period approaches. Should less than a majority of the Owners vote to continue the intervals at any such meeting, then the Board of Directors of the Association shall file suit in a Court of competent jurisdiction in Lee County, Florida, for partition of the Units.

In the event the Owners vote to continue their Unit Weeks as provided above, then each Owner shall have the exclusive right to occupy his Unit, and as between Owners to use and enjoy the Common Elements of the Condominium, and the rights and easements appurtenant to his Unit during his Unit Weeks (and, in the case of Developer, during all Unit Weeks not theretofore conveyed, and to authorize others so to do, together with the non-exclusive right in common with all other Owners, but only when acting through the Association), to maintain and repair the Units during maintenance weeks. No Owner shall occupy his Unit, or exercise

any other rights of Ownership in respect of his Unit other than the rights herein provided to him, during any other Unit Weeks unless expressly so authorized by the Owner entitled to occupy the Unit during such Unit Weeks or during any maintenance week except when acting through the Association. Each Owner shall keep his Unit and all furnishings in good condition and repair during his Unit Weeks, vacate the Unit at the expiration of his Unit Weeks, remove all persons and property therefrom excluding only furnishings, leave the Unit in good and sanitary condition and repair, and otherwise comply with such reasonable checkout and other procedures as may from time to time be contained in rules promulgated by the Association.

No Owner or other person or entity acquiring any right, title or interest in a Unit shall seek or obtain through any legal procedures, judicial partition of the Unit or sale of the Unit in lieu of partition at any date prior to the expiration of each successive ten (10) year period voted by a majority of Owners. If, however, any Unit Weeks shall be owned by two or more persons as tenants-in-common or as joint tenants, nothing herein contained shall prohibit a judicial sale of the Unit Weeks in lieu of partition as between such co-tenants or joint tenants.

XX.

USE OF COMMON ELEMENTS AND FACILITIES

The Association, its members, the Developer and its successors and assigns and all parties who own an interest in and to the aforesaid facilities agree that they shall not have any right to bring any action for partition or division of the real property that constitutes said facilities and said parties do hereby waive said rights of partition or division of said facilities. The initial Rules and Regulations, and all Amendments thereof and revision thereof pertaining to use of the Common Elements and facilities shall be posted in conspicuous places on the Common Elements or facilities. The Unit Owners hereby covenant and agree to be bound by all of such Rules and Regulations and said parties shall obey same and be responsible for their being obeyed by the said Unit Owners, their family, guests, invitees, lessees and servants. Should a Unit Owner fail to pay an assessment for common expenses, as required under the terms of this Declaration of Condominium for the period of time specified herein whereby said assessment becomes delinquent, the Association may deny the Unit Owner and/or the authorized user of the facilities the use and enjoyment of same until such time as all assessments are paid. The Association shall further have the right in its sole discretion to suspend any Unit Owner and/or authorized user of said facilities from the use of same for a period not to exceed thirty (30) days for any infraction of the promulgated Rules and Regulations pertaining to said facilities, and in the case of a Unit committed to Interval Ownership for a period not to exceed seven (7) days. Should the Unit Owner or the authorized user of said facilities rights to use same be suspended, there shall be no reduction in the assessments due and payable by said Unit Owner or authorized user. In the case of a Condominium Unit committed to Interval Ownership, all sanctions, as outlined above, shall be limited to the delinquent Unit Week Owner and shall be of no force and effect against non-delinquent Owners of Unit Weeks in such Condominium Unit committed to Interval Ownership.

Any person who is the Owner of a Condominium Parcel, together with members of his family, social guests, lessees, invitees and licensees, may use the facilities. Where a Corporation is a Parcel Owner, the use of said facilities shall be limited at any one time to

such Officer, Director or employee of said Corporation who is in actual residence and such individual shall be deemed to be the Condominium Parcel Owner for the purposes of this paragraph. Where a party owns one Condominium Unit and leases same, the lessee shall be entitled to the use of the facilities and said lessee's rights thereto shall be the same as though said lessee were the Unit Owner and during the term of said lease, the Unit Owner and his family shall not be entitled to the use of the facilities. Use of the facilities by Owners of Unit Weeks in Units committed to Interval Ownership, or any other person using the facilities through said Owner, shall be limited to the period of Ownership each year of said Owner of Unit Weeks in such Unit.

XXI.

MANAGEMENT AGREEMENT

A. The Association has entered into a Management Agreement, a copy of which is annexed hereto as Exhibit No. 4 and made a part hereof.

The Association has delegated to the Management Firm the power of the Association, through its Board of Directors, to determine the budget, make assessments for common expenses and collect assessments. Each Unit Owner, his heirs, successors and assigns, shall be bound by said Management Agreement for the purposes therein expressed, including but not limited to:

(1) Adopting, ratifying, confirming and consenting to the execution of said Management Agreement by the Association.

(2) Covenanting and promising to perform each and every of the covenants, promises and undertakings to be performed by Unit Owners in the cases provided therefor in said Management Agreement.

(3) Ratifying, confirming and approving each and every provision of said Management Agreement, and acknowledging that all of the terms and provisions thereof are reasonable.

(4) Agreeing that the persons acting as Directors and Officers of the Association entering into such an Agreement have not breached any of their duties or obligations to the Association.

(5) It is specifically recognized that some or all of the persons comprising the original Board of Directors of the Association, are or may be stockholders, Officers and Directors of the Management Firm, and that such circumstances shall not and cannot be construed or considered as a breach of their duties and obligations to the Association, nor as possible grounds to invalidate such Management Agreement, in whole or in part.

(6) The acts of the Board of Directors and Officers of the Association in entering into the Management Agreement be and the same are hereby ratified, approved, confirmed and adopted.

XXII.

MISCELLANEOUS PROVISIONS

A. The Owners of the respective Condominium Units shall not be deemed to own the undecorated and/or unfinished surfaces of the perimeter walls, floors and ceilings surrounding

their respective Condominium Units, nor shall the Unit Owner be deemed to own pipes, wires, conduits, or other public utility lines running through said respective Condominium Units which are utilized for or serve more than one Condominium Unit, which items are, by these presents, hereby made a part of the Common Elements. Said Unit Owner, however, shall be deemed to own the walls and partitions which are contained in said Unit Owner's Condominium Unit, and shall also be deemed to own the inner decorated and/or finished surfaces of the perimeter walls, floors, and ceilings, including plaster, paint, wallpaper, etc.; however, all load bearing walls and, where applicable, the floor between the first ground floor and second floor located within a Condominium Unit and, where applicable, the floor between any subsequent higher floors located within a Condominium Unit, and the floor of the first ground floor within a Condominium Unit, are a part of the Common Elements to the unfinished surface of said walls and floors.

B. The Owners of the respective Condominium Units agree that if any portion of a Condominium Unit or Common Element or limited Common Element encroaches upon another, a valid easement for the encroachment and maintenance of same, so long as it stands, shall and does exist. In the event a Condominium building or buildings are partially or totally destroyed and then rebuilt, the Owners of the Condominium Parcels agree that encroachments on parts of the Common Elements or limited Common Elements or Condominium Units, as aforedescribed, due to construction, shall be permitted, and that a valid easement for said encroachments and the maintenance thereof shall exist.

C. No Owner of a Condominium Parcel may exempt himself from liability for his contribution toward the common expenses or, in the case of an Owner of Unit Weeks in a Condominium Unit committed to Interval Ownership, the maintenance fee, by waiver of the use and enjoyment of any of the Common Elements or the recreation facilities, or by the abandonment of his Condominium Unit.

D. The Owners of each and every Condominium Parcel shall return the same for the purpose of ad valorem taxes with the Tax Assessor of the County wherein the Condominium is situate, or for such other future legally authorized governmental Officer or authority having jurisdiction over same. Nothing herein shall be construed, however, as giving to any Unit Owner the right of contribution or any right of adjustment against any other Unit Owner on account of any deviation by the taxing authorities from the valuation herein prescribed, each Unit Owner to pay ad valorem taxes and special assessments as are separately assessed against his Condominium Parcel. Ad valorem taxes on a Unit committed to Interval Ownership shall be paid by the Association and said taxes shall be collected as part of the maintenance fee.

For this purpose of ad valorem taxation, the interest of the Owner of a "Condominium Parcel" in his "Condominium Unit" and in the "Common Elements", shall be considered a Unit. The value of said Unit shall be equal to the percentage of the value of the entire Condominium, including land and improvements, as has been assigned to said Unit in this Condominium Declaration. The total of all of said percentages equals 100% of the value of all of the land and improvements thereon.

E. All provisions of this Declaration and Exhibits attached hereto, and Amendments thereof, shall be construed as covenants running with the land, and of every part thereof and interest therein, including but not limited to every Unit and the appurtenances thereto, and every Unit Owner and Occupant of the

property, or any part thereof, or of any interest therein, and his heirs, executors, administrators, successors and assigns, shall be bound by all of the provisions of said Declaration and Exhibits annexed hereto and any Amendments thereof.

F. If any of the provisions of this Declaration, or of the By-Laws, the Articles of Incorporation of the Association, the Management Agreement, or of the Condominium Act, or any section, clause, phrase, word, or the application thereof, in any circumstance, is held invalid the validity of the remainder of this Declaration, the By-Laws, Articles of Incorporation and Management Agreement, or the Condominium Act, and of the application of any such provision, action, sentence, clause, phrase or word, in other circumstances, shall not be affected thereby.

G. Whenever Notices are required to be sent hereunder, the same may be delivered to Unit Owners either personally or by mail, addressed to such Unit Owners at their place of residence on file with the Condominium Association from time to time. Proof of such mailing or personal delivery by the Association or any Management Firm shall be given by the Affidavit of the person mailing or personally delivering said Notices. Notices to the Association shall be delivered by mail to the Secretary of the Association, or the President of the Association, or to any member of the Board of Directors of the Association. The change of the mailing address of any party as specified herein shall not require an Amendment to this Declaration.

Notices to the Developer shall be delivered by mail at: Sunset Beach Club, Inc., 4950 Estero Blvd., Ft. Myers Beach, Florida 33931.

Notices to the Management Firm shall be delivered by mail at: Kahlua Property Management, Inc., 4950 Estero Blvd., Ft. Myers Beach, Florida 33931.

All Notices shall be deemed and considered sent when mailed. Any party may change his or its mailing address by written Notice, duly receipted for. Notices required to be given the personal representatives of a deceased Owner or devisee, when there is no personal representative, may be delivered either personally or by mail to such party at his or its address appearing in the records of the Court wherein the Estate of such deceased Owner is being administered. The change of the mailing address of any party, as specified herein, shall not require an Amendment to the Declaration.

H. The Developer shall have the right to use a portion of the Common Elements for the purpose of aiding in the sale of Condominium Units including the right to use portions of the Condominium property for parking for prospective purchasers and such other parties as Developer determines. The foregoing right shall mean and include the right to display and erect signs, billboards and placards and store, keep and exhibit same and distribute audio and visual promotional materials upon the Common Elements.

I. Each unit owner and the Association shall be governed by and shall comply with this Declaration and the By-Laws attached hereto, and the Condominium Act of the State of Florida, as it may exist from time to time. Failure to do so shall entitle the Association or any unit owner to recover sums due for damages or injunctive relief or both. Such actions may be maintained by or against a unit owner or the Association in a proper case by or against one or more unit owners, and the prevailing party shall be entitled to receive reasonable attorney's fees. Such relief shall not be exclusive of other remedies provided by law.

J. Subsequent to the filing of this Declaration of Condominium, the Condominium Association, when authorized by a vote of the majority of the total vote of the members of the Association, and approved by the Owners and holders of Institutional First Mortgages encumbering Condominium Parcels who represent a majority of the dollar institutionally mortgaged indebtedness against this Condominium may, together with other Condominium Associations and others, purchase and/or acquire and enter into Agreements, from time to time, whereby it acquires leaseholds, memberships, and other possessory or use interests in lands or facilities, including but not limited to country clubs, golf courses, marinas, and other recreational facilities, whether or not continguous to the lands of the Condominium intended to provide for the enjoyment, recreation and other use or benefit of the Unit Owners. The expense of Ownership, rental membership fees, operations, replacements and other undertakings in connection therewith shall be common expenses, together with all other expenses and costs herein or by law defined as common expenses.

K. Whenever the context so requires, the use of any gender shall be deemed to include all genders, and the use of the singular shall include the plural, and plural shall include the singular. The provisions of the Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the operation of the Condominium.

L. The captions used in this Declaration of Condominium and Exhibits annexed hereto are inserted solely as a matter of convenience and shall not be relied upon and/or used in construing the effect or meaning of any of the text of this Declaration or Exhibits hereto annexed.

M. Where an Institutional First Mortgage, by some circumstance, fails to be a First Mortgage, but it is evident that it is intended to be a First Mortgage, it shall, nevertheless, for the purpose of this Declaration and Exhibits annexed, be deemed to be an Institutional First Mortgage.

N. Subject to the provisions of Section 718.203 of the Condominium Act, the Developer specifically disclaims any intent to have made any warranty or representation in connection with the property or the Condominium documents, except as specifically set forth therein, and no person shall rely upon any warranty or representation not so specifically made therein unless otherwise stated. Maintenance fees, common expenses, taxes or other charges are estimates only and no warranty, guaranty or representation is made or intended, nor may one be relied upon.

O. Condominium Association, by its execution of this Declaration of Condominium, approves the foregoing and all of the covenants, terms and conditions, duties and obligations of this Declaration of Condominium and Exhibits attached thereto. The Condominium Unit Owners, by virtue of their acceptance of the Deed of Conveyance as to their Condominium Unit, and other parties by virtue of their occupancy of Units hereby approve the foregoing and all of the terms and conditions, duties and obligations of this Declaration of Condominium and Exhibits attached thereto.

P. No Condominium Parcel Owner shall bring, or have any right to bring, any action for partition or division of the Condominium property, nor shall any Owner of Unit Weeks within any Condominium Unit committed to Interval Ownership have any right to bring any such action with reference to other Owners of Unit Weeks in such Condominium Unit.

The Interval Conveyance consists of an estate for years, together with a remainder over as tenants in common with all other purchasers of Unit Weeks, in each such Condominium Unit as set forth in the Deed of Conveyance. No Owner of Unit Weeks in a Unit committed to Interval Ownership, shall have the right to separate the estate for years from the remainder interest.

Q. The real property submitted to Condominium Ownership herewith is subject to conditions, limitations, restrictions, reservations, all matters of record and the rights of the United States of America, the State of Florida or any governmental authority or agency as to any submerged lands and as to any lands lying below the natural ordinary high-water line of the surrounding bodies of water, taxes, applicable zoning ordinances now existing or which may hereafter exist, easements for ingress and egress for pedestrian and vehicular purposes, easements for utility service and drainage now existing or hereafter granted by the Developer for the benefit of such persons as the Developer designates, and the said Developer shall have the right to grant such easements and designate the beneficiaries thereof for such time as it determines in its sole discretion, and thereafter, the Association shall be empowered to grant such easements on behalf of its members. During the period of time that the Developer has the right to grant the foregoing easements, the consent and approval of the Association and its members shall not be required. The right to grant the foregoing easements shall be subject to said easements not structurally weakening the buildings and improvements upon the Condominium property nor unreasonably interfering with the enjoyment of the Condominium property by the Association's members.

R. In order to insure the Condominium and the Complex with adequate and uniform water service and sewerage disposal service the Developer shall and hereby reserves the exclusive right to contract for the servicing of said Condominium and the Unit Owners therein with said services. Pursuant to the foregoing, the Developer has, will or may contract with a utility company which may include a municipal or governmental agency or authority for the furnishing of said services and the Association and Unit Owners agree to pay the charges therefor pursuant to and to comply with all of the terms and conditions of said utility Agreement.

S. Notwithstanding the fact that the present provisions of the Condominium Act of the State of Florida are incorporated by reference and included herein thereby, the provisions of this Declaration and Exhibits attached hereto shall be paramount to the Condominium Act as to those provisions where permissive variances are permitted; otherwise, the provisions of said Condominium Act shall prevail and shall be deemed incorporated therein.

T. Leasing or renting of a Condominium Unit or Unit Weeks within a Condominium Unit committed to Interval Ownership is not prohibited.

U. Owners of units shall have as an appurtenance thereto a perpetual easement for ingress and egress to and from their units over stairs, terraces, balconies, walks and other Common Elements.

V. The Owner of a unit shall have an easement for ingress and egress, over such streets, walks and other rights-of-way serving the units within the Condominium as a part of the "Common Elements" as may be necessary to provide reasonable access to said public ways, and such easement shall extend to the invitees and licensees of said unit owner. In the event that any of said

easements for ingress and egress shall be encumbered by any leasehold or lien, other than those on the Condominium parcels, such leaseholds or liens shall hereby be subordinate to the use rights of any Condominium unit owner or owners whose Condominium parcel is not also encumbered by said lien or leasehold.

IN WITNESS WHEREOF, SUNSET BEACH CLUB, INC., a Florida Corporation, has caused these presents to be signed in its name by its proper officers and its Corporate Seal affixed, this 24 day of April, 1978.

Signed, sealed and delivered in the presence of:

Arlene C. Ballantine

Judith Wharfe

SUNSET BEACH CLUB, INC.
a Florida Corporation

By: M. L. Metheny, as Pres (SEAL)
President
(DEVELOPER)

STATE OF FLORIDA)
SS:
COUNTY OF Lee)

BEFORE ME, the undersigned authority, personally appeared MARVIN L. Metheny, to me well known to be the person described in and who executed the foregoing Declaration of Condominium as President of SUNSET BEACH CLUB, INC., a Florida Corporation, and he acknowledged before me that he executed such instrument as such Officer of said Corporation, and that the Seal affixed thereto is the Corporate Seal of said Corporation, and that it was affixed to said instrument by due and regular Corporate authority, and that said instrument is the free act and deed of said Corporation.

WITNESS my hand and Official Seal, at the State and County aforesaid, this 24 day of April, 1978.

My Commission Expires:
Nov. 21, 1981

Laura J. Olmsted (SEAL)
Notary Public, State of Florida

FOR GOOD AND VALUABLE CONSIDERATION, the receipt whereof is hereby acknowledged, KAHLUA OWNERS' ASSOCIATION, INC., a Florida Corporation not for profit, hereby agrees to accept all of the benefits and all of the duties, responsibilities, obligations and burdens imposed upon it by the provisions of the Declaration of Condominium and Exhibits attached hereto.

IN WITNESS WHEREOF, the above described Corporation, a Florida Corporation not for profit, has caused these presents to be signed in its name by its President, and its Corporate Seal affixed, attested by its Secretary, this 24 day of April, 1978.

Signed, sealed and delivered in the presence of:

Arlene C. Ballantine

Judith Wharfe

KAHLUA OWNERS' ASSOCIATION, INC.

By: Clarke Lutes Pres (SEAL)
President

Attest: M. L. Metheny, Sec. (SEAL)
Secretary
(ASSOCIATION)

STATE OF FLORIDA)
SS:
COUNTY OF Lee)

BEFORE ME, the undersigned authority, personally appeared Charles A. Cutaia + Marvin L. Methery, to me well known to be the persons described in and who executed the foregoing instrument as President and Secretary respectively of KAHLUA OWNERS' ASSOCIATION, INC., a Florida Corporation not for profit, and they severally acknowledged before me that they executed such instrument as such Officers of said Corporation, and that it was affixed to said instrument by due and regular Corporate authority, and that the said instrument is the free act and deed of said Corporation.

WITNESS my hand and Official Seal at said County and State, this 24 day of April, 1978.

Laura J. Olmsted (SEAL)
Notary Public, State of Florida

My Commission Expires:
Nov. 21, 1981

JOINDER

4368 Motel Corp., a Florida corporation being the owner of record to the real property described in Exhibit No. 1 to this Declaration of Condominium, pursuant to Chapter 718.104(2) Florida Statutes, joins in the execution of this Declaration of Condominium of Kahlua Beach Club, a Condominium.

IN WITNESS WHEREOF, the undersigned has executed this Joinder this 24 day of April, 1978.

4368 MOTEL CORP.,
a Florida corporation

Arlene C. Ballantine
Witness

By: Charles Cutaia
President

Judith Wharfe
Witness

(CORPORATE SEAL)

STATE OF FLORIDA)
COUNTY OF Lee)

BEFORE ME, the undersigned authority, personally appeared Charles A. Cutaia, to me well known to be the person described in and who executed the foregoing instrument as President of 4368 Motel Corp., a Florida Corporation, and he acknowledged before me that he executed such instrument as such Officer of said Corporation, and that the Seal affixed thereto is the Corporate Seal of said Corporation, and that it was affixed to said instrument as the free act and deed of said Corporation.

WITNESS my hand and Official Seal, at the State and County aforesaid, this 24 day of April, 1978.

Laura J. Olmsted
Notary Public, State of Florida

My Commission Expires:
Nov. 21, 1981

EXHIBIT NO. 1

TO DECLARATION

CLERK NOTE:

EXHIBIT 1-A, 1-B, 1-C SEE OFFICIAL RECORDS CONDOMINIUM

PLAT BOOK 5, AT PAGE 144-146

SAL GERACI, CLERK

BY: H.D. Drekinger
Deputy Clerk

LEGAL DESCRIPTION

OF

KAHLUA BEACH CLUB, A CONDOMINIUM

From the southeast corner of the fractional southwest quarter (SW¼) of Section 28, Township 46 South, Range 24 East, run westerly along the South line of said Section 28 for 1643.70 feet to the northwesterly corner of Lot 20 in Block 6 of GULF HEIGHTS SUBDIVISION, according to the map or plat thereof recorded in Plat Book 6 at Page 39 of the public records of Lee County; thence run northwesterly at an angle of 139 degrees 39' East to Northwest for 736.27 feet; thence run northeasterly at an angle of 92 degrees 00' southwesterly to northwesterly with the last mentioned course along the northwesterly line of the lands conveyed by deed recorded in Deed Book 212 at Page 490 of said public records for 256 feet, more or less, to the centerline of Estero Boulevard (State Road No. 865), which is the point of beginning of the lands hereby conveyed. From said point of beginning, run northwesterly along said centerline for 135.64 feet; thence run southwesterly at an angle of 91 degrees 38' northwest to southwest with said centerline to the waters of the Gulf of Mexico. Thence run southeasterly along said waters to an intersection with a line passing through the point of beginning at an angle of 88 degrees 22' southeast to southwest with said centerline of Estero Boulevard; thence run northeasterly along said line to the point of beginning. SUBJECT to existing right of way of Estero Boulevard.

EXHIBIT 1-D

SURVEYOR'S CERTIFICATION

KAHLUA BEACH CLUB, A CONDOMINIUM

I have examined the declaration of Condominium and attached Exhibits, including the "Plot Plan" of Kahlua Beach Club, a Condominium, and certify that the construction of the improvements described is sufficiently complete so that such material, together with the provisions of the Declaration describing the Condominium Property is an accurate representation of the location and dimensions of the improvements, and that the identification, location, and dimensions of the common elements and of each unit can be determined from these materials.

DONE this 9 day of NOVEMBER, 1977.

By: Walter A. Laythe Jr.

Registered Land Surveyor No. 2654

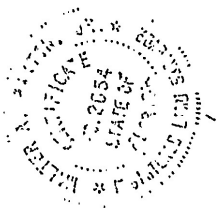

EXHIBIT 1-E

BY-LAWS

OF

KAHLUA OWNERS' ASSOCIATION, INC.

A FLORIDA NON-PROFIT CORPORATION

ARTICLE I. IDENTITY

The following By-Laws shall govern the operation of the Concominium created by the Declaration of Condominium to which these By-Laws are attached.

The Association whose name appears at the end of this instrument is a Florida Corporation not for profit, organized and existing under the laws of the State of Florida for the purpose of administering (but not exclusively unless so provided in the Association's Articles of Incorporation) the Condominium created by the Declaration of Condominium to which these By-Laws are attached.

Section 1. The office of the Association shall be at the Condominium property, or at such other place as may be subsequently designated by the Board of Directors of the Association.

Section 2. The Seal of the Corporation shall bear the name of the Corporation, the word "Florida", the words, "Corporation not for profit", and the year of incorporation.

Section 3. As used herein, the word, "Corporation", shall be the equivalent of "Association"; as defined in the Declaration of Condominium to which these By-Laws are attached. All other words, as used herein, shall have the same definitions as attributed to them in the Declaration of Condominium to which these By-Laws are attached.

ARTICLE II. MEMBERSHIP AND VOTING PROVISIONS

Section 1. Membership in the Association shall be limited to Owners of the Condominium Units in Condominiums wherein this Corporation has been designated the Association to operate and administer said Condominium by virtue of the Declaration of Condominium of said Condominium. Transfer of Unit Ownership, either voluntary or by operation of law, shall terminate membership in the Association, and said membership is to become vested in the transferee. If Unit Ownership is vested in more than one person, then all of the persons so owning said Unit shall be members eligible to hold office, attend meetings, etc., but, as hereinafter indicated, the vote of a Unit shall be cast by the "voting member". If Unit Ownership is vested in a Corporation, said Corporation may designate an individual officer or employee of the Corporation as its "voting member". Notwithstanding the foregoing, each Owner of Unit Weeks in a Condominium Unit committed to Interval Ownership shall be entitled to cast his share of the vote of the Unit in which he owns his Unit Weeks. "Unit committed to Interval Ownership" and "Interval Ownership" are defined in the Declaration of Condominium.

Section 2. Voting:

(a) The Owner(s) of each Condominium Unit shall be entitled to one (1) vote. If a Condominium Unit Owner owns more than one (1) Unit, he shall be entitled to one (1) vote for each Unit owned. The vote of a Condominium Unit shall not be divisible. Notwithstanding

EXHIBIT NO. 2
TO DECLARATION

the foregoing, each Owner of Unit Weeks in a Unit committed to Interval Ownership shall be entitled to 1/51 of the total vote assigned to the Unit in which he owns his Unit Weeks for each Unit Week owned. The Association shall not have a vote for any Unit Weeks conveyed to it.

(b) A majority of the Unit Owners' total votes shall decide any question, unless the Declaration of Condominium, By-Laws or Articles of Incorporation of the Association provide otherwise.

Section 3. Quorum: Unless otherwise provided in these By-Laws, the presence in person or by proxy of a majority of the Unit Owners' total votes shall constitute a quorum.

Section 4. Proxies: Votes may be cast in person or by proxy. All proxies shall be in writing and signed by the person entitled to vote (as set forth below in Section 5). Where a Unit is owned jointly by a husband and wife, and if they have not designated one of them as a voting member, a proxy must be signed by both husband and wife where a third person is designated.

Section 5. Designation of Voting Member: If a Condominium Unit is owned by one person, his right to vote shall be established by the recorded title to the Unit. If a Condominium Unit is owned by more than one (1) person, the person entitled to cast the vote for the Unit shall be designated in a Certificate, signed by all of the recorded Owners of the Unit and filed with the Secretary of the Association. If a Condominium Unit is owned by a Corporation, the officer or employee thereof entitled to cast the vote of the Unit for the Corporation shall be designated in a Certificate for this purpose, signed by the President or Vice-President, attested to by the Secretary or Assistant Secretary of the Corporation, and filed with the Secretary of the Association. The person designated in such Certificate who is entitled to cast the vote for a Unit shall be known as the "voting member". If such a Certificate is not on file with the Secretary of the Association for a Unit owned by more than one person or by a Corporation, the vote of the Unit concerned shall not be considered in determining the requirement for a quorum, or for any purpose requiring the approval of a person entitled to cast the vote for the Unit, except if said Unit is owned by a husband and wife. Such Certificates shall be valid until revoked or until superseded by a subsequent Certificate, or until a change in the Ownership of the Unit concerned. If a Condominium Unit is owned jointly by a husband and wife, the following three provisions are applicable thereto:

(a) They may, but they shall not be required to, designate a voting member.

(b) If they do not designate a voting member and if both are present at a meeting and are unable to concur in their decision upon any subject requiring a vote, they shall lose their right to vote on that subject at that meeting. (As previously provided, the vote of a Unit is not divisible).

(c) Where they do not designate a voting member, and only one is present at a meeting, the person present may cast the Unit vote, just as though he or she owned the Unit individually, and without establishing the concurrence of the absent person.

Section 6. Units Committed to Interval Ownership: Notwithstanding any other provisions in these By-Laws, each Owner of Unit Weeks in a Unit committed to Interval Ownership shall be entitled to cast the fractional vote attributable to his Unit Weeks owned. In the case of a Unit committed to Interval Ownership, the provisions of

Section 5, Designation of Voting Member, shall apply to each Unit Week owned.

ARTICLE III. MEETING OF THE MEMBERSHIP

Section 1. Place: All meetings of the Association membership shall be held at the Condominium(s) property, or at such other place and at such time as shall be designated by the Board of Directors of the Association and stated in the Notice of the meeting, and shall be open to all Unit Owners.

Section 2. Notices: It shall be the duty of the Secretary to mail or deliver a Notice of each annual or special meeting, stating the time and place thereof, to each Unit Owner of record at least fourteen (14) but not more than thirty (30) days prior to such meeting. Notice of any special meeting shall state the purpose thereof. All Notices shall be mailed to or served at the address of the Unit Owner as it appears on the books of the Association.

Section 3. Annual Meeting: The annual meeting shall be held at 3:00 p.m., Eastern Standard Time, on the second Wednesday of February each year for the purpose of electing Directors and transacting any other business authorized to be transacted by the members, provided, however, that if that day is a legal holiday, the meeting shall be held at the same hour on the next secular day following. At the annual meeting, the members shall elect by plurality vote - (cumulative voting prohibited), a Board of Directors, and shall transact such other business as may properly be brought before the meeting.

Section 4. Special Meeting: Special meetings of the members for any purpose or purposes, unless otherwise prescribed by statute, may be called by the President, and shall be called by the President or Secretary at the request, in writing, of a majority of the Board of Directors, or at the request, in writing, of voting members representing twenty-five percent (25%) of the members' total votes, which request shall state the purpose or purposes of the proposed meeting. Business transacted at all special meetings shall be confined to the objects stated in the Notice thereof.

Section 5. Waiver and Consent: Whenever the vote of members at a meeting is required or permitted by any provision of these By-Laws to be taken in connection with any action of the Association, the meeting and vote of members may be dispensed with if not less than a majority of the members who would have been entitled to vote upon the action if such meeting were held, shall consent in writing to such action being taken; however, Notice of such action shall be given to all members, unless all members approve such action.

Section 6. Adjourned Meeting: If any meeting of members cannot be organized because a quorum of voting members is not present, either in person or by proxy, the meeting may be adjourned from time to time until a quorum is present.

Section 7. Approval or Disapproval: Approval or disapproval of a Unit Owner upon any matter, whether or not the subject of an Association meeting, shall be by the voting members provided, however, that where a Unit is owned jointly by a husband and wife, and they have not designated one of them as a voting member, their joint approval or disapproval shall be required where they are both present, or in the event only one is present, the person present may cast the vote without establishing the concurrence of the absent person.

Section 8. The Management Firm: The Management Firm, as long as any Management Agreement remains in effect, shall be entitled to Notice of all Association meetings, and shall be entitled to attend the Association's meetings, and it may designate such person(s) as it desires to attend such meetings on its behalf.

ARTICLE IV. DIRECTORS

Section 1. Number, Term and Qualifications: The affairs of the Association shall be governed by a Board of Directors composed of not less than three (3) nor more than seven (7) persons, as is determined from time to time by the members. All Directors, except those designated by the Developer, shall be members of the Association. All officers of a Corporate Unit Owner shall be deemed to be members of the Association so as to qualify as a Director herein. The term of each Director's service shall extend until the next annual meeting of the members and thereafter until his successor is duly elected and qualified, or until he is removed in the manner provided in Section 3 below.

Section 2. First Board of Directors:

(a) The first Board of Directors of the Association who shall hold office and serve until their successors have been elected and qualified, shall consist of the following:

Charles A. Cutaia
Daniel Reinfried
Marvin Metheny

(b) The organizational meeting of a newly elected Board of Directors of the Association shall be held within ten (10) days of their election, at such place and time as shall be fixed by the Directors at the meeting at which they were elected, and no further Notice of the organizational meeting shall be necessary, provided a quorum shall be present.

Section 3. Removal of Directors: At any time after the first annual meeting of the membership at any duly convened regular or special meeting, any one or more of the Directors may be removed, with or without cause, by the affirmative vote of the voting members casting not less than two-thirds (2/3rds) of the total votes present at said meeting, and a successor may then and there be elected to fill the vacancy thus created. Should the membership fail to elect said successor, the Board of Directors may fill the vacancy in the manner provided in Section 4 below.

Section 4. Vacancies on Directorate: If the office of any Director or Directors becomes vacant by reason of death, resignation, retirement, disqualification, removal from office or otherwise, a majority of the remaining Directors, though less than a quorum, shall choose a successor or successors, who shall hold office for the balance of the unexpired term in respect to which such vacancy occurred. The election held for the purpose of filling said vacancy may be held at any regular or special meeting of the Board of Directors.

Section 5. Disqualification and Resignation of Directors: Any Director may resign at any time by sending a written Notice of such resignation to the office of the Corporation, delivered to the Secretary. Unless otherwise specified therein, such resignation shall take effect upon receipt thereof by the Secretary. Commencing with the Directors elected at such first annual meeting of the membership, the transfer of title of his Unit by a Director shall automatically constitute a resignation, effective when such resignation is accepted by the Board of Directors. No member shall continue to serve on the Board should he be more than thirty (30) days delinquent in the payment of an assessment and said delinquency shall automatically constitute a resignation, effective when such resignation is accepted by the Board of Directors.

Section 6. Regular Meetings: The Board of Directors may establish a schedule of regular meetings to be held at such time and place as the Board of Directors may designate. Notice of such

regular meetings shall nevertheless, be given to each Director personally or by mail, telephone or telegraph at least five (5) days prior to the day named for such meeting. All meetings of the Board of Directors, including special meetings in accordance with Section 7 below, shall be open to all Unit Owners.

Section 7. Special Meetings: Special meetings of the Board of Directors may be called by the President, and in his absence, by the Vice-President, or by a majority of the members of the Board of Directors, by giving five (5) days Notice, in writing, to all of the members of the Board of Directors of the time and place of said meeting. All Notices of special meetings shall state the purpose of the meeting.

Section 8. Directors' Waiver of Notice: Before or at any meeting of the Board of Directors, any Director may waive Notice of such meeting and such waiver shall be deemed equivalent to the giving of Notice. Attendance by a Director at any meeting of the Board shall be a waiver of Notice by him of the time and place thereof. If all the Directors are present at any meeting of the Board, no Notice shall be required and any business may be transacted at such meeting.

Section 9. Quorum: At all meetings of the Board of Directors, a majority of the Directors shall constitute a quorum for the transaction of business, and the acts of the majority of the Directors present at such meetings at which a quorum is present, shall be the acts of the Board of Directors. If, at any meeting of the Board of Directors there be less than a quorum present, the majority of those present may adjourn the meeting from time to time. At each such adjourned meeting, any business which might have been transacted at the meeting, as originally called, may be transacted without further notice. The joinder of a Director in the action of a meeting by signing and concurring in the Minutes thereof, shall constitute the presence of such Director for the purpose of determining a quorum.

Section 10. Compensation: The Directors' fees, if any, shall be determined by the voting members.

Section 11. Developer's Selection of Directors: Subject to the provisions of Section 718.301 of the Condominium Act, the Developer shall have the right to designate the Directors who need not be Owners of Units in the Condominium, and said Directors may not be removed by members of the Association, as elsewhere provided herein; and where a vacancy occurs for any reason whatsoever, the vacancy shall be filled by the person designated by the Developer.

Section 12. The Management Firm: The Management Firm, as long as any Management Agreement remains in effect, shall be entitled to Notice of all Directors' meetings and shall be entitled to attend the Directors' meetings and it may designate such person(s) as it desires to attend such meetings on its behalf.

Section 13. Powers and Duties: The Board of Directors of the Association shall have the powers and duties necessary for the administration of the affairs of the Association and may do all such acts and things as are not by law or by the Declaration of Condominium, this Assocation's Articles of Incorporation, or these By-Laws, directed to be exercised and done by Unit Owners. These powers shall speciifically include, but shall not be limted to the following:

(a) To exercise all powers specifically set forth in the Declaration of Condominium, this Association's Articles of Incorporation, in these By-Laws, and in the Condominium Act, and all powers incidental thereto.

(b) To make assessments, collect said assessments, and use and expend the assessments to carry out the purposes and powers of the Association.

(c) To employ, dismiss and control the personnel necessary for the maintenance and operation of the project, and of the common areas and facilities including the right and power to employ attorneys, accountants, contractors, and other professionals as the need arises.

(d) To make and amend regulations respecting the operation and use of the Common Elements and Condominium property, and the use and maintenance of the Condominium Units therein.

(e) To contract for the management of the Condominium and to delegate to such contractor all of the powers and duties of the Association, except those which may be required by the Declaration of Condominium to have approval of the Board of Directors or membership of the Association. To contract for the management or operation of portions of the Common Elements susceptible to the separate management or operation thereof, and to lease or concession such portions.

(f) The further improvement of the Condominium property, both real and personal, and the right to purchase realty and items of furniture, furnishings, fixtures and equipment for the foregoing, and the right to acquire and enter into Agreements pursuant to Section 718.114 of the Condominium Act, and as amended, subject to the provisions of the applicable Declaration of Condominium, this Association's Articles of Incorporation and these By-Laws.

(g) Designate one or more committees which, to the extent provided in the resolution designating said committee, shall have the powers of the Board of Directors in the management and affairs and business of the Association. Such committee shall consist of at least three (3) members of the Association. The committee or committees shall have such name or names as may be determined from time to time by the Board of Directors, and said committee(s) shall keep regular Minutes of their proceedings and report the same to the Board of Directors, as required. The foregoing powers shall be exercised by the Board of Directors or its contractor or employees, subject only to approval by Unit Owners when such is specifically required.

(h) To enter into and terminate Agreements with organizations providing Owners of Unit Weeks to trade their time periods with Owners of time periods at other resorts.

ARTICLE V. OFFICERS

Section 1. Elective Officers: The principal officers of the Association shall be a President, a Vice-President, a Secretary and a Treasurer, all of whom shall be elected by the Board of Directors.

One person may not hold more than one of the aforementioned offices, except one person may be both Secretary and Treasurer. The President and Vice-President shall be members of the Board of Directors. Notwithstanding the foregoing, the restriction as to one person holding only one of the aforementioned offices or the President and Vice-President being members of the Board of Directors shall not apply while the Association is under the control of the Developer, the control being the right of the Developer to select a majority of the Board of Directors in accordance with Section 718.301 of the Condominium Act.

Section 2. Election: The officers of the Association designated in Section 1 above shall be elected annually by the Board of Directors at the organizational meeting of each new Board following the meeting of the members.

Section 3. Appointive Officers: The Board may appoint Assistant Secretaries and Assistant Treasurers, and such other officers as the Board of Directors deems necessary.

Section 4. Term: The officers of the Association shall hold office until their successors are chosen and qualify in their stead. Any officer elected or appointed by the Board of Directors may be removed at any time, with or without cause, by the Board of Directors, provided however, that no officer shall be removed except by the affirmative vote for removal by a majority of the whole Board of Directors (e.g. if the Board of Directors is composed of five persons, then three of said Directors must vote for removal). If the office of any officer becomes vacant for any reason, the vacancy shall be filled by the Board of Directors.

Section 5. The President: He shall be the chief executive officer of the Association; he shall preside at all meetings of the Unit Owners and of the Board of Directors. He shall have executive powers and general supervision over the affairs of the Association and other officers. He shall sign all written contracts to perform all of the duties incident to his office and which may be delegated to him from time to time by the Board of Directors.

Section 6. The Vice-President: He shall perform all of the duties of the President in his absence, and such other duties as may be required of him from time to time by the Board of Directors of the Association.

Section 7. The Secretary: He shall issue Notices of all Board of Directors' meetings and all meetings of the Unit Owners; he shall attend and keep the Minutes of same; he shall have charge of all of the Association's books, records and papers, except those kept by the Treasurer. The Assistant Secretary shall perform the duties of the Secretary when the Secretary is absent.

Section 8. The Treasurer:

(a) He shall have custody of the Association's funds and securities, except the funds payable to any Management Firm, and shall keep full and accurate accounts of receipts and disbursements in books belonging to the Association, and shall deposit all monies and other valuable effects in the name of and to the credit of the Association, in such depositories as may be designated from time to time by the Board of Directors. The books shall reflect an account for each Unit in the manner required by Section 718.111(7)(b) of the Condominium Act.

(b) He shall disburse the funds of the Association as may be ordered by the Board of Directors in accordance with these By-Laws, making proper vouchers for such disbursements, and shall render to the President and Board of Directors at the regular meetings of the Board of Directors, or whenever they may require it, an account of all of his transactions as the Treasurer and of the financial condition of the Association.

(c) He shall collect the assessments and maintenance fees and shall promptly report the status of collections and of all delinquencies to the Board of Directors.

(d) He shall give status reports to potential transferees on which reports the transferees may rely.

(e) The Assistant Treasurer shall perform the duties of the Treasurer when the Treasurer is absent.

(f) The duties of the Treasurer may be fulfilled by a Management Firm employed by the Association, and said Management Firm shall fulfill the duties of the Treasurer, and shall have custody of such books of the Association as it determines in its sole discretion and the foregoing shall include any books required to be kept by the Secretary of the Association.

ARTICLE VI. FINANCES, ASSEMENTS AND MAINTENANCE FEES

Section 1. Depositories: The funds of the Association shall be deposited in such banks and depositories as may be determined by the Board of Directors from time to time upon resolutions approved by the Board of Directors, and shall be withdrawn only upon checks and demands for money signed by such officer or officers of the Association as may be designated by the Board of Directors. Obligations of the Association shall be signed by at Least two officers of the Association; provided, however, that the provisions of any Management Agreement between the Association and a Management Firm relative to the subject matter in this Section shall supersede the provisions hereof.

Section 2. Fidelity Bonds: The Treasurer and all officers who are authorized to sign checks, and all officers and employees of the Association, and any contractor handling or responsible for Association funds shall be bonded in such amount as may be determined by the Board of Directors. The premiums on such Bonds shall be paid by the Association. The Bond shall be in an amount sufficient to equal the monies an individual handles or has control of via a signatory or a bank account or other depository account; however, notwithstanding the foregoing, the Management Firm, under the terms Management Agreement, attached to the Declaration of Condominium to which these By-Laws are attached, as to funds in its possession and/or control, shall determine, in its sole discretion, the amount of and who is to be bonded, if any, among its employees.

Section 3. Fiscal Year: The fiscal year for the Association shall begin on the first day of January of each year provided, however, that the Board of Directors is expressly authorized to change to a different fiscal year in accordance with the provisions and regulations from time to time prescribed by the Internal Revenue Code of the United States of America, at such time as the Board of Directors deems it advisable.

Section 4. Determination of Assessments:

(a) The Board of Directors of the Association shall fix and determine from time to time, the sum or sums necessary and adequate for the common expenses of the Condominium. Common expenses shall include expenses for the operation, maintenance, repair or replacement of the Common Elements and the limited Common Elements, costs of carrying out the powers and duties of the Association, all insurance premiums and expenses relating thereto, including fire insurance and extended coverage, and any other expenses designated as common expenses from time to time by the Board of Directors of the Association, or under the provisions of the Declaration of Condominium to which these By-Laws are attached. The Board of Directors is specifically empowered, on behalf of the Association to make and collect assessment and to lease, maintain, repair and replace the Common Elements and limited Common Elements of the Condominium. Funds for the payment of common expenses shall be assessed against the Unit Owners in the proportions or percentages of sharing common expenses, as provided in the Declaration. Special assessments, should such be required by the Board of Directors, shall be levied in the same manner as hereinbefore provided for regular assessments, and shall be payable

in the manner determined by the Board of Directors. All funds due under these By-Laws, which are attached to the Declaration of Condominium to which these By-Laws are attached and said Declaration of Condominium, are common expenses of this Condominium.

(b) A copy of the proposed annual budget of common expenses shall be mailed to the Unit Owners not less than thirty (30) days prior to the meeting at which the budget will be considered, together with a Notice of that meeting. The Unit Owners shall be given written notice of the time and place at which the meeting of the Board of Directors shall be held to consider the proposed annual budget of common expenses, and such meeting shall be open to the Unit Owners. If a budget is adopted by the Board of Directors which requires assessment against the Unit Owners in any fiscal or calendar year exceeding 115% of such assessments for the preceding year, upon written application of 10% of the Unit Owners, a special meeting of the Unit Owners shall be held upon no less than ten (10) days written notice to each Unit Owner, but within thirty (30) days of the delivery of such application to the Board of Directors or any member thereof, at which special meeting Unit Owners may consider and enact a revision of the budget, or recall any and all members of the Board of Directors and elect their successors. In either case, unless these By-Laws shall require a larger vote, the revision of the budget or the recall of any and all members of the Board of Directors shall require a vote of not less than a majority of the whole number of votes of all Unit Owners. The Board of Directors may in any event propose a budget to the Unit Owners at a meeting of members or by writing, and if such budget or proposed budget be approved by the Unit Owners at the meeting, or by a majority of their whole number by a writing, such budget shall not thereafter be re-examined by the Unit Owners in the manner hereinabove set forth nor shall the Board of Directors be recalled under the terms of this Section. In determining whether assessments exceed 115% of similar assessments in prior years, there shall be excluded in the computation, any provision for reasonable reserves made by the Board of Directors in respect of repair or replacement of the Condominium property or in respect of anticipated expenses by the Condominium Association which are not anticipated to be incurred on a regular or annual basis and there shall be excluded from such computation, assessment for betterments to the Condominium property if these By-Laws so provide or allow the establishment of reserves, or assessments for betterments to be imposed by the Board of Directors, provided, however, that so long as the Developer is in control of the Board of Directors, the Board shall not impose an assessment for a year greater than 115% of the prior fiscal or calendar year's assessment without approval of a majority of the Unit Owners. When the Board of Directors has determined the amount of any assessment, the Treasurer of the Association shall mail or present to each Unit Owner a statement of said Unit Owner's assessment. All assessments shall be payable to the Treasurer of the Association and, upon request, said Treasurer shall give a receipt for each payment made to him.

Section 5. Determination of Maintenance Fee:

(a) The Board of Directors of the Association shall fix and determine from time to time, the sums necessary and adequate for the maintenance fee on Condominium Unis committed to Interval Ownership. The maintenance fee on such Units shall include the items specified in the Declaration of Condominium to which these By-Laws are attached.

(b) When the Board of Directors has determined the amount of any maintenace fee, the Treasurer of the Association shall mail or present to each Owner of Unit Weeks within all Units committed to Interval Ownership a statement of said maintenance fee. All maintenance fees shall be payable to the Treasurer of the Association

and, upon receipt, said Treasurer shall give a receipt for each payment made to him, if requested by the Unit Owners.

Section 6. Application of Payments and Co-Mingling of Funds: All sums collected by the Association from assessments and maintenance fees may be co-mingled in a single fund or divided into more than one fund, as determined by the Board of Directors of the Association. All assessment payments and maintenance fees by a Unit Owner shall be applied as to interest, delinquencies, costs and attorney's fees, other charges, expenses and advances as provided herein and in the Declaration of Condominium and general or special assessments, in such manner and amounts as the Board of Directors determines in its sole discretion.

Section 7. Acceleration of Assessment Installments Upon Default: If a Unit Owner shall be in default in the payment of an installment upon any assessment, the Board of Directors may accelerate the remaining monthly installments for the fiscal year upon Notice thereof to the Unit Owner and, thereupon, the unpaid balance of the assessment shall become due upon the date stated in the Notice, but not less than fifteen (15) days after delivery of or the mailing of such Notice to the Unit Owner.

Section 8. Audits: An audit of the accounts of the Association shall be made annually. Said audit shall be prepared by such accountant as the Board of Directors determines, and a copy of said report shall be available to the members of the Association in the office of said Association and with the Treasurer of the Association. Such report shall be available not later than three (3) months after the end of the year for which the report is made.

Section 9. Application of Surplus: Any payments or receipts to the Association, whether from Unit Owners or otherwise, paid during the year in excess of the operating expenses and other common expenses of the Association shall be kept by the Association and applied against the Association's expenses for the following year.

ARTICLE VII. ADDITIONS OR ALTERATIONS

There shall be no additions or alterations to the Common Elements or limited Common Elements of the Condominium(s) which this Association operates and maintains except as specifically provided for in said Condominium's Declaration of Condominium.

ARTICLE VIII. COMPLIANCE AND DEFAULT

Section 1. Violations: In the event of a violation (other than the nonpayment of an assessment) by the Unit Owner in any of the provisions of the Declaration of Condominium, of these By-Laws, or of the applicable portions of the Condominium Act, the Association, by direction of its Board of Directors, may notify the Unit Owner by written notice of said breach, transmitted by mail, and if such violation shall continue for a period of seven (7) days from date of Notice, the Association, through its Board of Directors, shall have the right to treat such violation as an intentional and inexcusable and material breach of the Declaration, of the By-Laws, or of the pertinent provisions of the Condominium Act, and the Association may then, at its option, have the following elections:

(a) An action at law to recover for its damage, on behalf of the Association or on behalf of the other Unit Owners.

(b) An action in equity to enforce performance on the part of the Unit Owner; or

(c) An action in equity for such equitable relief as may be necessary under the circumstances, including injunctive relief.

Any violations which are deemed by the Board of Directors to be a hazard to public health may be corrected immediately as an emergency matter by the Association and the cost thereof shall be charged to the Unit Owner as a specific item, which shall be a lien against said Unit with the same force and effect as if the charge were a part of the common expenses.

Section 2. Negligence or Carelessness of Unit Owner, Etc.: All Unit Owners shall be liable for the expense of any maintenance, repair or replacement rendered necessary by his act, neglect or carelessness, or by that of any member of his family, or his or their guests, employees, agents or lessees, but only to the extent that such expense is not met by the proceeds of insurance carried by the Association. Such liability shall include any increase in insurance rates occasioned by use, misuse, occupancy or abandonment of any Unit or its appurtenances. Nothing herein contained, however, shall be construed so as to modify any waiver by any insurance company of its rights of subrogation. The expense for any maintenance, repair or replacement required, as provided in this Section, shall be charged to said Unit Owner as a specific item which shall be a lien against said Unit with the same force and effect as if the charge were a part of the common expenses.

Section 3. Costs and Attorneys' Fees: In any proceeding arising because of an alleged default by a Unit Owner, the prevailing party shall be entitled to recover the costs of the proceeding and such reasonable attorneys' fees as may be determined by the Court.

Section 4. No Waiver of Rights: The failure of the Association or of a Unit Owner to enforce any right, provision, covenant or condition which may be granted by the Condominium documents shall not constitute a waiver of the right of the Association or Unit Owner to enforce such right, provision, covenant or condition in the future.

Section 5. Election of Remedies: All rights, remedies and privileges granted to the Association or Unit Owner, pursuant to any terms, provisions, covenants or conditions of the Condominium documents, shall be deemed to be cumulative and the exercise of any one or more shall not be deemed to constitute an election of remedies, nor shall it preclude the party thus exercising the same from exercising such other and additional rights, remedies, or privileges as may be granted to such other party by Condominium documents, or at law or in equity.

Section 6. Units Committed to Interval Ownership: Any liens or sanctions against an Owner of Unit Weeks in a Unit committed to Interval Ownership for an alleged default as set forth in this Article VIII shall be limited to the Unit Weeks owned by such Owner and shall be of no force and effect as to any other Unit Weeks or Owner thereof. The term "Unit Owner" as used throughout this article shall be deemed to include Owners of Unit Weeks in Units committed to Interval Ownership.

ARTICLE IX. ACQUISITION OF UNITS ON FORECLOSURE

Section 1. Acquisition of Units on Foreclosure: At any foreclosure sale of a Unit, the Board of Directors may, with the authorization and approval by the affirmative vote of voting members casting not less than sixty percent (60%) of the total votes of the members present at any regular or special meeting of the members wherein said matter is voted upon, acquire in the name of the Association, or its designee, a Condominium parcel being foreclosed. The term "foreclosure", as used in this Section, shall mean and include any foreclosure of any lien, excluding the Association's lien for assessments.

The power of the Board of Directors to acquire a Condominium parcel at any foreclosure sale shall never be interpreted as any requirement or obligation on the part of the said Board of Directors or of the Association to do so at any foreclosure sale, the provisions hereof being permissive in nature and for the purpose of setting forth the power in the Board of Directors to do so should the requisite approval of the voting members be obtained. The Board of Directors shall not be required to obtain the approval of Unit Owners at the foreclosure sale of a Unit, due to the foreclosure of the Association's lien for assessments under the provisions of the Declaration of Condominium to which these By-Laws are attached notwithstanding the sum the Board of Directors determines to bid at such foreclosure sale.

Section 2. Transfer of Units: All Owners of Units or Unit Weeks in a Unit committed to Interval Ownership shall notify the Association, of any transfer, by sale or otherwise, of said Unit or Unit Week within ten (10) days of the date of same. Said Notice shall include such information and be in the form that the Association shall prescribe from time to time. The Association may send all necessary Notices to the person shown as Owner of said Unit or Unit Weeks in its records, and said Notice shall be binding as to any other Owner of said Unit or Unit Weeks where the Association has not been notified as provided herein.

ARTICLE X. AMENDMENTS TO THE BY-LAWS

The By-Laws may be altered, amended or added to at any duly called meeting of the Unit Owners, provided:

(1) Notice of the meeting shall contain a statement of the proposed Amendment.

(2) If the Amendment has received the unanimous approval of the full Board of Directors, then it shall be approved upon the affirmative vote of the voting members casting a majority of the total votes of the members of the Association.

(3) If the Amendment has not been approved by the unanimous vote of the Board of Directors, then the Amendment shall be approved by the affirmative vote of the voting members casting not less than three-fourths (3/4ths) of the total votes of the members of the Association; and,

(4) Said Amendment shall be recorded and certified as required by the Condominium Act.

(5) Notwithstanding the foregoing, these By-Laws may only be amended with the written approval when required of the parties specified in the Declaration of Condominium to which these By-Laws are attached.

ARTICLE XI. NOTICES

Whatever Notices are required to be sent hereunder shall be delivered or sent in accordance with the applicable provisions for Notices as set forth in the Declaration of Condominium to which these By-Laws are attached.

ARTICLE XII. INDEMNIFICATIONS

The Association shall indemnify every Director and every Officer, his heirs, executors, and administrators, against all loss, cost and expense reasonably incurred by him in connection

with any action, suit or proceeding to which he may be made a party by reason of his being or having been a Director or Officer of the Association, except as to matters wherein he shall be finally adjudged in such action, suit or proceeding, to be liable for or guilty of gross negligence or willful misconduct. The foregoing rights shall be in addition to and not exclusive of all other rights to which such Director or Officer may be entitled.

ARTICLE XIII. LIABILITY SURVIVES TERMINATION OF MEMBERSHIP

The termination of membership in the Condominium shall not relieve or release any such former Owner or member from any liability or obligations incurred under or in any way connected with the Condominium during the period of such ownership and membership, or impair any rights or remedies which the Association may have against such former Owner and member arising out of or in any way connected with such ownership and membership, and the covenants and obligations incident thereto.

ARTICLE XIV. LIMITATION OF LIABILITY

Notwithstanding the duty of the Association to maintain and repair parts of the Condominium property, the Association shall not be liable for injury or damage caused by a latent condition in the property, nor for injury or damage caused by the elements or by other Owners or persons.

ARTICLE XV. PARLIAMENTARY RULES

Roberts Rules of Order (latest edition) shall govern the conduct of the Association's meetings when not in conflict with the Condominium Act, the Declaration of Condominium, or these By-Laws.

ARTICLE XVI. LIENS

Section 1. Protection of Property: All liens against a Condominium Unit, other than for mortgages, taxes or special assessments, shall be satisfied or otherwise removed within thirty (30) days of the date the lien attached. All taxes and special assessments upon a Condominium Unit shall be paid before becoming delinquent, as provided in these Condominium documents or by law, whichever is sooner.

Section 2. Notice of Lien: A Unit Owner shall give Notice to the Association of every lien upon his Unit, other than for mortgages, taxes and special assessments within five (5) days after the attaching of the lien.

Section 3. Notice of Suit: Unit Owners shall give Notice to the Association of every suit or other proceeding which will or may affect title to his Unit or any part of the property, such Notice to be given within five (5) days after the Unit Owner receives Notice thereof.

Section 4. Failure to Comply: Failure to comply with this Article concerning liens will not affect the validity of any judicial sale.

Section 5. Units Committed to Interval Ownership: In the case of a Unit committed to Interval Ownership, an Owner of Unit Weeks in such Unit shall be required to give Notices under Section 2 and Section 3 of this Article XVI only as to liens, suits, and proceedings affecting title to the Unit Weeks which he owns. Any lien against an Owner of Unit Weeks in a Unit committed to Interval Ownership, or against the Unit Weeks owned by him, shall be limited to the Unit Weeks owned by him and shall not encumber the property, real or personal, of any other Owner of Unit Weeks in said Unit.

ARTICLE XVII. RULES AND REGULATIONS

Section 1. The Board of Directors may, from time to time, adopt or amend previously adopted administrative Rules and Regulations governing the details of the operation, use, maintenance, management and control of the Common Elements and limited Common Elements of the Condominiums and any facilities or services made available to the Unit Owners, A copy of the Rules and Regulations adopted from time to time as herein provided shall from time to time be posted in a conspicuous place and/or copies of same shall be furnished each Unit Owner.

Section 2. As to Condominium Units: The Board of Directors may from time to time adopt or amend previously adopted Rules and Regulations governing and restricting the use and maintenance of the Condominium Unit(s) provided, however, that copies of such Rules and Regulations, prior to the time the same become effective, shall be posted in a conspicuous place and/or copies of same shall be furnished to each Unit Owner.

Section 3. Conflict: In the event of any conflict between the Rules and Regulations adopted, or from time to time amended, and the Condominium documents, or the Condominium Act, the latter shall prevail. If any unreconciled conflict should exist or hereafter arise with respect to the interpretation of these By-Laws and the Declaration of Condominium, the provisions of said Declaration shall prevail.

The foregoing was adopted as the By-Laws of Kahlua Owners' Association, Inc., at the first meeting of the Board of Directors.

Approved:

_____
Secretary

_____
President

KAHLUA OWNERS' ASSOCIATION, INC.

ARTICLES OF INCORPORATION

We, the undersigned, hereby associate ourselves together for the purpose of forming a Non-Profit Corporation under the laws of the State of Florida, pursuant to Florida States 617 Et Seq., and hereby certify as follows:

ARTICLE I.

The name of this Corporation shall be:

KAHLUA OWNERS' ASSOCIATION, INC.

ARTICLE II.

The general purpose of this Non-Profit Corporation shall be as follows: To be the "Association" (as defined in the Condominium Act of the State of Florida, F.S. 718 Et Seq.), for the operation of the Condominium known as Kahlua Beach Club, a Condominium, at Fort Myers Beach, Florida, to be created pursuant to the provisions of the Condominium Act, and as such Association, to operate and administer said Condominium and carry out the functions and duties of said Condominium, as set forth in the Declaration of Condominium establishing said Condominium and Exhibits annexed thereto. The Corporation may also be the Association for the operation of additional Condominiums which may be created at Fort Myers Beach, Florida. The Board of Directors shall have the authority in their sole discretion to designate the above Corporation as the Association for additional Condominiums and, in such instances, the provisions hereafter in these Articles of Incorporation shall be interpreted in such a manner as to include such additional Condominiums.

ARTICLE III.

All persons who are Owners of Condominium Parcels within said Condominiums shall automatically be members of this Corporation. Such membership shall automatically terminate when such person is no longer

EXHIBIT NO. 3
TO DECLARATION

Owner of a Condominium Parcel. Membership in the Corporation shall be limited to such Condominium Parcel Owners.

Persons who own interests in Condominium Parcels under a plan of Interval Ownership, as defined in the By-Laws of this Corporation, shall be members of this Corporation, their rights and duties to be as defined in the Declarations of Condominium.

Subject to the foregoing, admission to and termination of membership shall be governed by the Declaration of Condominium that shall be filed for said Condominium among the Public Records of Lee County, Florida.

ARTICLE IV.

This Corporation shall have perpetual existence.

ARTICLE V.

The names and residences of the subscribers to these Articles of Incorporation are as follows:

Charles A. Cutaia - 4850 Estero Blvd., Ft. Myers Beach, Florida 33931

Daniel Reinfried - 4850 Estero Blvd., Ft. Myers Beach, Florida 33931

Marvin Metheny - 4850 Estero Blvd., Ft. Myers Beach, Florida 33931

ARTICLE VI.

Section 1. The affairs of the Corporation shall be managed and governed by a Board of Directors composed of not less than three (3) nor more than the number specified in the By-Laws. The Directors, subsequent to the first Board of Directors, shall be elected at the annual meeting of the membership, for a term of one (1) year, or until their successors shall be elected and shall qualify. Provisions for such election, and provisions respecting the removal, disqualification and resignation of Directors and for filling vacancies on the Directorate, shall be established by the By-Laws.

Section 2. The principal Officers of the Corporation shall be: President; Vice-President; Secretary; Treasurer (the last two Officers

may be combined) who shall be elected from time to time, in the manner set forth in the By-Laws adopted by the Corporation.

ARTICLE VII.

The names of the Officers who are to serve until the first election of Officers, pursuant to the terms of the Declaration of Condominium and By-Laws, are as follows:

Charles A. Cutaia - President

Daniel Reinfried - Vice-President

Marvin Metheny - Secretary/Treasurer

ARTICLE VIII.

The following persons shall constitute the first Board of Directors and shall serve until the first election of the Board of Directors at the first regular meeting of the membership:

Charles A. Cutaia

Daniel Reinfried

Marvin Metheny

ARTICLE IX.

The By-Laws of the Corporation shall initially be made and adopted by its first Board of Directors.

Prior to the time the property described in Article II hereinabove has been submitted to Condominium Ownership by the filing of the Declarations of Condominium, said first Board of Directors shall have full power to amend, alter or rescind said By-Laws by a majority vote.

After the property described in Article II hereinabove has been submitted to Condominium Ownership by filing of the Declaration of Condominium, the By-Laws may be amended, altered, supplemented or modified by the membership at the annual meeting, or at a duly convened special meeting of the membership, by vote, as follows:

A. If the proposed change has been approved by the unanimous approval of the Board of Directors, then it shall require only a majority vote of the total membership to be adopted.

B. If the proposed change has not been approved by the unanimous vote of the Board of Directors, then the proposed change must be approved by three-fourths (3/4ths) of the total vote of the membership.

ARTICLE X.

Amendments to these Articles of Incoporation may be proposed by any member or Director and shall be adopted in the same manner as is provided for the Amendment of the By-Laws as set forth in Article IX above. Said Amendment(s) shall be effective when a copy thereof, together with an attached Certificate of its approval by the membership, sealed with the Corporate Seal, signed by the Secretary or an Assistant Secretary, and executed and acknowledged by the President or Vice-President, has been filed with the Secretary of State, and all filing fees paid.

ARTICLE XI.

This Corporation shall have all of the powers set forth in Florida Statute 617.021, all of the powers set forth in the Condominium Act of the State of Florida, and all powers granted to it by the Declaration of Condominium and Exhibits annexed thereto, including the power to contract for the management of the Condominiums and recreational facilities.

ARTICLE XII.

There shall be no dividends paid to any of the members, nor shall any part of the income of the Corporation be distributed to its Board of Directors or Officers. In the event there are any excess receipts over disbursements as a result of performing services, such excess shall be applied against future expenses, etc. The Corporation may pay compensation in a reasonable amount to its members, Directors and Officers for services rendered, may confer benefits upon its members in conformity with its purposes, and upon dissolution or final liquidation, may make distribution to its members as is permitted by the Court having jurisdiction thereof, and no such payment, benefit or distribution shall be deemed to be a dividend or distribution of income.

This Corporation shall issue no shares of stock of any kind or nature whatsoever. Membership in the Corporation and the transfer thereof, as well as the number of members, shall be upon such terms and conditions as provided for in the Declaration of Condominium and By-Laws. The voting rights of the Owners of Parcels in said Condominium property shall be as set forth in the Declarations of Condominium and/or By-Laws.

ARTICLE XIII.

The street address of the initial registered office of this Corporation is c/o Davis and Langer, P.A., 6075 Sunset Drive, Fourth Floor, South Miami, Florida 33143, and the name of the initial registered agent of this Corporation at that address is Mark G. Langer.

IN WITNESS WHEREOF, the Subscribers hereto have hereunto set their hands and seals this _____ day of _____, 197_.

_____(SEAL)
Charles A. Cutaia

_____(SEAL)
Daniel Reinfried

_____(SEAL)
Marvin Metheny

STATE OF FLORIDA)
COUNTY OF)

BEFORE ME, the undersigned authority, personally appeared CHARLES A. CUTAIA, DANIEL REINFRIED, and MARVIN METHENY , who after being by me first duly sworn, acknowledged that they executed the foregoing Articles of Incorporation of KAHLUA OWNERS' ASSOCIATION, INC., a Florida Corporation not for profit, for the purposes therein expressed.

WITNESS my hand and Official Seal, at the State and County aforesaid, this _____ day of _____, 197_.

_____(SEAL)
Notary Public, State of Florida at Large

MANAGEMENT AGREEMENT
BETWEEN
KAHLUA OWNERS' ASSOCIATION, INC.
AND
KAHLUA PROPERTY MANAGEMENT, INC.

THIS AGREEMENT, made and entered into on the date last appearing in the body of this instrument, by and between the Florida Corporati n whose name appears at the end of this Agreement as the Management Firm, hereinafter called the "Management Firm", and that certain Florida Corporation not for profit whose name appears at the end of this instrument as the Condominium Association, hereinafter called the "Association", which said terms shall be deemed to extend to and include the legal representatives, successors and assigns of the said parties hereto;

WITNESSETH:

THAT, WHEREAS, the Association is the Association responsible for the operation of that certain condominium to be known as Kahlua Beach Club, a Condominium, and said Association is desirous of entering into a Management Agreement for the management of said condominium, and,

WHEREAS, the Management Firm is desirous of furnishing such management services; and,

NOW, THEREFORE, for and in consideration of the mutual promises contained, it is agreed by and between the parties, as follows:

1. That the foregoing recitals are true and correct.

2. That the terms used in this Management Agreement shall be defined as said terms are defined and used in the Condominium Act, or in the Declaration of Condominium to which this Management Agreement is attached as Exhibit No. 4.

3. The Association does hereby employ the Management Firm as the exclusive Manager of the Condominium property and the Management Firm hereby accepts such employment.

4(A). The term of this Agreement shall commence as of the date hereof through December 31, 1979. Thereafter, it shall be automatically renewed for successive two (2) year periods until terminated at a duly authorized meeting of the owners by a majority of the votes of the owners, including proxies, assembeled at such meeting, or by the Management Firm notifying the Association in writing that it will now renew this Agreement at such renewal date.

4(B). Notwithstanding the foregoing, the Association may terminate this Agreement, as provided under the provisions of F.S. 718.302 which provides that if the Association operates one (1) condominium and the unit owners other than the Developer have assumed control of the Association, or if unit owners other than the Developer own not less than 75 percent of the units in the condominium, any contract for maintenance, management or operation of the condominium may be cancelled by concurrence of the owners of not less than 75 percent of the units other than the units owned by the Developer. If a grant, reservation, or contract is so canceled and the unit owners other than the Developer have not assumed control of the Association, the Association shall make a new contract or otherwise provide for maintenance, management, or operation in lieu of the canceled obligation, at the direction of the owners of not less than a majority of the units in the condominium other than the units owned by the Developer.

EXHIBIT NO.4
TO DECLARATION

5. The Management Firm, to the exclusion of all persons, including the Association and its members, shall have all the powers and duties of the Association as set forth in the Declaration of Condominium to which this Management Agreement is attached as Exhibit No. 4, and the By-Laws of the Association, (except such thereof as are specifically required to be exercised by its Directors or members) and shall perform by way of illustration and not of limitation, the following services:

(A) Cause to be hired, paid and supervised, all persons necessary to be employed in order to properly maintain and operate the Condominium, including a Manager, who, in each instance, shall be the employees of the Management Firm, as the Management Firm, in its absolute discretion shall determine, and cause to be discharged all persons unnecessary or undesirable.

(B) To maintain and repair the Condominium property and the common elements of said Condominium to the same extent that the Association is required to maintain and repair same, as provided in said Condominium's Declaration of Condominium and Exhibits attached thereto. For any one item of repair, replacement or refurbishing as to the Condominium , the expense incurred as to the Condominium as a whole, shall not exceed the sum of Two Thousand Five Hundred Dollars ($2,500.00), unless specifically authorized by the Board of Directors of the Association, except, however, in the case of an emergency, the Management Firm is authorized to expend any sum necessary to protect and preserve the property.

(C) Take such action as may be necessary to comply with all laws, statutes, ordinances, rules and of all appropriate governmental authority, and the rules and regulations of the National Board of Fire Underwriters, or in the event it shall terminate its present functions, those of any other body exercising similar functions.

(D) To enter into contracts for garbage and trash removal, vermin extermination, and other services, and make all such contracts and purchases in either the Association's or Management Firm's name, as the Management Firm shall elect.

(E) To purchase equipment, tools, vehicles, appliances, goods, supplies and materials as shall be reasonably necessary to perform its duties, including the maintenance, upkeep, repair, replacement, refurbishing and preservation of the Condominium . Purchases shall be in the name the Management Firm, or the Association, as the Management Firm shall elect.

(F) Cause to be placed or kept in force all insurance required or permitted in the Declaration of Condominium; to act as Agent for the Association, each unit owner, and for each owner of any other insured interest; to adjust all claims arising under said insurance policies; to bring suit thereon and deliver releases upon payment of claims; to otherwise exercise all of the rights, powers and privileges of the insured parties; to receive on behalf of the insured parties, all insurance proceeds, subject to the provisions of the Declaration of Condominium.

(G) Maintain the Association's financial record books, accounts and other records as provided by the Association's By-Laws and pursuant to the Condominium Act; issue Certificates of account to members, their mortgagees and lienors without liability for errors unless as a result of gross negligence. Such records shall be kept at the office of the Management Firm and shall be available for inspection by an expert employed by and at the cost and expense of the Association and at such reasonable time as the Management Firm shall agree to; however, said

request for inspection cannot be made more than once in any calendar year. Such expert may also conduct an external audit, provided the cost for same is paid by the Association, and said independent auditor, in any instance, must be acceptable to the Management firm whose acceptance shall not be unreasonably withheld. As a standard procedure, the Management Firm shall render to the Association a statement for each calendar year no later than the April 1st next thereafter. The Management Firm shall perform a continual internal audit of the Association's financial records for the purpose of verifying the same, but no independent or external audit shall be required of it. The consent of the Management Firm to an independent auditor shall not be unreasonably withheld.

(H) Maintain records sufficient to describe its services hereunder and such financial books and records sufficient in accordance with prevailing accounting standards to identify the source of all funds collected by it in its capacity as Management Firm, and the disbursement thereof. Such records shall be kept at the Office of the Management Firm, and shall be available for inspection by an expert employed by and at the cost and expense of the Association and at such reasonable time as the Management Firm may agree to; however, said request for inspection cannot be made more than once in any calendar year. The Management Firm shall perform a continual internal audit of the Management Firm's financial records relative to its services as Manager for the purpose of verifying same, but no independent or external audit shall be required of it.

(I) The Management Firm in its sole discretion shall determine the budget as to the Condominium for the term of the Management Agreement, subject, however, to the specific limitations thereof where otherwise provided. Upon said budget's being determined annually, the Management Firm shall submit annually to the Association the operating budget for the ensuing year, setting forth the anticipated income and expenses of the Condominium for the year, and said Management Firm shall specify therein each unit owner's monthly share thereof. Should an increase in assessments be required or a special assessment be required during the year, the same shall be determined and made by the Management Firm and the Association shall be advised thereof and as to the share thereof payable by each of the Association's members, as the case may be. The Management Firm shall collect the assessments based upon the foregoing. The assessments as to each member of the Association shall be made payable to the Management Firm, or such other firm or entity as the Management Firm shall direct; and the Management Firm shall have the right to designate such member or members of the Association, or the Association itself, as it determines, to collect said assessments on behalf of the Management Firm and deliver same to it. The Management Firm shall not be responsible for obtaining the best price available as to any service, material or purchase, but shall, with impunity, purchase or contract for same with such person or party as it deems advisable and in the best interests of the Association and the Management Firm, without the necessity of obtaining the best price. Where the Management Firm does not submit an operating budget for the ensuing year to the Association as herein set forth, the operating budget for the current year shall be deemed to apply to the ensuing year and, in such case, each unit owner's share of same shall continue in the same amount subject, however, to the right of the Management Firm to increase assessments during the year or levy a special assessment where it determines that same is necessary or advisable subject to the applicable provisions of the Declaration of Condominium.

(J) Have sole authority and responsibility to maintain and replace the personal property within units committed to interval ownership, and in such capacity to:

1. Determine the maintenance fee, proration of taxes, and other common expenses applicable to those condominium units committed to interval ownership, as defined in and provided for in the Declaration of Condominium. The Management Firm shall have sole discretion, while this Agreement remains in effect, for making determinations as to replacements of personal property located within such units, decor, and all other judgments relating to units committed to interval ownership; notwithstanding the foregoing, all replacements shall be such as to maintain the standard of quality of the furniture, other personal property and decor, as originally contained in such unit at the time it is committed to interval ownership.

2. It is understood by both parties that a portion of the maintenance fee will be set aside as a reserve for future replacements and repairs. The Management Firm shall have sole discretion as to the amounts of such reserves and application of same.

(K) Deposit all funds collected from the Association's members, or otherwise accruing to the Association, in a special bank account or accounts of the Management Firm in banks and/or savings and loan associations in the State of Florida, with suitable designation indicating their source, separate from or co-mingled with similar funds collected by the Management Firm on behalf of other condominiums or entities which the Management Firm manages.

(L) May cause a representative of its organization to attend meetings of the unit owners and of the Board of Directors of the Association; however, it is understood and agreed that the Minutes of all the Association's meetings, whether of unit owners or of the Board of Directors, shall be taken by the Association's Secretary, and possession of the Minutes Book shall be in the custody of said Secretary, who shall always be responsible for preparing and furnishing notices of all meetings to the required parties. The Management Firm shall have the right to determine the fiscal year and when it shall commence.

(M) Promulgate, adopt and amend Rules and Regulations as it deems advisable in its sole discretion for the use and occupancy of the Condominium's common elements, limited common elements and units therein, and to enforce same. The Management Firm, in its sole discretion, shall determine all activities and programs to be carried on as to same and shall employ the personnel required therefor as it determines in its sole discretion.

(N) The Management Firm shall cause such alterations and/or additions to the common elements or limited common elements of the Condominium property, to be made as authorized by the Board of Directors of the Association and its members where required, pursuant to and in accordance with said Condominium's Declaration of Condominium and Exhibits attached thereto. As to the foregoing, the Management Firm shall be paid for the cost of its personnel and overhead, materials and equipment in regard thereto, and any and all contractors, subcontractors or materialmen as are required therefor.

(O) Retain and employ such professionals and such other experts whose services may be reasonably required to effectively perform its duties and exercise its powers hereunder, and to employ same on such basis as it deems most beneficial.

(P) Enter into Agreements upon such terms and conditions and for such purpose as the Management Firm determines in its sole discretion as to the common elements of and the Condominium, and by agreement grant concessions and licenses to persons to provide facilities and services as to and within the Condominium and cause coin vending machines and coin operated equipment and pay telephones to be installed within the Condominium and to purchase for on behalf of and

at the cost and expense of the Condominium Association, or rent same or enter into agreements regarding same; however, all income derived by the Management Firm from the foregoing shall inure to the benefit of the Condominium Association; and all expenses appertaining thereto shall likewise be borne by said Condominium Association. The parties hereto recognize that agreements, concessions and licenses may be entered into to provide facilities and services as specified herein for very nominal or no compensation whatsoever. The Management Firm may enter into same in its sole discretion, and it shall use its best judgment; however, it shall not be responsible for same nor the fact that a greater sum might have been obtained nor a shorter period contracted for.

(Q) Make and collect special assessments for such purposes and against such parties as the Management Firm determines, subject to the provisions of the Declaration of Condominium.

(R) Exercise such powers and rights delegated to it, if any, under the terms and provisions of the Declaration of Condominium to which this Agreement is attached as Exhibit No. 4, and all Exhibits attached to said Declaration.

(S) If maintenance of the Condominium referred to in the Declaration of Condominium to which this Management Agreement is attached as Exhibit No. 4, or any portion thereof, including any unit, units and/or the common elements, is required due to loss by Act of God or other cause, which is other than normal wear and tear, and which loss is less than "major damage", as defined in the Condominium's Declaration of Condominium to which this Agreement is attached, then in such event, the Management Firm shall be authorized and empowered to determine, assess, charge and levy the costs of repairing and restoring such loss among the unit owners in such proportions as it deems advisable, pursuant to the Declaration of Condominium to which this Agreement is attached, notwithstanding the fact that said loss or damage was, or was not, covered by insurance, and said total assessment shall be equal to the cost of said repair which shall include the costs of the Management Firm's personnel and overhead, materials and equipment, and any and all other contractors, subcontractors, or materialmen as are required. Should the loss be covered by insurance, the proceeds thereof shall be applied as a credit against the total costs of said repair and restoration in such proportions as hereinbefore set forth in this paragraph. It shall be presumed that the first monies disbursed in payment of costs of repair and restoration, shall be from insurance proceeds, where such are received, and then from assessments collected, and, should there be a surplus of such funds, the said surplus shall be distributed to or on behalf of the unit owners, as provided in the aforesaid Declaration of Condominium.

6. Notwithstanding the delegation by the Association to the Management Firm of its power to determine and collect assessments during the term of this Agreement, the Association retains the power to make those assessments as are specified in the Declaration of Condominium to which this Agreement is attached as Exhibit No. 4, and the By-Laws which are attached thereto as Exhibit No. 2.

7. The Management Firm shall apply assessments collected as it determines in its sole discretion as to those items specified in the By-Laws of the Association including the Management Firm's fee and its overhead and expenses, which shall be deemed common expenses. The Management Firm, during the term of this Agreement, may file a lien against a unit owner's Condominium parcel should he fail to pay his assessments or maintenance fee as required and provided in the Declaration of Condominium to which this Agreement is attached and Exhibits attached to said Declaration, and take such other action as provided

in said documents, either in its name or in the name of or as agent of the Association whose name appears at the end of this instrument. The Management Firm may compromise liens in such amount as it deems advisable in its sole discretion, and it may satisfy liens of record and render statements as to the current status of a unit owner's assessments. In the case of a unit committed to interval ownership, any lien against an owner of unit weeks in such unit, shall be limited to the unit weeks owned by the defaulting owner and shall, in no case, be filed so as to encumber the unit weeks owned by any other owner in such unit.

8. The Association shall aid and assist the Management Firm in any reasonable manner requested by the Management Firm as to the collection of assessments, and the said Association shall further aid and assist the Management Firm in any reasonable manner required by the Management Firm so as to simplify the method of collecting the assessments due from unit owners.

9. It is specifically understood that the Management Firm does not undertake to pay common expenses from its own funds and shall only be required to perform its services and make disbursements to the extent that, and so long as, payments received from assessments or other revenue, if any, of the Association whose name appears at the end of this instrument, are sufficient to pay the costs and expenses of such services and the amounts of such disbursements. If it shall appear to the Management Firm that the assessments and other revenue, if any, of the said Association and its members are insufficient, the Management Firm shall forthwith determine such additional assessment as is required and advise the said Association and its members.

10(A). It is specifically understood and agreed that the Management Firm shall perform all of the services required of it hereunder at no cost and expense whatsoever to itself, but solely at the cost and expense of the Association and its members. As compensation, fee or profit for its services hereunder, the Management Firm shall receive a net fee, free from all charges and expenses, of ten (10%) percent of the common expense assessment, or in the case of a unit committed to interval ownership, $7.50 per unit week, such amount to be designated the "Management Fee". The Management Fee shall be taken into consideration in setting the common expense and maintenance fee assessments. The Management Firm's fee from each Condominium Unit or unit weeks shall commence as of the first day of the month following the date of a Deed from the Developer to the initial purchaser or on the first day of the month following the date of execution of a binding purchase contract for the purchase of a Condominium Unit or unit weeks. During the period of time that the Developer is the owner of a Condominium unit or unit weeks in a Condominium unit committed to interval ownership, it shall not be required to pay the Management Fee provided in this Agreement.

11. The Association shall not interfere nor permit, allow or cause any of the Officers, Directors or members to interfere with the Management Firm in the performance of its duties or the exercise of any of its powers hereunder.

12. The Management Firm shall not be liable to the Association and its members, for any loss or damage not caused by the Management Firm's own gross negligence or willful misconduct, and said Association and its members will and do hereby indemnify and save harmless the Management Firm from any such liability for damages, costs and expenses arising from injury to any person or property in, about and in connection with the Condominium specified in the Declaration of Condominium to which this Agreement is attached as Exhibit No. 4, from any cause whatsoever, unless such injury shall be caused by said Management Firm's own gross negligence or willful misconduct.

13. The Association on behalf of its members, or the Management Firm, shall both have the right to assign this Agreement as herein set forth. The Association may assign its right, title and interest herein to another Condominium Association operating and existing under the laws of the State of Florida, and the Management Firm may assign its right, title and interest herein to another management firm operating and existing under the laws of the State of Florida. However, said Assignment shall not be valid unless and until the Assignee thereunder expressly assumes and agrees, in writing to perform each and every covenant and term of this Agreement. The said Agreement shall be duly recorded in the Public Records of the County wherein the Condominium is located and an executed duplicate of said Assignment shall be delivered to the other party of this Agreement by certified mail or its equivalent. The Management Firm may also sub-contract all/or portions of its duties and powers under this Management Agreement.

14. The Management Firm shall be authorized to assess a Condominium unit owner for those items of special assessments as set forth in the Declaration of Condominium to which this Agreement is attached as Exhibit No. 4, and the Exhibits attached to said Declaration, and in this Agreement - i.e., maintenance, repairs or replacements caused by the negligence or misuse by a unit owner, his family, servants, guests or invitees, or lessees; or failure of a unit owner to maintain those portions of his Condominium unit and limited common elements assigned to his unit, as he is required to repair and maintain; or violation of the provisions of the aforesaid Declaration of Condominium and Exhibits attached thereto which require the removal of same by the Management Firm and/or which increase the costs of maintenance and/or repair upon the Management Firm, or increase insurance rates and premiums, etc.

15. The power and authority of the Association to amend the Declaration of Condominium to which this Agreement is attached as Exhibit No. 4, and the Exhibits attached to said Declaration, is subject to the specific provisos applicable thereto set forth in the aforesaid instruments.

16. Should any dispute arise as to the rights of any of the parties under this Agreement, including the powers and duties of the parties and all of the terms and conditions of this Agreement, and said dispute cannot be amicably settled and resolved between the parties, then either party shall have the right to submit the matter in controversy for arbitration to the Senior Judge of the Circuit Court in and for the County where the Condominium is located, and the decision of said Judge shall be final. The Court shall have the right to assess costs and attorneys' fees in such amount and against such party as it deems meet and proper under the circumstances.

17. No waiver of a breach of any of the covenants contained in this Agreement shall be construed to be a waiver of any succeeding breach of the same covenant.

18. Time is of the essence in every particular, and especially where the obligation to pay money is involved.

19. No modification, release or discharge or waiver of any provision hereof shall be of any force, effect or value, unless in writing, signed by the parties to this Agreement - i.e., the Management Firm and the Association or their respective successors or assigns.

20. This instrument, together with the Declaration of Condominium to which this Agreement is attached, and the Exhibits attached to said Declaration, including this Agreement, constitute the entire agreement between the parties hereto, as of the date of execution hereof, and neither has been induced by the other by representations, promises or understandings not expressed herein, and there are no collateral agreements, stipulations, promises or understandings whatsoever, in any way touching the subject matter of this instrument, or the instruments referred to herein, which are not expressly contained therein.

21. The invalidity in whole or in part of any covenant, promise or undertaking, or any section, sub-section, sentence, clause, phrase or word, or of any provision of this Agreement or the Exhibits attached hereto, and the Declaration of Condominium to which this Agreement is attached and the Exhibits attached to said Declaration, shall not affect the validity of the remaining portions thereof. The provisions of this Agreement shall be paramount to the Condominium Act as to those provisions where permissive variances are permitted; otherwise the provisions of said Condominium Act shall prevail and shall be deemed incorporated herein.

22. The definitions of the words, terms, phrases, etc., as provided in Article I of the Declaration of Condominium to which this Agreement is attached as Exhibit No. 4, are incorporated herein by reference and made a part hereof, and unless the context otherwise requires, said definitions shall prevail.

23. The words, "Condominium Association", "member(s)", "unit owner(s)" and "parcel owner(s)", wherever and whenever used herein, shall include the singular and plural thereof, and the use of any gender shall include all genders, wherever the same shall be appropriate. The term, "Condominium parcel", or "Condominium unit", or "unit", or "parcel", or "unit weeks", or "unit committed to interval ownership", or "interval ownership", or "parcels" and the owners thereof shall be defined pursuant to the Declaration of Condominium to which this Agreement is attached, and same are Condominium parcels and/or units of such Condominium as is created by the aforesaid Declaration of Condominium, or ownership of parts of such parcels or units.

24. When either party hereto, and the Association's members, desire to or are required to give notice unto the other, or others, in connection with and according to the terms of this Agreement, such notice shall be given to the Association, its members, and the Management Firm, as provided in the Declaration of Condominium to which this Agreement is attached as Exhibit No. 4.

25. If the Association or its members, shall interfere with the Management Firm in the performance of its duties and exercise of its powers hereunder, or if the said Association shall fail to promptly do any of the things required of it hereunder, then the Management Firm - fifteen (15) days after having given written notice to said Association of said default by delivering said notice to any officer of the Association, or in their absence, to any member of the said Association, may declare this Agreement in default unless such default be cured by the said Association within fifteen (15) days after such notice. Upon default, the Management Firm may, in addition to any other remedy given it by agreement or in law or in equity, bring an action against the said Association and its members for damages and/or specific performance and/or such other rights and remedies as it may have, and the said Association and its members shall be liable for the Management Firm's reasonable attorneys' fees and costs

incurred thereby. All of such rights of the Management Firm upon default shall be cumulative and the exercise of one or more remedies shall not be deemed to exclude or constitute a waiver of any other or additional remedy.

26. Failure by the Management Firm to substantially perform its duties and obligations under this Agreement for a continuous period of forty five (45) days after written notice of default from the Association specifying the default complained of shall be grounds for the said Association's cancellation of this Agreement.

27. If the Condominium specified in the Declaration of Condominium to which this Agreement is attached as Exhibit No. 4 shall be terminated, as is provided in its Declaration of Condominium, then each of the Condominium unit owners shall thereby become a tenant in common and shall, as to his separate interest, continue to be a party to this Agreement and bound by the provisions hereof, and the Management Firm shall manage such interest pursuant to the provisions of this Agreement as the nature of such interest and the context of this Agreement shall permit.

28. The Management Firm shall have the right in its sole discretion to suspend any unit owner and/or authorized user of the recreational facilities from the use of such recreational facilities for any infraction of the promulgated Rules and Regulations pertaining to said recreational facilities for a period not to exceed seven (7) days, for failure to abide by the Rules and Regulations promulgated from time to time for the use of such facilities, and during said period of suspension, there shall be no reduction in the assessments due and payable from said unit owner and/or authorized user. In the case of a unit committed in interval ownership, any such suspension shall be limited to the owner and/or authorized user committing the breach upon which such suspension is based.

29. Should a unit owner fail to pay an assessment within ten (10) days after its due date, the Management Firm may deny to the unit owner and/or the authorized user the use and enjoyment of the recreational facilities until such time as all assessments are paid. In the case of a unit committed to interval ownership, such denial shall be limited to the owner and/or authorized user of the particular unit weeks from which the delinquency arose.

30. Use of the recreational facilities shall be limited to owners of Condominium parcels and unit weeks in such parcels during the term of their ownership, in the Condominium to which this Agreement is attached as Exhibit No. 4 together with spouse and other members of said parcels owner's immediate family. The lessee of a Condominium unit or unit weeks in a condominium unit committed to interval ownership shall be entitled to the use of the facilities in the place of the unit owner. Owners of unit weeks in units committed to interval ownership, and their lessees and licensees, shall be restricted in their use of the recreational facilities, common elements, and limited common elements, to their periods of legal occupancy of said unit weeks.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals, and have caused these presents to be signed respectively by their proper Officer(s), and their respective Corporate Seals have been duly affixed, this _____ day of _____, 19__.

Signed, sealed and delivered in the presence of:

_____

_____

KAHLUA PROPERTY MANAGEMENT, INC.

By: _____ (SEAL)
PRESIDENT

Attest: _____ (SEAL)
SECRETARY

"MANAGEMENT FIRM"

_____

_____

KAHLUA OWNERS' ASSOCIATION, INC.

By: _____ (SEAL)
PRESIDENT

Attest: _____ (SEAL)
SECRETARY

"ASSOCIATION"

STATE OF FLORIDA)
SS:
COUNTY OF)

BEFORE ME, the undersigned authority, personally appeared _____ and _____ to me well known to be the persons described in and who executed the foregoing instrument as President and Secretary of KAHLUA PROPERTY MANAGEMENT, INC., a Florida Corporation, and they acknowledged before me that they executed such instrument as such Officers of said Corporation and that the Seal affixed thereto is the Corporate Seal of said Corporation, and that same was affixed to said instrument by due and regular Corporate authority, and that said instrument is the free act and deed of said Corporation.

_____(SEAL)
Notary Public, State of Florida
at Large

My Commission Expires:

STATE OF FLORIDA)
SS:
COUNTY OF)

BEFORE ME, the undersigned authority, personally appeared CHARLES A. CUTAIA and MARVIN METHENY to me well known to be the persons described in and who executed the foregoing instrument as President and Secretary respectively of KAHLUA OWNERS' ASSOCIATION, INC., a Florida Corporation not for profit, and they severally acknowledged before me that they executed such instrument as such Officers of said Corporation, and that the Seal affixed thereto is the Corporate Seal of said Florida Corporation, and that same was affixed to said instrument by due and regular Corporate authority, and that said instrument is the free act and deed of said Corporation.

WITNESS my hand and Official Seal, at the County and State aforesaid, this _____ day of _____, 19__.

_____(SEAL)
Notary Public, State of Florida
at Large

My Commission Expires:

PERCENTAGE OF OWNERSHIP

EACH UNIT WITHIN THE CONDOMINIUM SHALL HAVE A 1/27TH INTEREST IN AND TO THE COMMON ELEMENTS AND COMMON SURPLUS, AND SHALL BE RESPONSIBLE FOR 1/27TH OF THE COMMON EXPENSES OF THE CONDOMINIUM.

EXHIBIT NO. 5
TO DECLARATION

PERCENTAGE INTEREST IN UNITS

Each Condominium unit is identified by number and is delineated on the Survey Exhibits collectively identified as Exhibit No. 1 to the Declaration of Condominium to which this Exhibit No. 6 is attached.

In the case of a unit committed to interval ownership, each owner of unit weeks in said unit will own in remainder a percentage share of the unit and the percentage interest assigned to the unit by Exhibit No. 5 hereof according to the following schedule:

Week Numbers Owned	Percentage share in remainder for each week owned
1 - 52	1.9165
53	0.3420

MAY 3 1 33 PM '79
OFFICIAL
RECORDS
LEE COUNTY, FLORIDA
RECORDED VERIFIED
CLERK OF CIRCUIT COURT

EXHIBIT NO. 6
TO DECLARATION

OWNER NAME(S): UNIT/WEEK(S) OWNED	WEEKS OWNED	YES	NO	M/EM	Confirmed Receipt Via/Notes	Late YES's	Late NO's
Adams Gary/Tammy: 102/49	1	1			emd, lmovm, emd		
Allen Nathan/Tonya: 201/01, 205/01, 201/02, 203/02, 201/46, 201/47, 201/48, 201/49, 203/49, 306/49, 501/49, 201/50, 301/50, 501/50, 201/51, 201/52, 205/52	17	17			purchase from Bowler, Moffa		
Altmann Nancy: 405/13, 405/14	2	2		M	EM		
Anderson Danny/Gayla: 204/20	1	1					
Anderson Jack/ Jennifer: 106/30	1	1					
Arnold/Toffolo/Michael/Robin: 202/11	1	1		EM	EM		
B & T Group LLC (Stephan & Jamie Stasny): 204/12, 106/13	2	2		EM	EM		
Barkalow, Daniel/Katherine: 504/17, 405/18	2	2		M	Me verify unit weeks 2nd time, she had it backwards		
Barnes David/Natalie: 101/24	1	1					
Barnett Sheryl Lynn: 405/48, 405/49	2	2					
Bartek Joseph/Margaret: 201/14, 201/15, 201/16	3	3		M			
Bartel David/Elizabeth: 402/37	1	1		M			
Beeson Janet: 205/09, 205/10	2	2					
Beinfeld Ronda: 306/27, 306/28, 306/29	3	3		EM	EM, buying 204/26 from stephen king		
Bellew Brady/Melissa: 304/51	1	1		M	EM		
Bellew Rickie/Cynthia: 304/50, 202/51, 202/52	3	3		EM	deb separate ballot for 203/01 signed by James Thomas, listing James Thomas, Kathleen Thomas, Rickie Bellew, and Cynthia Bellew as joint owners, buying 506/02 from lara thise		
Bellew/Thomas Rickie/James: 203/01	1	1					
Berger Lorey: 101/09	1	1		M	EM verify unit weeks		
Berhow/Mewrin/Miller/Lois: 405/47, 502/48	2	2		M			
Berres Frederick/Barbara: 305/02, 201/03, 201/04, 505/05, 505/06	5	5		M			
Berres/Birnschein/Groth: 405/1, 405/02, 405/03, 405/04, 205/05, 405/05, 405/06, 405/07, 405/08	9	9		M			
Bertl Terry/Nancy: 106/39	1	1					
Biancardi Anne: 404/03, 404/04	2	2					
Biggs Kenneth: 304/05, 205/06	2	2			buying 501/07 & 501/08 from Canatta		
Bill, Benjamin/Joyce: 405/42, 405/43	2	2			verify unit weeks, emd		
Biskelonis Brian/Constance: 201/17,201/18, 306/18, 306/19	4	4		EM	EM		
Bissell Jeffrey/Terese: 304/26, 404/26, 405/27, 506/27, 404/28	5	5		M			
Blake Becky: 303/14, 504/15, 504/16	3	3		M	John - verify unit weeks		
Blazek Beatrice: 501/32	1	1					
Blazek Thomas/Nancy: 402/14, 101/15, 303/17, 303/18, 302/32, 405/32	6	6			dc said just came in 02/19/24? asked deb to contact 02/19/24		
Boka Michael/Stephanie: 202/33	1	1		EM	EM		
Bolon Kathryn: 305/38, 305/39	2	2			verify unit weeks		
Boroski Albert/Ann: 201/38	1	1			verify unit weeks, tt,sent us verify		
Bourland Karen/Andrew: 204/40, 205/40, 204/41, 204/42, 204/43	5	5		Prioity Mai	EM		
Bowler Victoria: 204/03,204/04,204/05,204/06	4	4					
Bowman Barbara: 401/40	1	1		M	em		
Boxell Robert/Sherri: 303/25, 303/26	2	2		M			
Brandl Donald/Diane Trustees: 502/05, 502/06, 502/07, 502/08	4	4		M			
Brankey Christopher/Karrie: 301/22	1	1			verify unit weeks		
Brankey Shane/Erin: 306/22	1	1		EM	EM verify unit weeks		
Brauer Gerald/Christine: 402/13	1	1		M			
Bringe Donald/Rita: 302/09	1	1					
Broda Marjorie: 301/33	1	1			verify unit weeks		
Broughton Robert: 206/46, 206/47	2	2		M			
Brown Barbara Sue: 402/22	1	1					

OWNER NAME(S): UNIT/WEEK(S) OWNED	WEEKS OWNED	YES	NO	M/EM	Confirmed Receipt Via/Notes	Late YES's	Late NO's
Brown Gregory: 204/36, 204/37	2	2			verify unit weeks		
Brown Nancy: 205/15	1	1		EM	EM		
Bucholtz Neal R: 205/11, 205/12	2	2			John - verify unit weeks		
Bucholtz Tom/Shirley: 206/09, 206/10, 206/11, 206/12, 206/13, 206/14	6	6			John - verify unit weeks		
Burggraaff Douglas/Kristin: 303/09, 303/10	2	2			me em Wayne		
Burggraaff Wayne/Linda: 304/07, 304/08, 301/09, 301/10, 303/11, 202/12	6	6					
Bussey John/Kathy: 201/20	1	1			verify unit weeks, em'd		
Cabral Wendy: 501/34, 506/35	2	2		M	EM verify unit weeks		
Caccamise John/Tracy: 502/30	1	1		M			
Cahill James/Laura: 505/45	1	1			verify unit weeks		
Carroll Ryan/Melissa: 101/51, 101/52	2	2		M	EM		
Cassetty Rosemary: 506/16, 202/17	2	2		M			
Caughell Anthony/Jessica: 206/36	1	1					
Cavada George: 305/32, 304/33, 304/34	3	3		M	magnolia landing in person		
Cecala Maria & Hutchison Rosana: 505/32	1	1			John - verify unit weeks		
Cerione Jay/Gruetzmacher Kristen: 401/35, 401/36	2	2					
Chamberlain Robin: 302/36, 303/37	2	2					
Chiaro Gabe & Velma: 102/44, 102/45	2	2			gabe passed away		
Chiaruttini Margaret: 202/28, 206/29	2	2					
Chiavelli Mark/Keli: 205/45, 205/46	2	2					
Christine Lawrence Trust: 203/13	1	1					
Ciciretto Elizabeth: 503/31	1	1					
Clark Joseph/Teresa: 205/22	1	1					
Clark Raymond & Dicks Cheryl: 301/51, 301/52	2	2			John verify unit weeks		
Clasen Mary/Paul: 302/41	1	1		M			
Coady Scott/Cheryl: 502/09, 502/10, 502/11, 502/12	4	4			deb, recvd but needs verify		
Coleman Jeff/Penny: 201/09, 201/10, 201/11	3	3		EM	EM		
Coleman Patricia: 201/12, 201/13	2	2		EM	EM		
Combest Art: 102/22, 102/23	2	2			John verify unit weeks		
Connor Christine: 204/29	1	1					
Cook Carolyn: 205/07, 205/08	2	2			John verify unit weeks		
Cooke Claudia: 306/35	1	1		M			
Cosenza Michael/Kathy: 306/09, 306/10	2	2					
Costa Joseph/Verga Stephanie: 106/35, 502/36	2	2		M			
Cox Deborah/Les:101/34	1	1		EM	EM		
Craine/Murphy/Twitchell Martin/Caroline/Kathryn: 404/13	1	1					
Cravens Michael/Kristin: 403/47	1	1		EM	EM		
Crawford Michael/Marlene: 403/17, 403/18	2	2			John - verify unit weeks		
Creps Joy: 405/30, 405/31	2	2		EM	EM		
Cripe James/Nancy: 505/01, 505/02, 505/03, 506/04, 506/05, 506/06, 504/51, 504/52	8	8		EM	EM		
Crockett Charles/Penelope: 403/44, 403/45	2	2		M			
Crook Russell/Sheri: 403/29, 301/38	2	2					
Cruthoff Robert T: 406/17	1	1			verify unit weeks		
Curley/Lievois John/Elise: 503/08	1	1		M			
Curtis Marlene: 302/33, 302/34	2	2					
Daugherty Terry/Polly: 302/38, 302/39, 106/40	3	3			I sent verify em 02/16/24		
Davidson Stephen/Patricia: 102/36	1	1			deb - verify unit weeks em said she owns 102/35, and sold 102/36		

OWNER NAME(S): UNIT/WEEK(S) OWNED	WEEKS OWNED	YES	NO	M/EM	Confirmed Receipt Via/Notes	Late YES's	Late NO's
Davies William/Mary: 102/46, 302/47, 505/48, 505/49, 505/50	5	5			deb		
DellaMaddalena Nancy: 302/11	1	1		EM	EM Me em for verification		
Delzell Gary/Amy: 402/08, 402/09, 402/10, 402/11, 305/12, 305/13, 305/14, 305/15, 403/16, 405/37, 405/39	11	11		EM	EM		
DeRoma James/Dianne: 303/12	1	1			John - verify unit weeks		
Diebold Lynn: 301/13	1	1					
Dimartino Joseph/Esther: 301/37	1	1			verify unit weeks		
DiMasi Nicolas/Wilma: 101/44, 101/45, 101/46	3	3			john verify unit weeks, tt wilma, recvd verify		
Dobberstein Julie & Douglas: 506/09, 504/10, 506/10	3	3		EM	EM		
Dolman Eric/Anita: 502/51, 502/52	2	2		M			
Donald Greg/Cheryle: 305/18	1	1		M	verify unit weeks		
Douglas Marianne: 401/16, 401/17	2	2		EM	EM		
Elger Jerry/Monica: 301/36	1	1		M			
Elie Michelle: 203/34	1	1			verify unit weeks		
Elliott Greg: 402/36	1	1					
Escude (Phares) Susan: 501/33	1	1		M	verify unit weeks		
Estervill Miguel/Laura: 303/33	1	1		M			
Ewald David/Karen: 302/10, 304/11	2	2		EM	EM verify unit weeks		
Ewald Susan: 304/12, 304/13, 304/14, 404/42, 404/43	5	5		EM	EM verify unit weeks		
Fehseke Marguerite: 402/48, 402/49, 402/50	3	3		M	EM		
Ferrigno William/Regina: 401/32, 401/33	2	2					
Fil/Mathew&Finn/Kellia: 402/23	1	1					
Filz Susan/John: 304/48, 303/49, 303/50	3	3			emd		
Flowers Hubert/Penny: 402/01, 402/02, 204/51	3	3		EM	EM verify unit weeks		
Fox Robert: 304/1, 304/02, 304/03, 304/04	4	4		M	deb tt, did mail in yes vote		
Frank Sandra: 102/20, 204/21, 502/49	3	3					
Franks, Tom/Shannon: 302/42, 302/43	2	2					
Friedman Brian/Burt/Hope: 101/17, 302/27, 301/28, 301/29	4	4		EM	EM		
Friedman Brian: 101/18, 505/19, 301/20, 102/21, 401/26, 501/26, 501/27, 501/28	8	8		EM	EM		
Gabler Harvey/Mary: 303/51, 303/52	2	2			John verify unit weeks son scott		
Garman Lynn: 304/15, 304/16	2	2		M			
Garrison James/Tina: 406/01, 504/01, 406/02, 504/03	4	4			deb		
Geerholt Joseph/Kristy: 201/23, 301/23	2	2		EM	EM, em'd us verification		
Geriak John/Angelina: 404/27	1	1			John verify unit weeks em'd 02/15/24		
Getz Stacy/Jason: 506/36	1	1			John verify unit weeks		
Gilbert Sandra: 503/21, 505/21, 503/22, 205/26, 205/27, 505/46, 505/47	7	7			Me em'd to verify unit weeks, 22/505 s/b 21/505, all others are ok		
Gilbraith Julie: 101/16	1	1					
Giles David, Herrli Gayle, 202/07, 202/08, 503/09, 503/10, 503/11	5	5			asked deb to contact, em'd yes but need ballot		
Glenn Gary/Deidre: 202/20	1	1			John verify unit weeks		
Gmurowski Arthur: 505/51, 505/52	2	2		M			
Gmurowski Romulald/Jolanta: 403/51, 403/52	2	2		M			
Goldstein Darren/Finneran Katie: 503/28	1	1		EM	EM		
Goldstein Ellen/Darren/Johnathon: 302/28	1	1		M			
Goldstein Jonathan: 303/28	1	1		M			
Gonzalez Claudio: 101/31	1	1		M			
Gonzalez-Crato Jeannette: 205/33	1	1					
Gooch Laura/Brett: 302/31	1	1		M			
Goostrey Daniel/Peggy Lee: 305/24, 305/25, 404/24, 404/25	4	4		EM	EM		

OWNER NAME(S): UNIT/WEEK(S) OWNED	WEEKS OWNED	YES	NO	M/EM	Confirmed Receipt Via/Notes	Late YES's	Late NO's
Gordon Brian/Elizabeth: 205/42	1	1			verify unit weeks		
Goth Leanne & Michael: 506/47, 506/48	2	2		EM	EM		
Graef/Kolaskinski Paul/Larry: 206/28	1	1					
Green Joan: 301/17	1	1					
Greene Bonita/McCartney Bryan: 502/15	1	1		EM	EM		
Greenwood Wayne/Patricia: 504/02, 202/03, 501/04, 506/52	4	4		EM	EM		
Guy Glenn/Jill: 405/17	1	1			John - verify unit weeks lm 02/15/24		
Hall David/Terry: 401/43	1	1		M			
Harris Charles/Barach Barbara: 205/35	1	1		M	John - verify unit weeks		
Harris Kenneth/Nancy: 406/15, 406/16	2	2		EM	EM		
Hartman Karen D.: 402/12, 403/13, 403/14	3	3		EM	Also mailed ballot, but that one didn't have unit #s on it		
Hartzell Neil: 101/32, 102/32, 202/32, 204/32, 306/32, 404/32	6	6		M	deb-julie passed away, one ballot for all 6 units signed by Neil, but Neil's name is not on 404/32, now recvd deed changing 404/32 to neil hartzell		
Hass James/Gina: 506/13, 506/14	2	2			John verify unit weeks		
Helman James & Stacy: 302/12, 303/41, 401/42	3	3			John - verify unit weeks		
Herrmann Richard/Jennifer: 102/30	1	1			John - verify unit weeks		
Herzer Gene/Marilyn: 403/48, 302/49	2	2			verify unit weeks		
Hicks David/Lorely: 302/35	1	1					
Hicks Gary/Linda: 402/24, 402/25, 402/26, 402/27	4	4			deb gary passed away		
Hicks Monica (Barnes): 106/32	1	1			verify unit weeks		
Higgins Deborah: 506/45	1	1			verify unit weeks		
Hirsch Wallace/Kate:405/09, 405/10, 501/11, 501/12	4	4		M	EM verify unit weeks		
Hirschman James: 204/15, 502/16	2	2					
Hitzeroth Wesley/Betty: 205/16	1	1			John - verify unit weeks		
Hughes Keith E: 406/22, 202/36, 202/37	3	3					
Humphries Steven/Deirdre: 506/18	1	1		M			
Hunter Scott/Regina: 102/13, 202/14, 202/15, 202/49, 202/50	5	5			asked deb to contact, J verify unit weeks		
Imsande Barry/Debra/Lauren: 203/03, 203/04	2	2		M			
Jaster Gregory (Cherie): 203/50, 402/51, 402/52	3	3		EM	EM, em'd us verification		
Jaster Jeff: 305/46, 305/47, 305/48, 305/49, 305/50, 405/50, 102/51, 305/51, 305/52	9	9			Deb lm 02/19/24, sent text, asked him to vote		
Jawroski Katerina: 302/21	1	1					
Johnson Jeff/Susan: 306/11, 306/12	2	2			John - verify unit weeks		
Jolliffe Doug / Patricia: 406/45	1	1			not buying from Dec		
Jostes Dennis/Linda: 304/06	1	1		EM	EM, I em'd 02/16/24 to verify unit weeks John was able to open ballot on his iphone, Linda will mail original 02/10/24 em her when recvd		
Joyce Edwin & Kristi: 306/24, 306/25	2	2					
Julian Janet: 306/41, 306/42, 403/42, 306/43	4	4		EM	EM		
Kaminsky Barbara: 301/46, 301/47	2	2					
Kapla Richard/Sarah: 504/45, 402/46, 402/47	3	3		M			
Kellogg Margaret: 402/07	1	1		M	02/21/24 they em'd to see if ballot recvd by usps. Replied and asked them to email ballot w/ u/w		
Kendall Halle: 503/19	1	1					
Kendall Linda: 101/19, 202/19	2	2					
Keskey/Wold William/KennyLow: 205/20, 205/21	2	2			verify unit weeks		
Kindred John & George Faith: 301/34	1	1		EM	EM		
King Nancy: 402/03, 402/04, 402/05, 402/06, 402/28	5	5			verify unit weeks		
Kirby Richard/Mary: 306/13, 306/14	2	2		M			
Kirby Timothy/Cindi: 502/13, 502/14	2	2		M	John, listed 506/13 and 506/14		
Kittle Terry/Cindy: 204/16, 204/17, 406/18	3	3		M	sellin all three to Raysin?		

OWNER NAME(S): UNIT/WEEK(S) OWNED	WEEKS OWNED	YES	NO	M/EM	Confirmed Receipt Via/Notes	Late YES's	Late NO's
Klein James/ Mary: 501/03, 101/04, 306/52	3	3	VERIFIED YES VOTES				
Kleinlaut Paul/Martha: 202/45, 202/46	2	2			verified names		
Kline Todd: 404/46, 404/47	2	2					
Kostka Dennis & Deborah: 406/12, 406/13, 406/14	3	3		M			
Kramer Jay/Aisar: 501/01, 501/02	2	2		EM	EM		
Kratt Rudy/Ursel: 305/37	1	1		M	needs signature, sending in mail		
Kuchinsky Lorraine: 503/44	1	1		M	John, only listed 44		
Kwechin/Federico Deborah/Marjorie: 301/32	1	1		M	John verify unit weeks wrong em 02/15/24		
Lackey Brian: 502/02, 305/03, 305/04, 504/05, 504/06, 304/43	6	6		EM	EM verify unit weeks		
Lackey Gary/Elizabeth: 403/01, 403/02, 403/03, 403/04, 201/05, 201/06	6	6		EM	EM		
Ladd Rick/Lissa: 101/10, 202/42	2	2		EM	EM		
Laffert Roland/Patricia: 203/16, 305/17	2	2		M	EM		
Lambremont Janice: 101/33, 102/34, 102/35	3	3		M			
Lamont Michelle: 406/04, 406/05	2	2			per em mailing ballot 02/14/24		
Lamson/Lizotte, Judith/Melissa: 206/19, 305/20	2	2		M	EM		
Larson Charles (Wendy Tomonovich): 202/48	1	1		EM	EM verify unit weeks		
LaSalvia III Anthony: 306/15, 305/16, 306/16	3	3		M			
LeMaire Louis/Joan: 402/29, 402/33	2	2			verify unit weeks		
Lessa Dominick/Blanton Susan: 301/21, 505/36	2	2			verify unit weeks		
Lessa Vincent/Miriam: 502/33, 101/41	2	2			verify unit weeks		
Lievois Joseph: 401/05, 504/07	2	2			John, voted on old BOD ballot, needs to send correct callot em'd		
Lievois Martin: 401/03, 401/04, 504/08	3	3		M			
Lievois Paul: 305/07, 401/08	2	2					
Lievois Thomas M: 401/06, 401/07	2	2					
Lincoln Keith/Susan/Dan/Sam: 403/23, 403/24, 304/25	3	3					
Lindgren Richard/Maureen: 205/44, 302/45, 204/46, 503/47	4	4			deb lmovm		
Lindgren/Marissa: 204/45	1	1					
Liszak-May Jacquelyn R: 101/47	1	1		EM	EM		
Lofing Traci: 101/28	1	1		M			
Long Elizabeth: 505/09	1	1		EM	EM		
Long Thomas: 505/10	1	1		M			
Long Tommy, Jr: 204/09	1	1					
Ludwig Ralph: 306/03, 306/04	2	2		EM	EM		
Ludwigson William/Karen: 302/13	1	1		M			
Luedke Mark/Michelle: 505/37, 505/38	2	2					
Luther William: 406/48	1	1			verify unit weeks, sent us em		
Lynch/Wendy: 302/23, 506/23	2	2					
Madden John/Tamie: 206/21, 102/48, 403/49	3	3		EM, M	EM		
Magnacca Allan: 302/46	1	1		EM	EM verify unit weeks		
Manos Jr Sam: 102/07, 203/25, 101/36, 101/37	4	4					
Manos Sam: 503/26, 503/27	2	2					
Marino Deborah: 403/25, 504/25, 506/26, 504/36	4	4			deb lmovm		
Marino Pearl: 506/24, 506/25	2	2					
Martinac James/Hill Lisa: 106/48, 106/49, 106/50	3	3			verify unit weeks		
Mathie Shannon & Sohpia: 101/22	1	1					
Maxwell Charles/Melissa: 404/01, 404/02, 502/03, 502/04, 403/50, 404/51, 404/52	7	7		EM	EM		
Maxwell Evan: 401/01, 301/49, 306/50, 401/50, 401/51, 401/52	6	6		EM	EM		
McAvoy James/Natalie: 506/49, 302/50	2	1		EM	EM bought 506/49 from Motto 03/04/24, adding one more YES vote. Motto did not vote.		

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McCann Russell/Susan: 303/36	1	1		M	verify unit weeks		
McCarty William/Viola: 206/48, 206/49	2	2		M			
McClain Michael/Daniel: 101/49, 202/25	2	2		M			
McDonald Bonnie/Cruthoff Todd: 503/17	1	1					
McFarren Randy: 102/08, 401/09, 401/10	3	3					
McGarvey Deborah & John: 403/28	1	1					
McGovney Scott/Cynthia:406/19, 401/20, 406/20	3	3					
McGuire Ramona: 406/03, 505/04	2	2		M			
McKeon Susan Marie: 205/31, 506/32	2	2					
McNeely Bruce/Donna: 401/48	1	1		EM	EM verify unit weeks		
Meissner, Raymond: 504/38	1	1		M			
Melson James/Judy: 201/26, 201/27	2	2					
Metz James/Linda: 401/44, 401/45, 501/46, 501/47	4	4			verify unit weeks		
Meyer Gregory/Gina: 206/01, 206/02, 202/21, 406/50, 206/51, 206/52	6	6			John verify unit weeks		
Meyer Joseph: 401/02	1	1					
Michon Katherine/Bruce 404/21	1	1		M			
Mielke/Southwick Wayne/Lynn: 505/22	1	1					
Miller Chatlotte: 302/18, 301/19	2	2		M			
Miller, Thomas: 102/18, 302/19	2	2					
Minniti Anthony: 401/30	1	1					
Mirabitur Tim/Rosemary: 505/40, 505/41	2	2			John verify unit weeks		
Moffa Robert/Sharon: 503/13, 504/13, 503/14, 205/48, 205/49, 406/49, 205/50 voted at meeting	7	7			Deb working with, waiting on hasn't paid		
Morgano Vito/Michelle: 402/17, 505/17, 204/18, 402/18, 505/18	5	5			John verify unit weeks		
Muinde Charles/Stacy: 504/09	1	1		M			
Mullucey Raging: 106/28	1	1			verify unit weeks		
Myers Michael/LeAnn: 203/26, 406/26	2	2					
Noack Lori 303/27	1	1		EM	EM		
Nocek Gregory/Cornelia: 403/36, 403/37	2	2			John verify unit weeks		
Norek Thomas: 203/48	1	1		M	verify unit weels		
North James/RuthAnn: 102/01, 102/02, 102/52	3	3		M			
Norton William 203/21	1	1					
O'Brien Sean: 403/27	1	1		M			
O'Halloran Roger/Judith: 203/24, 205/24, 102/29, 306/36	4	4			John verify unit weeks		
Okopny Stephen/Andrea: 203/51, 203/52	2	2			john has, correct		
Ouellette Francis/Lynne: 401/39	1	1		EM	EM verify unit weeks		
Page Robert/Mychalanne/Dillan: 204/49, 204/50	2	2					
Papes Laurie: 305/31, 306/31	2	2					
Paredes Manuel/Judith: 206/33	1	1					
Parker James/Ellen: 405/25	1	1			verify unit weeks+F535		
Pearce Ted & June: 203/18, 203/19	2	2			John verify unit weeks		
Pearce Tomas & Victoria: 306/23	1	1		M	EM		
Pearsall/Golitzen Mary Louise/Kathleen: 403/05, 403/06, 403/07, 403/08	4	4		M			
Perkins, Thomas: 505/08, 202/09, 202/10	3	3		M, M	EM		
Pers Stephanie/Helton Brenda: 205/03, 302/17 Helton's vote	2	2		EM	EM		
Pers Stephanie/Helton Brenda: 206/17, 206/18 Pers' vote	2	2		EM	EM		
Person Mark/Dawn: 106/24, 303/24, 106/25, 501/25, 106/33	5	5		EM	EM		
Peter Ramona Christine: 204/01, 204/02	2	2			verify unit weeks		

OWNER NAME(S): UNIT/WEEK(S) OWNED	WEEKS OWNED	YES	NO	M/EM	Confirmed Receipt Via/Notes	Late YES's	Late NO's
Peters Brandon: 403/32	1	1					
Peters Brent/Sheri: 504/32	1	1		EM	EM		
Peters Matthew: 502/32	1	1					
Peterson Keith/Sharon: 406/40	1	1		EM	EM		
Pfeffer Carla & Kelly: 201/21, 201/22	2	2		EM	EM		
Phillips Helga: 504/18, 504/19, 503/20	3	3		M	EM bounced back		
Phillips, Gerald/Roth, Shirley: 201/36	1	1					
Philo Bradley R: 101/14	1	1					
Philo Deborah/Lasswell Kyle: 301/15, 301/41	2	2		M			
Philo Gary: 404/12, 401/13, 301/14	3	3		M			
Philo James/Cheryl-Lyn: 101/13, 401/14	2	2					
Philo Susan C: 404/11	1	1		M			
Piercy Garland/Nancy: 206/23, 505/24	2	2					
Pinkul Joe/Shirley: 502/21, 502/22	2	2			verify unit weeks		
Pizzonia Patrick: 101/02, 206/20, 106/36, 101/50	4	4			John verify unit weeks		
Planer Frederick/Kathleen: 506/17	1	1		M	John, white out and diff color pen, contact to confirm		
Poirier Susan: 404/15, 404/16	2	2		M			
Porter Jeff: 102/19	1	1		M			
Porter Michael: 102/24, 102/25, 302/25, 102/26	4	4		EM	EM		
Proctor Robert & Janet: 304/09, 304/10	2	2		EM	EM		
Quinn William/Jill: 503/43	1	1					
Randazzo, Cosmo/Amy(Amelia): 404/07, 404/08	2	2			verify unit weeks em'd 02/15/24,will send us em		
Randazzo,Maria/Frank: 404/09, 404/10	2	2		EM	EM		
Raysin Matthew/Deanna: 106/16	1	1			em, buying 3 from kittle		
Reichert Gary/Bonnie: 301/48, verified vote at meeting	1	1			verify unit weeks, no em no ph#		
Reid Cynthia: 306/33, 306/34	2	2					
Rice James/Meta: 503/12	1	1		M			
Ring Craig/Jillian: 204/44	1	1					
Rivera/Torres Jennifer: 202/23, 405/23	2	2					
Roberts Patrick/Katherine: 301/26, 301/27	2	2		M			
Robinson Aeren/Coral: 102/28, 303/29	2	2		EM	EM		
Rogers Karen: 202/29, 202/30	2	2					
Root Lori/James 304/24	1	1			verify unit weeks		
Rosa Frank: 404/05, 404/06	2	2		EM	EM		
Rosenfeld Stephen/Rae: 506/28, 506/29	2	2			John verify unit weeks		
Ruvo/Rosa Richard/Mary Anne/Frank: 305/05, 305/06	2	2		EM	EM		
Saul Roger/Mary: 505/39, 502/40	2	2			verify unit weeks		
Sawyer Edward/ Rami: 101/5, 101/06, 101/07, 101/08, 403/09, 403/10, 403/11, 403/12, 404/23, 201/24	10	10		M			
Scanlon George/Patricia: 501/17, 501/18	2	2		M			
Schlesselman Loretta: 301/39	1	1			verify unit week, barbara ware tte		
Schlotterbeck Katherine/Jonas: 101/29	1	1		M			
Schlotterbeck Paul & Rebecca: 101/30	1	1					
Schomberg Chad/Gwen 306/17	1	1			John verify unit weeks em'd 02/15/24		
Schreiber David/Kate: 106/01, 106/51, 306/51, 106/52	4	4		EM	EM		
Schwede Jeffrey/Lauren: 504/44, 503/45, 503/50	3	3			verify unit weeks		
Schwede Jeffrey: 502/19	1	1			buying 501/05 and 501/06 from Donald Ira		
Scott Jane: 506/41	1	1		EM	EM		
Sesto Denise: 503/46, 205/47, 101/48	3	3		M			
Sharp Joan D: 506/50, 506/51	2	2					

OWNER NAME(S): UNIT/WEEK(S) OWNED	WEEKS OWNED	YES	NO	M/EM	Confirmed Receipt Via/Notes	Late YES's	Late NO's
Shavlik Guy/Verna: 201/44	1	1		EM	EM verify unit weeks		
Sheaffer Deborah: 506/11, 506/12	2	2		EM	EM		
Sherman Bob & Carol:206/16	1	1		M			
Sherrow Galley Sharon Trustee: 301/11, 301/12, 303/13, 302/14, 302/15, 302/16	6	6		M	EM		
Shields Kathleen & Makenzie Poole Karim: 305/23, 405/40, 504/41	3	3					
Shull Linda: 106/05, 106/06	2	2			John verify unit weeks no good em		
Sieferd Dennis: 203/20	1	1			John verify unit weeks		
Smith Becky J: 304/20, 304/21, 502/43 voted at meeting	3	3					
Smith Carla: 503/18	1	1		EM	EM		
Smith Douglas: 502/44	1	1					
Smith Michael/Bonnie: 305/08, 305/09, 305/10, 101/11, 401/11, 401/12	6	6		EM	EM		
Smith Richard/Christine: 401/18, 401/19	2	2					
Snip, Christy: 505/29	1	1					
Snover John/Yolanda: 505/43, 505/44	2	2					
Sotomayor Javier & Monica: 504/33	1	1					
St. Pierre James/Barbara: 106/11, 106/12, 102/39	3	3		EM	EM verify unit weeks		
St. Pierre Jeffrey/Maura: 406/39	1	1			John verify unit weeks em'd 02/15/24		
Starkey Ivan/Tanya 404/36	1	1		EM	EM verify unit weeks		
Stewart Shirley: 406/24, 101/35	2	2		M	need to verify unit weeks		
Stimac Brenda: 201/40	1	1			John verify unit weeks em'd 02/15/24		
Stimac Stacie: 203/40	1	1			verify unit weeks		
Stueve Robert/Cynthia: 302/24, 501/24	2	2					
Sutton D: 503/48	1	1					
Sweatt Penelope: 106/20, 106/21, 506/20, 506/21	4	4		EM	EM		
Tagliente Albert/Patricia: 404/29	1	1			John verify unit weeks em'd 02/15/24		
Talcott Eugene/Vickie: 101/39, 101/40	2	2					
Terrasi Loretta: 503/23, 504/24	2	2		EM	EM needs verification, I em'd 02/16/24 check for completeness, mark sent email asking if ballot was ok		
Thise Nancy: 506/07, 506/08	2	2		EM & M	EM John verify unit weeks		
Thomas/Flowers James/Kathleen, Penny/Hubert: 204/52	1	1		EM	EM deb verify unit weeks		
Thompson Jane A. Revocable Trust: 403/15	1	1		M	Jane voted for 403/15 and 406/07		
Thompson William & Jane: 406/06, 406/07	2	2		M	William voted for 406/06		
Thursam Gary/Judy: 106/09, 106/10, 305/11, 306/39	4	4		M	EM		
Tippett Kelly/Janet: 402/19, 402/20	2	2		EM	EM		
Tomc John/Dorothy: 205/04	1	1			verify unit weeks		
Trumbull Melissa: 402/42, 402/43, 402/44, 402/45	4	4		M			
Tucker Mark/Bettina: 201/32	1	1					
Turner, Johncie: 304/52	1	1			I em'd 02/20/24 to verify unit weeks		
Vanbuskirk Todd/Angela: 401/47	1	1					
Vanderploeg Charles/Connie: 303/07, 303/08	2	2					
Vena Jody: 203/23	1	1		M			
Veni Gaetano/Cheryl: 106/17, 205/17, 106/18, 202/18	4	4		EM	EM		
Veni Joseph: 502/18	1	1		M			
Verrengia Nicholas/Theresa: 501/36	1	1		M			
Von Hoff Burt/Kathleen: 206/37	1	1		M			
Wade Nicole Louise: 405/38	1	1					
Wadle Sylvia/Larry: 305/26, 305/27	2	2		EM	EM verify unit weeks		

OWNER NAME(S): UNIT/WEEK(S) OWNED	WEEKS OWNED	YES	NO	M/EM	Confirmed Receipt Via/Notes	Late YES's	Late NO's
Weber Carol: 201/30, 201/31	2	2		M			
Wegman Glenn/Jane: 505/30, 505/31	2	2					
Wegscheider Fred/Patricia: 106/03, 106/04	2	2					
Weibel Otto: 102/09, 102/10, 102/11, 102/12	4	4			deb just recvd ballot		
Wells Dakotah A: 304/32	1	1		EM	EM		
Wells Danny, Tracy & Catherine: 401/37, 401/38	2	2		M	verify unit/weeks no ph #, no em, ballot returned unable to forward		
Welter Julie: 303/47	1	1					
Wenzel, Brian & JoAnn: 503/01, 503/02, 503/03, 503/04, 504/04, 503/05, 503/06, 503/07	8	8		EM	EM		
Werner, James/Sandra: 404/49, 404/50	2	2		M	EM, also recv'd ballot via US mail		
Whelpley Thomas: 506/39	1	1					
Whipple Lance: 501/38	1	1					
White/Colleen: 403/19, 404/19, 403/33, 405/33	4	4		M			
Whitney Sarah: 501/13	1	1					
Wiedeke Linda: 405/11, 405/12	2	2		M	em		
Wiegel Corey/Jolene: 302/51, 302/52	2	2			resent em 030224 for verification of 2 weeks buying 202/05 & 202/06 fro Orth		
Wilde Robert & Tammera: 504/50, 501/51, 501/52	3	3		EM	EM		
Wilson Dale/Bette Jane: 202/01, 202/02, 206/03, 206/04, 206/05, 206/06, 206/07, 206/08	8	8			Daughter Nancy Papas Trustee		
Wilson Rodney/Debra: 301/01, 301/02, 301/03, 301/04, 301/05, 301/06, 301/07, 505/07, 301/08	9	9		M			
Wollett James/Phyllis: 306/05, 306/06, 306/07, 306/08	4	4		EM	EM		
Yasko Toni: 203/30, 203/31	2	2					
Young Wayne/Barbara: 303/39	1	1		M			
Zurawski Edward/Dianne: 505/16	1	1		EM	EM		
Zurweller Phillip/Gina: 106/19	1	1					
Beck Jill: 305/21, 202/22, 302/22	3		3		selling all three to chuck deborah higdon		
Bissell Thomas/Amy: 204/28, 401/28, 405/28, 505/28	4		4	EM	EM verify unit weeks		
Boldak Nicole (Rosa): 304/38	1		1	M			
Bramwell Virginia: 502/17	1		1	EM	EM verify unit weeks, giving 502/17 to jennifer barkalow guy		
Buehner Frank: 506/40	1		1				
Burnett Sandra Lee: 204/48, 302/48	2		2	M	John verify unit weeks		
Cahalan Thomas/VanAsten Lee: 506/19	1		1				
Casola, Marion/James: 501/39, 501/40, 501/41, 206/42	4		4		verify unit weeks		
Chandler John/Mary Ann: 203/45	1		1		verify unit weeks was ok, john to return to me		
Childs Susan/Simson Kim: 402/21	1		1				
Cole Carole:303/01, 303/02	2		2				
Cole Lawrence/Donna: 303/35	1		1				
Dasaro Angela: 303/31	1		1				
Dasaro Frank: 305/30	1		1		verify unit weeks		
Dasaro Joseph: 301/31	1		1		John - verify unit weeks		
Desmond James/Donna: 301/18, 305/36	2		2				
Donelan Norma: 502/29, 501/30, 403/34, 403/35 voted at meeting	4		4		deb lmovm daughter kathy asked them to vote		
Fishback Cheryl: 205/38	1		1	M			
Fisher Edmund/Diane: 501/14, 501/15, 501/16, 404/20	4		4		deb lmovm asked them to vote		
Goodenough Nicolas/Lynn: 402/39, 402/40, 502/41	3		3				
Guerin Patrice/Muriel Couvet: 405/44, 405/45, 405/46	3		3				
Hanrahan Sr Byron/Donna: 101/23	1		1	M			
Hassett,Jr Daniel/Maryanne: 402/30, 502/31	2		2	M			
Heinisch Danny & Kelly: 206/43	1		1				

OWNER NAME(S): UNIT/WEEK(S) OWNED	WEEKS OWNED	YES	NO	M/EM	Confirmed Receipt Via/Notes	Late YES's	Late NO's
Hendrickson John: 405/22	1		1		verify unit weeks		
Hill Michael: 303/20, 503/40	2		2	M			
Hinkle Gary: 501/19, 501/20	2		2		verify unit weeks		
Johnson Herbert/Lois: 303/38	1		1				
Kaszniak Raymond/Debra: 303/22, 304/23	2		2				
Kaszniak Shaun /Amanda: 502/23	1		1		John verify unit weeks		
Kay Victoria/DeFreese Isabelle: 505/23	1		1	EM	EM		
King Steven/Suzanne: 204/26, 102/27, 203/27, 204/27	4		4	EM	EM, deb verify unit weeks, sent em, selling 204/26 to Beinfeld ronda		
Koss Michael/Linda: 406/32, 406/33	2		2	M			
Kroening Michael & Nancy: 202/47	1		1	M	EM		
Krolak Debora/Clas Wanda: 101/20, 101/21, 405/36	3		3				
Krolak William & Nancy: 203/41, 305/41, 305/42	3		3		John has ballot, I sent email 02/16/24		
LaRose David/Candace: 202/34, 202/35	2		2	M			
LeBoeuf Michael/Janet: 504/22	1		1	M			
Lenfert Robert: 502/38, 502/39	2		2		verify unit weeks		
Leonard Dave/Mary Jo: 102/33, 402/34	2		2				
Liguori Thomas/Katherine: 403/38, 403/39	2		2	M			
Macdonald Margaret: 501/35	1		1				
Mace Marlene: 106/37	1		1		Em'd 02/18/24 to verify unit weeks, also wants to sell/deed back, is listed with RAL "offer"		
Mahoney James/Nella: 503/30	1		1	EM	EM		
Martin Virginia: 206/35	1		1	M			
McMaster Kathleen: 204/35	1		1		verify unit weeks		
Menke Family Trust: 203/09, 203/10	2		2	EM	EM		
Michaelson Eric/Barbara: 504/39	1		1				
Middleton, Patricia: 402/32	1		1		verify unit weeks		
Mildner Laura: 406/38	1		1				
Mitchell Gregory/Amy: 201/45	1		1	M			
Murray Damon: 404/34, 405/34	2		2	EM	EM		
Neama Ralph/Antoinette: 405/29	1		1	M			
Nicol Stephen/Thurmer Susan: 302/44	1		1		verify unit weeks		
Nuss Richard: 501/21, 501/22, 301/35	3		3	M			
Parham Milton/Diane: 505/27	1		1				
Phillips Karen/Kern Melvin: 302/37	1		1				
Preston Vicki: 206/22, 401/22	2		2	M	recvd email she hasn't recvd her packet, em'd one to her on 02/08/24		
Pszeniczny Carol: 203/17	1		1		didn't mark yes or no, verify unit weeks		
Rathjen Lars/Janice: 106/29	1		1		questions for bod no replies		
Richardson Shone/Renee: 205/30, 206/30	2		2	EM	EM verify unit weeks		
Rindfuss Joan: 504/29	1		1	M	verify unit weeks, sending em		
Santos Amanda/James: 304/17, 304/18	2		2	M			
Serratore Anthony: 406/37	1		1		John verify unit weeks		
Sharo Brad/Greg: 301/30	1		1	M			
Sharo Michael/Carole: 401/24, 401/25	2		2		John verify unit weeks I em'd 02/16/24		
Skehan David/Jo Anne: 504/26, 504/27, 504/28	3		3	M			
Smith Richard/Rosemary: 404/22	1		1	M			
Snyder Bruce/Lynn: 304/49	1		1		verify unit weeks		
Sommerer Carla: 503/32, 503/33, 503/34	3		3		verify unit weeks		
Stephenson Pamela: 303/34, 503/35	2		2		verify unit weeks		
Stockbridge David/Denise: 303/43, 202/44	2		2		need to verify unit weeks, deb tt dave, recvd verify		
Stone Valerie/Rivett Michael: 402/38	1		1	M			

VERIFIED NO VOTES

OWNER NAME(S): UNIT/WEEK(S) OWNED	WEEKS OWNED	YES	NO	M/EM	Confirmed Receipt Via/Notes	Late YES's	Late NO's
Thise Brian/Lara: 506/02, 506/03, 502/25, 502/26	4		4	M	John - Thise had sent ballot registered mail but green card was still attached to envelope, let them know ballot received lm & mailed green card back, selling 506/02 to Rick cindy bellew		
Thomas John/Suellen: 502/01, 506/01, 106/02	3		3				
Thurmer Susan/Nicol Stephen: 404/45	1		1	M	verify unit weeks		
Tippett Jeffrey/Janet: 302/20	1		1		verify unit weeks		
Toews, Tracy: 205/43, 406/42	2		2				
Trewyn, Nancy M: 404/38	1		1	M			
Vadala Gayle/Miller Karen/Mahoney Nella: 401/21	1		1	EM	EM		
Vanderbilt Barbara/Curewitz Richard: 205/13, 205/14	2		2		verify unit weeks		
Walden Lucretia A: 504/37	1		1				
Walter Carol: 501/48	1		1	EM	EM		
Ware Sarah: 303/42	1		1				
Weber James/Janet: 206/50	1		1		verify unit weeks		
Weinheimer Michael/Amanda: 306/44, 306/45, 306/46	3		3				
White Nancy: 303/48	1		1				
Wray Stanley: 305/01	1		1	1036	verify unit/weeks		
Beach Michael/Rebecca: 102/37	1	VERIFIED YES VOTES		M			
Buschman Kathy/Matthew/William: 304/36	1				deb - verify unit weeks lm 02/15, deb tt son, sent em		
Chambers Joseph/Carole: 203/11, 203/12, 202/13	3				parents passed away, need deed from cheri chambers		
Dean Joann: 501/29	1				verify unit weeks, deb tt Julie, both parents passed away, no paperwork, will not be abe to		
Gatt George/Patricia: 402/31	1				John verify unit weeks deb em'd, ph # out of service		
Giacherio Joseph/Barbara: 201/19	1				deb verify unit weeks, lmovm, no em		
Giegerich Carmen: 203/46, 504/47	2				verify unit weeks, deb tt carmen, sent her em		
Hicks Renee: 301/44, 301/45, 401/46	3				recvd 03/04/24, no ph #		
Kirchner/Iversen: 205/02	1			M	also listed wk 43? Per john purchased 501/43 from grafton req quit claim deed		
Laino/Hartzell: 203/32, 206/32	2		verified after deadline	M	verify unit weeks emd	2	
Malesky Kenneth/Dawn: 504/30, 204/31, 504/31	3				verify unit weeks		
Maynard David/Sharon: 205/18	1				verify unit weeks, phone just rang, no em		
McCormick Kyle/Linda:306/01,306/02,503/51,503/52	4				John verify unit weeks, deb lm 02/15/24, will send us em		
Motto Frank: 506/49	0				03/04/24 sold to McAvoy		
Patrick/Rhodes, Elaine/Theresa: 206/38, 206/40, 206/41	3			M	verify unit weeks, lmovm, no em		
Richardson Dennis/Coleen: 106/31	1			M	verify unit weeks, no em, deb lmovm		
Socha Patricia: 203/05, 203/06, 203/07, 203/08, 204/13, 204/14	6				asked deb to contact 02/19/24, tt scott, sent him em	6	
Thursam Ed/Mary Kae: 204/10, 204/11	2			36	EM I em'd 02/20/24 to verify unit weeks, en, lmovm		
Booth Glenn/Carol: 306/20	1	UNVERIFIED NO VOTES			deb - verify unit weeks - email not deliverable to glenn.booth@us.knoecranes.com will call		
Collins Paul/Vickie: 206/34	1			M	John verify unit weeks, deb tt paul, sent him em		
Klatt Constance: 203/47	1			M	verify unit weeks, sent ems		
Nelson Dolores: 102/47	1				verify unit weeks, emd, lmovm		
Ragonese Ann: 102/17	1				verify unit weeks, ann passed away, Marie Collinson has no deed, cannot vote, directed he		
Reisner Daniel/Linda: 404/44	1				recvd 03/04/24, no ph#		1
Schwaeble Dale/Georgia: 202/16	1			M	verify unit weeks, no em, mailed her new ballot 02/21/24, wants to sell		
Vaughn John: 101/01, 205/51, 405/51, 405/52	4			11	verify unit weeks, sent em		
Ahlin Shirley/Morgan: 204/23, 303/23	2						
Arango, Mario: 202/26, 202/27	2						
Arneson Lukas: 402/15, 402/16	2						
Barber Dennis/Holly: 201/29	1						
Barber Dennis/Lindsay: 203/29, 405/24	2						
Berry Stephen/Sharon: 502/34, 502/35	2						

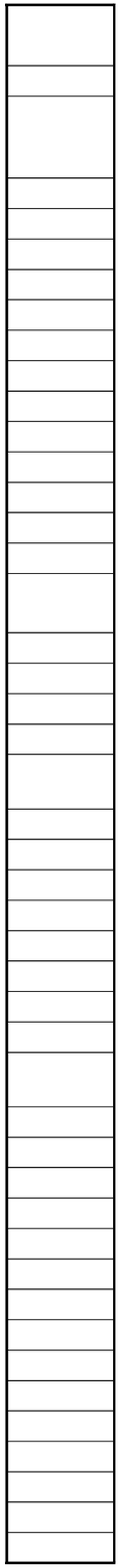
OWNER NAME(S): UNIT/WEEK(S) OWNED	WEEKS OWNED	YES	NO	M/EM	Confirmed Receipt Via/Notes	Late YES's	Late NO's
Bolock Anthony/Jozefa: 205/28	1						
Brooks Robert: 304/28, 403/30, 403/31	3						
Burnett Marie: 404/48	1						
Burton John: 304/44, 304/45, 304/46, 304/47	4				deb sent em asked them to vote		
Cannata William/Michele: 501/07, 501/08	2				selling both units to Biggs		
Carpenter Edwin/Edwin S: 305/29	1						
Cheripka Michael: 106/22, 106/23	2						
Connor Jessica: 204/30	1						
Cook Kenneth/Lucille: 205/36, 205/41	2						
Coombs Selena: 201/25	1						
Cooper Susanne: 304/39	1				Transferring deed from Cooper/Chamberlain to Terry Daughtery per em 02/08/24 from Sue Cooper Polly Daughtery em'd also, let Polly know when we receive Sue's vote as transfer is not likely to be completed by 03/04/24		
Coridan Gilbert/Lynda: 201/07, 201/08	2						
Craine Robert/Colette: 404/14, 405/15, 405/16, 404/17	4				deb tt, asked them to vote		
Cress Thomas/Roma: 203/22	1						
Criner Richard/Mary: 504/20, 504/21	2						
Cullen Lora: 303/19	1						
Dalfonso Henry/Elaine: 203/15, 102/16	2						
Dasaro Anthony: 501/31	1						
Davidson Celine: 401/23, 501/23	2						
Davis Chad/Dawn: 401/29	1						
Dec David/Tanya: 306/21, 406/21, 406/46, 406/47	4				deb Jolliffee not buying will send in yes vote		
Decker Amy: 504/34	1						
Decker David: 404/18	1						
DeLaLastra Albert: 304/29, 304/30, 304/31	3						
Downs William: 401/27	1						
Duncan David/Cassaundra: 204/24	1						
Durand Melissa/Alexandra: 203/33	1						
Elmore Virginia: 303/45	1						
Fearon Brian/Mary: 405/19, 505/20, 203/37, 203/38	4				deb tt, thinking about it, asked them to vote		
Forrest David: 506/46	1						
Frendel Paula: 506/44	1				from higgins, need pprwrk em higgins		
Goll Frieda: 206/15	1						
Gonzalez Martha, Cristina, Daniel: 102/31	1						
Grafton Daniel/Cassandra: 501/43	1				sold to kirchner iversen john req quit claim deed		
Harasimiuk Zbigniew/Nella: 204/19, 205/29	2						
Heleniak Marie: 506/37, 204/38	2						
Henderson Theresa: 502/27	1						
Hirschman Robert/Joyce: 504/14, 303/15, 303/16	3						
Humphries Jr. Curtis/Helen: 305/33	1						
Ira Donald: 501/05, 501/06, 503/15, 503/16	4				selling 501/05 and 501/06 to Jeff Schwede, ballot returned not deliverable, john tt, Don said does not have anything to do with kahlua, would not give new address		
Ivey Kirk D: 406/28, 406/29	2						
Jankalski Jerald: 404/40	1				Stacey and james helman, stacys dad jerry jankalsky passed away, gave title co info		
Johnson Sam/Cynthia: 505/34	1						
Kiesel Esther: 406/27	1						
Kim Tamara: 205/32	1						
Komisarek Lynn:101/03,102/03,102/04,102/05,102/06	5				deb sent em,asked them to vote		
Kornak Eugene: 304/27	1						

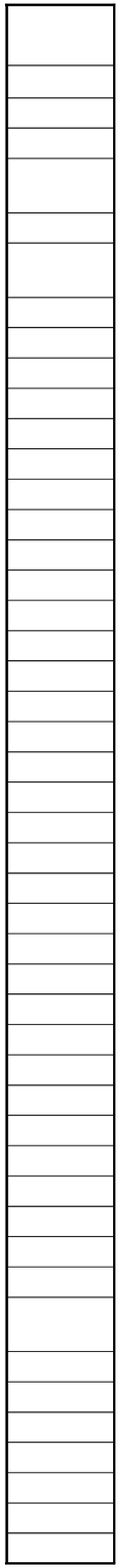
UNRETURNED VOTES

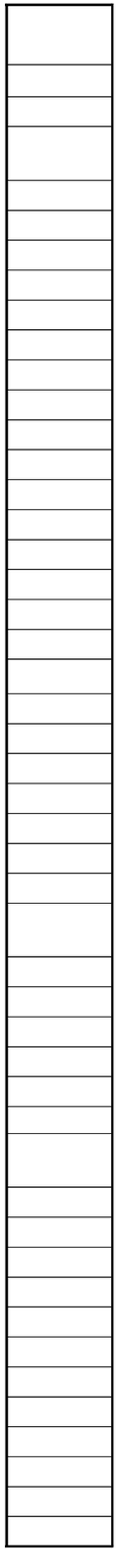
OWNER NAME(S): UNIT/WEEK(S) OWNED	WEEKS OWNED	YES	NO	M/EM	Confirmed Receipt Via/Notes	Late YES's	Late NO's
Landolina James/Michelle: 503/37	1						
Laukaitis Holly: 404/30, 406/30, 404/31, 506/31	4				deb did not call, hasn't paid		
Lemon Elizabeth 302/29, 302/30	2						
Lewis John/Mindy: 403/22	1						
Lindberg Carl/Lincoln Barbara: 506/33, 506/34	2						
Madigan Melody: 201/28	1						
Manos Tony: 405/26	1						
Marquardt, Cheryl: 306/26	1					1	
Marsden Michael/Karen: 302/01, 302/02, 302/03, 303/03, 302/04, 303/04, 302/05, 303/05, 302/06, 303/06, 106/07, 302/07, 106/08, 302/08	14				asked deb to contact 02/19/24 req they vote		
Martin Cindy: 304/35, 504/23	2						
McClain Drew & Manos Stacey: 205/25	1						
McDonald Samuel/Carolyn: 502/24	1						
Mcneilly Tracie: 503/36	1						
Melson Patrick/Tamara: 101/26, 101/27	2					2	
Miranda Carole: 504/40, 501/44, 501/45	3						
Morris Joemac: 504/35	1						
Norek George: 503/49	1						
Orth Robert & Judith: 202/04, 202/05, 202/06, 204/07, 204/08, 502/50	6				asked deb to contact 02/19/24, em'd ballot, req they vote		
Paul Kenneth/Nancy: 504/11, 504/12	2						
Pearce Jeffrey & Fairy: 301/24, 301/25	2						
Pentaude Betty: 106/26, 106/27, 201/35	3						
Quinn James/Katlleen: 303/21	1						
Ratajski Gerald/Marian: 102/50	1						
Reinfried Family Partnership: 406/34, 405/35, 406/35	3						
Rener Timothy J: 503/29, 205/37	2				205/37 fro ruth patricia shaw		
Romano Mellisa H: 306/30, 506/30, 406/31	3						
Rossetti Alexander: 305/19	1						
Sarote Jill: 401/31	1						
Schlotterbeck Paul & Thomas: 303/30	1						
Shirley Margaret M: 204/22	1				ballot returned forward order expired		
Siebert Richard/Helen: 102/14, 106/14, 203/14	3						
Skaggs Stephen/Lisa: 403/26	1						
Soto Manuel/Mirta: 502/28	1						
St. Francis Foundation: 302/26	1						
Suvelza Marcia: 406/08, 406/09, 406/10, 406/11, 406/51, 406/52	6				asked deb to contact 02/19/24, req they vote		
Tipton Lawrence/Georgia: 204/47, 306/48	2						
Toews Kevin/Jinni Lee: 406/43, 406/44	2						
VanAsten Lee: 505/25	1						
Varga Deborah: 404/33	1						
Vecchiano Daniel: 503/41	1						
Vena, Thomas: 101/25	1						
Whitted Fred/Michelle: 201/34	1						
Willis Donald: 306/47	1						
Wolfe Russell/Debra: 406/25	1				36	Unverified Yes	
Wurtz Everett/Mary: 401/49	1				11	Unverified No	
comfirm quantity, find error if not 0	0				1036	All Votes Received & Verified w/Owner	
Total Unit/Weeks Eligible to Vote	**1267**	**888**	**148**	231	1083	All Votes Received Verified By Staff	

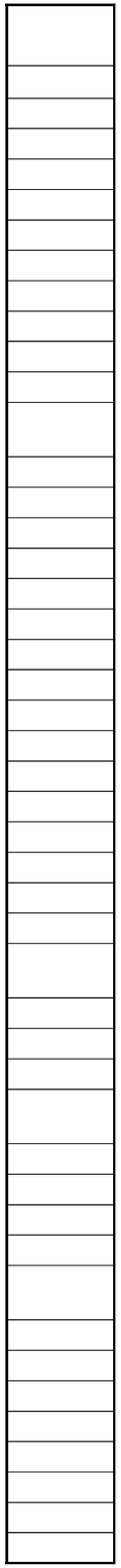
OWNER NAME(S): UNIT/WEEK(S) OWNED	WEEKS OWNED	YES	NO	M/EM	Confirmed Receipt Via/Notes	Late YES's	Late NO's
		70.1%	11.7%	18.2%	81.8%	% of All Votes Received	
		of 1,267	of 1,267	unreturned			
		YES	NO	/unverified			
Total Unit/Weeks @ KBC	1377			1377	Total Unit/Weeks @ KBC		
Total Kahlua Owned Unit/Weeks thru 12/31/23	-110			-110	Total Kahlua Owned Unit/Weeks thru 12/31/23		
Total Unit/Weeks Eligible to Vote	1267			1267	Total Unit/Weeks Eligible to Vote		
YES Percent Needed	50%			-5	Total Unit/Weeks Ballots Returned in Mail Undeliverable, No Forward Order, Could not find new address (IRA & SHIRLEY)		
50%	634			**1262**	ADJUSTED UNIT/WEEKS ELIGIBLE TO VOTE		
+1	1						
Total YES Votes Needed	**635**			888	YES VOTES VERIFIED WITH OWNERS		
				36	YES VOTES VERIFIED BY STAFF		
				1	YES VOTE ADJUSTMENT FOUND AFTER THE FACT, MCAVOY PURCHASED 506/49 FROM MOTTO (RECORDED ON 03/04/24) PRIOR TO THE MEETING, MCAVOY VOTES YES		
Foreclosures Completed in 2023				3	YES VOTES RECEIVED AFTER THE MEETING		
Aiazone Todd: 201/41	1		73.5%	**928**	TOTAL YES VOTES		
Barton Jody: 203/42	1						
Bell Donna/Chumbley/Chumblet/Chumbley: 106/44, 106/45	2			148	NO VOTES VERIFIED WITH OWNERS		
Bell Donna: 102/40, 102/41, 102/42, 102/43	4			11	NO VOTES VERIFIED BY STAFF		
Boyer Connie: 502/20	1			0	NO VOTES RECEIVED AFTER THE MEETING		
Brown Douglas: 106/41, 106/42, 106/43	3		12.6%	**159**	TOTAL NO VOTES		
Cannata William/Michele: 501/09, 501/10, 505/11, 505/12, 505/13, 505/14	6						
Cecala Michael: 505/33	1		**13.9%**	**175**	**TOTAL VOTES UNRETURNED**		
Dempsey Jim/Michele: 305/43,305/44,305/45,504/46	4		**86.1%**	**1087**	**TOTAL ELIGIBLE VOTES RETURNED**		
Farah Nazir/Elizabeth: 502/37	1		**100.0%**	**1262**	**TOTAL UNIT/WEEKS ELIGIBLE TO VOTE**		
Fry Lorne: 304/41	1						
Geary Truman/Monique: 206/31	1						
Gershater James/Sandra: 305/22 note: Jim passed away	1						
Gilbeault Joline: 101/12	1						
Grafton James/Lynn: 201/42, 201/43	2						
Guelcher Dale/Laurie: 303/44	1						
Gurka Stella: 204/33, 204/34	2						
Isaac Raidys: 201/33, 202/31, 406/36	3						
Knoop Kenneth/Marlyse: 106/46, 106/47	2						
Landberg Dennis: 502/45, 502/46, 502/47, 504/48, 504/49	5						
Leclair Alfred: 203/43, 203/44	2						
Leto Michael/ Becky: 305/28	1						
Maholovich Edward/Wendy: 505/26	1						
Meador Family Trust: 306/38	1						
Powell James: 505/15, 301/16	2						
Prichard Geoffrey: 504/43	1						
Purcell Kathleen/Thomas: 304/42, 506/43, 206/44, 206/45	4						
Ragland Anne: 204/25	1						
Sandra L. Gardner Trust Sandra Garnder TTE: 203/28	1						
Scratcher Alan R: 506/22	1						
Shuey Daniel/Betty: 402/35, 202/38	2						
Siebert Richard/Helen: 106/15, 506/15, 106/34, 305/34, 202/41	5						
Silverthorne David/Maureen: 301/42, 301/43	2						
Smith Russell P: 205/19, 403/21	2						
Srite Barbara: 405/20, 405/21	2						

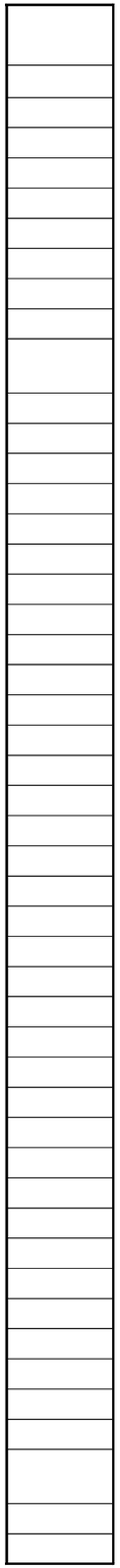
OWNER NAME(S): UNIT/WEEK(S) OWNED	WEEKS OWNED	YES	NO	M/EM	Confirmed Receipt Via/Notes	Late YES's	Late NO's
Terrasi Robert: 503/24, 503/25, 305/35, 404/37	4						
Thomas David/Diane/Kathleen: 101/42, 101/43	2						
Trumbull Jonathan: 401/15	1						
Vega Serina: 401/34	1						
Vermilya Carolyn: 206/24, 206/25, 206/26, 206/27	4						
Zapp Mark/Roberta Mee Keith/Carol: 102/15	1						
Kahlua Owned Unit/Weeks thru 12/31/22							
Kahlua Beach Club Owners: 304/19, 403/20, 304/22, 205/23, 406/23, 202/24, 303/32, 205/34, 203/35, 404/35, 505/35, 203/36, 201/37, 304/37, 306/37, 501/37, 503/38, 506/38, 404/39, 503/39, 202/40, 403/40, 202/43, 403/43, 303/46, 403/46	26						
TOTAL KAHLUA OWNED UNIT/WEEKS as of 12/31/23	**110**						

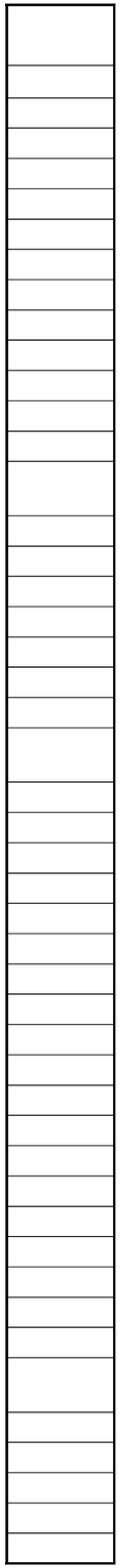


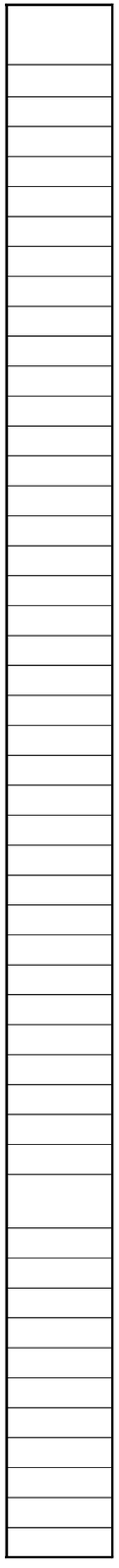


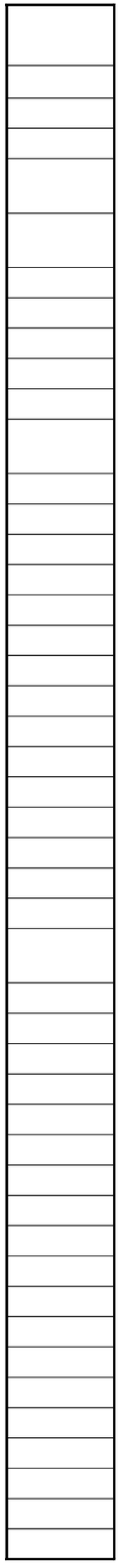


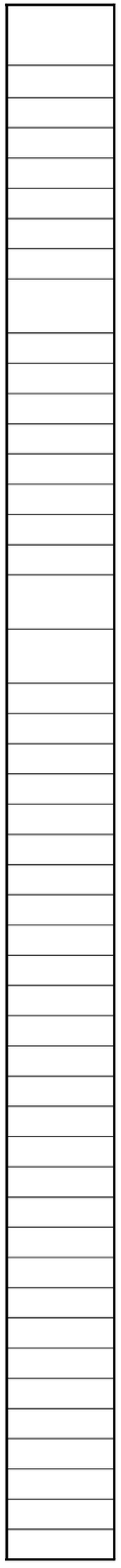


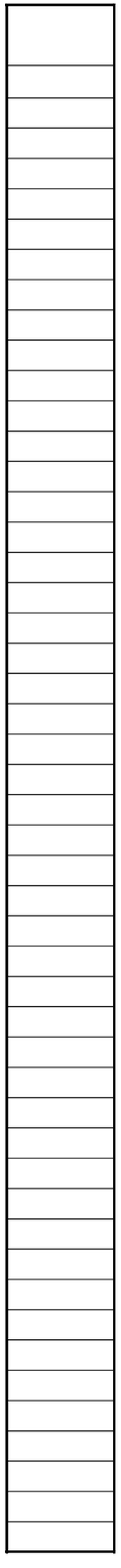


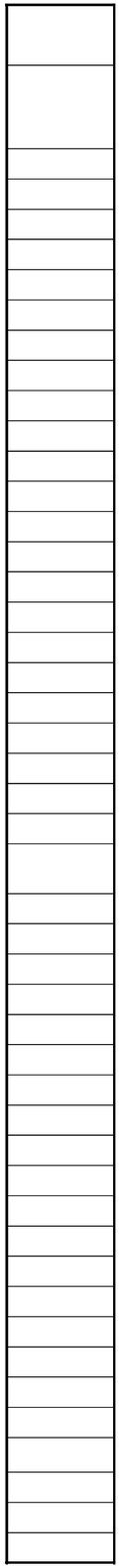


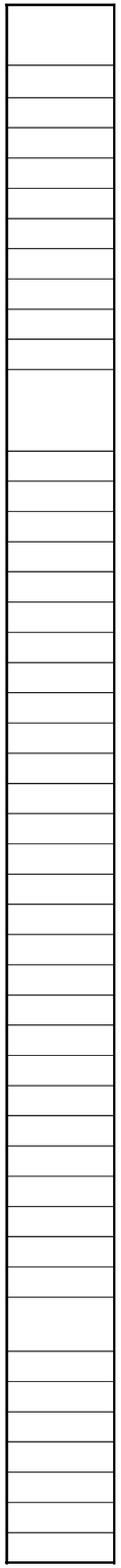


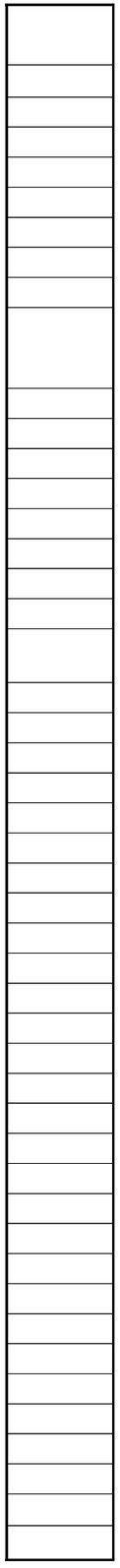


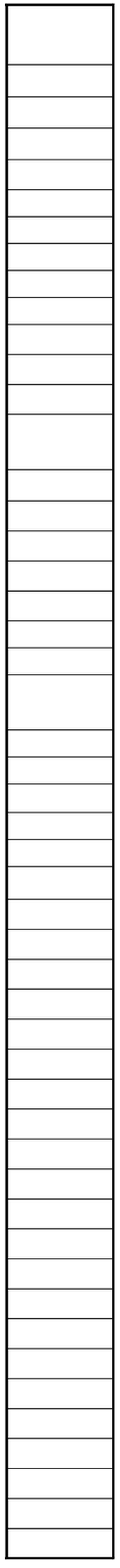


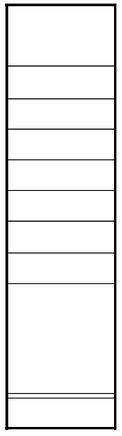












KAHLUA OWNERS' ASSOCIATION, INC.

LIMITED PROXY/BALLOT FORM

I hereby nominate and appoint Jeff Coleman, Vice-President of Kahlua Owners' Association, Inc. (the "Association"), as my proxyholder with powers of substitution for and in the name and place of I/we, the undersigned Owner(s) of record, to appear, represent and cast my vote (as indicated below) at the Meeting of the Owners of the Association to be held on Tuesday, March 5 2024 at 9:00 AM EST at DiamondHead Resort located at 2000 Estero Boulevard, Fort Myers Beach FL 33931, or via Zoom or other remote means and at any extension(s) and/or adjournment(s) thereof, according to the number of votes that I would be entitled to vote by signing below. I understand if I fail to designate a proxyholder or the designated proxyholder above does not attend the meeting, it will be presumed that the Secretary of the Association shall serve as my proxyholder. In the Secretary's absence, the President of the Association shall be my proxyholder, however, the proxyholder shall cast my vote as designated below but shall also have general powers to vote on other issues that might come up at the meeting.

IF I WANT KAHLUA BEACH CLUB TO CONTINUE OPERATING AS A TIMESHARE CONDOMINIUM, I UNDERSTAND THAT I MUST RETURN A "**YES"** VOTE. ANY UNRETURNED VOTES WILL HAVE THE SAME EFFECT AS A "**NO"** VOTE. A MAJORITY OF ALL ELIGIBLE UNIT WEEKS IS NEEDED TO CONTINUE THE TIMESHARE CONDOMINIUM. ALL BUILDING PERMITS TO REBUILD HAVE BEEN ISSUED AND REBUILDING IS SET TO COMMENCE ON/ABOUT MARCH 11, 2024, SUBJECT TO THE RESULTS OF THIS VOTE. THE PROJECT IS EXPECTED TO BE COMPLETED ON/ABOUT DECEMBER 31, 2024.

PLEASE NOTE: IF THE VOTE DOES NOT PASS, KAHLUA BEACH CLUB WILL BE TERMINATED. HOWEVER, THAT DOES NOT MEAN THE BOARD OF DIRECTORS IS AUTHORIZED TO SELL THE PROPERTY AND DISTRIBUTE THE PROCEEDS. INSTEAD, A COMPLEX, LENGTHY AND EXPENSIVE LEGAL PROCESS WILL BE REQUIRED PURSUANT TO THE FLORIDA STATUTES.

I HEREBY CAST MY VOTE AS FOLLOWS (put a mark in front of your selection):

_____ **YES**, I DESIRE TO CONTINUE KAHLUA BEACH CLUB AS A TIMESHARE CONDOMINIUM AND REBUILD

_____ **NO**, I DESIRE TO PERMANENTLY TERMINATE KAHLUA BEACH CLUB AS A TIMESHARE CONDOMINIUM

OWNER'S PRINTED NAME: _____

JOINT OWNERS PRINTED NAME(S) (IF APPLICABLE): _____

By signing below, I attest that: (i) I am the legal Owner of record of the unit week(s) below, (ii) I am one of two or more individual Owners of the unit week(s) below, or (iii) I am an officer, director, partner, or trustee of the entity or trust which owns the unit week(s) listed below.

Signature: _____ Date: _____

Total Weeks Owned: _____ (as listed below)

Unit Week(s) Owned: _____, _____, _____, _____, _____, _____, _____, _____,
_____, _____, _____, _____, _____, _____, _____, _____, _____

PLEASE MAIL OR EMAIL THIS COMPLETED FORM IMMEDIATELY TO:
KAHLUA BEACH CLUB, 4950 ESTERO BLVD, FORT MYERS BEACH FL 33931
OR
KBEACHCLB@AOL.COM

THIS PROXY/BALLOT MUST BE RECEIVED BY KAHLUA BY MARCH 4, 2024
A SCANNED VERSION OF THIS FORM WILL BE CONSIDERED AN ORIGINAL
FOR THE PURPOSE OF THE ASSOCIATION'S GOVERNING DOCUMENTS

David H. Rogel
Shareholder
Board Certified Specialist, Condominium and Planned Development Law
Phone: 305.260.1015 Fax: 305.442.2232
drogel@beckerlawyers.com

Becker & Poliakoff
2525 Ponce de Leon Blvd, Suite 825
Coral Gables, FL 33134

Becker

October 31, 2024

Via E-mail: jfrankel@fmbgov.com

Town of Fort Myers Beach
Judith Frankel, Principal Planner
Community Development
2731 Oak St.
Fort Myers Beach, FL 33931

RE: 4950 Estero Blvd, Fort Myers Beach
Strap # 28-46-24-W4-02400.00CE
SEZ 20240194– Restoration of a swimming pool, shuffleboard court (1), chickee huts (2), paver pool deck, and fences on side property lines and 4-feet aluminum atop existing seawall for pool security. Pool equipment is proposed to be relocated behind 1978 CCCL line.

Dear Ms. Frankel:

This firm has the pleasure of representing Kahlua Owners' Association, Inc. ("Association"). They operate the timeshare condominium known as Kahlua Beach Club. We have been asked to address with the Town of Fort Myers Beach, certain requirements associated with a special exception relating to the rebuilding of the swimming pool which serves the condominium property which our client operates.

Initially, we have been asked to advise you and confirm that the Association conducted a meeting of the membership on or about February 23, 2024. That meeting was called for the purpose of determining whether the condominium should be terminated or rebuilt and an assessment made for the rebuilding process. The meeting and vote to rebuilt was noticed to every unit week interest in writing, and the rebuilding vote anticipated that rebuilding would include the rebuilding of the pool at its current location, as anticipated in the application for the special exception. The vote of the membership, in accordance with Article 16, Section 16.3 of the Declaration, as amended and restated, was in the affirmative in connection with rebuilding.

We acknowledge the requirements of Section 34-201(a)(1)b that the application or petition for a special exception must be made by not less than Seventy-five (75%) percent of timeshare condominium owners. The Association operates 1377 timeshare unit weeks. Of the 1377 timeshare unit weeks, 928-unit weeks interest not owned by the Association voted in favor of rebuilding. Under applicable condominium law, a unit owned by the Association is not allowed to vote, per se, on most matters, but the Association did recognize and direct that its unit weeks, totaling 110-unit weeks, would be cast in favor of rebuilding. Taken together, the Town should recognize that a total of 1038 unit support this application because it is the Association, acting on

behalf of the membership as recognized by the vote to rebuild, that is making the application. With this recognition, in excess of Seventy-five (75%) percent of the voting interests voted in favor of rebuilding.

Also, in accordance with Section 34-201(a)(1)b.3, I certify that I have reviewed the Declaration of Condominium, Bylaws and other relevant legal documents and have concluded that the act of applying or petitioning to the town for the special exception violates none of the provisions therein, or any federal or state law regulating condominium and timeshare plans, or the rights of any of the nonparticipating unit owners, as derived from such documents and laws, and that approval of the requested act by the town would violate no such rights.

To the extent that the information provided herein is not sufficient to advance the application for the public hearing, please contact the undersigned.

Sincerely,

David H. Rogel
For the Firm

DHR/lh
cc: Kahlua Owners' Association, Inc.

Town of Fort Myers Beach
Agenda Item Summary Yellow Sheet Number: **2025-34**

1. **Request:** **Meeting Date: November 12, 2024**

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING/ APPROVING WITH CONDITIONS/ DENYING THE COMMERCIAL PLANNED DEVELOPMENT (CPD) ZONING FOR 6.02 ACRES OF THE PROPERTY LOCATED AT 275/322 ESTERO, 200 ESTERO, 192 ESTERO COMMON ELEMENT ONLY, 142 ESTERO, 171-191 ESTERO, 251-281 ESTERO, AND 309 ESTERO BLVD., GENERALLY IDENTIFIED AS STRAP NUMBERS 24-46-23-W1-0070D.028A, 24-46-23-W1-00700.0340, 24-46-23-W1-00700.0290, 24-46-23-W1-00700.0330, 24-46-23-W1-00700.0320 , 24-46-23-W1-03700.00CE, & 24-46-23-W1-04100.00CE IN FORT MYERS BEACH, TO ALLOW EXPANSION OF AN EXISTING BEACH RESORT TO INCLUDE A NEW 40 UNIT RESORT HOTEL, 4 ADDITIONAL HOTEL UNITS IN THE WHITE SANDS BUILDING, AND A DUPLEX; PROVIDING FOR OTHER CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

Why the action is necessary:
The LPA hears rezoning requests and makes recommendations to the Town Council

What the action accomplishes:
Approval of the CPD will allow amendments to the existing CPD including addition of a 40 unit hotel.

2. **Agenda:**
PUBLIC HEARINGS

3. **Requirement/Purpose:**
Ordinance

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5. **Background:**
JABO LLC, owner or agent of 275/322 Estero Blvd, 200 Estero Blvd, and the common element of 192 Estero Blvd, known as Pink Shell Resort, is requesting a CPD rezoning, to rezone multiple properties from CPD and CR to CPD. This rezoning will combine the existing Pink Shell CPD with two new properties for a total of 6.02 acres, all landward of the CCCL.

Attachments:
1. 24-35, Pink Shell
2. Staff Report
3. Exhibit A Master Concept Plan 2024-07-10
4. Exhibit B Schedule of Uses
5. Exhibit C Deviations and Justifications
6. Exhibit D Renderings
7. Exhibit E Applicant Narrative
8. Exhibit F Application
9. Exhibit G Historical Zoning Resolutions Summary

Financial Impact:
unknown

6. **Alternative Action**
Approve with conditions

7. **Staff Recommendations:**

Denial

8. **Recommended Approval:**

_____	Date: October 31, 2024
Judith Frankel, Principal Planner	
_____	Date: November 01, 2024
Frankie Kropacek, Operations & Compliance Director	
_____	Date: November 04, 2024
nancy stuparich, Town Attorney	
_____	Date: November 05, 2024
Amy Baker, Town Clerk	

ORDINANCE 24-35

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING/ APPROVING WITH CONDITIONS/ DENYING THE COMMERCIAL PLANNED DEVELOPMENT (CPD) ZONING FOR 6.02 ACRES OF THE PROPERTY LOCATED AT 275/322 ESTERO BLVD, 200 ESTERO BLVD, 192 ESTERO BLVD COMMON ELEMENT ONLY, 142 ESTERO BLVD, 171-191 ESTERO BLVD, 251-281 ESTERO BLVD, AND 309 ESTERO BLVD., GENERALLY IDENTIFIED AS STRAP NUMBERS 24-46-23-W1-0070D.028A, 24-46-23-W1-00700.0340, 24-46-23-W1-00700.0290, 24-46-23-W1-00700.0330, 24-46-23-W1-00700.0320 , 24-46-23-W1-03700.00CE, & 24-46-23-W1-04100.00CE IN FORT MYERS BEACH, TO ALLOW EXPANSION OF AN EXISTING BEACH RESORT TO INCLUDE A NEW 40 UNIT RESORT HOTEL 4 ADDITIONAL HOTEL UNITS IN THE WHITE SANDS BUILDING, AND A DUPLEX; PROVIDING FOR OTHER CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Florida Statutes provide that municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal service, and exercise any power for municipal purposes, except when expressly prohibited by law; and

WHEREAS, Article X of the Town Charter of the Town of Fort Myers Beach empowers the Town to adopt, amend. or repeal such ordinances and resolutions as may be required for the proper governing of the Town; and

WHEREAS, JABO, LLC, the owner, and RVI, as agent for the property located at 275/322 Estero Blvd., 200 Estero Blvd., 192 Estero Blvd. common element only, 142 Estero Blvd., 171-191 Estero Blvd., 251-281 Estero Blvd., and 309 Estero Blvd., generally identified as strap numbers 24-46-23-w1-0070d.028a, 24-46-23-w1-00700.0340, 24-46-23-w1-00700.0290, 24-46-23-w1-00700.0330, 24-46-23-w1-00700.0320 , 24-46-23-w1-03700.00ce, & 24-46-23-w1-04100.00ce in the Town of Fort Myers Beach, filed applications to rezone the property from the CPD and Commercial Resort (CR) to CPD with Master Concept Plan (MCP) with certain deviations to the Land Development Code (LDC) in order to amend the approved development to allow a new 40 lodging unit hotel, four(4) new hotel rooms in the White Sands building, and a residential duplex, in addition to the existing approve development of 195 resort units, a marina and resort accessory uses ; and

WHEREAS, a public hearing was held before the Local Planning Agency (LPA) on November 12, 2024; and

WHEREAS, at the November 12, 2024 public hearing the LPA gave full and complete consideration of the request, recommendations by staff, the documents in the record, and the testimony of all interested persons, as required by Section 34-85 of the Town Land Development Code; and

WHEREAS, at the November 12, 2024 public hearing the LPA found that the request is

consistent with the comprehensive plan and the requirements of the LDC and voted to recommend approval with conditions by a ___ vote; and

WHEREAS, on December 2, 2024 the Town Council held a first reading of the proposed Ordinance and gave full and complete consideration to the request of the Applicant, the recommendation of the LPA, the recommendation of staff, the documents in the record, and the testimony of all interested persons, as required by Section 34-85 of the LDC; and

WHEREAS, the Town Council voted to have a second reading of the proposed Ordinance and a public hearing on this matter was noticed in the Fort Myers News-Press more than 10 days prior to the Town Council on December 18, 2024; and

WHEREAS, at the December 18, 2024 public hearing, the Town Council gave full and complete consideration to the request of the Applicant, the recommendation of the LPA, the recommendation of staff, the documents in the record, and the testimony of all interested persons, as required by Fort Myers Beach Land Development Code (LDC) Section 34- 85; and

WHEREAS, the applicant has resolved and is current on any outstanding fees associated with notice, advertisement, and consulting services required by the Town; and

WHEREAS, a Business Impact Estimate has been prepared and published on the Town's website; and

WHEREAS, with the following terms, conditions, and requirements which the LPA finds to be in the public health, safety, and welfare, all of which are in compliance with the comprehensive plan and the Land Development Code; and

WHEREAS, Exhibit B provides the approved development regulations and the schedule of uses and conditions of approval for this CPD to be used during the permitting process; and

WHEREAS, Exhibit A is the approved Master Concept Plan (MCP), which future development should be substantially in compliance with; and

WHEREAS, the Town Council finds that this request to rezone the property from the CPD and CR to CPD with MCP with six deviations to the LDC in order to develop a resort hotel development with 40 lodging units, 2 dwelling units and 4 additional hotel units in the place of the White Sands spa, is a unique application, which does not set precedent for future development or rezoning applications; and

WHEREAS, the requested deviations from the LDC include:

Deviation #1

Deviate from LDC §10-416(d)(2) Table 10-8 requiring a Type C buffer with a wall when a proposed commercial parking lot is next to a multifamily residential property; to allow a Type C buffer with no wall to allow visibility to the redesigned public boardwalk.

Deviation #2
Deviate from LDC §34-645 Table 34-2 that specifies in the CR zoning district no building or structure shall be placed closer than 15 feet as a side setback; to allow a 10-foot side setback in CPD Area #2 for the two new homes/short-term rental units are proposed.

Deviation #3
Deviate from LDC §34-645 Table 34-2 that specifies in the CR zoning district no building or structure shall be placed closer than 20 feet as a rear setback; to allow a 15-foot rear setback.

Deviation #4

Deviate from LDC §34-645 Table 34-2 that specifies in the CR zoning district no building or structure shall be placed closer than 15 feet as a side setback; to allow a 10-foot side setback in CPD Area #4 for the new 40-unit hotel/condo building.

Deviation #5

Deviate from LDC §34-675(b) that requires a maximum height of 40 feet above base flood elevation and no taller than three stories; to allow a height of:

- 60 feet as measured from one foot over base flood elevation (BFE+1) or
- Five (5) stories (six (6) stories over ground level parking).

Deviation #6
Deviate from LDC §34-633 where the gross floor area includes the total floor area of all stories of a building within the surrounding exterior walls (whether the walls are solid or screened), plus all area below an elevated building that is six feet or more in height, plus all stories of covered parking; to eliminate counting the ground level covered parking area towards FAR and be significantly below the required 1.2 FAR for this subject property.

WHEREAS, the Town Council considered all relevant factors and made the following formal findings before making its final decision on the requested rezone to a Commercial Planned Development (see LDC 34-85 and 34-216):

a. Minor ambiguities were resolved through the deviation process.
b. The previous development on the subject property was destroyed by Ian and adoption of the rezoning with deviations ameliorates longstanding design issues on the site due to the lot's odd shape and orientation.
c. The rezoning would carry out the policies and requirements of the Comprehensive Plan and Land Development Code.
d. The Town Council carefully considered the testimony of the applicant, the recommendations of staff and of the local planning agency, and testimony from the public.
e. The rezoning would be consistent with the goals, objectives, policies, and intent, and with the densities, intensities, and general uses in the Comprehensive Plan.
f. The rezoning would meet or exceed all performance and locational standards set

forth for the proposed use.

g. Urban services are available and adequate to serve the proposed use.

h. The rezoning would protect, conserve, or preserve environmentally critical areas and natural resources.

i. The rezoning would be compatible with existing and planned uses and not cause damage, hazard, nuisance, or other detriment to persons or property.

j. The rezoning would not place an undue burden upon existing transportation or other services and facilities and will be served by streets with the capacity to carry traffic generated by the development.

k. The rezoning, with the mitigating factors volunteered by the applicant and the special conditions imposed by the Town Council, is consistent with the Fort Myers Beach Comprehensive Plan, Land Development Code, and other applicable town ordinances or codes.

l. The proposed use or mix of uses is appropriate at the subject location.

m. Sufficient safeguards to the public interest are provided by the recommended special conditions to the master concept plan and by other applicable regulations.

n. All recommended special conditions are reasonably related to the impacts on the public's interest created by or expected from the proposed development.

WHEREAS, the Town Council made the following formal findings before making final decisions on the eight requested deviations from "by-right" requirements of the Land Development Code (see LDC 34-216):

a. Each item enhances the achievement of the objectives of the planned development; and
b. The general intent of this chapter to protect the public health, safety and welfare will be preserved and promoted; and
c. Each deviation operates to the benefit, or at least not to the detriment, of the public interest; and
d. Each deviation is consistent with the Fort Myers Beach Comprehensive Plan.

WHEREAS, the Town Council finds that this application to approve Ordinance 24-35 which is, **consistent/ not consistent** with the Town of Fort Myers Beach Comprehensive Plan and LDC and voted to **deny/ approve/ approve with conditions** the Application.

NOW, THEREFORE, IT IS HEREBY ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AS FOLLOWS:

Section 1. The above recitals are true, correct, incorporated herein by this reference, and adopted as the legislative and administrative findings of the Town Council.

Section 2. The Town Council determines the Applicant **did/did not** meet its burden of proof, that the request to approve Town of Fort Myers Beach's Ordinance 24-35 and the conditions of approval for the commercial planned development zoning, **does/ does not** meet the requirements of the Town Comprehensive Plan and LDC. Therefore, based upon the recommendations, testimony, and evidence presented by the Applicant, Town staff, and interested parties, the Town Council **DENY/ APPROVE/ APPROVE WITH CONDITIONS** the requested application.

Section 3. Town Ordinance 24-35 is adopted and the schedule of uses and conditions of approval for the Property's CPD set forth in Exhibit A and the attached Master Concept Plan in Exhibit B, attached hereto and incorporated herein by this reference are approved.

Section 4. Whenever the requirements or provisions of this Ordinance conflict with the requirements or provisions of any other lawfully adopted LDC or Town Code provision, ordinance, or statute, the most restrictive shall apply.

Section 5. Any typographical errors that do not affect the intent of this Ordinance may be corrected with notice to and authorization of the Town Manager without further process.

Section 6. If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason, declared by a court of competent jurisdiction to be unconstitutional or invalid, such decision will not affect the validity of the Ordinance as a whole, or any part thereof, other than the part so declared.

Section 7. This Ordinance will take effect immediately upon adoption by the Town Council.

THE FOREGOING ORDINANCE was adopted by the Town Council upon a motion by Council Member _____ and seconded by Council Member _____, and upon being put to a vote, the result was as follows:

DULY PASSED AND ADOPTED on this ___ day of December 2024.

Dan Allers, Mayor	_____
Jim Atterholt, Vice Mayor	_____
John R. King, Council Member	_____
Scott Safford, Council Member	_____
Karen Woodson, Council Member	_____

FORT MYERS BEACH TOWN COUNCIL

_____
Dan Allers, Mayor

ATTEST:

_____
Amy Baker, Town Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE AND RELIANCE OF THE TOWN OF FORT MYERS BEACH ONLY:

_____
Vose Law Firm, LLP, Town Attorney

This Ordinance was filed in the Office of the Town Clerk on this ___ day of December 2024.

Attachments:

A – Master Concept Plan
B – Schedule of Uses
C – Conditions of Approval

Town of Fort Myers Beach

COMMUNITY DEVELOPMENT DEPARTMENT
STAFF REPORT

TYPE OF CASE:	**CPD Rezoning**
CASE NUMBER:	**DCI 20230090**
CASE NAME:	**Rezoning of 6.02 acres landward of the 1978 Coastal Construction Control Line (CCCL), located at 275/322 Estero, 200 Estero, 192 Estero Common Element only, 142 Estero, 171-191 Estero, 251-281 Estero, and 309 Estero, from Commercial Planned Development (CPD) and Commercial Resort (CR) to CPD.**
LPA HEARING DATE:	**November 12, 2024 at 9:00 AM**
STAFF RECOMMENDATION:	**Denial**
PREPARED/ SUBMITTED BY:	**Sarah Propst, AICP, PMP**

I. APPLICATION SUMMARY

Applicant/Owner:	Fred Drovdlic, AICP/JABO LLC, Bill Waichulis
Request:	To rezone 6.02 acres from CPD and CR to CPD to allow the development of a new 40-unit hotel/condominium, reconstruction of a duplex, and conversion of the spa in White Sands to four hotel rooms.
Subject property:	Exhibit A – Adopted Master Concept Plan
Physical Address:	**309, 275/322, 251-281, 200, 171-191, and 142 Estero Blvd, and 192 Estero Blvd Common Element only**
STRAP #:	24-46-23-W1-0070D.028A (309 Estero Blvd), 24-46-23-W1-00700.0340 (275/322 Estero Blvd), 24-46-23-W1-00700.0290 (251-281 Estero Blvd), 24-46-23-W1-00700.0330 (200 Estero Blvd), 24-46-23-W1-00700.0320 (171-191 Estero Blvd), 24-46-23-W1-03700.00CE (142 Estero Blvd), & 24-46-23-W1-04100.00CE (192 Estero Blvd CE only)

FLU: Mixed Residential

Zoning: Commercial Planned Development & Commercial Resort

Adjacent zoning and land uses:

North:	CPD, Mixed Residential
South:	ENVIRONMENTALLY CRITICAL (EC), Recreation
East:	CPD, RM, & RESIDENTIAL PLANNED DEVELOPMENT (RPD), Mixed Residential
West:	RESIDENTIAL MULTIFAMILY (RM), Mixed Residential, and COMMUNITY FACILITY (CF), Recreation

II. BACKGROUND AND ANALYSIS

Background:
JABO LLC, owner or agent of 275/322 Estero Blvd, 200 Estero Blvd, and the common element of 192 Estero Blvd, known as Pink Shell Resort, is requesting a CPD rezoning, to rezone multiple properties from CPD and CR to CPD. This rezoning will combine the existing Pink Shell CPD with two new properties for a total of 6.02 acres, all landward of the CCCL.

The original Pink Shell rezoning was in 1982 (Z-82-170). Since that time, several modifications to the CPD have been adopted. This rezoning will add one property, 309 Estero Blvd, which previously contained a single-family residence and is zoned CR. The CPD request proposes a new 40-unit hotel/condominium on the bayside property closest to Bowditch Point Park; reconstruction of a duplex, on the easternmost property on the gulfside; and redevelopment of the spa facility in the White Sands Hotel, to create four new hotel units.

Analysis:
The Pink Shell resort site currently contains several resort developments which include buildings known as White Sands, Sanibel View, and Captiva Villas. Previously there was also a duplex and a cottage which provided housing for Pink Shell staff, these were destroyed in the storm. There is also a marina with 41 wet slips with 39 allowed as live-aboard slips and a dock master building as well as parking lots for guests and employees. There are 195 hotel/motel resort rooms and prior to Ian there were 3 units in the cottage and duplex as well a single-family residence. The first rezoning for this property was approved by Lee County in 1982 by R-82-170, with multiple amendments adopted by the County and the Town since then.

This request proposes several changes that will impact different parts of the resort. The most notable component is the proposal for an additional resort building with 40

resort units. That structure will be on the bay side of Estero Boulevard on the parcel closest to Bowditch Point Park. It is proposed to be a six story building (5 stories over one story of at-grade parking) and 60 feet over base flood elevation. The applicant has proposed side setbacks of 10 feet and proposed front and rear setbacks of 15 feet. The previously approved CPDs included height and setback modifications on each individual building, with the tallest building at 95 feet above BFE. This CPD will include height and setback modifications for the newly proposed buildings that are discussed in the deviations section of this staff report.

The CPD also proposes several additional but less noticeable changes. The White Sands Resort building currently contains a spa facility which will be replaced with four resort units. A residential duplex structure is also proposed in the same location as the previous duplex. The applicant is also proposing setback deviations for the duplex unit.

Prior to the storm the Pink Shell CPD property included a duplex and a cottage unit, east of Gulfshore Court. An additional property, 309 Estero, was purchased by JABO LLC, and is proposed to be included in the CPD. Of the two single family and one duplex, only the duplex is proposed for reconstruction, the other two residential units are not. The change from pre-storm units to proposed units are shown in Table 1 and 2.

Table 1: Gulfside Parcels Existing and Proposed Uses

Building	Existing Density/Intensity	Proposed Density/Intensity	Parcel(s)
Restaurants	5,450 sf	5,450 sf	24-46-23-W1-00700.0330
Conference	1,150 sf	1,150 sf	
Ballroom	2,104 sf	2,104 sf	
Fitness Facility	900 sf	900 sf	
Spa	6,033 sf	***0 sf***	
Pool Bar	1,000 sf	1,000 sf	
Retail (accessory)	1,400 sf	1,400 sf	
Rooms (White Sands, Captive Villas and Sanibel View Villas)	195 Units	***199 Units (4 units per 6,000 sf conversion of spa)***	24-46-23-W1-00700.0330 24-46-23-W1-00700.037A 24-46-23-W1-03700.00CE
Duplex and Cottage lot	3 Units	***2 Units***	24-46-23-W1-00700.0330

Table 2: Bayside Parcels Existing and Proposed Uses

Building	Existing Density/ Intensity	Proposed Density/ Intensity	Parcel(s)
Boutique hotel/condo	Employee parking lot	***40 Units (1 unit per 309 Estero and 1 per duplex and cottage lot)***	24-46-23-W1-00700.0340
Boat Slips	41	41	24-46-23-W1-00700.0340 24-46-23-W1-00700.0320 24-46-23-W1-00700.0290
Liveaboards	39	39	
Dock Master Building	500 sf	500 sf	
Residential with dock	1 Unit (309 Estero Blvd purchase)	-	24-46-23-W1-0070D.028A
	Existing dock	-	

The proposed CPD increases the number of units on the combined CPD parcels by 42. Applying the underlying Future Land Use of Mixed Residential and using the maximum allowable equivalency factor of 2 would result in a total of 72 hotel units. The proposed total number of units on the entire CPD property with the proposed amendments is 241. However, the Pink Shell CPD allowed the 195 hotel units and the two single family units were allowed also. Because the two single family units will not be rebuilt, application of the equivalency factor of 2 results in the creation of 4 units, which can account for the new units in White Sands. Using this evaluation, the proposed development exceeds the allowed number of hotel units by 40, the number of hotel units proposed for the new boutique hotel.

The development currently contains 241,900 square feet of floor area, including the hotel buildings and the dock master building. The proposed boutique hotel would add another 78,000 square feet. This would result in an FAR of 1.2, which is allowed in the Mixed Residential future land use. The applicant is requesting a deviation to exclude the under-building parking from the FAR calculation for the new building. If this deviation request is granted, it will reduce the FAR of the proposed development to 1.0.

Neighborhood Compatibility:
The existing buildings in this portion of the Town are mostly the Pink Shell Resort buildings which are allowed a maximum height of 95 feet above BFE. The existing Pink Shell resort buildings are 11 stories, six stories, and eight stories tall.

The nearby uses that are not part of the Pink Shell CPD include Pink Shell Vacation Villas which is seven stories tall, including parking on the ground floor, and Estero Island Beach Villas which is eight stories. Adjacent to the proposed new hotel building, there is also an uninhabited triplex. There are no approved plans for that property at this time.

Uses in the neighborhood are condominium, resort, and marina, as well as the park at Bowditch Point Park.

Requested Deviations:

1) **Deviate from LDC §10-416(d)(2) Table 10-8 requiring a Type C buffer with a wall when a proposed commercial parking lot is next to a multifamily residential property; to allow a Type C buffer with no wall to allow visibility to the redesigned public boardwalk.**

   JUSTIFICATION: Placing a wall where a public boardwalk that is to be park-like and a public fishing pier would take away from the from the public access easement that is meant to be a well landscaped, enticing walk to the boardwalk along Matanzas Pass on the back of the building. A wall would not enhance this experience but detract.

   Staff Comment: The type C buffer is 15 feet wide and requires 5 trees and 18 shrubs per 100 linear feet. If more screening is desired in this location, staff recommends requiring canopy trees in the type C buffer to create more screening between the

uses than palm trees will provide.

2) **Deviate from LDC §34-645 Table 34-2 that specifies in the CR zoning district no building or structure shall be placed closer than 15 feet as a side setback; to allow a 10-foot side setback in CPD Area #2 for the two new homes/short-term rental units are proposed.**

JUSTIFICATION: The lot in CPD area #2 is small, 0.17 acres, and historically had inadequate setbacks and buffers when it was a duplex and cottage that were less than the 10 feet proposed. According to the best we can estimate the side setbacks ranged from 0-10 feet to the north (towards Estero Blvd) and 13 feet to the south (beach). The proposed 10-foot setbacks will provide enough room for typical Type B plantings regardless of the 5-foot reduction of side setback.

Staff Comment: The decrease in side setbacks at this location are unlikely to have an impact on the adjacent properties. It appears that the duplex structure and cottage on that parcel were located similarly prior to the storm.

3) **Deviate from LDC §34-645 Table 34-2 that specifies in the CR zoning district no building or structure shall be placed closer than 20 feet as a rear setback; to allow a 15-foot rear setback.**

JUSTIFICATION: The CPD boundary Area #2 is only 0.17 acres and previously housed three units. The new request is for two units and meeting the required rear and side setbacks would make the lot unbuildable for two units. The 15-foot rear setback will provide enough room for typical Type B plantings regardless of the 5-foot reduction of side setback.

Staff Comment: The decrease in rear setback at this location are unlikely to have an impact on the adjacent properties. It appears that the duplex structure and cottage on that parcel were located similarly prior to the storm.

4) **Deviate from LDC §34-645 Table 34-2 that specifies in the CR zoning district no building or structure shall be placed closer than 15 feet as a side setback; to allow a 10-foot side setback in CPD Area #4 for the new 40-unit hotel/condo building.**

JUSTIFICATION: The lot in CPD area #4 does not require buffers but does require 15-foot setbacks per the LDC. We are proposing a Type B buffer along the side setbacks to offset the request to have a building with only 10-foot setbacks. The proposed 10-foot setbacks will provide enough room for typical Type B plantings regardless of the 5-foot reduction of side setback. Historically there were no setbacks or buffers for the surface parking lot where the new building is proposed. To the south is a dilapidated multi-family structure that will be razed, and new multi-family structure is proposed in a CPD that is in progress. To the north is Bowditch Point Park maintenance area and employee parking. The buffers will improve current conditions as will the 10-foot setback. The uses to the north and south will not be negatively impacted with the 5-

foot reduction as offset with buffering.

Staff Comment: The proposed decrease in side setbacks will decrease views of the bay by 5 feet on each side. A 10-foot setback is not a lot of space to fit five trees per 100 linear feet and a double hedge. In this instance only palms can fit in that space and installation of hedges may diminish views of the bay from ground level. The applicant should choose appropriate hedges to ensure visibility is not diminished.

5) **Deviate from LDC §34-675(b) that requires a maximum height of 40 feet above base flood elevation and no taller than three stories; to allow a height of:**
   - **60 feet as measured from one foot over base flood elevation (BFE+1) or**
   - **Five (5) stories (six (6) stories over ground level parking).**

JUSTIFICATION: The permitted height in the CR District is a maximum of 40 feet above base flood elevation. The height is significantly shorter than the condo/hotel and resort buildings across Estero Boulevard.

Staff Comment: The current CPD has a maximum allowed height on the gulf side of the property of 95 feet and one of the existing resort buildings is approximately that tall. This proposed building is on the bayside of the Pink Shell property and will have different impacts. The neighbors across Estero, at Pink Shell Vacation Villas (seven stories) and the adjacent property at 131/133 Estero Blvd, may be impacted by this additional height.

6) **Deviate from LDC §34-633 where the gross floor area includes the total floor area of all stories of a building within the surrounding exterior walls (whether the walls are solid or screened), plus all area below an elevated building that is six feet or more in height, plus all stories of covered parking; to eliminate counting the ground level covered parking area towards FAR and be significantly below the required 1.2 FAR for this subject property.**

JUSTIFICATION: The CR district limits the FAR of properties to a maximum of 1.2. The area of the subject property landward of the 1978 Lee County CCCL that is in the CPD boundary is 6.02 acres or 262,231 square feet. The existing White Sands, Sanibel View, Captiva Villas and the dock master building account for 241,900 square feet of floor area. The additional boutique hotel building accounts for 78,000 square feet of floor area. The total floor is 319,900 square feet resulting in an FAR of 1.2. However, the applicant has requested a deviation to eliminate counting the first-floor parking areas in the FAR calculation. If the deviation is approved the floor area is reduced for the existing White Sands, Sanibel View and Captiva Villas and the dock master buildings floor area to 195,500 square feet. The additional boutique hotel building is reduced to 65,000 square feet of floor area. The reduced total floor area for the CPD is 260,500 square feet resulting in an FAR of 1.0. It is our understanding that the Town staff, LPA and Council have moved towards future LDC amendments making this request permanent thus the request meets the intent of the will of the Town.

Staff Comment: This type of request has been approved previously.

Existing Deviations on Pink Shell Resort, approved for **Captiva Villas - Resolution 01-26**:

2. Deviation from LDC Section 34-935e(4) which requires buildings be separated a distance of one half the sum of the building heights, to allow separation of 36 feet instead of 82 feet, and to allow a separation 44 feet instead of 59 feet.
3. Deviation from LDC Section 34-802 to allow hotel units with a maximum of 750 square feet and1300 square feet. At least 14 of the 43 units are limited to a maximum of 750 square feet. In no case will the total area of the 43 units exceed 28,219 square feet.
4. Deviation from LDC Section 34-2175 which states buildings may not exceed 25 feet in height above base flood elevation to allow a building 83 feet in height above base flood elevation. No more than 7 floors over one ground floor of parking only will be developed.
5. Deviation from Land Development Code 34-2017(a) which requires parking lot aisles and spaces have a paved, dust free, all-weather surface, to allow an unpaved surface (no parking lots with the following conditions:
(a) The alternative parking surface must be a stabilized surface of clean (washed) angular gravel or other similar porous material over a well-drained base. The surface will be continually maintained in a dust free manner. Stabilization may be accomplished by turf blocks, or proprietary cellular or modular porous paving systems installed in accordance with manufacturer's specifications.
(b) The disabled parking spaces must be provided with a smooth surface without gaps or holes which would create a danger to the user.
(c) Parking stripes will not be required on the alternative surface; however, parking bumpers must be used to identify the required nw11ber of parking spaces.

<u>Findings and Conclusions:</u>
LDC Sec. 34-85(b) and (c) and 34-216(2) sets forth the required considerations and findings for the approval of a rezoning.

(b) Considerations. In reaching its decision, the town council shall consider the following, whenever applicable:
(1) Whether there exists an error or ambiguity which must be corrected.
Staff response: No errors or ambiguities exist. However, this is a CPD and the addition of the property owned by JABO LLC and it's subsidiaries, is a reasonable request.

(2) Whether there exist changed or changing conditions which make approval of the request appropriate.
Staff response: The duplex and cottage which were part of the Pink Shell Resort and the single family residence at 309 Estero Blvd were destroyed by Ian.

(3) The impact of a proposed change on the intent of this chapter.
Staff response: No impact on the intent of this chapter will occur.

(4) The testimony of any applicant.

(5) The recommendation of staff and of the local planning agency.

(6) The testimony of the public.

(7) Whether the request is consistent with the goals, objectives, policies, and intent, and with the densities, intensities, and general uses as set forth in the Fort Myers Beach Comprehensive Plan.
Staff response: The proposed development is in compliance with the intensity of the district, whether the FAR is counted for the ground floor parking or not, the property will not exceed the allowed 1.2 FAR. If we were to apply density to the use, it would exceed the density. However, the applicant is requesting 40 additional resort units above the current allowed number of resort units. The new structure will be designed to current building and flood requirements which is supported by the comprehensive plan.

The development is consistent with several policies:
***POLICY 1-A-1** Changes along Estero Boulevard should improve on the characteristics that make it a boulevard in character and not just in name: safe and interesting to walk along, impressive landscaping, and scaled to people rather than high-speed traffic.*
***POLICY 7-D-5** HIDDEN-PATH SYSTEM. **HIDDEN-PATH SYSTEM:** The town shall support the creation of a quiet network of "hidden paths" running on the Bay side parallel to Estero Boulevard. This network would provide an alternative to walking and cycling along Estero Boulevard (as described further in the Community Design Element). Initial land acquisition shall begin in 1999.*

(8) Whether the request meets or exceeds all performance and locational standards set forth for the proposed use.
Staff response: The proposed development will meet performance standards set forth in 34-2031. There are no special location standards for hotels.

(9) Whether urban services are, or will be, available and adequate to serve a proposed land use change.
Staff response: The urban services exist in this location.

(10) Whether the request will protect, conserve, or preserve environmentally critical areas and natural resources.
Staff response: The request should not have an impact on environmentally critical areas and natural resources.

(11) Whether the request will be compatible with existing or planned uses and not cause damage, hazard, nuisance, or other detriment to persons or property.
Staff response: The existing Pink Shell resort has operated successfully for a number of decades, without causing nuisance. The site of the duplex previously contained a duplex and a cottage, without known incidence. It is not expected that this use will cause hazard or nuisance.

(12) Whether the location of the request places an undue burden upon existing

transportation or other services and facilities and will be served by streets with the capacity to carry traffic generated by the development.
Staff response: This use in this location will not likely to place an additional burden on the transportation network or other facilities and services. Impact fees will be required at time of development order.

(13) For planned development rezonings, see § 34-216 for additional considerations.

(c) Findings. Before granting any rezoning, the town council shall find that the requested zoning district complies with:
(1) The Fort Myers Beach Comprehensive Plan.
Staff response: The proposed uses and requested deviations for the CPD comply with the Comprehensive Plan.

(2) This chapter.
Staff response: The proposed uses comply with this chapter except in regard to the deviations.

(3) Any other applicable town ordinances or codes.
Staff response: The proposed request complies with the town ordinances and codes, except in regard to the deviations.

(4) For planned development rezonings, see § 34-216 of this chapter for additional findings.

a. The proposed use or mix of uses is appropriate at the subject location;
Staff response: The proposed resort use is appropriate in this location, it is in the Mixed Residential Future land use.

b. Sufficient safeguards to the public interest are provided by the recommended special conditions to the concept plan or by other applicable regulations;
Staff response: Sufficient safeguards are provided for the public interest.

c. All recommended special conditions are reasonably related to the impacts on the public's interest created by or expected from the proposed development;
Staff response: All conditions are related to the impacts on the public interest.

d. The proposed use meets all specific requirements of the comprehensive plan that are relevant to the requested planned development, such as the following:

1. Policies 4-B-4 and 4-C-3 on commercial uses in the "mixed residential" category.
Staff response: The proposal is in compliance with these policies.

2. Policies 4-B-5 and 4-C-3 on commercial rezonings in the "boulevard" category.
Staff response: Not applicable.

3. Policy 4-C-4 on building heights taller than the standard height limit.

Staff response: The request for additional height is proposed as part of the planned development rezoning process. The requested height appears to be similar to the surrounding uses both the Pink Shell Resort and the surrounding resort and condominium buildings. However, the proposed building is not adjacent to any buildings and therefore additional height may not be appropriate.

4. Policy 4-C-8 on density transfers.
Staff response: Not applicable.

5. Policy 4-E-1 on pre-disaster build back.
Staff response: Not applicable.

6. Policy 7-J-2 on traffic impact analyses and potential design improvements that could offset traffic impacts.
Staff response: The proposed development will be required to pay impact fees at time of development. Additionally, the developer has proposed a variety of policies which will function to decrease the number of vehicles at the hotel.

Findings for Deviation Requests:
Per Sec. 34-216(4) all deviations must be approved, approved with modification, or rejected based upon a finding that:

a. Each item enhances the achievement of the objectives of the planned development; and
Staff response: The requested deviations allow the development of the site as requested by the applicant. It is unclear if they enhance the development.

b. The general intent of this chapter to protect the public health, safety and welfare will be preserved and promoted; and
Staff response: The proposed deviations do not increase risk, hazard, or injury to the public.

c. Each deviation operates to the benefit, or at least not to the detriment, of the public interest; and
Staff response: The deviations are not a detriment to the public interest.

d. Each deviation is consistent with the Fort Myers Beach Comprehensive Plan.
Staff response: The deviations are consistent with the comprehensive plan.

I. RECOMMENDATION

Staff finds that the CPD with deviations does not meet the criteria set forth in Sec. 34-85(b) and (c) and 34-216(2) of the LDC and recommends denial of DCI20230246 with the attached conditions.

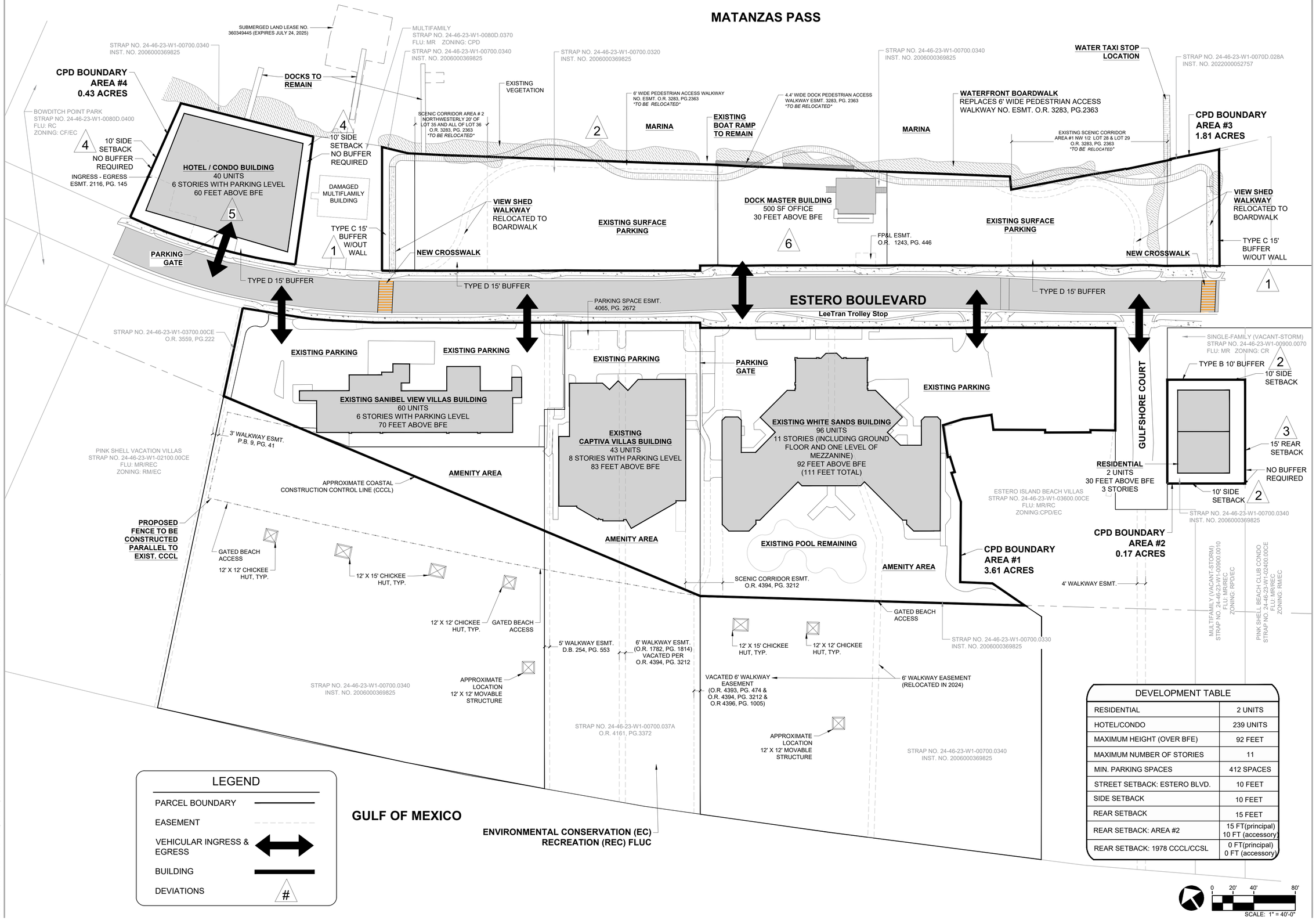
II. CONDITIONS OF APPROVAL

1. The terms and conditions of all previous resolutions shall continue in full force except as expressly altered by this amendment.

2. All development must be consistent with the Master Concept Plan (MCP) titled "Pink Shell CPD Gulf Side" or "Pink Shell CPD Bay Side" and marked with a revision date of August 27, 2013 attached as Exhibit A.
3. The approved uses are limited to those detailed on the attached Exhibit B, Schedule of Uses.
4. Architectural design of the bayside Boutique Hotel shall be substantially in compliance with Exhibit D, renderings.
5. (Condition 7 of Resolution 10-06, amended as follows) Boat rentals, charter boat, and tour boat operations and all other uses of leased submerged lands are limited in accordance with the most recent submerged land lease from the State of Florida (Recorded in Official Record Book 3718, Page 2242, Public Records of Lee County, Florida). A maximum of forty-one (41) boat slips currently are allowed by the state submerged land lease. Use of submerged land must comply with all applicable local, state, and federal regulations. Cruise ships are prohibited as provided by LDC Section 34-620(f). Dock structures located upon leased submerged lands adjacent to the subject property have existed since prior to the adoption of the Fort Myers Beach Comprehensive Plan and its Future Land Use Map. This amendment shall not be interpreted as a finding as to consistency or inconsistency of these docks, and/or their uses, with the Mixed Residential Future Land Use Map category or any other provision of the Fort Myers Beach Comprehensive Plan. Any expansion to the uses of leased submerged lands adjacent to the subject property, including increase to the number of boat slips, and/or the number and/or size of charter boats and/or tour boats, will require an amendment to this planned development and its MCP through the public hearing process for zoning actions.
6. The applicant must provide a landscaping plan and planting schedule that is in compliance with the approved MCP or the LDC Chapter 10, Division 6 Open Space, Buffering and Landscaping.
7. A dune restoration plan must be submitted to the Town of Fort Myers Beach, for approval and will be subject to the following conditions:
   a. Location of the restoration area will be generally as shown on the MCP.
   b. Plant species will consist of a mix of sea oats, beach panic grass, railroad vine, cocoplum, seagrapes and beach sunflower in lines planted at 1.5 feet on center
   c. To allow the plants to become established, the vegetation will be temporarily fenced with ropes and bollards or a similar fencing. Orange construction fence is prohibited.
   d. No more than the existing dune walkover will be permitted to provide beach access.
   e. The beach vegetation project will be coordinated with and integrated with any ongoing beach restoration or renourishing project that is underway at the time of development.
   f. The dune plan must identify the location, behind the dune line, for chickee huts, beach furniture and rental equipment (personal watercraft, chairs etc.) as required by the Town's Sea Turtle Ordinance found in Section 32, Article V, Section 32-113.

Exhibits:

A – Master Concept Plan
B – Schedule of Uses
C – Deviations and Justification from applicant
D – Renderings
E – Applicant Narrative
F – Application
G – Historical Zoning Approvals



LEGEND	
PARCEL BOUNDARY	
EASEMENT	
VEHICULAR INGRESS & EGRESS	
BUILDING	
DEVIATIONS	#

DEVELOPMENT TABLE	
RESIDENTIAL	2 UNITS
HOTEL/CONDO	239 UNITS
MAXIMUM HEIGHT (OVER BFE)	92 FEET
MAXIMUM NUMBER OF STORIES	11
MIN. PARKING SPACES	412 SPACES
STREET SETBACK: ESTERO BLVD.	10 FEET
SIDE SETBACK	10 FEET
REAR SETBACK	15 FEET
REAR SETBACK: AREA #2	15 FT(principal) 10 FT (accessory)
REAR SETBACK: 1978 CCCL/CCSL	0 FT(principal) 0 FT (accessory)

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PINK SHELL RESORT & MARINA CPD
MASTER CONCEPT PLAN
JABO, LLC
FORT MYERS BEACH, FL

PROJECT NO : 23000471
DATE : 06/10/2024
DRAWN: CH
REVIEWED: FD

REVISIONS
1 05/22/2023
2 08/10/2023
3 06/12/2024
4 07/02/2024
5 07/10/2024

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PINK SHELL RESORT & MARINA CPD

Schedule of Uses & Site Development Regulations

1. **SCHEDULE OF USES:**

RESIDENTIAL

Principal:

- Dwelling unit, single-family
- Dwelling unit, two family
- Dwelling unit, multi-family
- Group Quarters

Accessory:

- Residential accessory uses

LODGING

Principal:

- Hotel/motel
- Rental of any permitted dwelling unit for periods of one day or longer
- Resort
- Timeshare Units

Accessory:

Resort accessory uses, including:

- Parking: Surface and garage
- Rental of beach furniture and cabanas
- Rental of boats, bicycles, electric scooters, e-bikes and golf carts
- Charter and tour boats
- Personal watercraft operations office
- Parasailing operations office
- Sailing office
- Docks for use by water taxi or water shuttle
- Meeting space
- Conference center
- Business center
- Kids camp and crafts
- Signs

Subordinate commercial uses

RETAIL

Principal:

- Recreational facilities - commercial. in conjunction with a membership
- Commercial uses including restaurant, café, personal services, retail store

- Mobile food trucks
- Rental of bicycles, electric scooters, e-bikes and golf carts
- Bait and Tackle Shop

Accessory:

- ATM
- On-premises and package sale for off-premises consumption of alcoholic beverage

OFFICE

Principal:

- Administrative office

Accessory:

- Home occupation (no outside help)
- Commercial accessory use

MARINE

Principal:

- Administrative
- Bait and Tackle Shop

Accessory:

- Dock (for lease to non-occupants of the principal use)
- Dock (for use by resort occupants)
- Liveaboard vessel mooring slips (in compliance with submerged land lease)
- Bathrooms, showers and laundry facilities

CIVIC

Principal:

- Beach or bay access
- Essential services
- Essential service equipment
- Park, neighborhood
- Licensed fishing pier
- Sheriff Substation

COMMERCIAL PARKING

Principal:

- Public parking garage
- Public surface parking

Table 1: DENSITY/INTENSITY

USE CATEGORY	TYPE OF USE	DWELLING UNITS/FLOOR AREA
Residential	Multifamily	115 du
Lodging	Hotel/Motel Room	197 rooms
Office	Administrative	2,500 sf
Retail	Primary and Accessory	5,000 sf
Commercial Parking	Garage	518 spaces

PINK SHELL RESORT & MARINA CPD

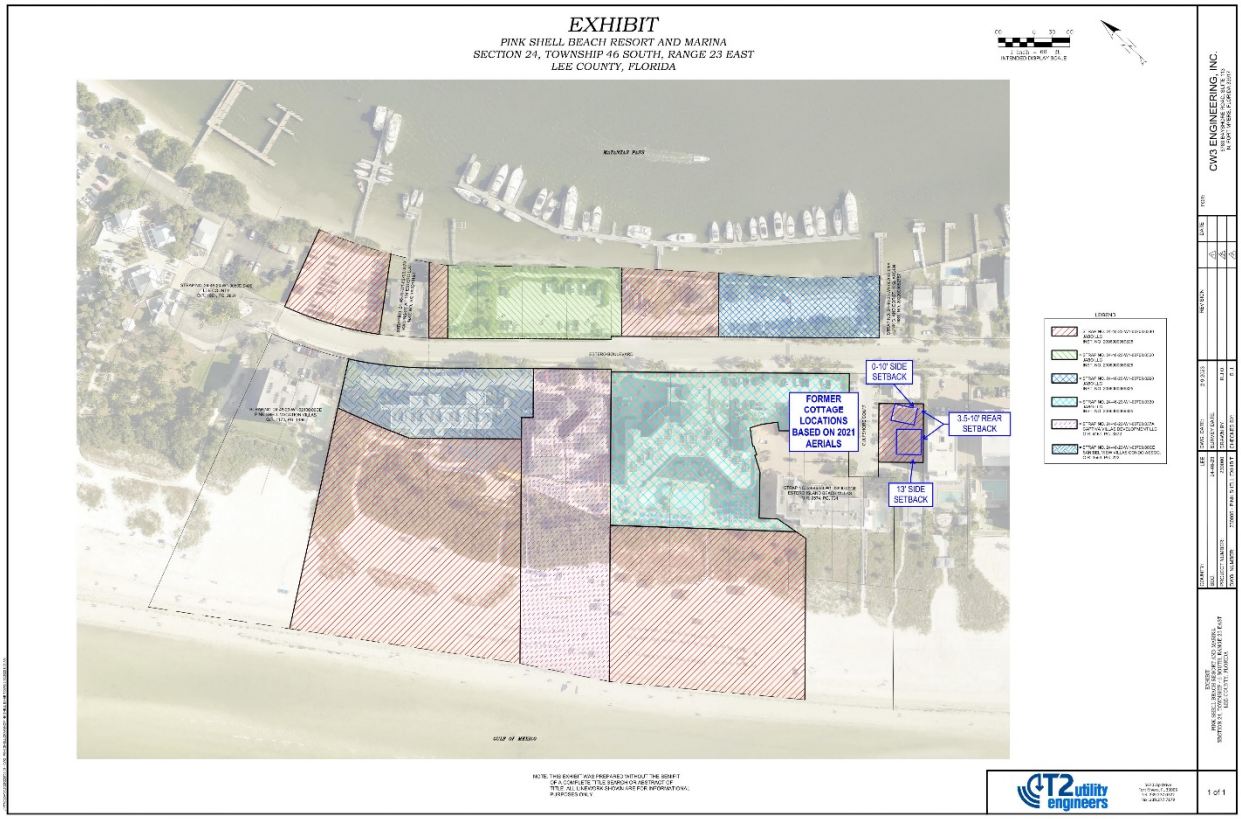
Schedule of Deviations and Justifications

1. Deviate from LDC §10-416(d)(2) Table 10-8 requiring a Type C buffer with a wall when a proposed commercial parking lot is next to a multifamily residential property; to allow a Type C buffer with no wall to allow visibility to the redesigned public boardwalk.

   JUSTIFICATION: Placing a wall where a public boardwalk that is to be park-like and a public fishing pier would take away from the from the public access easement that is meant to be a well landscaped, enticing walk to the boardwalk along Matanzas Pass on the back of the building. A wall would not enhance this experience but detract.

2. Deviate from LDC §34-645 Table 34-2 that specifies in the CR zoning district no building or structure shall be placed closer than 15 feet as a side setback; to allow a 10-foot side setback in CPD Area #2 for the two new homes/short-term rental units are proposed.

   JUSTIFICATION: The lot in CPD area #2 is small, 0.17 acres, and historically had inadequate setbacks and buffers when it was a duplex and cottage that were less than the 10 feet proposed. According to the best we can estimate the side setbacks ranged from 0-10 feet to the north (towards Estero Blvd) and 13 feet to the south (beach). The proposed 10-foot setbacks will provide enough room for typical Type B plantings regardless of the 5-foot reduction of side setback.



3. Deviate from LDC §34-645 Table 34-2 that specifies in the CR zoning district no building or structure shall be placed closer than 20 feet as a rear setback; to allow a 15-foot rear setback.

   JUSTIFICATION: The CPD boundary Area #2 is only 0.17 acres and previously housed three units. The new request is for two units and meeting the required rear and side setbacks would make the lot unbuildable for two units. The 15-foot rear setback will provide enough room for typical Type B plantings regardless of the 5-foot reduction of side setback.

4. Deviate from LDC §34-645 Table 34-2 that specifies in the CR zoning district no building or structure shall be placed closer than 15 feet as a side setback; to allow a 10-foot side setback in CPD Area #4 for the new 40-unit hotel/condo building.

   JUSTIFICATION: The lot in CPD area #4 does not require buffers but does require 15-foot setbacks per the LDC. We are proposing a Type B buffer along the side setbacks to offset the request to have a building with only 10-foot setbacks. The proposed 10-foot setbacks will provide enough room for typical Type B plantings regardless of the 5-foot reduction of side setback. Historically there were no setbacks or buffers for the surface parking lot where the new building is proposed. To the south is a dilapidated multi-family structure that will be razed, and new multi-family structure is proposed in a CPD that is in progress. To the north is Bowditch Point Park maintenance area and employee parking. The buffers will improve current conditions as will the 10-foot setback. The uses to the north and south will not be negatively impacted with the 5-foot reduction as offset with buffering.

5. Deviate from LDC §34-675(b) that requires a maximum height of 40 feet above base flood elevation and no taller than three stories; to allow a height of:

   - 60 feet as measured from one foot over base flood elevation (BFE+1) or
   - Five (5) stories (six (6) stories over ground level parking).

   JUSTIFICATION: The permitted height in the CR District is a maximum of 40 feet above base flood elevation. The height is significantly shorter than the condo/hotel and resort buildings across Estero Boulevard.

6. Deviate from LDC §34-633 where the gross floor area includes the total floor area of all stories of a building within the surrounding exterior walls (whether the walls are solid or screened), plus all area below an elevated building that is six feet or more in height, plus all stories of covered parking; to eliminate counting the ground level covered parking area towards FAR and be significantly below the required 1.2 FAR for this subject property.

   JUSTIFICATION: The CR district limits the FAR of properties to a maximum of 1.2.

   The area of the subject property landward of the 1978 Lee County CCCL that is in the CPD boundary is 6.02 acres or 262,231 square feet.

   The existing White Sands, Sanibel View, Captiva Villas and the dock master building account for 241,900 square feet of floor area. The additional boutique hotel building

accounts for 78,000 square feet of floor area. The total floor is 319,900 square feet resulting in an FAR of 1.2.

However, the applicant has requested a deviation to eliminate counting the first-floor parking areas in the FAR calculation. If the deviation is approved the floor area is reduced for the existing White Sands, Sanibel View and Captiva Villas and the dock master buildings floor area to 195,500 square feet. The additional boutique hotel building is reduced to 65,000 square feet of floor area. The reduced total floor area for the CPD is 260,500 square feet resulting in an FAR of 1.0.

It is our understanding that the Town staff, LPA and Council have moved towards future LDC amendments making this request permanent thus the request meets the intent of the will of the Town.

PREVIOUS APPROVALS with Strikethrough where no longer applicable

2001 Captiva Villas - Resolution 01-26

1. ~~Deviation from LDC Section 34-940 which requires Mixed Use Planned Developments to have at least 300 or more dwelling units and either 100,000 square feet of commercial floor area or be located on a parcel of 10 or more acres, to allow the requested intensities.~~
2. Deviation from LDC Section 34-935e(4) which requires buildings be separated a distance of one-half the sum of the building heights, to allow separation of 36 feet instead of 82 feet, and to allow a separation 44 feet instead of 59 feet.
3. Deviation from LDC Section 34-802 to allow hotel units with a maximum of 750 square feet and 1300 square feet. At least 14 of the 43 units are limited to a maximum of 750 square feet. In no case will the total area of the 43 units exceed 28,219 square feet.
4. Deviation from LDC Section 34-2175 which states buildings may not exceed 25 feet in height above base flood elevation to allow a building 83 feet in height above base flood elevation. No more than 7 floors over one ground floor of parking only will be developed.
5. Deviation from Land Development Code 34-2017(a) which requires parking lot aisles and spaces have a paved, dust free, all-weather surface, to allow an unpaved surface (no parking lots with the following conditions:

   (a) The alternative parking surface must be a stabilized surface of clean (washed) angular gravel or other similar porous material over a well-drained base. The surface will be continually maintained in a dust free manner. Stabilization may be accomplished by turf blocks, or proprietary cellular or modular porous paving systems installed in accordance with manufacturer's specifications.

   (b) The disabled parking spaces must be provided with a smooth surface without gaps or holes which would create a danger to the user.

   (c) Parking stripes will not be required on the alternative surface; however, parking bumpers must be used to identify the required nw11ber of parking spaces.

2010 Gulfside - Resolution 10-05

~~Deviation from LDC Sections 10-415 and 10-416 is to allow open space reduction and buffer reductions as indicated on the Landscape Plan prepared by Bellomo Herbert & Co. for case numbers DC12006-0001 and DC12006-0002, stamped received August 1, 2007. This request for a deviation was partially withdrawn by !he applicant on September 25, 2009. The remaining reductions in required buffers and open space are depicted on the attached "Exhibit C".~~

~~2010 Bayside - Resolution 10-06~~

1. ~~Deviation from LDC Sections 10-415 and 10-416 is to allow open space reduction and buffer reductions as indicated on the Landscape Plan prepared by Bellomo Herbert & Co. for case numbers DC12006-0001 and DC12006-0002, stamped received August 1, 2007. This request for a deviation was partially withdrawn by the applicant on September 25, 2009. The remaining reductions in required buffers and open space are depicted on the attached "Exhibit C'. The Town Council states that its approval does not include the requested 16-foot-wide opening in the buffer along the Estero Boulevard right-a-way for access to the proposed trash compactor.~~

PINK SHELL RESORT & MARINA

COMMERCIAL PLANNED DEVELOPMENT

REQUEST NARRATIVE & FORT MYERS BEACH COMPREHENSIVE PLAN COMPLIANCE

I. REQUEST

JABO, LLC ("Applicant") is requesting to rezone 6.02+/- acres from Commercial Planned Development (CPD), Commercial Resort (CR) to CPD. The 6.02+/- acres are part of seven (7) parcels located on both the Gulfside of Estero Boulevard landward Lee County 1978 Coastal Construction Control Line (CCCL)[1] and the Bayside. The land area included as part of the parcels occupy 11+/-acres in total[2] but only the 6.02 acres is part of the zoning request.

The request is to add a 40 hotel/condominium building, reconstruct two (2) residential units, convert the White Sands spa to four (4) hotel/condominium units, and add many public benefits. The height for the new hotel/condo building, designated within CPD area #4, is a maximum of 60 feet over Federal Emergency Management Agency (FEMA) Base Flood Elevation (BFE+1') and a total of six (6) stories including parking on the first floor. The maximum proposed floor-to-area ratio (FAR) for the entire CPD is 1.0[3].

The proposed CPD is supplemented by a companion Comprehensive Plan Amendment (CPA) application to amend the future land use category from "Mixed Residential" to the "Pink Shell Resort Mixed-Use" district. Approval of this CPA application would create the Mixed-Use district and supportive policies in the Comprehensive Plan to allow unique development regulations and increased density per contributions to the public realm.

II. PROPERTY INFORMATION & CONDITIONS

Entitlements

Pink Shell Resort is in the Mixed Residential and Recreation Future Land Use categories. The proposed CPD requests density above the current Comprehensive Plan and Land Development Code Regulations. Policy 4-C-10 states that, "intensity and density levels allowed by the Future Land Use Map may be increased through formal amendments to this plan if such increases are clearly in the public interest, not just in the private interest of a petitioning landowner."

The Property's zoning designation is: CPD (formerly PUD) on the Bayside CPD and a designation of CPD for White Sands and Captiva Villas (formerly PUD/MPD). Approvals for additional height have been made through the prior CPDs based on the Town's Comprehensive Plan Policy 4-C-4, which permits approval of such requests and provides that "the town shall balance the public benefits of the height limit against other public benefits that would result from the specific proposal."

See the proposed development section below for a summary of the height, density, and floor-to-area ratio (FAR) requested.

---

[1] Also referred to as the Coastal Construction Setback Line (CCSL) on the survey and in common practice.
[2] Per The Town of Fort Myer Beach Land Development Code (LDC) and the Town's Comprehensive Plan zoning areas included in a CPD are limited to areas landward of the 1978 Lee County CCCL/CCSL.
[3] FAR of 1.0 does not count the first floor of parking of the existing resort and the proposed new building. A deviation has been requested to LDC Sec. 34-633.

Built Environment

The existing built environment on the Gulfside includes: (1) three resort buildings (White Sands, Captive Villas and Sanibel View Villas); (2) a vacant pad previously developed with a duplex and one cottage, both of which were destroyed by Hurricane Ian; and (3) associated parking and outdoor amenities, including pools, sundecks, and water sports for the Pink Shell Resort.

The Pink Shell always has been approved for "resort" use. "Resort" is defined by the Land Development Code Section 34-2 as a mixed-use facility that accommodates transient guests or vacationers as well as longer-term residents. Resorts include a combination of dwelling units and guest units, and must contain, at a minimum, the following: (1) one hotel/motel unit; and (2) at least 50 total units, which include a combination of dwelling units and guest units. Resorts may also include timeshare units, and may provide food service, outdoor recreational activities, and/or conference facilities for their guests.

The existing resort infrastructure includes a marina, pools and pool deck, beach and beach chairs, wave runners, skiffs, spa, conference room, and food and beverage services. The resort uses have been found to be consistent with the Comprehensive Plan and the Land Development Code and compatible with the neighborhood of multi-family, hotel, hotel/condo, and resort uses.

The property has been entitled through numerous zoning actions beginning in 1982, long before the Town's incorporation, and most recently in 2023. Additional actions were taken in 2024 regarding hardscape amenities, fencing and replacement of tiki structures waterward of the CCCL/CCSL. The existing buildings units and non-residential uses are in place primarily as part of PUD, MPD and CPD zoning. The summary of the historical zoning actions is included as *Appendix A* in this document.

Gulfside Parcels

The specific breakdown of the existing uses is as follows with proposed changes in ***RED bold italics***:

Table 1: Gulfside Parcels Existing and Proposed Uses

Building	Existing Density/Intensity	Proposed Density/Intensity	Parcel(s)
Restaurants	5,450 sf	5,450 sf	24-46-23-W1-00700.0330
Conference	1,150 sf	1,150 sf	
Ballroom	2,104 sf	2,104 sf	
Fitness Facility	900 sf	900 sf	
Spa	6,033 sf	***0 sf***	
Pool Bar	1,000 sf	1,000 sf	
Retail (accessory)	1,400 sf	1,400 sf	
Rooms (White Sands, Captive Villas and Sanibel View Villas)	195 Units	***199 Units (4 units per 6,000 sf conversion of spa)***	24-46-23-W1-00700.0330 24-46-23-W1-00700.037A 24-46-23-W1-03700.00CE
Duplex and Cottage lot	3 Units	***2 Units***	24-46-23-W1-00700.0330

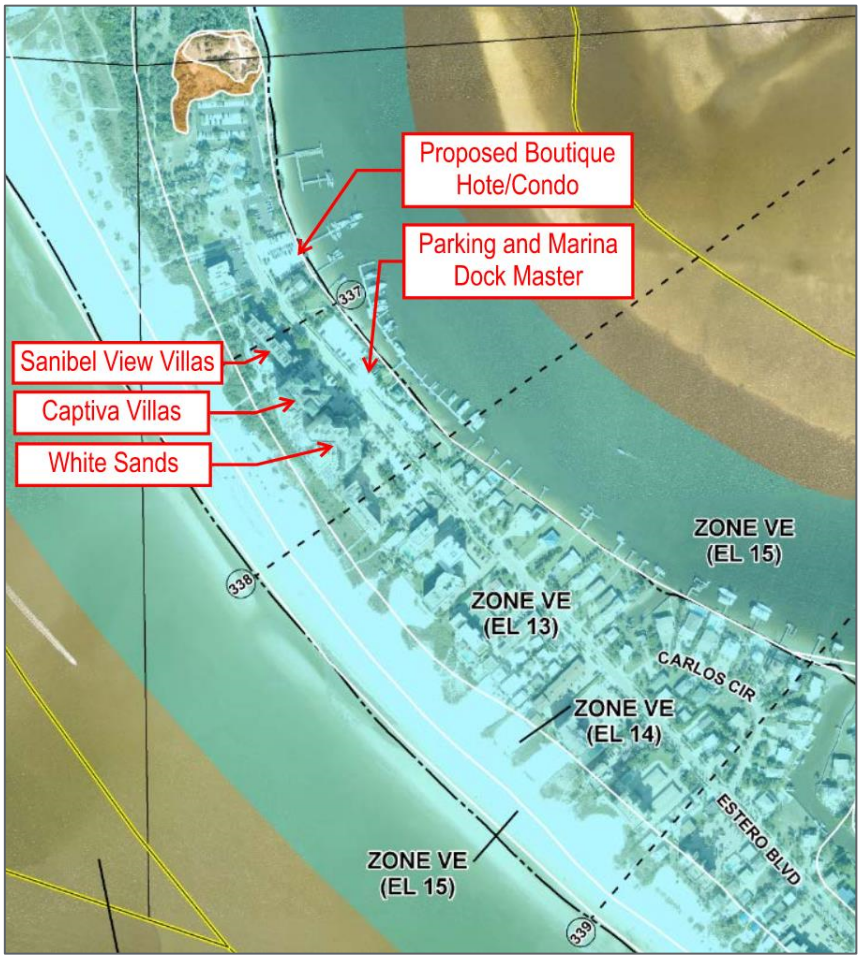
Bayside Parcels
The existing built environment on the Bayside includes a marina, docks, dock master building, and surface parking. The specific breakdown is as follows with changes and new additions in ***RED bold italics***:

Table 2: Bayside Parcels Existing and Proposed Uses

Building	Existing Density/ Intensity	Proposed Density/ Intensity	Parcel(s)
Boutique hotel/condo	Employee parking lot	***40 Units (1 unit per 309 Estero and 1 per duplex and cottage lot)***	24-46-23-W1-00700.0340
Boat Slips	41	41	24-46-23-W1-00700.0340 24-46-23-W1-00700.0320 24-46-23-W1-00700.0290
Liveaboards	39	39	
Dock Master Building	500 sf	500 sf	
Residential with dock	1 Unit (309 Estero Blvd purchase)	-	24-46-23-W1-0070D.028A
	Existing dock	-	

Flood Elevation

The built environment is entirely within the VE Flood Zone with a base flood elevation of 13 feet per FEMA Flood Map Panel 12071C0554G.



III. SURROUNDING LAND USES

Current uses of the Pink Shell properties include resorts, guest units, residential dwelling units and assorted accessory and non-residential uses in support of the resort buildings including conference rooms, restaurants, office, marina, and spa.

The Mixed Residential FLUC area of the north end of the island contains several resorts, hotels, and high-rise multi-family units. Immediately north of Pink Shell Resort is the Bowditch Point regional beach park, owned by Lee County, which provides beach access to

the Gulf of Mexico and the bay through Matanzas Pass.

Table 3: Surrounding Land Use

	Future Land Use	Zoning	Existing land uses
North	Mixed Residential, then Recreation	Residential Multifamily (RM) then Community Facilities (CF)	Pink Shell Vacation Villas Condo and Bowditch Point Park
South	Mixed Residential	Commercial Resort (CR), Residential Multifamily (RM) and Residential Planned Development (RPD)	High-rise condominiums, rental cottages, residential lot
West:	Recreation	EC (Environmentally Critical)	Gulf of Mexico beach
East:	Tidal Water	None	San Carlos Bay
Enclave (Bayside):	Mixed Residential	Commercial Planned Development (CPD)	Abaco Beach Property – Multi unit

IV. PROPOSED DEVELOPMENT

The development program proposed will add a boutique hotel/condo to the Bayside, consistent with the existing development, as well as a substantial number of improvements to the Bayside properties and Estero Boulevard, and new features available to the public that are outlined in the next section.

The request will combine all historical zoning actions into a unified CPD that will:

- Establish an accurate inventory of existing development including hotel units, commercial area, amenities, and resort services.
- Allow for redevelopment of the Bayside parcels limited to a new 40-unit boutique hotel/condo on the northernmost lot, a redeveloped parking area that surrounds the Dock Master Building, an improved boardwalk, a public fishing pier, and access to water taxis.
- Establish redesigned amenities of the existing resort property (Gulfside) and add two units to White Sands by reducing the size of the spa.
- Add a host of public benefits designed to serve the local area and the Town as a whole.

The existing structures on the Gulfside parcels –White Sands (Pink Shell Resort), Captiva Villas, and Sanibel View Villas – avoided significant structural damage from Hurricane Ian. The prior existing duplex and rental cottage were damaged in Hurricane Ian and have been razed. The land south of Gulfshore Court has historically been used as an overflow surface parking lot and would now be available for development or reestablishment as a parking area.

Gulfside Parcels

Redevelopment of the Gulfside parcels will be limited to the beachside amenities that were largely destroyed from the hurricane, and much of this is well underway. The cottages that were located Gulfside are proposed to be relocated to the northernmost Bayside that is currently surface parking. The density unit from the Estero Blvd 309 parcel is also proposed to be relocated to the northernmost Bayside parcel. The total density to be relocated from the Gulfside to the Bayside would be four (4) units total.

Bayside Parcels
Redevelopment will focus on the new 40-unit boutique hotel/condo on the northernmost lot, a redeveloped parking area that surrounds the Dock Master Building, an improved boardwalk, a public fishing pier, and access to water taxis.

General Improvements
There will be general improvements to the properties that are not parcel-specific, such as landscaping enhancements to Estero Boulevard and other benefits outlined in the contributions to the public realm.

Summary of Development Program Intensities and Densities

Once complete, the proposed CPD intensity/density would be:

- 199 hotel and hotel/condo units (4 new hotel rooms from spa conversion in White Sands) in CPD Area #1,
- 41 boat slips with 39 liveabords,
- A new 40-unit boutique hotel/condo building in CPD Area #4,
- Two (2) new residential units in CPD Area #4 (former duplex and cottage lot)
- 500 square feet in the dock master building in CPD Area #3,
- Resort amenities such as sundeck and pools, and
- Non-residential uses associated with the resort such as restaurant, conference rooms, fitness facilities, pool bar, spa, and water sports.

Comprehensive Plan

The Applicant has submitted a companion Comprehensive Plan Amendment (CPA) application to amend the future land use category from “Mixed Residential” to the “Pink Shell Resort Mixed-Use” district and create the Mixed-Use district and supportive policies in the Comprehensive Plan to allow unique development regulations and increased density per contributions to the public realm.

Development Parameters

Height
The BFE at this location is 13 feet.

- The maximum permitted height to be established by the Pink Shell Resort and Marina CPD is 92 feet above base flood elevation (BFE) on the Gulfside parcels.
- The height of the proposed boutique hotel/condo is 60 feet above BFE.

Stories
The existing buildings are built to the following number of stories:

- 11 stories including the parking and mezzanine level of the White Sands building
- Eight (8) stories including the parking level of the Captiva Villas building
- Six (6) stories including the parking level of the Sanibel View Villas building
- The new boutique hotel/condo building on the Bayside lot identified as CPD Area #4 is a maximum of six (6) stories including the parking level.

Floor-to-Area Ration (FAR)
The FAR permitted at this location in the surrounding Commercial Resort (CR) zoning district is 1.2. Per LDC §34-633, the gross floor area includes the total floor area of all stories of a building within the surrounding exterior walls (whether the walls are solid or screened), plus all area below an elevated building that is six feet or more in height, plus all stories of covered parking. However, the calculation of the gross floor area does not include any area where the roof is screened rather than solid (such as swimming pool enclosures).

The land area used in the calculation is the gross square footage within the site's private property line, minus wetlands, canals or other waterbodies, and minus any land designated "recreation" on the comprehensive plan's future land use map. The area of the subject property in the Recreation FLUC (and Environmental Conservation zoning district) which is landward of the 1978 Lee County CCCL is 6.02 acres or 262,231 square feet.

The existing White Sands, Sanibel View, Captiva Villas and the dock master building account for 241,900 square feet of floor area. The additional boutique hotel building accounts for 78,000 square feet of floor area. The total floor is 319,900 square feet resulting in an FAR of 1.2.

However, the applicant has requested a deviation to eliminate the first-floor parking areas from the calculation of the gross floor area. If the deviation is approved, the floor area is reduced for the existing White Sands, Sanibel View and Captiva Villas and the dock master buildings floor area to 195,500 square feet. The additional boutique hotel building is reduced to 65,000 square feet of floor area. The reduced total floor area for the CPD is 260,500 square feet resulting in an FAR of 1.0.

It is our understanding that the Town staff, LPA, and Council have moved towards future LDC amendments that would utilize the calculation sought by the deviation applicable to all requests permanently. Thus, the request meets the Town's intent and would provide no special benefit to the Applicant in practice.

Density
The proposed development approval would allow a total of 241 units over 6.02 acres, which results in a gross density of 40 units per acre. The units are comprised of 96 hotel rooms in White Sands, 103 hotel/condo units in the Sanibel View and Captiva Villas, 40 condominium or hotel condo in the new boutique hotel, and two (2) units in CPD Area #4 (former cottages lot Gulfside).

Parking Analysis

Table 4: Existing and Proposed Parking

Location		Existing Spaces	Proposed Spaces
Gulfside	Sanibel View Villas	92	92
	Captiva Villas	24	24
	White Sands	64	64
	Former Duplex and Cottage (Lot 5 and 6)	15	***15***
Bayside	Marina and Dock Master lot (surface parking)	143	***185***
	309 Estero Blvd Property (surface parking)	5	***-***
	Employee Parking lot (lots 38 & 39)	49	***-***
	Boutique hotel/condo (lots 38 & 39)	***-***	***46***
Total		**400**	***426***

Table 5: LDC Parking Requirements

Use	Ratio	Existing Density/Intensity	Proposed Density/Intensity	Required Parking
Restaurant[1]	None per LDC 34-2020	5,450 sf	5,450 sf	0
Conference[1]	2/1000 sf	1,150 sf	1,150 sf	2
Ballroom[1]	8/1000 sf	2,104 sf	2,104 sf	16
Fitness Facility[1]	Non-Public	900 sf	900 sf	0
Spa[1]	5/1000 sf	6,033 sf	***0 sf***	***0***
Pool Bar[1]	8/1000 sf	1,000 sf	1,000 sf	8
Retail[1]	3/1000 sf	1,400 sf	1,400 sf	2
Hotel/Condo Units[1] (White Sands, Sanibel View and Captiva Villas)	1.5 per Room	195	***199 (+4 units per 6,000 sf spa conversion)***	***298.5***
Duplex and Cottage Lot[1]	2.0 per Unit	4	***2***	***4***
Unit from 390 Estero Blvd[2]	1.5 per Unit	1	***-***	***-***
Boat Slips[2]	1/2 per slip	41	41	20.5
Dock Master Building[2]	2/1000 sf	500 sf	500 sf	1
Fishing pier (accessory)[2]	-	-	-	***0***
Boutique hotel/condo[2]	1.5 per Unit	-	***40 Units***	***60***
			Total Required Spaces	**412**
			Spaces Provided	**426**

1 Gulfside parcels and/or accessory to resort buildings
2 Bayside parcels

Contributions to the Public Realm

The proposed zoning requests density above the minimum provided in the current Comprehensive Plan and Land Development Code Regulations. According to the Town's Comprehensive Plan FLU Policy 1-C-11 (formerly Policy 4-C-10) states that, "intensity and density levels allowed by the Future Land Use Map may be increased through formal amendments to this plan if such increases are clearly in the public interest, not just in the private interest of a petitioning landowner."

Likewise, FLU Policy 1-C-4 (formerly Policy 4-C-4) states that requests for additional height can be made and "the town shall balance the public benefits of the height limit against other public benefits that would result from the specific proposal."

Below are the proposed public benefits to the residents and visitors to the Beach and the Town for Fort Myers Beach overall. Based on such benefits, approval of additional density requested herein is appropriate.

1. **Relocated public accessways at north and south end of the bayside Dock Master building area and surface parking lot and create a public boardwalk along Matanzas Pass.**

    - As part of prior development of the Pink Shell Resort and Marina, easements were established for viewsheds and accessways on the Bayside parcels. Prior to the hurricane, the area included surface parking and a pathway that provided access to the marina. The redevelopment plan enhances the public experience with a landscaped walkway that connects to Estero Boulevard on the north and south ends of the view corridor easements, wrapping the lot with an improved meandering boardwalk along the water of Matanzas Pass. The boardwalk connects to the water taxi slip and the proposed fishing pier. Such improvements enhance the public's experience on the north end of the Island and would provide an overall benefit to the Town.

2. **Landscaping improvements to Estero Boulevard for the length of the CPD, redesigned and maintained in perpetuity by the Resort.**

    - The landscaping and improvements to Estero Boulevard have been important and substantially improved the look and feel of the northern part of the Island. Now that the hurricane damaged or removed much of the landscaping, the Pink Shell Resort proposes to not only restore prior improvements, but to substantially enhance what was previously provided. This zoning request includes a landscape plan for Estero Boulevard, paid for in full and maintained in perpetuity by the Resort. Simply put, the Town would be benefitted by such improved landscaping and pedestrian oriented infrastructure that would come at no cost to the Town now or in the future.

3. **Drop off/pick up location for the proposed intercoastal water taxi route connecting visitors to San Carlos Island.**

    - The marina has ample slip and docking areas to provide a free stop for the water taxi running from San Carlos Island to Estero Island as part of the park once opportunity, which will contribute to the visitor experience by providing an enhanced public experience when arriving to the Island. The water taxi would also provide alternative transportation to cars, alleviating traffic on Estero Boulevard, furthering the intent of Comprehensive Plan Policies T-1-D-1 through T-1-D-3. Further, the exit point from the water taxi is walking distance to the Bowditch Point Park pedestrian access, and therefore is located at a uniquely convenient spot for the public.

4. **Pre-arrival Concierge encouraging alternative transportation.**

    - The Resort will provide re-arrival concierge and golf carts. As a program the resort emails incoming guests 3 days out and 7 days out to encourage airport transportation and presell golf carts that are available as road ready alternatives to vehicles at White Sands with charging stations. The resort also has bike rentals available as another means of getting around the island without vehicles.

5. **Resort provided employee transportation.**

    - The Resort will continue to operate two 15-passenger vans for employee transport: 1.) Leigh Acres 2.) North Fort Myers, which are operated by the Pink Shell staff as a program thru LeeTran and Enterprise Vans.

6. **Barge pump out for Town's mooring fields.**

    - Since Hurricane Ian the resort has offered the marinas dock and pump to empty the Town's barge from the mooring fields. It will continue to offer the use until the Town's infrastructure is back in place.

7. **Community support for Bay Oaks Summer Camp.**

    - Since Hurricane Ian damaged the Bay Oaks the community swimming pool Pink Shell has offered its pool for the Bay Oaks summer camp while the pool is being reconstructed.

8. **Community day passes to pool amenities.**

    - Use of the Pink Shell Resort pool amenities are available to the public via day passes.

9. **Improved transportation circulation and options for alternative modes of travel.**

    - The proposed additions of the water taxi stop that tie into the park once opportunity, the LeeTran trolley system with a stop in front of the Resort, redesigned walkway and boardwalk around the Bayside structure, enhanced crosswalks on Estero Boulevard, improved shading and landscaping along Estero Boulevard, and additional seating along sidewalks, will create a cohesive, connected, and complete transportation solution.

10. **Florida Green Lodging Program, 4 Palm Certification, through FDEP**

    - As stated in a letter from FDEP, the Pink Shell Resort is a certified green lodging facility and one of the few such facilities in the State of Florida. The Resort intends to keep being environmentally conscious and maintain the certification relative to both the existing and proposed development. See *Exhibit A*.

11. **Turtle Conservancy Certified Maintained Property**

    - The Beach belongs to all walks of life, including sea turtles. The Resort is currently taking the necessary steps to address lighting concerns for the nesting sea turtles at significant expense to the Applicant. They will meet or exceed said requirements such as installing tinted windows and directed outdoor lighting to be certified by the Conservancy pending completed work programs as outlined in *Exhibit B*.

V. INFRASTRUCTURE

As outlined in the enclosed application, and more thoroughly in the companion CPA, the subject property is currently serviced, or will be serviced, by public infrastructure that can accommodate the proposed density and intensity associated with the CPD request.

Letters of service availability have been received from the Lee County Utilities (Sewer), Town of Fort Myers Beach Utilities (Water), Lee County Sheriff, Fort Myers Beach Fire Control & Rescue District, Fort Myers Beach Public Works Department, Lee County School District, and Lee County Transit. Based on the capacity letters all agencies and services have adequate capacity to meet the demand for the additional units proposed in this application.

VI. Design Standards Compliance (LDC Sections 34-991 through 34-997)

Section 34-992

(a) Applicability. Except where this code specifically provides otherwise, these commercial design standards apply to all commercial and mixed-use buildings or portions thereof that are being newly built, and to "substantial improvements" to such buildings as defined in § 6-405 of this LDC, on properties that are zoned in any of the following zoning districts:

(6) CPD (commercial planned development) (§§ 34-951—34-960).

Applicant: The proposed redevelopment of the northern most Bayside parcel property with a hotel/condo building of 40 units is new construction for which approval is requested through CPD zoning. The commercial standards within these sections will be applied to the design and conditioned appropriately by the zoning resolution.

(b) Commercial buildings on properties with a zoning resolution that incorporated specific architectural elevations shall be required to comply with these standards to the extent that the standards are not inconsistent with the approved elevations.

Applicant: Architectural renderings will be part of the Commercial Planned Development zoning package for conceptual compliance review by staff and the LPA and Town Council during public hearings.

(c) Commercial buildings such as hotels that will not contain commercial uses below base flood elevation shall not be required to comply with the ground-floor window and retail standards except along Old San Carlos Boulevard (see § 34-676(b)(2) of this chapter. However, the principal facades of these buildings must screen under-building parking areas in a manner acceptable to the town manager or designee.

Applicant: The 40-unit building on the Bayside will be constructed above base flood elevation, and therefore does not propose ground floor commercial.

The building includes under-building parking on the first floor, which will be screened. This first-floor parking area will also be designed to create a pedestrian level scale with opening for light and building treatments that create the look and feel of windows and interesting facades.

(d) Compliance determinations. Compliance with these standards shall be determined as follows:

(1) An applicant may seek conceptual or final approval of a specific building and site design during the commercial planned development rezoning process (see § 34-931 of this chapter). The resolution approving a commercial planned development may include specific site plans and building elevations and shall specify the extent to which these plans and elevations have or have not been determined to meet these commercial design standards and whether any deviations to these standards have been granted.

Applicant: The Pink Shell Resort & Marina CPD application seeks conceptual approval of a Master Concept Plan (MCP) and conceptual approval of the 40-unit building that will be shown in the forthcoming renderings as part of the application.

The project proposes previously approved deviations to be carried over from all prior zoning approvals in addition to five new deviations.

VII. DECISION-MAKING COMPLIANCE (LDC SECTION 34-85)

Town council shall find that the requested zoning district complies with:

(1) The Fort Myers Beach Comprehensive Plan.

Applicant: The CPD zoning application is attached to a companion Comprehensive Plan Amendment that seeks to create the Pink Shell Mixed Use District.

Town council shall consider the following, whenever applicable:

(1) Whether there exists an error or ambiguity which must be corrected.

Applicant: The rezoning of the Pink Shell managed properties solves the long-standing confusion that has resulted from the piecemeal zoning approvals. Adding to the confusion is the adoption of zoning approvals by Lee County prior to Town incorporation, and transition to the Town after incorporation. The requested CPD will codify streamlined development parameters and rectify any remaining discrepancies by placing all properties under one approved zoning resolution.

(2) Whether there exist changed or changing conditions which make approval of the request appropriate.

Applicant: The island has been changed by Hurricane Ian. Approval of this request would address the long-term need of the island while balancing the redevelopment costs in doing so.

(3) The impact of a proposed change on the intent of this chapter.

Applicant: None.

(4) The testimony of any applicant.

Applicant: As a quasi-judicial process, the CPD zoning will allow for competent substantial evidence to be presented to and considered by the Local Planning Agency

for recommendation and Town Council for a decision or conditions for approval. The testimony presented will demonstrate that the request is consistent with the goals, objective and policies of the Comprehensive Plan, as proposed to be amended by the companion CPA, and with all applicable development regulations.

(5) The recommendation of staff and of the local planning agency.

Applicant: The Town Council will consider the staff report and recommendation as well as the LPA's report and recommendation rendered after a public hearing where the staff and applicant will present evidence, the public will speak, and the LPA is permitted to ask questions of all parties.

(6) The testimony of the public.

Applicant: During the quasi-judicial process, the hearing will be advertised to the public and they will be entitled to present evidence, concerns, or issues with the proposed development pursuant to the Florida Sunshine Law and principles of procedural due process. In addition, the applicant intends to hold one or more public outreach events where public input will be received and considered by the Applicant.

(7) Whether the request is consistent with the goals, objectives, policies, and intent, and with the densities, intensities, and general uses as set forth in the Fort Myers Beach Comprehensive Plan.

Applicant: The proposed development includes public benefits, as discussed above. The Applicant respectfully requests consideration of these benefits in relation to its requests to exceed the standard density and intensity ranges for height and density under the current Comprehensive Plan. It is also for this reason that the Applicant has proposed the companion Comprehensive Plan Amendment to create a Pink Shell Mixed Use FLUC.

(8) Whether the request meets or exceeds all performance and locational standards set forth for the proposed use.

Applicant: The requested rezoning proposes to affirm both the existing Resort and new similar uses following those parameters already deemed to meet or exceed performance and locational standards. The public benefits will increase the performance of not only the Resort but the entire north end of the island by addressing safety, services, beauty, and alternative forms of transportation.

(9) Whether urban services are, or will be, available and adequate to serve a proposed land use change.

Applicant: Letters of availability have been requested and received regarding the adequate urban services for the proposed project. In short, the resort largely exists today with adequate infrastructure and services provided. The expansion will not exceed those capabilities.

(10) Whether the request will protect, conserve, or preserve environmentally critical areas and natural resources.

Applicant: The request does not propose new development within environmentally sensitive areas, and will be required to develop according to the Town's LDC and applicable state requirements.

(11) Whether the request will be compatible with existing or planned uses and not cause damage, hazard, nuisance, or other detriment to persons or property.

Applicant: The proposed development on the Bayside is compatible with the existing Gulfside resort in size, height, stories, function, and services.

(12) Whether the location of the request places an undue burden upon existing transportation or other services and facilities and will be served by streets with the capacity to carry traffic generated by the development.

Applicant: The proposed development should serve to decrease traffic issues by providing: (1) access to a water taxi as alternative transportation; (2) improved pedestrian circulation; and (3) enhanced shade and landscaping along pedestrian walkways.

According to 34-216 the recommendation made to the town council must be supported by the guidelines set forth in § 34-85 of this chapter. In addition, the findings must address whether the following criteria can be satisfied:

a. The proposed use or mix of uses is appropriate at the subject location;

Applicant: We respectfully assert that the use and location is appropriate. It has long been a commercial use and marina, and the proposed new development is consistent with the existing scheme of development. The buildings in the area are of similar height and size as that proposed by this request.

b. Sufficient safeguards to the public interest are provided by the recommended special conditions to the concept plan or by other applicable regulations;

Applicant: Staff and applicant will discuss safeguards to be proposed as special conditions.

c. All recommended special conditions are reasonably related to the impacts on the public's interest created by or expected from the proposed development;

Applicant: Staff and applicant will discuss conditions that are reasonably related to the public interest, as impacted by this request.

d. The proposed use meets all specific requirements of the comprehensive plan that are relevant to the requested planned development, such as the following:

1. Policies 4-B-4 and 4-C-3 on commercial uses in the "mixed residential" category.

Applicant: Proposed comprehensive land use amendment proposed for new mixed-use district.

2. Policies 4-B-5 and 4-C-3 on commercial rezonings in the "boulevard" category.

Applicant: Not applicable

3. Policy 4-C-4 on building heights taller than the standard height limit.

Applicant: See the Comprehensive Plan Consistency Section below.

4. Policy 4-C-8 on density transfers.

Applicant: Not applicable

5. Policy 4-E-1 on pre-disaster buildback.

Applicant: Not applicable

6. Policy 7-J-2 on traffic impact analyses and potential design improvements that could offset traffic impacts.

Applicant: See the traffic study report by TR Transportation and the Master Concept plan.

VII. COMPREHENSIVE PLAN CONSISTENCY NARRATIVE

The following is an analysis of how the proposed Comprehensive Plan Amendment is consistent with the goals, objectives, and policies (GOPs) of the Town of Fort Myers Beach Comprehensive Plan. The adopted GOP headings are listed below, and the Applicant's compliance analysis is shown in **bold.**

Future Land Use Element

POLICY 1-A-1 Changes along Estero Boulevard should improve on the characteristics that make it a boulevard in character and not just in name: safe and interesting to walk along, impressive landscaping, and scaled to people rather than high-speed traffic.

The proposed CPD rezone and companion CPA include commitments that will provide enhanced pedestrian safety and streetscape aesthetics, in direct compliance with this policy. The CPD master concept plan reflects sidewalk connectivity throughout the development, relocated public accessways, and improved/redesigned public boardwalk along Matanzas Pass. Additionally, public streetscape improvements are proposed along Estero Boulevard to create an enhanced pedestrian environment along the roadway and general improvement to aesthetics.

POLICY 1-B-2 Improve the appearance of the town throughout by landscaping public property and rights-of-way with native vegetation.

The CPD and companion CPA propose landscaping improvements in the Estero Boulevard ROW for the length of the project, redesigned and maintained in perpetuity by the Applicant with no cost to the Town, to provide a comfortable walking environment in conformance with this Policy.

POLICY 1-B-3 Identify potential mechanisms to implement and maintain special amenities such as entry features, monuments, or other special landscape projects.

The CPD and companion CPA propose landscaping improvements in the Estero Boulevard ROW for the length of the project, redesigned to provide a comfortable walking environment and maintained in perpetuity by the Applicant, in conformance with this Policy.

POLICY 4-A-1 Maintaining the town's current "human scale" is a fundamental redevelopment principle. Fort Myers Beach is best enjoyed from outside a car; new buildings should be designed to encourage use or admiration by people on foot or bicycle, rather than separating them with gates, walls, deep setbacks, or unnecessary building heights.

The CPD master concept plan and development parameters propose ground floor screening and landscaping according to the LDC. The new structure proposed within CPD Area #4 has been designed to encourage both use and admiration by pedestrians, as discussed above. Further, the provision of three (3) pedestrian access easements, ROW improvements, and water taxi encourage the public to experience the north end of the Island from outside a car from the time the arrive on the Island until their departure.

POLICY 4-A-2 The Town of Fort Myers Beach values its vibrant economy and walkable commercial areas. Through this plan, the town will ensure that new commercial activities, when allowed, will contribute to the pedestrian oriented public realm.

The creation of the Pink Shell Resort Mixed Use District is in direct compliance with the above policy. The proposed CPD provides for a mix of uses in support of this policy.

POLICY 4-A-4 Easy walking access to the beach is a key element of the town's human scale. Development trends that inhibit this access are undesirable (including traffic improvements to Estero Boulevard that would make it a barrier to the beach for pedestrians).

The proposed CPD rezone and companion CPA propose to further enhance the pedestrian environment and multi-modal transportation network that is critical to Fort Myers Beach's success, quality of life and public safety. Specifically, the Mixed Use District and supportive zoning conditions will contain the following bicycle/pedestrian elements in direct compliance with the above policy:

- ***Relocated public accessways at north and south end of building (Bayside) and improved/redesigned public boardwalk along Matanzas Pass.***
- ***Landscaping improvements in Estero Boulevard for the length of the CPD, redesigned and maintained in perpetuity by the Applicant, to provide a comfortable walking environment.***
- ***A drop off/pick up location for the proposed intercoastal water taxi route connecting visitors to San Carlos Island.***

POLICY 4-A-5 The town contains many important natural resources despite its urbanized character. Preservation of those resources is of the highest importance and is a frequent theme throughout this plan.

Uses and development in the areas waterward of the 1978 Coastal Construction Control Line (CCCL) will continue to comply with the above policy. Other portions of the Property are disturbed/developed. The development program will be designed and

constructed to the latest South Florida Water Management and Department of Environmental Protection standards to ensure high-quality development that protects natural resources.

As stated above, the Pink Shell Resort is one of the few certified green lodging facilities in the State of Florida, and has obtained the highest classification of 4 Palm, demonstrating the Applicant's ongoing commitment to natural resource preservation.

Additionally, following Hurricane Ian, the Applicant partnered with local and state agencies regarding beach renourishment. On May 15, 2023, the Pink Shell Resort & Marina executed the Temporary Beach Management and Access Easement agreement as shown in Exhibit C in the application.

POLICY 4-B-4 "MIXED RESIDENTIAL": designed for older subdivisions with mixed housing types on smaller lots, newer high-rise buildings, and mobile home and RV parks. This category will ensure that Fort Myers Beach retains a variety of neighborhoods and housing types. For new development, the maximum density is 6 dwelling units per acre (except where the Future Land Use Map's "platted overlay" indicates a maximum density of 10 units per acre for legally existing dwelling units). Commercial activities ties are limited to lower impact uses such as offices, motels, churches, and public uses, and must be sensitive to nearby residential uses, complement any adjoining commercial uses, contribute to the public realm as described in this comprehensive plan, and meet the design concepts of this plan and the Land Development Code. These qualities and overall consistency with this comprehensive plan shall be evaluated by the town through the planned development rezoning process. Non-residential uses (including motels and churches) now comprise 7.9% of the land in this category, and this percentage shall not exceed 12%**.**

The above policy describes the portions of the Property that are outside of the area currently assigned a Recreation FLU and demonstrates it is no longer an appropriate future land use category for a resort destination, as this scale and scope of use was not contemplated when the Town adopted its Comprehensive Plan.

POLICY 4-B-8 "RECREATION": applied to public parks, schools, undevelopable portions of Bay Beach, and those parts of Gulf beaches that lie seaward of the 1978 coastal construction control line. Additional accretions of beach, whether by natural causes or through beach renourishment, will automatically be assigned to this category. No new residential development is permitted (although several existing buildings were legally constructed partially seaward of the 1978 control line). The maximum density of residential development here is 1 dwelling units per 20 acres, with all dwelling units to be constructed outside this category. Allowable uses are parks, schools, libraries, bathing beaches, beach access points, and related public facilities. Non-recreational uses (such as the elementary school) now comprise 2.7% of the land in this category; additional school sites and public buildings shall not increase this percentage beyond 6%.

Though the proposed Comprehensive Plan Amendment removes the Recreation FLU in favor of the Pink Shell Mixed-Use FLU, the uses and development in these areas will continue to comply with the above policy based on restrictions to be included in the CPA.

POLICY 4-C-3 COMMERCIAL LOCATIONS: When evaluating proposals for new or expanded commercial uses in categories where they are permitted, the several principles shall apply.

The proposed District/CPD is not located within the Low-Density category and is proposed for inclusion in a site-specific Mixed-Use District based on existing and

proposed levels of development at an established node in the west side of Fort Myers Beach.

The proposed District requires the approval of a Planned Development rezoning to ensure conditions and site-specific concept plans are attached to the District in perpetuity.

The proposed District is currently within the Mixed Residential FLU and proposes lower intensity uses such as hotel/lodging, recreation, and retail uses.

The proposal is sensitive to surrounding properties and provides enhanced public access to the Property and surrounding public amenities including Fort Myers Beach Accesses and Bowditch Point Park.

The physical scale has been carefully planned to remain consistent with the current development form and soften new building via landscaping and architectural details.

Transportation Element

POLICY 7-D-4 ENCOURAGE WATER TAXIS.

The District and CPD zoning includes a water taxi stop/drop-off at the proposed public licensed fishing pier, in direct compliance with this policy.

POLICY 7-D-5 HIDDEN-PATH SYSTEM.

The proposed pathway, located on the Bayside of the project, provides a hidden pathway that is open to public and provides a comfortable waterside pedestrian environment that connects the proposed buildings to the water taxi, fishing pier and greater Fort Myers Beach sidewalk system along Estero Boulevard.

OBJECTIVE 7-E UPGRADE ESTERO BOULEVARD.

The proposed enhanced landscape improvements will improve the walking environment and additional street trees, such as those to be provided, are proven to slow traffic and enhance public safety.

OBJECTIVE 6-E DUNES AND BEACHES

The District will contribute to the beach renourishment efforts by the Town and state agencies, as well as implement localized dune renourishment. On May 15, 2023 the Pink Shell Resort signed the Temporary Beach Management and Access Easement to allow the Town to administer the Estero Island Beach Renourishment Project post-Ian. See Exhibit C.

POLICY 6-H-5 WATER QUALITY

The District and implementing development plans, through CPD conditions and the adopted master concept plan, will be reviewed by the FDEP and SFWMD to ensure water quality is maintained and the project meets the current standards, which are more stringent compared to the existing permits.

VIII. CONCLUSION

In sum, the Pink Shell Resort & Marina CPD and the companion proposal for a Pink Shell Resort Mixed Use District, will allow for the expansion of resort-oriented uses at an established activity node in the north end of Estero Island, between Times Square and Bowditch Point Park. The expansion is largely contributing to the public benefit of Fort Myers Beach, including Estero Boulevard landscaping to improve aesthetics and the pedestrian environment, public fishing pier and new boardwalk that are fully open to the public, and recreational amenities.

As proposed through the Pink Shell Resort & Marina CPD and the site-specific Mixed-Use District, the new CPD will be consistent with the vision and implementing goals, objectives and policies of the Town's Comprehensive Plan and Land Development Code Regulations. For these reasons, the Applicant respectfully requests approval of this amendment.

APPENDIX A
Historical Zoning Summary

COMMUNITY DEVELOPMENT DEPARTMENT
APPLICATION for PUBLIC HEARING

This is a first part of a two-part application. Please be sure to fill out this form, which requires general information, as well as the Supplemental Form application specific to action requested for the subject property. Please submit a complete Public Hearing application with required, supplemental information, exhibits and documents to zoningpermits@fmbgov.com. Please do not submit the instructions at the end of the application.

Site Address: Various, See attached List of Owners-STRAPS-Address document

STRAP Number: Various, See attached List of Owners-STRAPS-Address document

Applicant: JABO, LLC Phone: _____

Contact Name: BIll Waichulis Phone: (239) 463-8601

Email: bwaichulis@boykin.com Fax: _____

Current Zoning District: CPD, CR and EC

Future Land Use Map (FLUM) Category: Mixed Residential and Recreation*

FLUM Density Range: 6 du/acre Platted Overlay: ☐ YES ☑ NO

*Companion CPA submitted to amend FLUM to Pink Shell Mixed Use District

ACTION REQUESTED	SUPPLEMENTAL FORM REQUIRED
☐ Special Exception	PH-A
☐ Variance	PH-B
☐ Conventional Rezoning	PH-C
☑ Planned Development ■ Commercial ☐ Residential	PH-D
☐ Master Concept Plan Extension	PH-E
☐ Appeal of Administrative Action	PH-F
☐ Vacation of Platted Right-of-way and Easement	PH-G
☐ Other – cite LDC Section: _____	attach on separate sheet

PART I – General Information

A. Applicant*: JABO, LLC Phone: (239) 463-8601

**Applicant must submit a statement under oath that he/she is the authorized representative of the property owner. Please see PART III to complete the appropriate Affidavit form for the type of applicant.*

Applicant Mailing Address: 275 Estero Boulevard, Fort Myers Beach, FL 33901

Email: bwaichulis@boykin.com Fax: (239) 463-8640

Contact Name: Bill Waichulis Phone: (239) 463-8601

Town of Fort Myers Beach 2525 Estero Blvd Fort Myers Beach, Florida 33931
Phone: 239-765-0202 zoningpermits@fmbgov.com Fax: 239-765-0909

B. Relationship of Applicant to subject property:

- [x] Owner*
- [x] Corporation*
- [ ] Subdivision*
- [ ] Land Trust*
- [ ] Association*
- [ ] Timeshare Condo*
- [ ] Other* (please indicate)_____
- [ ] Partnership*
- [ ] Condominium*
- [ ] Contract Purchaser*
- [■] Authorized Representative*

**Applicant must submit a statement under oath that he/she is the authorized representative of the property owner. Please see PART III to complete the appropriate Affidavit form for the type of applicant.*

C. Authorized Agent(s). Please list the name of Agent authorized to receive correspondence Agents

Name: Fred Drovdlic, AICP, RVi Planning + Landscape Architecture Phone: (239) 318-6707

Address: 1514 Broadway, Suite 201, Fort Myers, FL 33901

Email: fdrovdlic@rviplanning.com Fax: _____

D. Other Agent(s). Please list the names of all Authorized Agents (attach extra sheets if necessary)

Name: Amy Thibaut, Esq., Roetzel & Andress, LPA Phone: (239)338-4213

Address: 2320 First Street, Suite 1000

Email: sspector@ralaw.com Fax: (239)337-0970

Name: Ted Treesh, TR Transportation Consultants, Inc. Phone: (239)278-3090

Address: 2726 Oak Ridge Court, Suite 503, Fort Myers, FL 33901

Email: TBT@trtrans.net Fax: (239)278-1906

PART II – Nature of Request

Requested Action (each request requires a separate application)

- [ ] Special Exception
- [ ] Variance from LDC Section _____ - _____
- [ ] Conventional Rezoning from _____ to _____
- [x] Planned Development
- [x] Rezoning from CPD, EC and CR to [x] Commercial PD [ ] Residential PD
- [x] Amendment. List the project number: See request Request Narrative & Comp Plan Compliance
- [ ] Extension/reinstatement of Master Concept Plan. List project number: _____

☐ Appeal of Administrative Action

☐ Vacation ☐ Right-of-Way ☐ Easement

☑ Other. Please Explain: Rezoning from CPD, EC and CR to CPD and EC

PART III – Waivers

Please indicate any specific submittal items that have been waived by the Director for the request. Attach a copy of the signed approval as Exhibit 3-1. (Use additional sheets if necessary)

Code Section: NA Description: _____

Code Section: NA Description: _____

Code Section: NA Description: _____

PART IV – Property Ownership (Single Owner)

☐ Single Owner (individual or husband and wife)

Name: NA Phone: _____

Mailing Address: _____

Email: _____ Fax: _____

AFFIDAVIT
APPLICATION IS SIGNED BY AN INDIVIDUAL OWNER OR APPLICANT

I, _____ swear or affirm under oath, that I am the owner or the authorized representative of the owner(s) of the property and that:

I have full authority to secure the approval(s) requested and to impose covenants and restrictions on the referenced property as a result of any action approved by the Town of Fort Myers Beach in accordance with this application and the Land Development Code;
All answers to the questions in this application and any sketches, data or other supplementary matter attached hereto and made a part of this application are honest and true;

I have authorized the staff of the Town of Fort Myers Beach Community Development to enter upon the property during normal working hours for the purpose of investigating and evaluating the request made thru this application; and that
The property will not be transferred, conveyed, sold or subdivided unencumbered by the conditions and restrictions imposed by the approved action.

_____ _____
Signature Printed Name

STATE OF _____ COUNTY OF _____

The foregoing instrument was certified and subscribed before me by means of ____ physical presence OR _____ online notarization, this _____day of _____, 20_____, by _____, ☐ who is personally known to me OR ☐ who has produced _____ as identification.

(SEAL) _____
Notary Public Signature

PART V
Property Ownership (Multiple Owners)

☑ Multiple Owners (including corporation, partnership, trust, association, condominium, timeshare, or subdivision)

- ☑ Complete Disclosure of Interest Form (see below)
- ☑ Attach list of property owners as Exhibit 5-1
- ☑ Attach map showing property owners interests as Exhibit 5-2 (for multiple parcels)
- ☑ For condominiums and timeshares see Explanatory Notes Part V – Exhibit 5-3
- ☐ Letter of Opinion - Exhibit 5-4

DISCLOSURE OF OWNERSHIP INTEREST

If the property is owned in fee simple by an INDIVIDUAL, tenancy by the entirety, tenancy in common, or joint tenancy, list all parties with an ownership interest as well as the percentage of such interest.

Name and Address	Percentage Ownership
_____	_____
_____	_____
_____	_____
_____	_____

Town of Fort Myers Beach 2525 Estero Blvd Fort Myers Beach, Florida 33931
Phone: 239-765-0202 zoningpermits@fmbgov.com Fax: 239-765-0909

If the property is owned by a CORPORATION, list the officers and stockholders and the percentage of stock owned by each.

Name, Address and Office	Percentage of Stock
JABO, LLC	
Robert Boykin and John Boykin	100%
275 Estero Boulevard, Fort Myers Beach, FL 33901	

If the property is in the name of a TRUSTEE, list the beneficiaries of the trust with percentage of interest.

Name and Address	Percentage of Interest

If the property is in the name of a GENERAL PARTNERSHIP OR LIMITED PARTNERSHIP, list the names of the general and limited partners.

Name and Address	Percentage of Ownership

If there is a CONTRACT FOR PURCHASE, whether contingent on this application or not, and whether a Corporation, Trustee, or Partnership, list the names of the contract purchasers below, including the officers, stockholders, beneficiaries, or partners.

Name, Address and Office	Percentage of Stock

COMMUNITY DEVELOPMENT DEPARTMENT
APPLICATION for PUBLIC HEARING

Date of Contract: _____

If any contingency clause or contract terms involve additional parties, list all individuals or officers, if a corporation, partnership, or trust.

Name	Address

For any changes of ownership or changes in contracts for purchase subsequent to the date of the application, but prior to the date of final certificate of compliance, a supplemental disclosure of interest must be filed.

The above is a full disclosure of all parties of interest in this application, to the best of my knowledge and belief.

Signature

William Waichulis, Officer JABO, LLC
Printed Name

AFFIDAVIT

APPLICATION IS SIGNED BY A CORPORATION, LIMITED LIABILITY COMPANY (L.L.C.), LIMITED COMPANY (L.C.), PARTNERSHIP, LIMITED PARTNERSHIP, OR TRUSTEE

I, William Waichulis (name), as General Manager of Pink Shell (title) of JABO, LLC (company), swear or affirm under oath, that I am the owner or the authorized representative of the owner(s) of the property and that:

1. I have full authority to secure the approval(s) requested and to impose covenants and restrictions on the referenced property as a result of any action approved by the Town of Fort Myers Beach in accordance with this application and the Land Development Code;
2. All answers to the questions in this application and any sketches, data or other supplementary matter attached hereto and made a part of this application are honest and true;
3. I have authorized the staff of Fort Myers Beach Community Development to enter upon the property during normal working hours for the purpose of investigating and evaluating the request made thru this application; and that
4. The property will not be transferred, conveyed, sold or subdivided unencumbered by the conditions and restrictions imposed by the approved action.

JABO, LLC
Name of Entity (corporation, partnership, LLP, LLC, etc)

Signature

Manager
Title

WILLIAM WAICHULIS, GENERAL MANAGER
Typed or Printed Name

5/12/23
Date

STATE OF Florida **COUNTY OF** Lee

The foregoing instrument was certified and subscribed before me by means of ✓ physical presence OR ☐ online notarization, this 12th day of May, 2023, by William Waichulis ☑ who is personally known to me OR ☐ who has produced _____ as identification.

TIMOTHY F. LAY
MY COMMISSION # HH 190730
EXPIRES: October 25, 2025
Bonded Thru Notary Public Underwriters

Notary Public Signature

PART VI– Property Information

A. Legal Description:

STRAP: Various, See attached Exhibit A

Property Address: Various, See attached Exhibit A

Is the subject property within a platted subdivision recorded in the official Plat Books of Lee County?

☑ No. Attach a legible copy of the legal description as Exhibit 6-1.

☐ Yes. Property identified in subdivision: _____

Book: _____ Page: _____ Unit: _____ Block: _____ Lot(s): _____

B. Boundary Survey:

☑ Attach a Boundary Survey of the property meeting the minimum standards of Chapter 61G17-6 of the Florida Administrative Code. A Boundary Survey must bear the raised seal and original signature of a Professional Surveyor and Mapper licensed to practice Surveying and Mapping by the State of Florida. Attach and label as Exhibit 6-2.

C. Property Dimensions:

Width (please provide an average width if irregular in shape) varies feet

Depth (please provide an average width if irregular in shape) 200 to 450 feet

Frontage on street: 1,050 (Estero Blvd) feet. Frontage on waterbody: 1,000+ feet

Total land area: 11 ☑ acres ☐ square feet

D. General Location of Subject Property (from Sky Bridge or Big Carlos Pass Bridge):

from Sky Bridge go north on Estero Boulevard 1+/- mile. Pink Shell Resort is located on both sides of Estero Boulevard.

☑ Attach Area Location Map as Exhibit 6-3

E. Property Restrictions (check applicable):

☐ There are no deed restrictions and/or covenants on the subject property.

☐ A list of deed restrictions and/or covenants affecting the subject property is attached as Exhibit 6-4.

☑ A narrative statement detailing how the restrictions/covenants may or may not affect the request is attached as Exhibit 6-5.

F. Surrounding Property Owners (these items can be obtained from the Lee County Property Appraiser):

☑ Attach a list of surrounding property owners within 500 feet as Exhibit 6-6.

☑ Attach a map showing the surrounding property owners as Exhibit 6-7.

☑ Provide Staff with two (2) sets of surrounding property owner mailing labels.

G. Future Land Use Category (see Future Land Use Map):

☐ Low Density	☐ Marina
☑ Mixed Residential	☑ Recreation
☐ Boulevard	☐ Wetlands
☐ Pedestrian Commercial	☐ Platted Overlay

Town of Fort Myers Beach 2525 Estero Blvd Fort Myers Beach, Florida 33931
Phone: 239-765-0202 zoningpermits@fmbgov.com Fax: 239-765-0909

EXPLANATORY NOTES

Please do not print, copy and submit these instructions

Please submit required applications, supplemental information, exhibits and documents to zoningpermits@fmbgov.com .

Application fees are set by resolution of the Town Council of the Town of Fort Myers Beach and must be paid before any materials submitted will be considered an application.

The applicant is responsible for the accuracy and completeness of this application. Time delays or additional expenses necessitated by submitting inaccurate or incomplete information will be the responsibility of the applicant. Decisions regarding requests to waive submittal requirements are at the discretion of the Community Development Director and may not be appealed.

All information submitted with the application becomes a part of the public record and will be a permanent part of the file.

All attachments and exhibits must be legible, suitable for recording, and of a size that will fit or conveniently fold into a letter size (8 ½ by 11) folder.

Explanatory Notes – Part I

A. Applicant's name: The applicant may be the landowner or an authorized agent.
B. Relationship of applicant to property: Indicate if the applicant is the property owner, and if so, the type of ownership. If the applicant is not the owner of the property, indicate the relationship of the applicant to the owner and submit a notarized authorization from the owner(s) to the applicant.
C. Agent's name: If the applicant will have others representing him/her in processing the application, indicate name, address, and phone number.
D. Other agents: Provide contact information for any other agents that may be involved in the request.

Explanatory Notes – Part II

Indicate the requested action.

Explanatory Notes – Part III

If waiver of any application requirement has been approved by the Community Development Director, attach a copy of the approval. Please request waivers prior to applying. Exhibit 3-1

Explanatory Notes – Part IV

A. If the property owner is an individual or husband and wife, check the box and provide the information.

Town of Fort Myers Beach 2525 Estero Blvd Fort Myers Beach, Florida 33931
Phone: 239-765-0202 zoningpermits@fmbgov.com Fax: 239-765-0909

Explanatory Notes – Part V

A. If there are multiple property owners exhibit 5-1, complete the disclosure form and include the names and mailing addresses of all persons or entities having an ownership interest in the property, including the names of all stockholders and trust beneficiaries. Disclosure is not required of any entity whose interests are solely equity interests that are regularly traded on an established securities market in the United States or another country.
B. If more than one parcel is involved, submit a list of all property owners and their mailing addresses. Provide a map keyed to the list of property owners showing their interests. The applicant is responsible for the accuracy of the list and map Exhibit 5-2
C. Where the property is a condominium or timeshare condominium, the application must be initiated by both the condominium association and no less than 75% of the total number of unit owners. To verify ownership, the list of property owners must be identified by unit number and/or timeshare period as applicable, along with proof that the owners who did not join in the application were given actual written notice of the application by the applicants, who must verify the list and the notice by sworn affidavit. Attach this affidavit as Exhibit 5-3.
D. In addition, a letter of opinion from an attorney licensed to practice law in the State of Florida addressing the considerations in LDC Section 34-201(a)(1)b.3. must be attached as Exhibit 5-4.

Explanatory Notes – Part VI

A. Include the street address of the subject property. List STRAP number. If more than one parcel is involved, list all STRAP numbers. If you don't know the STRAP number, you can look up the property in the records of the Lee County Property Appraiser at http://www.leepa.org. If the application includes only one or more undivided platted lots within a subdivision officially recorded in the Plat Books of Lee County, Florida, identify the property by lot number(s), block if applicable, subdivision unit if applicable, subdivision name, and plat book number and page number. If the property is not one or more undivided platted lots or is in an "unrecorded" subdivision, attach a metes and bounds legal description giving accurate bearings and distances for each course. If multiple parcels are involved, the metes and bounds legal description must describe the perimeter of the entire property subject to the request. The initial point in the description must be related to at least one established identifiable real property corner, such as a government corner or a recorded corner. The bearings used in the description must be clearly referenced to a well-established and monumented line. Exhibit 6-1
B. Submit a Boundary Survey meeting the minimum technical standards for surveying set out in Chapter 61G17-6 of the Florida Administrative Code. Make sure that the surveyor is aware of any specific needs of the survey (location of Coastal Construction Lines, locations of existing structures, locations of easements, etc) that are relevant to your request. The perimeter boundary of the entire subject property should be indicated clearly with a heavy

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line. Exhibit 6-2

C. Provide the property dimensions or the approximate dimensions if the property is not a regular quadrilateral.
D. Describe how to get to the property starting from either the Sky Bridge or the Big Carlos Pass Bridge (specify which). Exhibit 6-3
E. If there are any deed restrictions or covenants that might affect the requested action, provide the information. Exhibit 6-4
F. A narrative statement detailing how the restrictions/covenants may or may not affect the request is attached as Exhibit 6-5
G. Attach a list of the surrounding property owners within 500 feet of the perimeter of the area of the request. Also include two sets of mailing labels providing the names and addresses of the owners on this list, and a map showing the parcel boundaries within the 500-foot radius Exhibit 6-6. This information can be acquired for a small fee by requesting a "variance report" from the Map Sales Office at the Lee County Property Appraiser's Office. Contact information for the Property Appraiser can be found at http://www.leepa.org.
H. Indicate the Future Land Use Map category or categories of the property as shown on the Fort Myers Beach Comprehensive Plan's Future Land Use Map, and whether the property is located in the "platted overlay" on the map.
I. Indicate the current zoning of the property. In most cases the current zoning is shown on the official zoning map of the Town of Fort Myers Beach, as adopted by ordinance. If zoning actions affecting the subject property have been taken since March 2004, call Town Hall to verify the current zoning.

Explanatory Notes – Part IV & V

The applicant must sign and submit either of the affidavits in Part V & VI, as applicable.

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Phone: 239-765-0202 zoningpermits@fmbgov.com Fax: 239-765-0909

Case # _____ Date Received: _____

Town of Fort Myers Beach

COMMUNITY DEVELOPMENT DEPARTMENT

Supplement PH-D

Additional Required Information for a Planned Development Application

This is the second part of a two-part application. This part requests specific information for a planned development rezoning or an amendment to an approved planned development. Include this form with the Request for Public Hearing form.

Fee in the amount of $8000.00 up to 1 acre +1000.00 per additional acre
$2000.00 PD Amendment minor (< acre total property area)
$4000.00 PD Reinstatement or $6500.00 PD Amendment

Project Name: Pink Shell CPD
Authorized Applicant: Bill Waichulis, JABO, LLC
STRAP Number(s): See attached List of Owners, Addresses and STRAPS

Current Property Status: Pink Shell Resort and amenities, surface parking, marina
Current Zoning: Various CPD's, CR and EC
Future Land Use Map (FLUM) Category: Mixed Residential and Recreation*
Platted Overlay? ☐ **yes,** ☐ **no FLUM Density Range:**

Requested Action:

☐	DRI (with rezoning)
✔	Planned Development (also check below)
☐	Rezoning from: CPD, CR and EC to: CPD and EC
☐	Amendment to Master Concept Plan/attendant documentation

Town of Fort Myers Beach 2525 Estero Blvd. Fort Myers Beach, FL 33931
Phone 239 765-0202 Zoningpermits@fmbgov.com Fax 239 765-0909

PART I
Narrative Statements

A. **Comprehensive Plan Amendments** (check one)

☑ There are NO Comprehensive Plan Amendments pending that could affect the future use of this property.
☐ The following Comprehensive Plan Amendments ARE pending and could affect the future use of this property (list the amendment and give a brief explanation of its possible effect)
from the Mixed Residential and Recreation to Mixed Residential and Recreation to the
Pink Shell Mixed Use District and Recreation Future Land Use Category

B. **Phasing of Construction**

☐ The development is to be constructed in a single phase.
☑ The development is to be constructed in phases as follows: (describe proposed phasing below)
Phase 1 - Bayside parking gagarge and multifamily units, Estero landscaping, Resort amenities
Phase 2 - Workforce Housing building

C. **Comprehensive Plan Compliance.**

Explain how the proposed development complies with applicable Goals, Objectives, and Policies of the Fort Myers Beach Comprehensive Plan.

See request narrative and comprehensive plan compliance document

D. Design Standards Compliance

For projects required to meet Commercial Design Standards, explain how the proposed development complies with the design standards set forth in LDC Sections 34-991 through 34-997.

See request narrative and comprehensive plan compliance document

E. Decision-making Compliance

Explain how the proposed development complies with the guidelines for decision-making embodied in LDC Section 34-85.

See request narrative and comprehensive plan compliance document
from Sky Bridge go north on Estero Boulevard 1+/- mile. Pink Shell Resort is
located on both sides of Estero Boulevard.

F. Schedule of deviations and written justification

Provide a list of the requested deviations keyed to the Master Concept Plan and provide a written justification for each deviation. The location of each deviation should be indicated on the Master Concept Plan.

G. Administrative amendments to approved Master Concept Plan

For amendments to an approved Master Concept Plan, indicate the specific amendments that could not be approved administratively as set forth in LDC Section 34-219.

NA

PART 2

Submittal Requirements

All applications for a planned development must submit fourteen (14) copies of this application form and all applicable exhibits.

Required Items

Public Hearing Request Form
Supplement Form PH-D
Master Concept Plan
Traffic Impact Statement
Architectural Elevations
Schedule of Uses
Fee in the amount of $8000.00 up to 1 acre +1000.00 per additional acre
$2000.00 PD Amendment minor (< acre total property area)
$4000.00 PD Reinstatement or $6500.00 PD Amendment

For DRI: A Binding letter of interpretation from DCA or a complete and sufficient ADA.

Guide to Filing Supplement PH-D for Planned Developments

Amendments Applications for amendments to an approved Master Concept Plan or its attendant documentation will require as much information as is needed to describe the changes requested, to specify the incremental change in impacts expected from the amendment, and to detail the changes in surrounding land uses that have occurred since the original application. Some amendments can be approved administratively as provided in LDC Section 34-219, but all other amendments must proceed through the public hearing process.

Through a pre-application meeting with Community Development staff, prospective applicants can determine whether proposed amendments will require a public hearing, and can request waivers from any submittal requirements that are not necessary to specify the changes requested.

All other planned developments All other applications must complete and submit the Request for Public Hearing and Supplement PH-D, along with all required documents. Refer also to the instructions for the Request for Public Hearing form.

Case Number will be inserted by Community Development staff.
Project Name must be the same as the name used on the Request for Public Hearing form.
Authorized Applicant must be the same as on the Request for Public Hearing form.
STRAP numbers must be the same as on the Request for Public Hearing form.
Current status of property must be the same as on the Request for Public Hearing form.
Requested Action: Indicate whether the request is a DRI (Development of Regional Impact) that requires rezoning, a Planned Development, or an amendment to a Planned Development.

Part 1 Narrative Statements:

Comprehensive Plan Amendments
If Comprehensive Plan Amendments are pending that might affect the future use of the property, explain the amendments' possible effects.

Construction Phasing
If the project is to be constructed in multiple phases, describe the ordering and timing of the proposed phasing. In the absence of a phasing plan, phasing of development would be governed by the limitations of LDC Section 34-220.

Comprehensive Plan Compliance
Explain how the proposed development complies with the Fort Myers Beach Comprehensive Plan. Address the Future Land Use Map category or categories applicable to the subject property and any other relevant policies.

Design Standards Compliance
For properties and/or projects as described in LDC Section 34-992, explain how the proposed development will comply with the standards in LDC Sections 34-991 through 34-997.

Decision-making compliance
Explain how the proposed development will comply with the standards for decision-making in LDC Section 34-85.

Schedule of deviations and written justification
Identify the deviations from the requirements of the Land Development Code that are requested for the proposed development and justify them in relation to the guidance in LDC Section 34-932(b).

Administrative amendments
If the request is for an amendment to a planned development, indicate which of the requested changes could not be approved administratively as allowed by LDC Section 34-219.

Part 2 Submittal Requirements

Public Hearing Application Form. Applications for rezoning, including Planned Developments and Planned Development amendments for which public hearing is required, consist of the Public Hearing form and the supplemental form PH-D. Both parts of the application form must be completed and submitted.

Master Concept Plan. The master concept plan consists of maps, graphic illustrations, and written statements concerning the development. Space has

been provided on this form for many of the required narrative statements, though they can be attached on separate sheets. A master concept plan must include the following required information:

a. The general size, configuration, and location of each development phase, and a description of the phasing of construction, unless the development is to be constructed in a single phase.
b. The maximum height of any proposed buildings or structures, using the Land Development Code's method of measuring building height (see LDC Section 34-631).
c. Proposed principal and accessory uses, identified using the terminology employed in the Land Development Code. Employ the groupings of uses in Tables 34-1 and 34-2 of the Land Development Code, or specify individual uses if necessary.
d. The density and intensity of the proposed uses, in terms of dwelling units by type, or through conversion factors for hotel/motel units. Provide gross square footages for types of commercial uses, and maximum Floor-Area Ratio.
e. The minimum width and composition of proposed buffers along the perimeter of the property. References to the types of buffers required by LDC chapter 10 are acceptable.
f. The location of any environmentally sensitive land and water, based on standard environmental data capable of verification by Town staff. Developments larger than one acre in size may require a protected species survey under LDC Section 10-473.
g. The exact location of all points of vehicular ingress and egress from existing easements or rights-of-way into the development, with distances from other existing or planned rights-of-way or access points.
h. Access and facilities for public transit, if applicable.
i. The general location of stormwater management areas.
j. The specific locations of requested deviations, including sample detail drawings illustrating their effects if applicable.
k. The exact location of existing rights-of-way and easements, whether or not those easements are recorded.
l. Proposed dedications, if any, including beach access, boat ramps, park or recreation areas, open space, or other easements.

Traffic Impact Statement. A traffic impact statement in the same format and to the same degree of detail required for development orders (LDC Section 10-286).

Architectural Elevations. Architectural elevations or three-dimensional renderings that show at minimum all building façades adjoining public streets. These drawings will serve for the sketch requirement of LDC Section 34-202(b)(5) as well. If aspects of the proposed design will not comply with the commercial design standards of LDC Sections 34-991 through 34-997 (if required), the applicant may request deviations from those standards.

Schedule of uses. A list of all proposed principal and accessory uses. Identify these uses by reference to the groups of uses in Tables 34-1 and 34-2 of the Land Development Code unless greater specificity is necessary. For amendments to planned developments that were approved under different regulations, the enumeration of uses in the schedule of uses supplied for the amendment must be specific enough to explain what uses were previously approved without future reference to prior regulations or approvals.

	Document	Date	What it Does	Property Description	Notes
			LEE COUNTY		
1	Resolution Z-82-170	6/21/1982	Rezoning from RM-2 to PUD as shown on the PUD plan with the removal of the cul-de-sac and parking area and to continue the bike path for a total of $6,000 donation towards construction together with the following conditions: 1. 17.1 du/acre for a toal of 182 units 2. Phased over a minimum of 10 years 3. Maximum height of 6 stories over parking 4. Construction of .25 mile/1350 feet of bike path 5. 3 beach access points, public and semi-public 6. $8,100 contribution towards curbing or widening of Estero 7. Streetscaping plan 8. 6 additional parking spaces for condominium owners at the end of the resort property	Phase I - Lots 29 and 30, Unit No. 4, Island Shores (PB 9, PG 37) Phase II - The northwesterly 6.5 feet of Lot 40 and Lots 41 & 42 Island Shores Club Section and Lots 38 & 39, Block "D", Island Shores Club Section (PB 9, PG 41). Phase III - The westerly 25 feet of Lot 33 and all of Lots 34 through 36, Island Shores Unit 4 , together with Lots 2 through 4 & Lots 8 through 10, Gulf Shore, (PB 9 PG 88). Phase IV - Lot 40 less Northwesterly 6.5 feet and all of Lot 39, Island Shores Club Section. Phase V - The west 1/2 of Lot 29 and all of Lots 30 through 32, Block "D", Island Shores Unit 4, together with Lots 33 & 34 Block "D", Island Shores Club Section.	
2	Resolution ZAB-83-353	11/14/1983	Approval of Final PUD Site Plan for Phase 1 (Island Shores per AA PUD-91-010) - 42 units	Phase I (identified as 394 Estero Boulevard)	
3	Resolutions ZAB-84-196(A) and ZAB-84-196	04/25/1988 and 11/19/1984	Approval of Final PUD Site Plan for Phases II through V with conditions (A) corrects scrivener's error	Phase II, III, IV, and V	
4	Resolution Z-87-076	5/11/1987	Temporary (5 year) approval of consumption on premises, restrictied to Pink Shell residents and their guests, limited to 350 sq. ft. recreation room of existing office and model center building located in Phase V until restaurant and minimarket are constructed, at which time the COP can be transferred	Phase V LESS Lots 33 & 34 Block "D", Island Shores Club Section	

5	Administrative Approval Amendment PUD-91-010(A) and PUD-91-010	1/29/1992 and 11/15/1991	Administrative amendment approving/confirming the following: 1. Total of 147 units (excluding Phase I and including 7 motel units in Phase V) 2. 42 unit, 6-story (over parking) building in Phase III. 3. Parking deviations for approved buildingonly 4. Conversion of quadraplex (112, 113, 114, and 115) to duplex, with two units being transferred to new building 5. Removal of 6 units (102, 103, 104, 106, 107, and 108) to be transferred to new building 6. Transfer of 7 motel units in Phase V, but for use as administrative offices only	Phase I, Phase II, Phase III, Phase IV, and Phase V LESS Lots 33 & 34 Block "D", Island Shores Club Section	Phase I (42 dwelling units) has been sold and is no longer part of the Pink Shell Resort. Any future development SHALL NOT INCLUDE that portion of the PUD. WHEREAS clauses refer to 2 administrative approvals with no resolution number.
6	Administrative Approval Amendment PUD-93-014A and PUD-93-014	7/9/1993	Relocation of swimming pool and spa previously approved to be located in Phases II and IV to Phase III Confirmation of the following: 1. Parking requirement for residential/hotel/motel units = 1.5/unit 2. Setback between proposed building in Phase III and any other building = 25' 3. Required 5' buffer at south end of property in Phase III	Phase II, III, IV, and V and Lots 5 & 6, Gulfshore	Missing second page of original amendment
7	Z-93-057	10/4/1993	Amends PUD site plan and the following: 1. Maximum height of 42 unit Phase III building increased from 6 to 7 stories with minimum 42' street setback (deviation from 47') from Gulf Shore Court 2. Remaining 6 motel units to be converted to administrative office use 3. Existing quadraplex (112, 113, 114, and 115) to be converted to duplex 4. 7 (instead of previous 6) cottages/units (106-109 and 118-120) to be removed	STRAP Number 24-46-23-07-00000.0350 All of Lots 2, 3, 4 and 8, Gulfshore Lot 33 LESS the Easterly 100 feet thereof and Lot 34 LESS the Northerly 50 feet thereof and the Easterly 100 feet thereof, Island Shores, Unit 4	
8	Z-95-017	11/6/1995	Approval of rezoning from RM-2 and PUD to CPD including creation of 59 hotel/motel units	STRAP Number 24-46-23-07-00000.0350 (portion) and 24-46-23-08-0000D.0370 NW 1/2 of Lots 29 through 32, Block "D", Island Shores Unit 4 (this appears to be a typo and the NW 1/2 should only apply to Lot 29) Lots 33 through 36 and Lots 37 through 39, Block "D", Island Shores Club Section	

9	PUD-95-041	12/22/1995	Removal of Bayside portion of project rezoned to CPD by Z-95-017; applies to Gulfside PUD	Phase I, II, III, IV, and V **minus Bayside property** as described in Z-95-017	Bayside property rezoned to CPD and removed from PUD
10	PUD-98-029	8/4/1998	Clarification amendment following partial acquisition by Boykin - **144 units built, leaving 15 to be constructed** Island Shores Condominium - Phase I, 42 units (no longer a part of PUD) Sanibel View- Lots 39 through 42, Island Shores Club Section, 60 units (5 story over parking) Estero Island Beach Villas - Lots 2 through 4 and Lots 8 through 10, Gulfshore together with a portion of the westerly 25 feet of Lot 33 and part of Lot 34, Unit 4 Island Shores; 42 units (7 story over parking) Cottage Units- Remaining portion of Lots 34 through 36 and westerly 25 feet of Lot 33, Unit 4 Island shores; 30 units Duplexes - Lots 9 and 10, Gulfshore; 2 duplexes/4 units total Single Cottage/Duplex Cottage - Lots 5 and 6 Gulfshore **NOT PART OF PUD**(per ordinance) **NEW APPROVAL**: Deletion of 2 5-story buildings, allowing for construction of 6-story over parking building with 45 units, the first 15 of which are already permitted and additional 30 only with removal of existing cottages on 1-to-1 basis; proposed pool and 63 parking spaces; recognized existence of existing swimming pool, 4 existin	Lots 2, 3, 4, 5, 6, 8, 9 and 10, Gulfshore Lots 34, 35 and 36 and Northwesterly 25 feet of Lot 33, Unit No. 4 Island Shores Lots 39, 40, 41 and 42, Island Shores Club Section LESS AND EXEPT legal description New building and improvements mentioned under "NEW APPROVAL" to be built on remaining portion of Lots 34 through 36 and the westerly 25 feet of Lot 33, Unit 4 Island Shores, and Lots 9 and 10, Gulfshore	
TOWN OF FORT MYERS BEACH					
11	Resolution 99-7	2/22/1999	Amend CPD (**Bayside**) to reduce permitted hotel units from 12 to 5, allowing only 52 units on the Bayside	STRAP Number 24-46-23-W1-0080D.0370	
12	Resolution 99-8	2/22/1999	Amend CPD to permit 7 additional units within existing 2 unit, 7 story Hotel Casa Playa - Abaco Beach CPD	STRAP Number 24-46-23-W1-0060D.020A	Transfers 7 units taken from Pink Shell Bayside to different project (Casa Playa)

13	Resolution 00-07A and Resolution 00-07	1/10/2000 and 06/29/2000	Amend CPD (**Bayside**) to remove 47 units and amend PUD (Gulfside) to add 47 uits to a 45 unit building increasing the height from 6 stories over parking to 9 stories over recreation area and lobby/administration area	STRAP Number 24-46-23-W1-0070.0350 Lots 2, 3, 4, 5, 6, 8, 9, and 10, Gulfshore Lots 34, 35, and 36 and Northwesterly 25 feet of Lot 33, Unit 4 Island Shores Lots 29 thorugh 32 and the Northwest 1/2 of Lot 28, Block D, Unit 4 Island Shores Lots 33-36, Block D, Island Shores Club Section Lot 29, Block D, Unit 4 Island Shores LESS AND EXEPT legal description	
14	Resolution 01-21	6/25/2001	Amend with conditions to**White Sands Villas**portion of PUD to change the orientationof 9-story building, revise project units from 77 units at 1000 square feet each, and from the approved 15 units at 550 square feet each, to allow 46 2-bedroom units at 1246 square feet each and 46 1-bedroom units at 761 square feet each, and allow shell parking lot	Same as Resolution 00-07A	

15	Resolution 01-26	8/27/2001	Approval of rezoning of **Captiva Villas** from RM-2 to MPD with conditions to permit a maximum of 43 hotel units in 28,219 square feet, accessory uses, and 12,000 square feet of commercial uses (to be transferred from Bayside) with consumption on premises, not to exceed 7 stories over one ground floor of parking (hotel rooms on Floors 2-7)/83 feet in height above based flood elevation	STRAP Number 24-46-23-W1-0070.0350 (referred to as being 1.84 total acres) (nothing more provided)	12,000 square feet of commercial broken down as follows: 1,300 Administrative/Offices 6,000 Restaurant/Deli/Retail 2,500 Guest Services 2,200 Conference/Meeting/Limited Food & Beverage Service Only permitted uses on Bayside accessory parking and uses related to the operation of the boat slips and dockage; existing commercial building to be demolished
16	Administrative Amendment ADD2003-00160	4/5/2004	Amend CPD (**Bayside**) to eliminate 12,000 sqft of commercial uses transferred to Captiva Villas CPD	Lots 29 through 32 and the Northwest 1/2 of Lot 28, Block D, Unit 4 Island Shores Lots 33-36, Block D, Island Shores Club Section Lots 38 and 39, Block D, Island Shores Club Section (referred to as containing 2.12 acres)	Moves 12,000 square feet as required by Resolution 01-26
17	Resolution 10-05	1/19/2010			
18	Resolution 10-06	1/20/2010	Amend CPD (**Bayside**) with conditions to replace tennis courts on Lots 38 and 39, Block D, Island Shores Club Section with an accessory parking lot for employee parking only and trash compactor while allowing existing boat ramp to remain with rerouted pedestrian walkway	STRAP Number 24-46-23-W1-0070.0340, 24-46-23-W1-0070.0320, and 24-46-23-W1-0070.0290 NW 1/2 of Lots 29 through 32, Block "D", Island Shores Unit 4 (this appears to be a typo and the NW 1/2 should only apply to Lot 29) Lots 33 through 36 and Lots 38 through 39, Block "D", Island Shores Club Section	Legal description is the same as Z-95-017 except Lot 37 is excluded

19	Resolution 13-23	10/21/2013	Amend CPD with conditions to add "Recreation, Commerical with membership" to approved schedule of uses and allow the use of the parking areas on Lots 38 and 39 for parking for employees, guests, and members	STRAP Number 24-46-23-W1-0070.0320, 24-46-23-W1-0070.0330, 24-46-23-W1-0070.0290 and 24-46-23-W1-0070.037A Same as Resolution 00-07A LESS AND EXCEPT Sanibel View Villas and White Sand Villas	
20	Ordinance 23-04	3/6/2023	Amends CPD (**Bayside**) to remove restriction against liveaboards	200 and 275 Estero STRAP Number 24-46-23-W1-0070.0330, 24-46-23-W1-0070.0340, and 24-46-23-W1-0070.037A (nothing more provided)	Includes condition to clarify existing CPD ownership, addresses, and parcel IDs

Town of Fort Myers Beach
Agenda Item Summary Yellow Sheet Number: **2025-33**

1. **Request:** **Meeting Date: November 12, 2024**

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING/ APPROVING WITH CONDITIONS/ DENYING THE COMMERCIAL PLANNED DEVELOPMENT (CPD) ZONING FOR THE PROPERTY LOCATED AT 2310 ESTERO BLVD AND 2316/2320 ESTERO BLVD. GENERALLY IDENTIFIED AS STRAP NUMBERS 19-46-24-W3-0430N.0001, 19-46-24-W3-04300.00CE AND 19-46-24-W3-0110A.0010 FORT MYERS BEACH; PROVIDING FOR OTHER CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

Why the action is necessary:
The LPA makes recommendations to the Town Council for CPD rezoning requests.

What the action accomplishes:
Approval of the CPD will allow development of a 148 unit resort.

2. **Agenda:**
PUBLIC HEARINGS

3. **Requirement/Purpose:**
Ordinance

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5. **Background:**
The Neighborhood Company, applicant for 2310 and 2316/2320 Estero Blvd, is requesting a rezoning for the portion of the property landward of the CCCL from Commercial Resort zoning to Commercial Planned Development to allow the development of a resort building with 148 lodging units, accessory retail uses, and recreational uses. The proposed development will be a total of 129,925 square feet with an FAR of 1.48. There are two access points on Estero Blvd and one point of only egress from Delmar Ave with a separate access to the dumpster enclosure on the east side of the property. The proposed resort is designed with 4 stories of habitable hotel space above 2 levels of parking for a maximum zoned height of 51 feet as measured from the base flood elevation (FDEP design flood elevation) to mean roof height The site previously contained a resort with 71 lodging units and accessory resort uses.

Attachments:
1. Ordinance 24-XX with Exhibit A
2. LPA staff report
3. Exhibit B to Ordinance - Master Concept Plan
4. Applicant's Narrative
5. Application

Financial Impact:
unknown

6. **Alternative Action**
Recommend approval with additional conditions

7. **Staff Recommendations:**
Recommend denial

8. **Recommended Approval:**

Judith Frankel, Principal Planner	Date: October 30, 2024
Frankie Kropacek, Operations & Compliance Director	Date: October 30, 2024
nancy stuparich, Town Attorney	Date: November 04, 2024
Amy Baker, Town Clerk	Date: November 05, 2024

ORDINANCE 24-XX

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING/ APPROVING WITH CONDITIONS/ DENYING THE COMMERCIAL PLANNED DEVELOPMENT (CPD) ZONING FOR THE PROPERTY LOCATED AT 2310 ESTERO BLVD AND 2316/2320 ESTERO BLVD. GENERALLY IDENTIFIED AS STRAP NUMBERS 19-46-24-W3-0430N.0001, 19-46-24-W3-04300.00CE AND 19-46-24-W3-0110A.0010 FORT MYERS BEACH; PROVIDING FOR OTHER CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Florida Statutes provide that municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal service, and exercise any power for municipal purposes, except when expressly prohibited by law; and

WHEREAS, Article X of the Town Charter of the Town of Fort Myers Beach empowers the Town to adopt, amend. or repeal such ordinances and resolutions as may be required for the proper governing of the Town; and

WHEREAS, CHG Neptune Acquisitions, LLC and The Neighborhood Company, owner and agents for the property owner, located at 2310 Estero Blvd. and 2316/ 2320 Estero Blvd., parcels generally identified as STRAP numbers 19-46-24-W3-0430N.0001, 19-46-24-W3-04300.00CE and 19-46-24-W3-0110A.0010 in the Town of Fort Myers Beach, filed applications to rezone the property from the Commercial Resort Zoning District to CPD with Master Concept Plan (MCP) with certain deviations to the Land Development Code (LDC) in order to develop a 148 lodging units and accessory retail and recreational uses; and

WHEREAS, the subject property is a combination of three parcels located in the Boulevard Future Land Use Category of the Comprehensive Plan of the Town of Fort Myers Beach; and

WHEREAS, a public hearing was held before the Local Planning Agency (LPA) on November 12, 2024; and

WHEREAS, at the November 12, 2024 public hearing the LPA gave full and complete consideration of the request, recommendations by staff, the documents in the record, and the testimony of all interested persons, as required by Town Land Development Code (LDC) sec. 34-85; and

WHEREAS, at the November 12, 2024 public hearing the LPA found that the request is consistent/ inconsistent with the comprehensive plan and the requirements of the LDC and voted to recommend approval/approval with conditions/ denial of the variance by a ____ vote with ____ member abstaining; and

WHEREAS, on December 2, 2024 the Town Council held a first reading of the proposed Ordinance and gave full and complete consideration to the request of the Applicant, the

recommendation of the LPA, the recommendation of staff, the documents in the record, and the testimony of all interested persons, as required by Fort Myers Beach Land Development Code (LDC) Section 34-85; and

WHEREAS, the Town Council voted to have a second reading of the proposed Ordinance and a public hearing on this matter was noticed in an appropriate publication 10 days prior to the Town Council on December 16, 2024; at which time the Town Council gave full and complete consideration to the request of the Applicant, the recommendation of the LPA, the recommendation of staff, the documents in the record, and the testimony of all interested persons, as required by Fort Myers Beach Land Development Code (LDC) Section 34- 85; and

WHEREAS, the applicant has resolved and is current on any outstanding fees associated with notice, advertisement, and consulting services required by the Town; and

WHEREAS, a Business Impact Estimate has been prepared and published on the Town's website; and

WHEREAS, with the following terms, conditions, and requirements which the LPA finds to be in the public health, safety, and welfare, all of which are in compliance with the comprehensive plan and the Land Development Code; and

WHEREAS, Exhibit A provides the approved property development regulations, the schedule of uses and conditions of approval for this CPD to be used during the permitting process; and

WHEREAS, Exhibit B is the approved Master Concept Plan (MCP), which future development should be substantially in compliance with; and

WHEREAS, the Town Council finds that this request to rezone the property from the Commercial Resort Zoning District to CPD with MCP with certain deviations to the Land Development Code (LDC) in order to develop a resort with 148 lodging units and accessory retail and recreational uses, is a unique and individual application which does not set precedent for future development or rezoning applications.

Deviation #1

Relief from LDC Sec. 10-285, Table 10-1 – Connection Separation, which requires a 250' separation between street and accessways, in order to allow driveway separations as depicted on the Master Concept Plan (MCP).

Deviation #2

Relief from LDC Sec. 10-416(C)(2) – Landscaping of parking and vehicular use areas, which has specific tree and landscape island dimensional requirements to allow an alternate landscape betterment plan as allowed per LDC Sec. 10-419.

Deviation #3

Relief from LDC Sec. 34-1804(A) and Sec. 34-2020, which regulates parking for hotels/motels and other accessory uses, to allow reduced parking requirements as justified by the project's independent parking analysis.

Deviation #4
Relief from LDC Sec. 34-633, which includes covered parking in the floor area ration (FAR) calculation to exclude the two stories of under-building parking from this hotel's FAR calculation.

Deviation #5
Relief from LDC Division 4, Table 34-3 for the CR zoning district which limits height to 30 feet zoned height and three (3) stories to allow a maximum zoned height of 51 feet and a maximum of six (6) stories consisting of four (4) stories above two (2) levels of parking.

Deviation #6
Relief from LDC Sec. 34-1803(a)(1), which allows the conversion of dwelling units to hotel/motel guest units per established equivalency factors, in order to exceed said factors as allowed per LDC Sec. 34-1803(a)(2). This deviation would allow a maximum equivalency factor of 6.2 resulting in a maximum of 148 resort hotel units.

Deviation #7
Relief from LDC Section 34-645(b) and Table 34-3, which allows for a Floor Area Ratio (FAR) maximum of 1.2 within the Commercial Resort (CR) zoning district, to allow for a maximum FAR of 1.5.

Findings for the rezoning:

WHEREAS, the Town Council considered all relevant factors and made the following formal findings before making its final decision on the requested rezone to a Commercial Planned Development (see LDC 34-85 and 34-216):

a. Minor ambiguities were resolved through the deviation process.
b. The previous development on the subject property was destroyed by Ian and adoption of the rezoning with deviations ameliorates longstanding design issues on the site due to the lot's odd shape and orientation.
c. The rezoning would carry out the policies and requirements of the Comprehensive Plan and Land Development Code.
d. The Town Council carefully considered the testimony of the applicant, the recommendations of staff and of the local planning agency, and testimony from the public.
e. The rezoning would be consistent with the goals, objectives, policies, and intent, and with the densities, intensities, and general uses in the Comprehensive Plan.
f. The rezoning would meet or exceed all performance and locational standards set forth for the proposed use.
g. Urban services are available and adequate to serve the proposed use.
h. Rezoning would protect, conserve, or preserve environmentally critical areas and natural resources.
i. The rezoning would be compatible with existing and planned uses and not cause damage, hazard, nuisance, or other detriment to persons or property.
j. The rezoning would not place an undue burden upon existing transportation or other services and facilities and will be served by streets with the capacity to carry traffic generated by the development.

k. The rezoning, with the mitigating factors volunteered by the applicant and the special conditions imposed by the Town Council, is consistent with the Fort Myers Beach Comprehensive Plan, Land Development Code, and other applicable town ordinances or codes.

l. The proposed use or mix of uses is appropriate at the subject location.

m. Sufficient safeguards to the public interest are provided by the recommended special conditions to the master concept plan and by other applicable regulations.

n. All recommended special conditions are reasonably related to the impacts on the public's interest created by or expected from the proposed development.

WHEREAS, the Town Council made the following formal findings before making final decisions on the seven requested deviations from "by-right" requirements of the Land Development Code (see LDC 34-216):

a. Each item enhances the achievement of the objectives of the planned development; and
b. The general intent of this chapter to protect the public health, safety and welfare will be preserved and promoted; and
c. Each deviation operates to the benefit, or at least not to the detriment, of the public interest; and
d. Each deviation is consistent with the Fort Myers Beach Comprehensive Plan.

WHEREAS, the Town Council finds that this application to approve Ordinance 24-XX which is, **consistent/ not consistent** with the Town of Fort Myers Beach Comprehensive Plan and LDC and voted to **deny/ approve/ approve with conditions** the Application.

NOW, THEREFORE, IT IS HEREBY ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AS FOLLOWS:

Section 1. The above recitals are true, correct, incorporated herein by this reference, and adopted as the legislative and administrative findings of the Town Council.

Section 2. The Town Council determines the Applicant **did/did not** meet its burden of proof, that the request to approve Town of Fort Myers Beach's Ordinance no. 24-XX and the conditions of approval for the commercial planned development zoning, **does/ does not** meet the requirements of the Town Comprehensive Plan and LDC. Therefore, based upon the recommendations, testimony, and evidence presented by the Applicant, Town staff, and interested parties, the Town Council **DENY/ APPROVE/ APPROVE WITH CONDITIONS** the requested application.

Section 3. Town Ordinance 24-XX is adopted and the schedule of uses and conditions of approval for the Property's CPD set forth in Exhibit A, attached hereto and incorporated herein by this reference is approved.

Section 4. Whenever the requirements or provisions of this Ordinance conflict with the requirements or provisions of any other lawfully adopted LDC or Town Code provision, ordinance, or statute, the most restrictive shall apply.

Section 5. Any typographical errors that do not affect the intent of this Ordinance may be corrected with notice to and authorization of the Town Manager without further process.

Section 6. If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason, declared by a court of competent jurisdiction to be unconstitutional or invalid, such decision will not affect the validity of the Ordinance as a whole, or any part thereof, other than the part so declared.

Section 7. This Ordinance will take effect immediately upon adoption by the Town Council.

THE FOREGOING ORDINANCE was adopted by the Town Council upon a motion by Council Member _____ and seconded by Council Member _____, and upon being put to a vote, the result was as follows:

DULY PASSED AND ADOPTED on this ___ day of December 2024.

Dan Allers, Mayor	_____
Jim Atterholt, Vice Mayor	_____
John R. King, Council Member	_____
Scott Safford, Council Member	_____
Karen Woodson, Council Member	_____

FORT MYERS BEACH TOWN COUNCIL

_____
Dan Allers, Mayor

ATTEST:

_____
Amy Baker, Town Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE AND RELIANCE OF THE TOWN OF FORT MYERS BEACH ONLY:

_____
Vose Law Firm, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this ___ day of December 2024.

Attachments:

A – Conditions of Approval and Schedule of Uses
B – Master Concept Plan (MCP)

Exhibit A: CONDITIONS OF APPROVAL & SCHEDULE OF USE

Conditions of Approval

Staff finds that the CPD with deviations meets the criteria set forth in Sec. 34-85(b) and (c) and 34-216(2) of the LDC and recommends approval of DCI20230213 with the attached conditions:

1. A local development order is required prior to any development of the site, in accordance with this planned development approval.
2. All state and local permits, including but not limited to right of way and stormwater permits, must be applied for and received prior to site development.
3. Addresses 2310 and 2316/2320 Estero Blvd must be combined as a single parcel under one STRAP number.
4. An approval letter for the second access from Estero will be required prior to construction.
5. Landscaping on adjacent properties must be protected during construction or replaced at the expense of the owner, CHG Neptune Acquisitions, LLC.
6. All signage and landscaping must meet the Vehicle Visibility at Intersection requirements found in Sec. 34-3131.
7. A parking agreement and a perpetual parking easement must be established with the Town for the proposed 16 public parking spots along Delmar Ave and street improvements prior to commencement of construction.
8. No permanent or temporary structures are permitted within the 25-foot-wide view corridor on the East and within the 20-foot-wide view corridor on the West side of the property.
9. Failure to comply with any of the above-mentioned conditions of approval for the Special exception will render this approval null and void.

Schedule of Use

Lodging

- Hotel/ Motel (inclusive of Hotel Condominiums)
- Guest Units
- Resort

Lodging Accessory Uses

- On premises consumption of Alcohol beverages
- Resort accessory uses
- Personal services
- Recreational Facilities
- Pathways and dune walkovers

Accessory Retail use

- Accessory commercial uses
- Retail store

Town of Fort Myers Beach

COMMUNITY DEVELOPMENT DEPARTMENT
STAFF REPORT

TYPE OF CASE:	**Commercial Planned Development**
CASE NUMBER:	**DCI Rezoning, 20230213**
CASE NAME:	**2310 and 2316/2320 Estero Blvd, rezone the portion of the property currently zoned Commercial Resort to Commercial Planned Development for the redevelopment of a resort including 148 lodging units and accessory retail use and recreational uses.**
LPA HEARING DATE:	**November 12, 2024 at 9 AM**
STAFF RECOMMENDATION:	**Denial**
PREPARED/ SUBMITTED BY:	**Sarah Propst, AICP, PMP**

I. APPLICATION SUMMARY

Applicant:	The Neighborhood Company
Owner:	CHG Neptune Acquisitions, LLC
Request:	Rezone the portion of the property zoned Commercial Resort to Commercial Planned Development for the redevelopment of a resort including 148 lodging units and accessory retail and recreational uses.
Subject property:	See attached site plan
Physical Address:	2310 and 2316/2320 Estero Blvd
STRAP #:	19-46-24-W3-0430N.0001, 19-46-24-W3-04300.00CE and 19-46-24-W3-0110A.0010
FLU:	Boulevard
Zoning:	Commercial Resort

Adjacent zoning and land uses:

North:	Commercial Boulevard/ Vacant Commercial
South:	Environmentally Critical /Beach
East:	Multi-Family Residential / Vacant Commercial
West:	Multi-Family Residential / Single Family Residential and vacant commercial

II. BACKGROUND AND ANALYSIS

Background:

The Neighborhood Company, applicant for 2310 and 2316/2320 Estero Blvd, is requesting a rezoning for the portion of the property landward of the CCCL from Commercial Resort zoning to Commercial Planned Development to allow the development of a resort building with 148 lodging units, accessory retail uses, and recreational uses. The proposed development will be a total of 129,925 square feet with an FAR of 1.48. There are two access points on Estero Blvd and one point of only egress from Delmar Ave with a separate access to the dumpster enclosure on the east side of the property. The proposed resort is designed with 4 stories of habitable hotel space above 2 levels of parking for a maximum zoned height of 51 feet as measured from the base flood elevation (FDEP design flood elevation) to mean roof height The site previously contained a resort with 71 lodging units and accessory resort uses.

The Commercial Resort zoning district permits resort use by right. However, the Applicant would need to request several variances for the proposed plan and therefore the applicant is requesting to rezone the property to CPD. Seven deviations are requested from the land development code requirements.

Analysis:

2310 and 2316/2320 Estero Blvd has supported a resort or an Inn with 71 units for many years. The previous development included one-three story building and two-two story buildings which were substantially damaged during Hurricane Ian. The previous buildings did not meet current flood requirements.

The property has the Future Land Use designation of Boulevard which allows a maximum density of 6 dwelling units per acre or 14 dwelling units on this 2.46-acre property. Application of the equivalency factors established in LDC Section 34-1803, would allow 35 lodging units with an area less than 450 square feet or 28 lodging units with an area between 450 and 750 square feet. The Town's buildback policy in Section 34-3238 would allow the Applicant to rebuild the previously existing 71 units with limitations on total square footage. The Applicant is proposing 148 lodging units and is therefore requesting a rezoning to CPD with a Master Concept Plan and seven deviations from the Town's Land Development Code.

The Boulevard Future Land Use designation allows a maximum of 1.5 FAR and CR zoning district permits a maximum FAR of 1.2. The proposed resort is 129,925 square feet with 1.48 FAR. The applicant is requesting a deviation to exclude the square footage for two-stories of car parking underneath the building.

The development proposes automobile 164 parking spaces, 138 delineated spaces and an additional 26 valet spaces when needed. Additionally, the plan includes 32 bicycle parking spaces and 16 public parking spaces along Delmar Ave. The code requires 1.5 parking spaces per unit greater than 450 square feet area and 1.2 parking space per unit less than 450 square feet in area, which would require 212 parking spaces. The code requires 2 parking spaces for every 1000 square feet of accessory retail and recreational uses, which would require a total of 8 parking spaces for 4,420 square foot accessory uses area. The total number of code required parking spaces Is 220. The applicant is proposing eight four-space bike racks, which decreases the number of required spaces by one. With the reduction of one parking space, the Applicant is requesting a deviation for reduction in parking spaces by 55 spaces.

A 25-foot-wide view corridor and a 15-foot-wide Type C perimeter landscaping buffer is proposed along the east property line. As per LDC Section 10-416 (d), a Type C buffer includes a minimum of 5 trees, 18 shrubs and a minimum 6 feet high wall. All trees and shrubs required in the buffer must be placed on the residential side of the wall. This combination of trees, shrubs and the 6-foot-high wall of the 15-foot-wide landscape buffer might obstruct the view of the Gulf from the proposed 25-foot-view corridor. The Applicant is also proposing a 20-foot-wide view corridor on the west side of the property along Delmar Avenue.

Seven deviations from the Land Development Code are requested. The deviations are listed below and include the applicant's justification as well as a staff comment.

Requested Deviations:

1) **Relief from LDC Sec. 10-285, Table 10-1 – Connection Separation, which requires a 250' separation between street and accessways, in order to allow driveway separations as depicted on the Master Concept Plan (MCP).**

   Applicant Justification: *LDC Section 10-285, Table 10-1 states that when a street or accessway is constructed or improved, it must be spaced a minimum distance from all other streets or accessways. Estero Blvd. is classified as a major street, requiring streets and accessways to be spaced 250 feet from centerline to centerline. Prior to Hurricane Ian, visitors entered and exited the Neptune Resort along Estero Blvd. through a curb cut which measured approximately 95 feet wide and contained 6 parking spaces at its north side.*

   The proposed site configuration as shown on the proposed MCP provides an improved traffic flow throughout the site with controlled access both entering and exiting the property. Visitors will enter the site through two dedicated accessways from Estero Blvd. The western primary access facilitates full turning movements and a drive aisle with no parking spaces that will allow vehicles to move efficiently from Estero Blvd. into the property and provide for on-property stacking and

vehicle maneuverability without impeding traffic flow on Estero Blvd. This accessway is approximately 140 feet from centerline to centerline from Delmar Ave. The second accessway is 85 feet east of the primary and provides for right-in/left-in and right-out only along Estero Blvd. This limited accessway will provide appropriate turning movements based on the lane configuration of Estero Blvd at this location and will reduce left out conflict points along Estero Blvd.

The project proposes an egress only accessway located on the western side of the property from the parking garage onto Delmar Ave. The exit onto Delmar Ave. will allow visitors to have a third alternative to exit onto Estero Blvd from an already existing roadway intersection.

The proposed improvements address operational and safety issues on the property and Estero Blvd. They will enhance functionality through the decreased width of the accessway and the relocation of parking to appropriate locations onsite, thus working toward achieving general consistency with intent of LDC Section 10-285 to provide as much connection separation as possible while protecting the health, safety and welfare of island residents and visitors.

Staff Comment: The property previously had one entrance from Estero and one from Delmar Ave, which appear to be consistent with the Town's regulation for 250 feet separation between the previous accessway and Delmar Ave and between the previous accessway and Mango Street. The proposed layout with two accesses from Estero Blvd is a design choice to support 148 lodging units and is not consistent with the Town's regulations. The Applicant will need to coordinate with Lee County to permit the second access from Estero Blvd.

2) Relief from LDC Sec. 10-416(C)(2) – Landscaping of parking and vehicular use areas, which has specific tree and landscape island dimensional requirements to allow an alternate landscape betterment plan as allowed per LDC Sec. 10-419.

Applicant Justification: *The deviation from LDC Sec. 10-416(C)(2) is requested to allow the use of an alternate landscape betterment plan for the redevelopment of the site. The limited size of the property and the need to redevelop the site due to hurricane damages has created unique circumstances that limit the ability meet the strict tree and landscape island size requirements. There will be limited surface parking available with most of the proposed parking provided by two levels of garage parking under four levels of hotel.*

The proposed surface parking will be heavily landscaped within appropriately located landscape islands and of adequate size to sustain the required trees and grass/ground cover/approved landscape materials. The intent of the finalized landscape betterment plan approved under the Development Order will be to provide additional landscaped open space areas within the frontage area of the project to help offset any potential landscape island size reduction. The alternate landscape betterment plan, as allowed per LDC Sec. 10-419, will meet the intent of LDC Sec. 10-416 (C)(2) and will not cause or result in any negative impacts to the community's health, safety, and welfare.

Staff Comment: The proposed development exceeds the landscaping requirements of the Town's LDC for the total number of trees, native trees and shrubs required within the site and parking area. The Applicant is requesting a deviation to allow no internal landscaping islands for the parking area underneath the building, while compensating for the requirement in other parts of the property. Any development within the Town that meets the intent of the LDC and exceeds the minimum landscaping standards of the code, as per LDC 10-419, may be approved for an alternate landscape betterment plan. Staff recommends approval of this request.

3) **Relief from LDC Sec. 34-1804(A) and Sec. 34-2020, which regulates parking for hotels/motels and other accessory uses, to allow reduced parking requirements as justified by the project's independent parking analysis.**

Justification: *The requested deviation from LDC Sec. 34-1804(A) and Sec. 34-2020 is to allow for a reduction in the parking requirements by promoting and providing resort guests and visitors a variety of alternative modes of transportation options as well as utilizing the results of the independent parking analysis provided by TR Transportation Consultants, Inc. dated May 13, 2024. Under the strict regulations provided in the town's LDC, the proposed resort and accessory uses would require 220 parking spaces. The developer will provide, at a minimum, 138 delineated parking spaces with an additional 26 spaces that can be achieved via valet service stacking. Combined, the resort will be able to park 164 vehicles with an additional 16 spaces along Delmar dedicated for public use. The enclosed parking analysis memorandum dated May 13, 2024, finds the peak season parking demand to be 118 parking spaces. The proposed supply of a minimum of 164 parking spaces, inclusive of parking via valet service, will exceed anticipated demand based on the Institute of Transportation Engineer's (ITE)* ***Parking Generation Manual, 6th Edition****, which was published by ITE in October of 2023 as well as the* ***Urban Land Institutes – Shared Parking, 3rd Edition*** *manual and analysis spreadsheet.*

The alternative transportation mode options to be promoted and potentially provided to resort guests and visitors include using bicycles, golf carts, walking, transit and potentially land and water-based shuttle services. The developer intends to provide numerous bicycle racks within the adjacent Delmar Ave right-of-way, along the east side of the development as part of the new public beach access corridor, the surface parking area, and parking garage. Land Development Code Section 34-2020(c) allows for the reduction of one typical vehicle parking space for every 4 bicycle spaces provided. It is the intent of the developer to provide a minimum of 32 bicycle parking spaces throughout the development and adjacent public beach access, thus contributing to a reduction of 8 required vehicle parking spaces. The Neptune Resort will also make bicycles available to guests and visitors in order to further encourage this very popular alternative mode of transportation on the island. Adequate pedestrian connectivity will also be designed at the time of development order approval and constructed to ensure easy access to the nearby trolley stops along Estero Blvd. as well as encouraging

guests and visitors to walk to nearby destinations rather than driving and searching for parking. The project will also be incorporating golf cart parking and potential on-site rentals to support a reduction in the need to use and park vehicles on property or throughout the island. There is also an effort being considered by various transient lodging proprietors on the island to study and potentially implement, if feasible, a dedicated airport/island shuttle service as well as support a local water taxi/ferry service. The Neptune Resort's developer is supportive of this alternative transportation initiative and is committed to working to develop either a private or public/private partnership and fund their fair-share to ensure its success. All these alternative modes when successfully implemented will further reduce over parked developments and help alleviate traffic congestion on the island, and in turn reduce any associated negative impacts to the health, safety and welfare of the island's residents and visitors.

Staff Comment: The proposed development has a similar use to the previous development. The Applicant is requesting a reduction of 55 parking spaces and proposing more than four times the units permitted by the zoning district and twice as permitted by right under the Town's build back policy. This proposed reduction in parking spaces may lead to an undue burden on the parking and transportation facilities in the Town. The Applicant is encouraging alternate means of transportation at the same time and proposing 16 public parking spaces along Delmar Ave. A detailed review by Town's traffic consultant will be required at the Development Order phase.

4) Relief from LDC Sec. 34-633, which includes covered parking in the floor area ration (FAR) calculation to exclude the two stories of under-building parking from this hotel's FAR calculation.

Applicant Justification: *A component of this planned development rezoning petition is a deviation request from LDC Sec. 34-633 that requires covered parking to be included in the FAR calculation. This deviation specifically requests that the proposed two stories of under-building (covered) parking not be calculated towards the maximum allowed FAR and the resulting gross floor area calculation. The maximum floor area ratio (FAR) proposed for the site is 1.48 which equates to approximately 129,925 SF of habitable gross floor area and is not inclusive of 2 levels of under-building parking. A maximum FAR of 1.5 is being requested through this CPD and deviation #7, in order to provide some leeway for changes that may be needed as the project progresses to final design and permitting.*

Exceptional circumstances now exist due to the destruction caused by Hurricane Ian and the need to create a code compliant, more resilient, and sustainable resort that will contribute to the rebuilding of the island and strengthening its economic base. Other exceptional circumstances exist that support the need for the two levels of parking to be excluded from the FAR calculation. These include changes to FEMA standards and Florida Building Code regulations, the extreme costs of construction and the need to create and provide for a modern family friendly resort with amenities for both visitors and island residents to enjoy. Current building code regulations and FEMA standards require the resort to be

significantly elevated above the design flood elevation. As a result of the requirement to elevate the structure, a beneficial opportunity is presented to design the structure and utilize this open area for covered parking and other support facilities as allowed within the design flood elevation. When designing elevated structures to mitigate impacts of potential hurricane/flooding disaster on coastal communities, there is justification of providing the flexibility to not hinder the logical application of incorporating under-building (covered) parking and it not counting towards the gross floor area determined by the maximum FAR.

It is common to apply a FAR to only that portion of a development that contributes to much of the massing associated with usable and habitable space. It is also beneficial to encourage under-building (covered) parking to not encourage vast and expansive parking lots. The Neptune Resort is designed to provide much of the habitable gross floor area above the required design flood elevation and utilize covered parking for the majority of the required parking, thus helping to reduce impervious surfaces and reducing the impacts of stormwater runoff.

Based on the above stated justification, the granting of this deviation from LDC Sec. 34-633 will not be injurious to the neighborhood or negatively impact the overall health, safety, and welfare of the island.

Staff Comment: There has been some discussion in support of amendment to LDC Sec 34-633 to exclude a single story of parking from FAR calculations. However, further discussion is needed on this topic during the LDC update.

5) Relief from LDC Division 4, Table 34-3 for the CR zoning district which limits height to 30 feet zoned height and three (3) stories to allow a maximum zoned height of 51 feet and a maximum of six (6) stories consisting of four (4) stories above two (2) levels of parking.

Applicant Justification: *The CPD property development regulations are to be consistent with the CR zoning district regulations, which limit the maximum height to 30 feet and 3 stories. The proposed project is requesting a maximum zoned height of 51 feet as measured from design flood elevation plus 3 feet to the mid-point of the main roof. See Figure 1 below.*

The Town's comprehensive plan allows for additional heights beyond the limits provided in the CR zoning district on a case-by-case basis. As stated in the comprehensive plan, the request would be "approved, modified, or denied, based on the conformance of the specific proposal with all aspects of the comp plan,

Figure 1. Zoned Building Height

including land use and design policies, pedestrian orientation, and natural resource criteria. Particular attention would be paid to any permanent view corridors to the Gulf that could be provided in exchange for allowing the building to be taller." The previous development was constructed on the east property line which allowed no view corridor to the Gulf and the view corridor on the west was limited to the width of Delmar Ave. The building was seaward of the Coastal Construction Control Line which was established after the hotel was constructed in the 1960's.

The redesigned site places the building out of the Coastal Construction Control Line boundary and setback from the side property lines thus limiting the available footprint for the structure. This made it necessary to increase the height of the building to achieve the appropriate square footage necessary to create the quality resort desired. The redevelopment height allows additional view corridors, creates space for additional buffering against Cottage Avenue properties and increased setbacks with enhanced landscaping/pedestrian amenity nodes from and along Estero Boulevard while creating a more aesthetically pleasing development with updated architecture and varied rooflines.

As demonstrated in the photos below (Figure 2) the Neptune Resort is located adjacent to and near buildings which range from 3 stories up to 13 stories. Thus, the proposed height of 51 feet and 4 stories over 2 levels of parking garage is compatible and consistent with building heights within this area of the island.

Figure 2. Photos of adjacent building heights. (West – left and East – right)

The proposed height and redevelopment design provide the ability to create a more resilient development while correcting non-conformities which previously existed. The granting of this deviation request will not result in harm to the overall health, safety or welfare of island residents or guests.

Staff Comment: The properties to the north and east currently are developed as single-family residential and the properties on the west appear to be multi-family residential buildings ranging between two to four stories in height. The resort use has been in existence in this area for many years and is compatible with this neighborhood.

The Applicant is proposing a 25-foot-wide view corridor on the east and a 20-foot-wide view corridor on the west. The proposed 25-foot-wide view corridor contains a 15-foot-wide Type C perimeter landscaping buffer which might obstruct the view of the Gulf. The Applicant is also advocating that the proposed 20-foot-wide view corridor together with Delmar Ave will effectively create a 70-foot-wide view corridor on the west. Staff believes that rights-of-way do not count towards view corridors and the proposed Type C perimeter landscaping might obstruct view in the east view corridor. Staff does not find the proposed view corridors sufficient to allow additional height as permitted by the Town's Comprehensive Plan.

6) **Relief from LDC Sec. 34-1803(a)(1), which allows the conversion of dwelling units to hotel/motel guest units per established equivalency factors, in order to exceed said factors as allowed per LDC Sec. 34-1803(a)(2). This deviation would allow a maximum equivalency factor of 6.2 resulting in a maximum of 148 resort hotel units.**

Applicant Justification: *The Neptune Resort property consists of 2.46± acres located within the Boulevard Future Land Use category. The property is comprised of a total of 24 platted lots – 10 lots within the W.W. Watson Subdivision and 14 lots within the Beach Estates Subdivision. Each platted lot would be permitted 1 unit by right, for a total of 24 dwelling units.*

Per the equivalency factors outlined in LDC Sec. 34-1803(a)(1), the 24 residential units can be converted into guest units based at a ratio of 2.5 guest unit per residential unit. LDC Sec. 34-1803(a)(2), further allows these established ratios to

be exceeded under exceptional circumstances and when providing public benefit as part of the planned development process. The exceptional circumstances applicable to the Neptune Resort include the devastation sustained due to Hurricane Ian, the construction requirements mandated through the Florida Building Code and FEMA, the increased cost of construction, high interest rates and the shortages of materials and labor. Additionally, through the planned development process, the applicant is proposing the following public benefits that contribute to the project's consistency with LDC Sec. 34-1803(a)(2):

- *A gulf side neighborhood sit-down restaurant and tiki bar open to the public.*
- *A minimum 25' wide view corridor on the east side of the subject property.*
- *Enhancement and improvements to the Delmar Avenue right-of-way and public beach access that include:*
  - *o Complementary enhanced landscaping and open space features;*
  - *o Additional public parking spaces (16) to be dedicated to the Town; and*
  - *o Expanded view corridor from Estero Boulevard.*
- *Improved pedestrian and vehicular access and site parking design to improve movements to and from Estero Boulevard and eliminate potential conflict points.*
- *Planting of shade trees and pedestrian amenity nodes along Estero Blvd.*
- *Restored dune habitat and native vegetation plantings*
- *Elimination of non-conformities*
- *Improved setbacks*
- *Elimination of structures beyond the CCCL*
- *Replacement of non-FEMA compliant structures with a hardened, and resilient resort which will meet all Florida Building Code and FEMA requirements and will benefit public health, safety and welfare.*
- *Development of a high-quality resort product with superior design and styling*
- *Provision of bicycle parking*
- *Provision of bicycles for guest to reduce vehicular traffic*
- *Fair share contribution toward mobility solutions to reduce traffic on the island*
- *Participation in efforts to promote the Beach School and after-care, increase enrollment and provide flexibility to hotel employees to drop-off and pick up their children*
- *Contributions to the local economy via ad valorem property taxes, the bed tax, sales tax, job creation and partnerships with local businesses and vendors*
- *Support the Town's vision as a family-oriented destination by providing a family friendly resort that honors its longstanding heritage on this island.*

The Neptune Resort is requesting 148 hotel units through this CPD. The total number of hotel units is derived as follows: 24 ("by right" dwelling units) x 6.2 = 148 hotel units.

The deviation requesting an equivalency factor of 6.2 is justified as outlined above. Additionally, for comparison purposes, Margaritaville obtained a 9.1 equivalency ratio. Given the devastating hurricane, the unprecedented cost to rebuild, and the proposed public benefits proportionate with the size of the property and the scale of the request, this deviation is reasonable and will not adversely impact the

public's health, safety, and welfare.

Staff Comment: The property has the Future Land Use designation of Boulevard which allows a maximum density of 6 dwelling units per acre or 14 dwelling units on this 2.46-acre property. The property comprises of 24 platted lots, which may be built into 24 dwelling units using the Minimum Use Determination.

As per the equivalency factors established for the Town's Future Land Use districts in LDC Section 34-1803, 35 lodging units with an area less than 450 square feet and an equivalency factor of 2.5 or 28 units of area between 450 square feet to 750 square feet with an equivalency factor of 2 are permitted by right. The property supported 71 guest units prior to Hurricane Ian. Per the Town's Build back policy, the Applicant may build back the previously existing 71 units, however, the Applicant plans to build 148 lodging units with an equivalency factor of 6.2 and is therefore, requesting a deviation from LDC Sec. 34-1803(a)(1).

7) Relief from LDC Section 34-645(b) and Table 34-3, which allows for a Floor Area Ratio (FAR) maximum of 1.2 within the Commercial Resort (CR) zoning district, to allow for a maximum FAR of 1.5.

Justification: The property is located within the Boulevard Future Land Use designation which allows a maximum FAR of 1.5. Although the preliminary design for the resort shows an FAR of 1.48, a maximum FAR of 1.5 is requested to provide leeway for changes that may be needed as the project progresses to final design and permitting. As stated in the Comprehensive Plan an increase in FAR is permitted up to the allowance set within the specific future land use designation. The requested 1.5 FAR is equal to the maximum allowable FAR for the Boulevard Future Land Use designation as set within the Comprehensive Plan, which by comparison is far less than the 2.5 FAR allowed within the Pedestrian Commercial district that is a few hundred feet to the west of the Neptune property.

The increase in FAR is requested to allow the development of the type of resort desired by the community and consistent with today's market expectations. The Neptune Resort will offer high end guest amenities, such as an on-site restaurant open to the public, pools, pool bar, conference rooms, recreational areas, and open space. Additionally, the increased FAR is needed to address today's building codes, FEMA regulations, and updated hospitality standards that call for larger rooms, back of house and support facility areas.

The CPD allows applicants to request an FAR of up to 1.5 within the Boulevard FLU designation. In support of the CPD and the request to increase the FAR to 1.5, the applicant is proposing the following public benefits:

- *A gulf side neighborhood sit-down restaurant and tiki bar open to the public.*
- *A minimum 25' wide view corridor on the east side of the subject property.*
- *Enhancement and improvements to the Delmar Avenue right-of-way and public beach access that include:*

o Complementary enhanced landscaping and open space features;
o Additional public parking spaces (16) to be dedicated to the Town; and
o Expanded view corridor from Estero Boulevard.

• Improved pedestrian and vehicular access and site parking design to improve movements to and from Estero Boulevard and eliminate potential conflict points.
• Planting of shade trees and pedestrian amenity nodes along Estero Blvd.
• Restored dune habitat and native vegetation plantings
• Elimination of non-conformities
• Improved setbacks
• Elimination of structures beyond the CCCL
• Replacement of non-FEMA compliant structures with a hardened, and resilient resort which will meet all Florida Building Code and FEMA requirements and will benefit public health, safety and welfare.
• Development of a high-quality resort product with superior design and styling
• Provision of bicycle parking
• Provision of bicycles for guest to reduce vehicular traffic
• Fair share contribution toward mobility solutions to reduce traffic on the island
• Participation in efforts to promote the Beach School and after-care, increase enrollment and provide flexibility to hotel employees to drop-off and pick up their children
• Contributions to the local economy via ad valorem property taxes, the bed tax, sales tax, job creation and partnerships with local businesses and vendors
• Support the Town's vision as a family-oriented destination by providing a family friendly resort that honors its longstanding heritage on this island
The requested deviation for increased FAR is consistent with the Comprehensive Plan and the Land Development Code and will not result in any negative impacts to the public's health, safety, and welfare.

Staff Comment: Boulevard Future Land Use designation allows a maximum of 1.5 FAR and CR zoning district permits a maximum FAR of 1.2. The proposed resort is 129,925 square feet with 1.48 FAR excluding the square footage for two-story car parking underneath the building and requires a deviation.

Neighborhood Compatibility:
The property on the North is zoned Commercial Boulevard and the properties towards the east and west of the proposed development are zoned as multi-family residential. The properties to the north and east currently support single-family residential and the properties on the west appear to support multi-family residential buildings ranging between two to four stories in height. This resort use has been in existence in this area for many years and is compatible with this neighborhood.

The scale of the resort has changed and may be less compatible with the adjacent residential properties than the previous resort. However, the separation distance between the resort and the additional landscaping buffers may ameliorate the impacts of the scale.

Findings and Conclusions:
LDC Sec. 34-85(b) and (c) and 34-216(2) sets forth the required considerations and

findings for the approval of a rezoning.

(b) Considerations. In reaching its decision, the town council shall consider the following, whenever applicable:

(1) Whether there exists an error or ambiguity which must be corrected.
Staff response: No errors or ambiguities exist.

(2) Whether there exist changed or changing conditions which make approval of the request appropriate.
Staff response: The previous structure was destroyed by Hurricane Ian and the site is available for redevelopment. Additionally, the flood regulations do require a higher elevation for usable floor area, than was allowed when the original resort was developed.

(3) The impact of a proposed change on the intent of this chapter.
Staff response: No impact on the intent of this chapter will occur.

(4) The testimony of any applicant.

(5) The recommendation of staff and of the local planning agency.

(6) The testimony of the public.

(7) Whether the request is consistent with the goals, objectives, policies, and intent, and with the densities, intensities, and general uses as set forth in the Fort Myers Beach Comprehensive Plan.
Staff response: The use is a permitted use by right in Commercial Resort zoning. The Applicant is requesting a deviation of 0.3 FAR to allow a FAR of 1.5, the maximum allowed intensity of the Boulevard Future Land Use district. The new structure will be designed to meet current building and flood requirements, which is supported by the comprehensive plan. The proposed development does exceed the height recommended in the comprehensive plan.

(8) Whether the request meets or exceeds all performance and locational standards set forth for the proposed use.
Staff response: The proposed development will meet performance and locational standards set forth in 34-2031. There are no special location standards for resorts.

(9) Whether urban services are, or will be, available and adequate to serve a proposed land use change.
Staff response: The urban services exist in this location.

(10) Whether the request will protect, conserve, or preserve environmentally critical areas and natural resources.
Staff response: The request will have no impact on environmentally critical areas and natural resources. The EC portion of the property is not being rezoned.

(11) Whether the request will be compatible with existing or planned uses and not cause damage, hazard, nuisance, or other detriment to persons or property.
Staff response: The proposed use has been in existence in this location for many years. It is not anticipated to have any detrimental impact on existing or planned uses.

(12) Whether the location of the request places an undue burden upon existing transportation or other services and facilities and will be served by streets with the capacity to carry traffic generated by the development.
Staff response: The proposed development has a similar use to the previous development. The Applicant is requesting a reduction of 55 parking spaces and proposing more than four times the units permitted by the zoning district and twice the number permitted by right under the Town's build back policy. It appears that the proposed reduction may lead to an undue burden on the parking and transportation facilities in the Town. A detailed review of traffic impacts will determine impact fees during development of the property.

(13) For planned development rezonings, see § 34-216 for additional considerations.

(c) Findings. Before granting any rezoning, the town council shall find that the requested zoning district complies with:

(1) The Fort Myers Beach Comprehensive Plan.
Staff response: The proposed use for the CPD comply with the Comprehensive Plan.

(2) This chapter.
Staff response: The proposed use complies with this chapter except in regard to the deviations.

(3) Any other applicable town ordinances or codes.
Staff response: The proposed request complies with the town ordinances and codes, except in regard to the deviations.

(4) For planned development rezonings, see § 34-216 of this chapter for additional findings.

a. The proposed use or mix of uses is appropriate at the subject location.
Staff response: A resort is permitted use by right in Commercial Resort zoning district. The proposed use has existed in this location without creating a nuisance.

b. Sufficient safeguards to the public interest are provided by the recommended special conditions to the concept plan or by other applicable regulations;
Staff response: Sufficient safeguards are provided for the public interest.

c. All recommended special conditions are reasonably related to the impacts on the public's interest created by or expected from the proposed development;
Staff response: All conditions are related to the impacts on the public interest.

d. The proposed use meets all specific requirements of the comprehensive plan that are relevant to the requested planned development, such as the following:

1. Policies 4-B-4 and 4-C-3 on commercial uses in the "mixed residential" category.
Staff response: Not applicable.

2. Policies 4-B-5 and 4-C-3 on commercial rezonings in the "boulevard" category.
Staff response: The proposed use is similar to the previously existing development and is consistent with Policy 4-B-5 and 4-C3 of the Tow's Comprehensive Plan.

3. Policy 4-C-4 on building heights taller than the standard height limit.
Staff response: The proposed structure will be a six-story building (four stories of hotel over two stories of parking) and 51 feet above the base flood elevation, where a maximum height of three story or 30 feet high building is permitted in the CR zoning district. As per Policy 4-C-4 of the Town's Comp Plan, permanent view corridors to Gulf or Bay waters may be provided in exchange for allowing a building to be taller than three stories, including the ground story. The Applicant is however proposing a 25-foot-wide view corridor obstructed by a 15-foot-wide landscape buffer on the east. The Applicant is also proposing a 20-foot view corridor on the west.

The property on the east and west are zoned as multi-family residential. The properties to the east are developed as single-family residential and the properties on the west appear to support multi-family residential buildings ranging between two to four stories in height. Therefore, the requested building height is consistent with the neighborhood, but not consistent with the view corridors as specified in Policy 4-C-4 of the Town's Comprehensive Plan.

4. Policy 4-C-8 on density transfers.
Staff response: Not applicable.

5. Policy 4-E-1 on pre-disaster build back.
Staff response: Not applicable.

6. Policy 7-J-2 on traffic impact analyses and potential design improvements that could offset traffic impacts.
Staff response: The proposed development has a similar use to the previous development. The Applicant is requesting a reduction of 55 parking spaces and proposing more than four times the units permitted by the zoning district and twice the number permitted by-right under the Town's build back policy. The Applicant proposes 16 public parking

spaces on Delmar Ave and will encourage alternate modes of transportation on site.

There is a possibility that the proposed reduction in parking spaces may lead to a burden on the parking and transportation facilities in the Town.

Findings for Deviation Requests:
Per Sec. 34-216(4) all deviations must be approved, approved with modification, or rejected based upon a finding that:

a. Each item enhances the achievement of the objectives of the planned development; and
Staff response: The requested deviations allow the development of the site with the design that the applicant has chosen.

b. The general intent of this chapter to protect the public health, safety and welfare will be preserved and promoted; and
Staff response: The proposed deviations are a result of design choice that might be underestimating the parking needs.

c. Each deviation operates to the benefit, or at least not to the detriment, of the public interest; and
Staff response: The deviations are not a detriment to the public interest.

d. Each deviation is consistent with the Fort Myers Beach Comprehensive Plan.
Staff response: The deviations are not consistent with the comprehensive plan.

III. RECOMMENDATION

Staff finds that the CPD with deviations does not meet the criteria set forth in Sec. 34-85(b) and (c) and 34-216(2) of the LDC and recommends denial of DCI20230213.

IV. CONDITIONS OF APPROVAL

If the Town's LPA recommends approval for the rezoning, town's staff recommends the following conditions of approval:

1. A local development order is required prior to any development of the site, in accordance with this planned development approval.
2. All state and local permits, including but not limited to right of way and stormwater permits, must be applied for and received prior to site development.
3. Addresses 2310 and 2316/2320 Estero Blvd must be combined as a single parcel under one STRAP number.
4. Lee County must approve the permit for the second access from Estero Blvd.
5. Landscaping on adjacent properties must be protected during construction or replaced at the expense of the owner, CHG Neptune Acquisitions, LLC.

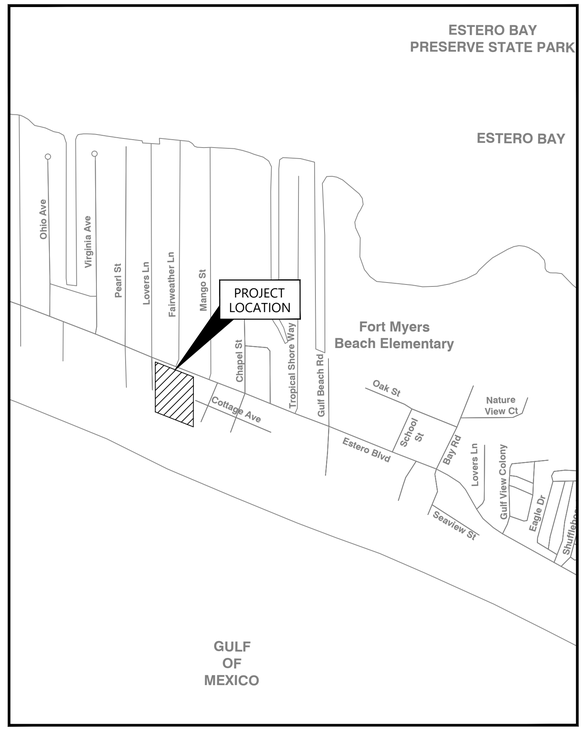
6. All signage and landscaping must meet the Vehicle Visibility at Intersection requirements found in Sec. 34-3131.
7. A parking agreement and a perpetual parking easement must be established with the Town for the proposed 16 public parking spots along Delmar Ave and street improvements prior to commencement of construction.
8. Failure to comply with any of the above-mentioned conditions of approval for the Special exception will render this approval null and void.

Staff Report Exhibits:
A – Master Concept Plan
B – Applicant's Narrative
C – Complete Application

MASTER CONCEPT PLAN FOR

NEPTUNE RESORT CPD

SECTION 19, TOWNSHIP 46S, RANGE 24E,
FORT MYERS BEACH, FLORIDA



VICINITY MAP
N.T.S.

SITE LOCATION MAP
N.T.S.

PREPARED BY:

THE NEIGHBORHOOD COMPANY

5618 WHISPERING WILLOW WAY
FORT MYERS, FL 33908

PREPARED FOR:

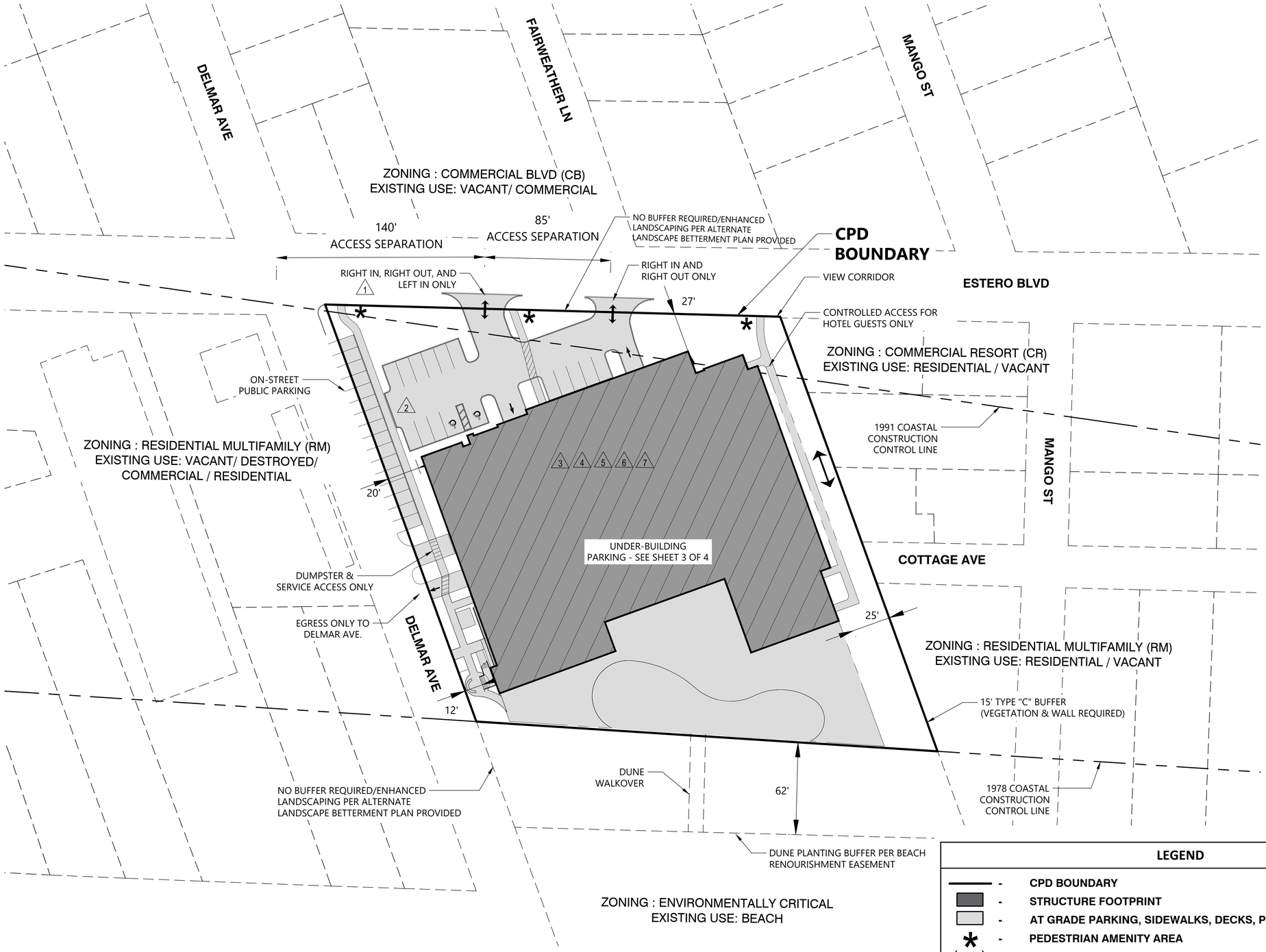
CHG NEPTUNE ACQUISITIONS, LLC

150 EAST BROAD ST, SUITE 800
COLUMBUS, OH 43215

CONTENTS

SHEET NUMBER	SHEET DESCRIPTION
1	COVER SHEET
2	MASTER CONCEPT PLAN
3	CONCEPT PARKING PLAN
4	NOTES

DATE:	PROJECT No.:	SHEET No.:
October, 2023	220050.01.01	1 OF 4



LEGEND

- CPD BOUNDARY
- STRUCTURE FOOTPRINT
- AT GRADE PARKING, SIDEWALKS, DECKS, POOL, AND PATHWAY AREAS
- PEDESTRIAN AMENITY AREA
- VEHICULAR INGRESS / EGRESS
- VIEW CORRIDOR
- DEVIATIONS

0 20 40

#	REVISION	DRAWN	DATE
1	PER COUNTY COMMENTS	F.L.	01/24

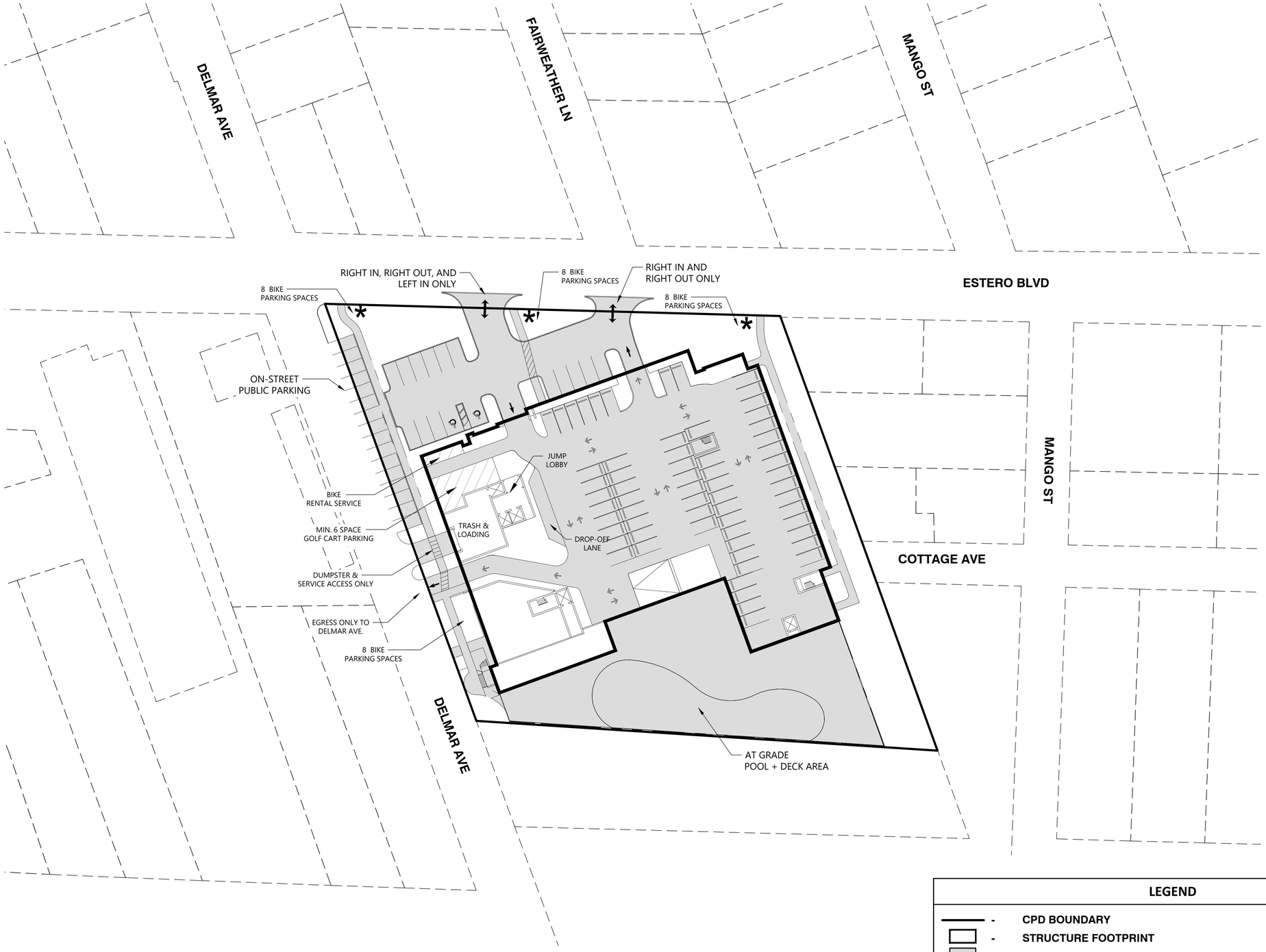
THE NEIGHBORHOOD COMPANY
5618 WHISPERING WILLOW WAY | FORT MYERS, FL 33908
WWW.THENEIGHBORHOOD.COMPANY

CLIENT: CHG NEPTUNE ACQUISITIONS, LLC

PROJECT: NEPTUNE RESORT COMMERCIAL PLANNED DEVELOPMENT (CPD)

TITLE: MASTER CONCEPT PLAN

PROJECT NO: 220050.01.01
DATE: 08/23
DRAWN: F.L.
DESIGN: K.G.
SHEET NUMBER: 2 OF 4



LEGEND

- CPD BOUNDARY
- STRUCTURE FOOTPRINT
- AT GRADE PARKING, SIDEWALKS, DECKS, POOL, AND PATHWAY AREAS
- PEDESTRIAN AMENITY AREA
- VEHICULAR INGRESS / EGRESS

0 20 40

#	REVISION	DRAWN	DATE
1	PER COUNTY COMMENTS	F.L.	01/24

THE NEIGHBORHOOD COMPANY
5618 WHISPERING WILLOW WAY | FORT MYERS, FL 33908
WWW.THENEIGHBORHOOD.COMPANY

CLIENT: CHG NEPTUNE ACQUISITIONS, LLC

PROJECT: NEPTUNE RESORT COMMERCIAL PLANNED DEVELOPMENT (CPD)

TITLE: CONCEPT PARKING PLAN

PROJECT NO. 220050.01.01
DATE: 08/23
DRAWN: F.L.
DESIGN: K.G.
SHEET NUMBER: 3 OF 4

GENERAL NOTES:

1. THIS MASTER CONCEPT PLAN (MCP) IS CONCEPTUAL IN NATURE. THE OVERALL CONFIGURATION, SIZE AND LOCATION OF THE STRUCTURES AND OTHER IMPROVEMENTS MAY VARY. FINAL DESIGN AND IMPROVEMENT **DETAILS** WILL BE PROVIDED AS PART OF THE DEVELOPMENT ORDER (D.O.) PROCESS.
2. TOTAL LOT AREA IS 2.46 ACRES OF WHICH 2.01 ACRES IS LANDWARD OF THE 1978 CCCL.
3. WATER MANAGEMENT NEEDS CAN VARY SIGNIFICANTLY. THE WATER MANAGEMENT PLAN WILL BE DESIGNED AT TIME OF D.O.
4. THE PROJECT WILL BE DEVELOPED IN ONE PHASE.
5. ALL OTHER DEVELOPMENT STANDARDS SHALL BE SET FORTH IN LDC CHAPTER 24 OR OTHER APPLICABLE PROVISIONS OF THE LDC.
6. NO ENVIRONMENTALLY SENSITIVE LAND OR WATER EXISTS ON SITE AS THIS SITE WAS IMPACTED BY PREVIOUS DEVELOPMENT. NO PROTECTED SPECIES SURVEY IS REQUIRED PER APPROVED WAIVER.
7. PARKING ON DELMAR WILL BE IN COMPLIANCE WITH LDC SEC. 34-2011(3) REGULATION ON-STREET PARKING.
8. AT GRADE BEACH PATHWAYS AND DUNE WALKOVERS WILL BE LOCATED AT TIME OF D.O.
9. THE MAXIMUM OF 148 HOTEL UNITS IS PERMITTED PURSUANT TO LDC SECTION 34-1803, ALLOWABLE INTENSITY EQUIVALENCY TABLE, FOOTNOTE #2.

SCHEDULE OF USES:

LODGING:

- HOTEL/MOTEL (INCLUSIVE OF HOTEL CONDOMINIUMS)
- GUEST UNITS
- RESORT

LODGING ACCESSORY USES:

- ON PREMISE CONSUMPTION OF ALCOHOLIC BEVERAGES
- RESORT ACCESSORY USES
- PERSONAL SERVICES
- RECREATIONAL FACILITIES
- PATHWAYS AND DUNE WALKOVERS

RETAIL:

- SUBORDINATE COMMERCIAL USES
- RETAIL STORE

MAXIMUM INTENSITY:

- MAXIMUM OF 148 HOTEL UNITS
- MAXIMUM FLOOR AREA RATIO (F.A.R.): 1.5 OR 131,333 SF (NOT INCLUSIVE OF 2 LEVELS OF PARKING)

PARKING:

VEHICLE:

- MIN. REQUIRED PER PARKING STUDY: 118 PARKING SPACES
- MIN. PROVIDED:
  - 138 ON-SITE DELINEATED PARKING SPACES FOR RESORT USE
  - 26 ON-SITE PARKING SPACES FOR RESORT USE VIA VALET SERVICE
  - TOTAL: 164 FOR RESORT USE
  - 16 PARKING SPACES FOR PUBLIC USE

BICYCLE:

- MIN. REQUIRED: 0 SPACES
- MIN PROVIDED: 32 SPACES

GOLF CART:

- MIN. REQUIRED: 0 SPACES
- MIN. PROVIDED: 6 SPACES

DEVELOPMENT STANDARDS

DEVELOPMENT STANDARDS	PRINCIPAL STRUCTURE	ACCESSORY STRUCTURE
MINIMUM FRONT YARD - FROM ESTERO BLVD	27 FEET	SPS
MINIMUM REAR YARD - FROM SOUTHERN BOUNDARY	62 FEET	SPS
MINIMUM SIDE YARD FROM DELMAR AVE	20 FEET OR 12 FEET FOR EXTERNAL STAIRCASE	SPS
MINIMUM SIDE YARD - FROM EASTERN BOUNDARY	25 FEET	SPS
MAXIMUM ZONED HEIGHT[1]	54 FEET	N/A
MAXIMUM ACTUAL HEIGHT[2]	81 FEET	N/A
MAXIMUM STORIES	4 ABOVE 2 LEVELS OF PARKING	N/A
MAXIMUM FLOOR AREA RATIO[3]	1.5	N/A

1. MEASURED FROM DESIGN FLOOD ELEVATION TO MID-POINT OF MAIN ROOF
2. MEASURED FROM GRADE TO PEAK OF HIGHEST ROOF
3. EXCLUDES THE TWO UNDER-BUIDING LEVELS OF PARKING

SPS: SAME AS PRINCIPAL STUCTURE

DEVIATIONS:

1. A DEVIATION FROM LDC SEC. 10-285, TABLE 10-1 – CONNECTION SEPARATION, WHICH REQUIRES A 250' SEPARATION BETWEEN STREET AND ACCESSWAYS, IN ORDER TO ALLOW DRIVEWAY SEPARATIONS AS DEPICTED ON THE MASTER CONCEPT PLAN (MCP).
2. A DEVIATION FROM LDC SEC. 10-416(C)(2) – LANDSCAPING OF PARKING AND VEHICULAR USE AREAS, WHICH HAS SPECIFIC TREE AND LANDSCAPE ISLAND DIMENSIONAL REQUIREMENTS TO ALLOW AN ALTERNATE LANDSCAPE BETTERMENT PLAN AS ALLOWED PER LDC SEC. 10-419.
3. A DEVIATION FROM LDC SEC. 34-1804(A) AND SEC. 34-2020, WHICH REGULATES PARKING FOR HOTELS/MOTELS AND OTHER ACCESSORY USES, TO ALLOW REDUCED PARKING REQUIREMENTS AS JUSTIFIED BY THE PROJECT'S INDEPENDENT PARKING ANALYSIS.
4. A DEVIATION FROM LDC SEC. 34-633, WHICH INCLUDES COVERED PARKING IN THE FLOOR AREA RATION (FAR) CALCULATION TO EXCLUDE THE TWO STORIES OF UNDER-BUILDING PARKING FROM THIS HOTEL'S FAR CALCULATION.
5. A DEVIATION FROM LDC DIVISION 4, TABLE 34-3 FOR THE CR ZONING DISTRICT WHICH LIMITS HEIGHT TO 30 FEET ZONED HEIGHT AND THREE (3) STORIES TO ALLOW A MAXIMUM ZONED HEIGHT OF 51 FEET AND A MAXIMUM OF SIX (6) STORIES CONSISTING OF FOUR (4) STORIES ABOVE TWO (2) LEVELS OF PARKING.
6. A DEVIATION FROM LDC SEC. 34-1803(A)(1), WHICH ALLOWS THE CONVERSION OF DWELLING UNITS TO HOTEL/MOTEL GUEST UNITS PER ESTABLISHED EQUIVALENCY FACTORS, IN ORDER TO EXCEED SAID FACTORS AS ALLOWED PER LDC SEC. 34-1803(A)(2). THIS DEVIATION WOULD ALLOW A MAXIMUM EQUIVALENCY FACTOR OF 6.2 RESULTING IN A MAXIMUM OF 148 RESORT HOTEL UNITS.
7. A DEVIATION FROM THE LDC SECTION 34-645(B) AND TABLE 34-3, WHICH ALLOWS FOR A FLOOR AREA RATIO (FAR) MAXIMUM OF 1.2 WITHIN THE COMMERCIAL RESORT (CR) ZONING DISTRICT, TO ALLOW FOR A MAXIMUM FAR OF 1.5.

THE NEIGHBORHOOD COMPANY
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#	REVISION	DRAWN	DATE

CLIENT: CHG NEPTUNE ACQUISITIONS, LLC

PROJECT: NEPTUNE RESORT COMMERCIAL PLANNED DEVELOPMENT (CPD)

TITLE: NOTES

PROJECT NO: 220050.01.01
DATE: 08/23
DRAWN: F.L.
DESIGN: K.G.
SHEET NUMBER: 4 OF 4

THE NEPTUNE RESORT
COMMERCIAL PLANNED DEVELOPMENT (CPD) REZONING

NARRATIVE

BACKGROUND & REQUEST

The subject property is located at 2310/2316/2320 Estero Boulevard, Fort Myers Beach, FL 33931. The property consists of 3 parcels (19-46-24-W3-0430N.0001, 19-46-24-W3-0110A.0010; and 19-46-24-W3-04300.00CE) totaling 2.46+/- acres, situated south of Estero Boulevard, east of Delmar Avenue and west of Mango St (See Figure 1). The property has a Future Land Use (FLU) Designation of Boulevard and a zoning designation of Commercial Resort (CR). CHG Neptune Acquisitions, LLC (CHG), has owned the property since September 2021 and is the applicant for this rezoning request.

Figure 1. Location Map

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The Neighborhood Company, on behalf of CHG Neptune Acquisitions, LLC, is submitting this Planned Development Rezone Application to request the following:

- Rezone the subject property from Commercial Resort (CR) to Commercial Planned Development (CPD) to allow the redevelopment of the prior Neptune Inn site with a 148-unit resort hotel, accessory retail and recreational uses, and a restaurant and tiki bar open to the public.

History of The Neptune Inn

In the 1960's, the subject property was developed as an "Old Florida" style motor inn (See Figure 2) known as the Neptune Inn. The inn consisted of 71 rooms/suites within three buildings and parking on the interior of the property. Most of the buildings were two stories in height. However, the beachfront portion of the building along Delmar Avenue was three stories. Amenities included two pools, shuffleboard courts, and shaded picnic areas.

The Neptune Inn had a long-standing history of providing a home away from home for vacationers, who returned year after year to enjoy the many qualities of Fort Myers Beach. The property was purchased in September of 2021 by CHG Neptune Acquisitions, LLC, which is a subsidiary of Continental Real Estate Companies. Although the inn was dated, the ownership valued the hotel's heritage and nostalgic charm. They intentionally decided not to completely redevelop the hotel, but rather update, refresh and renovate the existing hotel to better serve and meet the needs and wants of its loyal customers.

Figure 2. Vintage Neptune Inn

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As a result of Hurricane Ian, the property and existing structures suffered extensive damage (See Figure 3). The ownership evaluated the opportunity to repair the hotel under the 50% Rule, but it was deemed unfeasible for numerous reasons including: long-term resiliency, FEMA and Florida Building Code requirements, site issues related to the Coastal Construction Control Line (CCCL), insurance obligations, the age and anticipated lifespan of existing structures, repair costs, and today's hospitality market and consumer expectations. Based on this detailed assessment, the property owners decided to redevelop the property with a brand-new beach resort that will respect the Neptune Inn's heritage while allowing for a prosperous and sustainable future. The proposed resort will remain family oriented but will offer the quality and modern amenities that today's consumers expect. The resort will be beautiful and resilient while also eliminating existing nonconformities and risks associated with older structures.

Figure 3. Post Hurricane Ian Photos

To redevelop the property and to eliminate existing nonconformities it is necessary to rezone the property from Commercial Resort (CR) to Commercial Planned Development. This request will not require a change to the Comprehensive Plan and the property's "Boulevard" Future Land Use Category.

PROPOSED USE/REDEVELOPMENT

The intent of the Commercial Resort (CR) zoning district is to designate suitable locations for hotels, motels, resorts, and related services. As stated in the Land Development Code (LDC), "… the Commercial Planned Development District (CPD) is to allow a landowner the ability to submit a specific proposal for a land development that is primarily nonresidential or mixed-use in character and that complies with the Fort Myers Beach Comprehensive Plan, but which does not meet all of the specific requirements of a conventional or redevelopment zoning district." The proposed rezone from CR to CPD is being requested as a direct result of Hurricane Ian damage, meets the intent of the CPD, and provides the best vehicle for the property owner to build back better and stronger. The proposed CPD will enhance the property's resiliency, provide an outstanding product that meets today's consumer expectations, and will result in a project with multiple

benefits to the Town and its residents. Through the CPD rezoning process, the property owner is seeking to develop the site with a 148-unit resort, retail and recreational uses subordinate to the hotel use, and a restaurant and tiki bar that will be open to the public. The proposed resort will be built landward of the established 1978 Coastal Construction Control and will comply with all FEMA and Florida Building Code requirements.

Redevelopment, Resiliency and Economic Feasibility

Hurricane Ian devastated the Neptune Inn and its supporting infrastructure as it did to many hotels and resorts on the island. The Town of Fort Myers Beach, its residents, and businesses remain strong and are working tirelessly on the recovery and reconstruction of their island and its economy.

Prior to Hurricane Ian, Fort Myers Beach had a significant hotel inventory of approximately 2,156 rooms, which was below the peak inventory that existed prior to Hurricane Charley in 2004. Post Ian, the Lee County Visitor and Convention Bureau estimates that only 408 rooms are currently available for occupancy. This represents a decline of over 81% in available rooms. This significant reduction in hotel room supply significantly impacts the Town's economy and impedes the road to recovery. Tourism affects all facets of the local economy - it creates jobs and small business opportunities for local residents; it supports local bars, restaurants and entertainment venues; it contributes to the Town and County's tax base; and it provides the critical mass needed for certain business such as grocery stores and pharmacies to be viable and for services such as dentists, sports therapists, healthcare clinics and gyms to thrive. As such, it is vital that we rebuild the hotel stock and that we promote a strong tourism economy. Redevelopment and reconstruction of hotels and resorts will bring visitors back to the island, which in turn will help reopen and keep restaurants, bars, and retail stores thriving. In combination, all these key commercial uses will provide a strong economic engine for the Town.

It is going to take time to recover and there are still many challenges ahead. Fort Myers Beach will once again be the robust tourist destination it was before Hurricane Ian but challenges such as new FEMA and Florida Building Code regulations, the need to harden and construct resilient structures, and insurance changes will seriously affect the ability to rebuild. The high cost of construction, limited availability of labor, the need for modern amenities that meet today's consumer expectations, high interest rates, overall inflation and the significant risks associated with local tourism (i.e., red tide, COVID, major storms) seriously affect investment decisions and what type of hotel can be rebuilt. Smaller, ground level hotels can no longer be constructed due to current regulations, nor can they be rebuilt due to today's economic reality. As many island residents can attest to, the cost to rebuild on Fort Myers Beach has increased exponentially and this does not even factor in land costs. As such, it is not realistic to believe that hotels, motels, and resorts can

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be rebuilt at the same size and with the same number of lodging units as before. In order to offset these high costs and to hedge against unforeseen risks, hotels will need to be bigger than they once were.

CHG has carefully analyzed and evaluated these challenges. While rebuilding is not a quick or easy task, they are committed to this Town and want to be a significant community partner, and an asset to the Town of Fort Myers Beach by paying homage to the history of the Neptune Inn by developing a new family-oriented resort. The new resort seeks to strike a balance between the need to address today's economic and regulatory realities and delivering a design that respects the surrounding context and community character. The new Neptune Resort will not only provide new hotel rooms to bolster the economy and replenish units lost since Hurricane Charley and Ian, but will also provide a new resort that provides public benefits and amenities that include:

- A gulf side neighborhood sit-down restaurant and tiki bar open to the public.
- A minimum 25' wide view corridor on the east side of the subject property.
- Enhancement and improvements to the Delmar Avenue right-of-way and public beach access that include:
    - Complementary enhanced landscaping and open space features;
    - Additional public parking spaces (16) to be dedicated to the Town; and
    - Expanded view corridor from Estero Boulevard.
- Improved pedestrian and vehicular access and site parking design to improve movements to and from Estero Boulevard and eliminate potential conflict points.
- Planting of shade trees and pedestrian amenity nodes along Estero Blvd.
- Restored dune habitat and native vegetation plantings
- Elimination of non-conformities
- Improved setbacks
- Elimination of structures beyond the CCCL
- Replacement of non-FEMA compliant structures with a hardened, and resilient resort which will meet all Florida Building Code and FEMA requirements and will benefit public health, safety and welfare.
- Development of a high-quality resort product with superior design and styling
- Provision of bicycle parking

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- Provision of bicycles for guest to reduce vehicular traffic
- Fair share contribution toward mobility solutions to reduce traffic on the island
- Participation in efforts to promote the Beach School and after-care, increase enrollment and provide flexibility to hotel employees to drop-off and pick up their children
- Contributions to the local economy via ad valorem property taxes, the bed tax, sales tax, job creation and partnerships with local businesses and vendors
- Support the Town's vision as a family-oriented destination by providing a family friendly resort that honors its longstanding heritage on this island

LOCATION, DESIGN ELEMENTS AND COMPATIBILITY

Location

The property is located within the Civic Complex area of Fort Myers Beach at the southeast corner of Estero Boulevard and Delmar Avenue and is approximately three quarters of a mile east/southeast of Times Square. This area of the island contains many of the community's key public facilities such as the historic elementary school, the public library, Town Hall, Bay Oaks Recreation Center, and the Matanzas Pass Preserve. Pre-Ian, this neighborhood was home to a mix of institutional, residential, commercial, and lodging uses. As envisioned in the Comprehensive Plan, this area is truly the "Heart of the Island" in that it contains an eclectic mix of uses that serve visitors and residents alike. This segment of the island creates a transition zone between the downtown Core Area and the Quiet Center district. It provides a logical and functional transition between the more intense commercial, resort and entertainment uses downtown and the predominantly residential character of the Quiet Center. The Civic Complex is not as lively and "funky" as downtown but is sufficiently close to it and has the right balance of uses to appeal to both visitors and residents.

The Civic Complex is close enough to downtown and Time Square that it can be easily accessed by pedestrians and cyclists but is sufficiently removed from the entertainment center to create a markedly different district that has its very own character. The Civic Complex is a little more mellow than downtown but remains lively with a diverse mix of uses that include family resorts, neighborhood commercial uses, civic and recreational uses.

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The Neptune Resort is located towards the northern end of the Civic Center district, along the gulf side of Estero Boulevard and in close proximity to other family-oriented resorts including the Diamond Head and the former Estero Island Beach Club. Visitors to the Neptune Resort will be able to reach Times Square via a short walk or bike ride while enjoying shops, restaurants or the beach along the way. There are trolley stops located nearby providing visitors with another option to travel about the island. The town is also bicycle friendly, allowing resort guests to visit other parts of the island without the use of a car. The Neptune Resort will provide dedicated public bicycle parking onsite and bicycles for resort guests so they can conveniently experience restaurants, shops, and entertainment throughout the island.

Surrounding Uses and Site Design

The future land use category, zoning and existing land uses surrounding the property are as follows:

	FUTURE LAND USE	ZONING DISTRICT	EXISTING LAND USES
NORTH	Boulevard	Commercial Boulevard	Estero Boulevard ROW and Vacant Commercial
SOUTH	Recreation	Waterfront	Beach
EAST	Boulevard	Commercial Resort & Residential	Vacant/Destroyed Commercial
WEST	Boulevard	Residential Multi-family	Residential & Vacant Commercial

The project has been designed to be a high quality and welcoming hotel resort that complements the surrounding community. The site design includes elements tailored to improve compatibility with neighboring properties, eliminate any existing nonconformities and provide amenities beneficial to resort guests and general public visiting the resort and beach. These elements include a structure that is setback farther from adjacent properties, Estero Boulevard and the CCCL; an entrance point off of Estero Boulevard to provide unimpeded vehicle movements into the property so as not to obstruct the flow of traffic along Estero Boulevard; dedicated and appropriately designed ingress and egress points; enhanced landscaping and pedestrian amenity areas along the Estero Boulevard frontage; an oversized sidewalk with benches and decorative hardscape; two enhanced view corridors (See Figure 4); additional public parking spaces along Delmar Avenue; bicycle parking; and a restaurant and tiki bar open to the public.

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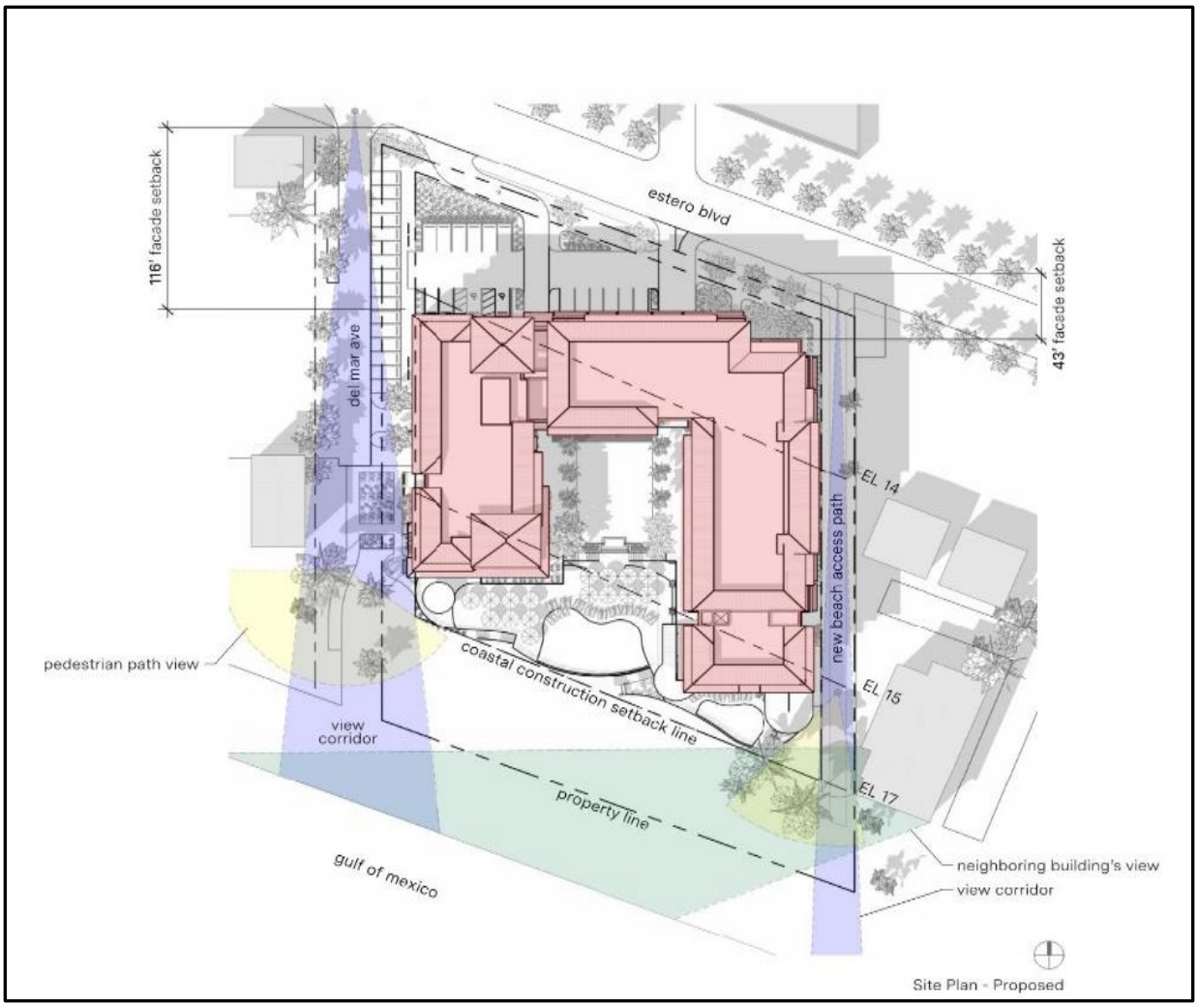

Figure 4. Overall Site Design Setbacks/View Corridors

Height

The Town's comprehensive plan allows for additional heights beyond the limits provided in the Commercial Resort (CR) zoning district on a case-by-case basis when utilizing the planned development rezoning process. As stated in the comprehensive plan, the request would be "approved, modified, or denied, based on the conformance of the specific proposal with all aspects of the comp plan, including land use and design policies, pedestrian orientation, and natural resource criteria. Particular attention would be paid to any permanent view corridors to the Gulf that could be provided in exchange for allowing the building to be taller."

The proposed resort is designed with 4 stories of habitable hotel space above 2 levels of parking for a maximum zoned height of 51 feet as measured from design flood elevation plus 3 feet to mid-point of the main roof. (See Figure 5a and the Height Exhibit included with the submittal). The allowance for additional height will result in a more attractive hotel, will help ensure its economic feasibility and will allow the Applicant to provide public benefits such as the additional view corridor, an enhanced corridor along Delmar, dedicated public parking and restaurant and tiki bar amenities which will serve the public and resort guests.

Hurricane Ian's destructive storm surge and flooding emphasizes the need for resilient construction that complies with FEMA standards and the Florida Building Code. As noted above, the project's zoned height is 51 feet, however the need to comply with FEMA and DEP's minimum design flood elevation adds height to the proposed resort and so does the varied rooflines which were included to provide visual interest and architectural embellishment. This results in a maximum actual height of 78 feet, 11 inches, measured from grade to the peak of the highest roof. Height measurements are presented in Figure 5a below and the Neptune Resort Height Exhibit included with the submittal.

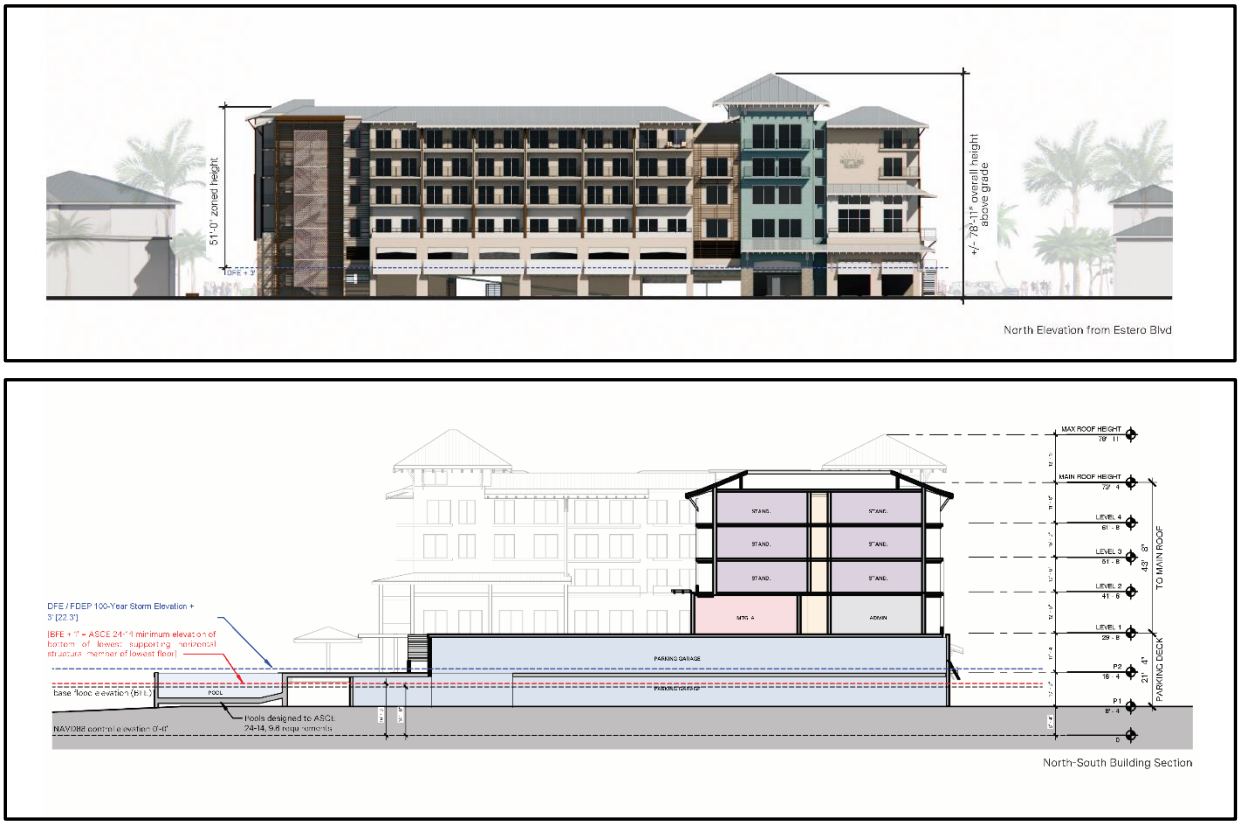

Figure 5a: Building Height and Building Cross-Section

A detailed treatment of the proposed height and how it is compatible with surrounding uses is provided below in the Comprehensive Plan Compliance section and more specifically in addressing Policy 4-C-4.

Figure 5b: Photos of adjacent building heights (West – left and East – right)

Setbacks & Buffers

The development proposes a minimum front yard setback from Estero Boulevard of 27 feet with increased front setbacks of 116 feet and 43 feet for the western and eastern corners respectively; a minimum side yard setback from Delmar Avenue of 20 feet, a minimum eastern side setback of 25 feet from the property line, and a minimum setback from the southern boundary of 62 feet. The proposed setbacks will alleviate the nonconformities which existed with the original development and allow for the addition of a view corridor on the eastern side of the property. The new site layout will also improve views of the beach for the properties to the east. This configuration will also eliminate the nonconforming structures built over the 1978 Coastal Construction Control Line.

Along the eastern boundary, a 15-foot, type “C” buffer, which will consist of vegetation and a wall is proposed where none previously existed. This will create separation and screening from adjacent properties and will provide a softer and aesthetically appealing separation from the structures to the east. While no buffers are required for the Estero Boulevard and Delmar Avenue sides of the property, the developer will provide enhanced landscaping per the planting plan provided to create a more inviting public realm and to provide shade for the pedestrian.

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Density/Intensity

The Neptune Resort consists of ± 2.46 acres located within the Boulevard Future Land Use category. Due to the catastrophic damage caused by Hurricane Ian and the need to create a resilient luxury resort with amenities expected by today's consumers, building back the property as it existed is not feasible. Conditions have changed significantly since the original construction of the Neptune Inn. The cost of construction materials, the availability of labor, the construction requirements mandated by the Florida Building Code and FEMA regulations are some of the many challenges. Due to the exponential increase in construction cost and today's consumer preferences, additional hotel units and gross floor area are needed to justify this level of investment and deliver an economically feasible development that can thrive for years to come.

The subject property is comprised of a total of 24 platted lots – 10 lots within the W.W. Watson Subdivision and 14 lots within the Beach Estates Subdivision. Each platted lot would be permitted 1 unit by right, for a total of 24 dwelling units. Per the equivalency factors outlined in LDC Sec. 34-1803(a)(1), the 24 residential units can be converted into guest units based at a ratio of 2.5 guest unit per residential unit. LDC Sec. 34-1803(a)(2), further allows these established ratios to be exceeded under exceptional circumstances and when providing public benefit as part of the planned development process.

The exceptional circumstances applicable to the Neptune Resort include the devastation sustained due to Hurricane Ian, the construction requirements mandated through the Florida Building Code and FEMA, the increased cost of construction, high interest rates and the shortages of materials and labor. The applicant is proposing public benefits, as outlined previously on pages 5 and 6, that further contribute to the project's consistency with LDC Sec. 34-1803(a)(2). Recognizing the exceptional circumstances, proposed public benefits, and utilizing the underlying 24 "by-right" dwelling units for density conversion, the Neptune Resort is requesting 148 hotel units through this CPD rezone request. The total number of hotel units is derived as follows: 24 ("by right" dwelling units) x 6.2 (requested equivalency factor – See Deviation #6) = 148 hotel units. For further details related to the proposed hotel/motel density conversion outlined above, see the "Narrative Supplement – Hotel/Motel Density & Allowable Intensity" document included with this submittal.

The floor area ratio (FAR) as conceptually established for the project is 1.48 or 129,925 SF (not inclusive of 2 levels of parking), which is detailed in the Neptune Resort FAR Exhibit as part of the application submittal. However, we are requesting a maximum FAR of 1.5 to provide some leeway for changes that may be needed as the project progresses to final design and permitting. Additionally, the increase in FAR is requested to allow the development of the type of resort desired by the community and consistent with today's market expectations. The Neptune Resort will offer high-end guest amenities, such as an on-site

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restaurant open to the public, pools, pool bar, conference rooms, recreational areas, and open space. The increased FAR is also needed to address today's building codes, FEMA regulations, and updated hospitality standards that call for larger rooms, back of house and support facility areas. This proposed FAR is equal to the maximum FAR of 1.5 as allowed under the Boulevard Future Land Use category. Additionally, as part of this CPD rezoning petition are deviations from LDC Sec. 34-633 to exclude the two levels of under-building parking when calculating the FAR and a deviation from LDC Sec. 34-645(b) and Table 34-3 to exceed the maximum 1.2 FAR within the Commercial Resort zoning district.

Transportation and Parking

A traffic impact assessment has been performed by T.R. Transportation Consultants and concludes that with the proposed rezoning to CPD, the future redevelopment of this resort hotel with 148 units along with restaurant and tiki bar, open to the public, will not place an undue burden on the island's roadway network. The level of service analysis provided is based on data collected prior to Hurricane Ian and shows that Estero Boulevard was over capacity during season. Due to the destruction caused by the hurricane, and due to the significant amount of time it will take to rebuild and re-establish pre-storm population and traffic levels, this development will not create an undue burden on the island roads.

Parking for hotels within the Town of Fort Myers Beach is based on LDC Section 34-1804 which states, "the minimum requirement for off-street parking is 1.2 parking spaces for guest units up to 450 square feet and 1.5 spaces for each larger guest unit." Parking requirements for ancillary uses contained within the hotel are calculated based on their square footage and as outlined in LDC Section 34-2020. As demonstrated below the total number of spaces required per the LDC is 220.

Hotel Resort Parking Calculations			
Estimated Unit Size	**Estimated # of Units**	**Required Spaces per Unit**	
Less than 450 SF	36	1.2	43.2
Greater than 450 SF	112	1.5	168
		Hotel Only	**211.2**
Parking for Ancillary uses = 3.0 % of total SF			
Location	**SF**	**Spaces per SF**	
Interior	2,623	2 / 1000 SF	5.2
Exterior	1,048	2 / 1000 SF	2.1
Tiki	749	2 / 1000 SF	1.5
		Ancillary Uses	**8.8**
		Total for Hotel & Ancillary Uses	**220**

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As we know, local land development codes tend to have conservative parking requirements that often lead to overparking. As such, parking requirements recommended by the Institute of Transportation Engineers (ITE) were also analyzed. Per the ITE Manual definitions, Resort Hotel (Land Use 330) specifically applies to the proposed project. As described in the ITE Manual, a Resort Hotel (Land Use 330) "is similar to a hotel (Land Use 310) in that it provides sleeping accommodation, full-service restaurants, cocktail lounges, retail shops and guest services. The primary difference is that a resort hotel caters to the tourist and vacation industry, often providing a wide variety of recreational facilities/programs…". The attached memorandum from TR Transportation Consultants, Inc. dated May 13, 2024, further evaluates the parking demands based on the **Institute of Transportation Engineer's (ITE)** ***Parking Generation Manual*****, 6th Edition**, which was just published by ITE in October of 2023, and the **Urban Land Institute (ULI)** ***Shared Parking, 3rd Edition*** manual and spreadsheet, the Master Concept Plan and the requested parking deviation. The analysis finds that the maximum peak parking demand for the proposed Neptune Resort is 118 spaces. The on-site supply of a minimum of 138 delineated parking spaces with an additional 26 spaces that can be achieved via valet service stacking, for a total of 164 spaces will be sufficient.

Further, the Town's LPA and Council have discussed strategies to reduce car trips and encourage visitors to leave their car at home. In an attempt to reduce parking space and support the Town's desire to reduce car dependency, the project proposes a minimum of 164 resort parking spaces, inclusive of parking via valet service, and 16 public parking spaces along Delmar Avenue through a dedicated easement to the Town of Fort Myers Beach.

The developers propose to enhance the on-site vehicle parking by providing alternative transportation options such as bicycle parking for visitors, complimentary/rental bicycles for use by resort guests or the public, golf cart parking, pedestrian connectivity to and from the property to existing trolley stops and encourage guest to leave their cars at home by promoting alternative modes of transportation. The developers of the Neptune Resort are seasoned resort operators throughout the United States and based on their experience they feel confident that the proposed parking is adequate for the resort. Nonetheless, the Applicant commits to work with the Town and other local hotel proprietors in developing and promoting alternative modes of transportation and agrees to contribute their fair share to comprehensive transportation/parking solutions.

Compatibility

As presented above and further discussed in the Rezoning Approval Criteria below, careful consideration was given to designing a resort that fits into the fabric of Fort Myers Beach while remaining feasible from a regulatory and economic standpoint. By honoring the Neptune Inn's heritage as a family-oriented hotel, and through the proposed setbacks, buffers, enhanced landscaping, moderate height and scale,

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exceptional architecture, thoughtful site design, and public benefits, the proposed resort ensures compatibility with surrounding properties. The Neptune Resort has a long and beloved history on Fort Myers Beach and will continue to be an asset to the island for years to come by providing a family-oriented destination resort for visitors, by building a resort that is open to local residents, by providing public benefits and by being active participants in developing Town-wide mobility solutions and promoting the Beach School.

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REZONING APPROVAL CRITERIA

The proposed rezoning request from CR to CPD must be found consistent with the established rezoning criteria provided for in LDC Section 34-85 and Section 34-216 as well as post-disaster build back criteria in accordance with Policy 4-D-1 of the Fort Myers Beach Comprehensive Plan and LDC Section 34-3238. The following narrative demonstrates compliance with the Town of Fort Myers Beach Comprehensive Plan and Land Development Code.

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THE FOLLOWING ADDRESSES APPLICABLE SECTIONS PROVIDED FOR IN THE PLANNED DEVELOPMENT APPLICATION – SUPPLEMENT PHD FORM:

A. COMPREHENSIVE PLAN AMENDMENTS

The following Comprehensive Plan Amendments are pending and could affect the future use of this property:

Mixed Use Districts Designation - Civic Center and Coconut Village RV Park Mixed-Use District

Figure 6. Proposed FLUM category

The applicant is aware that the Town of Fort Myers Beach has initiated an update to the Comprehensive Plan Future Land Use Element (FLUE) and Future Land Use Map (FLUM). This initiative was presented before the LPA on January 18, 2023 (Yellow Sheet #2023-895) and the Town Council on March 20, 2023. As of the date of this submittal, these updates are still in process. Should the proposed updates be approved, the subject property would be reclassified to the "Civic Center and Coconut Village RV Park Mixed-Use District" FLUM category (See Figure 6). At this time, the Applicant desires to move forward with this petition and intends to be consistent with the existing Boulevard FLUM designation, while also taking into consideration the current drafted language for the proposed Civic Center & Coconut Village RV Park Mixed-Use District category. Items included in the updated FLUE, which have been considered within this petition, include coordination regarding beach access improvements along with contributions to the public realm.

B. PHASING OF CONSTRUCTION

The development is to be constructed in a single phase.

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COMPREHENSIVE PLAN COMPLIANCE

COMMUNITY DESIGN ELEMENT:

OBJECTIVE 1-A ESTERO BOULEVARD: Improve the functioning and appearance of Estero Boulevard as the premier public space and primary circulation route of Fort Myers Beach.

POLICY 1-A-1: Changes along Estero Boulevard should improve on the characteristics that make it a boulevard in character and not just in name: safe and interesting to walk along, impressive landscaping, and scaled to people rather than high-speed traffic.

The developer has made a conscious and significant effort to create a resort that is attractive and provides additional functionality to the Estero Boulevard corridor. Through the addition and expansion of view corridors, enhanced streetscape along Estero Boulevard, creation of safe pedestrian walkways from Estero to the beach, and exceptional architectural design, the new Neptune Resort will embody the vision that is desired through the Comprehensive Plan's Community Design Element.

The project will be constructed with 4 stories of habitable hotel space above 2 levels of parking for a maximum zoned height of 51 feet, measured from design flood elevation plus 3 feet to mid-point of the main roof and an overall height above grade of approximately 78 feet – 11 inches (See Figure 5a above).

Through the use of architectural features and color, the building will be aesthetically pleasing and complementary to the surrounding area. The main building will have warm and colorful earthtones with more vibrant pops of color added through elements such as canopies and architectural features. The two-level parking garage is disguised through design elements such as awnings and the use of color and complimentary materials. The structure will have varying rooflines, oversized windows, balconies, and terraces to enhance the open feel of the design. See architectural renderings (Figure 7) on the following page.

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Figure 7: Architectural Renderings

The view corridors will be on both the east and west side of the resort. The eastern side of the resort will be set back from the property line to allow a minimum 25-foot view corridor on the subject property. The current building sits on the eastern property line and inhibits the neighboring residences' beach view. Additionally, there is no buffer between the uses. The increased setback will allow for the creation of enhanced landscaping and hardscaping as well as a buffer between the resort and the neighboring residences. This setback will also allow neighboring residences a less obstructed view of the beach.

The western side of the resort, along Delmar Avenue, will be set back approximately 20 feet from the property line. This proposed 20-foot setback and the Delmar Ave. right-of-way will provide approximately 70 feet of view corridor, as well as 16 public parking spaces, public bicycle parking and external access to the resort's restaurant. The developer will provide enhanced landscaping where permissible to create a welcoming environment for both island residents and visitors along Delmar Ave.
These two corridors will allow better views of the beach from Estero Boulevard for resort patrons and the public, thus creating a more attractive experience for visitors along Estero Boulevard.

The proposed development will incorporate items and amenities throughout the site to enhance the Boulevard character. These include the following:

- Public Access/Use
- Restaurant, tiki bar open to public
- Bicycles for guests
- Improved traffic flow, circulation and access through the appropriately designed access points along Estero Boulevard and the egress onto Delmar Avenue from the parking garage.
- Increasing sidewalk width, pedestrian amenity nodes, and providing shade through landscaping to beautify the public realm to create a more pedestrian friendly environment.
- Coastal Old Florida/Cracker architectural elements – siding, porches, metal roof etc.
- Elimination of nonconforming side setbacks
- Economic benefits will include the creation of jobs, additional funding for the town from the collection of taxes, i.e., Tourist Development Tax, sales tax and property taxes, and additional visitor spending at local shops, restaurants, etc.
- The developer will work with the school to increase student enrollment by informing employees that their children are eligible to attend the Beach School and through the coordination of work schedules for employees with children in the school.
- The new construction will meet modern construction requirements to harden and be more resilient.
- All new structures will be located landward of the Coastal Construction Control Line.

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- As described above the redeveloped site will allow for an increase in setbacks and buffers, wider view corridors, more separation from adjoining properties and an additional view corridor on the eastern side of the property.
- Enhanced landscaping to create an aesthetically pleasing site.
- Dune restoration in coordination with the Town to prevent beach erosion and provide additional protection during storm events.
- The developer pledges to work with the Town on alternative modes of transportation such as shuttle and ferry.

Through the features described above and uses proposed, the development will enhance the appearance of Estero Boulevard and provide additional opportunities for both lodging and public use thus demonstrating consistency with the Community Design Element, Objective 1-A, Policy 1-A-1.

FUTURE LAND USE ELEMENT:

GOAL 4: To keep Fort Myers Beach a healthy and vibrant "small town," while capitalizing on the vitality and amenities available in a beach–resort environment and minimizing the damage that a hurricane could inflict.

OBJECTIVE 4-A SMALL-TOWN CHARACTER: Maintain the small-town character of Fort Myers Beach and the pedestrian-oriented "public realm" that allows people to move around without their cars even in the midst of peak-season congestion.

The devastation caused by Hurricane Ian has emphasized the need for more resilient structures on Fort Myers Beach. The Neptune Inn, though left standing, sustained significant damage and intends to redevelop into a more sustainable resort with additional public benefits. As expressed in Object 4-A, the desire is for the small-town character of Fort Myers Beach to be maintained while continuing the pedestrian-oriented "public realm" that encourages people to move around without their cars even in the midst of peak-season congestion. In planning the redevelopment of the property, the owners have considered what is needed in this area of the island for both visitors and residents to achieve this goal.

With the construction of a new building that meets Florida Building Code and FEMA standards, the site will be more resilient and able to withstand impacts from future hurricanes. Through the reconfiguration of the access to the property, widened sidewalks, hardscape enhancements, additional view corridor along the eastern portion of the property, enhanced landscaping and pedestrian amenities along Estero Boulevard and Delmar Avenue, public bicycle racks, and a restaurant and tiki bar open to the public, the Neptune Resort will contribute to Fort Myers Beach's goal of being a healthy and vibrant "small town," while capitalizing on the vitality and amenities available in this beach resort environment.

POLICY 4-A-1: Maintaining the town's current "human scale" is a fundamental redevelopment principle. Fort Myers Beach is best enjoyed from outside a car; new buildings should be designed to encourage use or admiration by people on foot or bicycle, rather than separating them with gates, walls, deep setbacks, or unnecessary building heights.

The overall site, building placement, additional setback, height and massing were carefully designed to create a resort that approachable and human scale. While today's construction requirements mandate stronger and taller structures especially in "V" zones, additional landscape and hardscape proposed along Estero Boulevard, Delmar Avenue, and the eastern view corridor soften the resorts massing and contribute to creating a human scale on FMB and along Estero Boulevard. The subject property is a perfect location for visitors to use as their home base as they explore all the island has to offer through walking and bicycling.

POLICY 4-A-6: The beaches provide incomparable recreational and environmental benefits to the town; careful management of the beach, including renourishment, when necessary, can increase both. Frequent beach access is essential to the town's character and should be maintained and expanded where possible.

The proposed MCP provides a visual representation of the orientation of the building and its amenities which focus on the Gulf of Mexico overlooking the beach. The proposed on-street parking along Delmar Avenue increases access to the beach. The property owners have entered into a beach restoration and management easement agreement with the Town of Fort Myers Beach as evidenced by the enclosed agreement. This agreement demonstrates the property owners' commitment to protecting and promoting beach access for all.

POLICY 4-A-9: Many amenities available to local residents are the result of the local tourist economy and would diminish if hotels and motels were displaced. Landowners may redevelop hotels and motels for other uses, but special incentives of this plan such as post-disaster and pre-disaster build back (Objectives 4-D and 4-E) only apply if the current use is maintained.

The proposed development shall support the Fort Myers Beach goals of keeping a healthy and vibrant "small town" atmosphere. This development is designed to not only benefit hotel guests, but to also provide enhancements that can be enjoyed by, and to benefit, the general public. The proposed development will provide health, safety and quality of life benefits to public by providing a restaurant and tiki bar which will be open to the public, additional public parking along Delmar Avenue, pedestrian mobility and connectivity along Estero Boulevard, beautification of the public realm through enhanced landscaping and hardscaping, and fair share contributions to mobility solutions such as a potential future water ferry and airport shuttle service, public parking for bicycles, bicycles for guests, along with the rebuilding of structures to be

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compliant with today's Florida Building Code. The proposed structures shall be constructed in the "Coastal" vernacular to complement and further the town's desire to provide unique and attractive architecture. Through these proposed amenities, contributions, and architectural style, the development complies with Policy 4-A-1, 4-A-6, and 4-A-9.

POLICY 4-B-5 BOULEVARD: A mixed-use district along portions of Estero Boulevard, including less intense commercial areas, historic cottages, and mixed housing types. This category is not intended to allow commercial uses on all properties; its mixed-use nature is intended to remain permanent. To obtain approval for a new or expanded commercial activities, proposals must be sensitive to nearby residential uses, complement any adjoining commercial uses, contributed to the public realm as described in this comprehensive plan, and meet the design concepts of this plan and the Land Development Code. These qualities and overall consistency with this comprehensive plan shall be evaluated by the town through the planned development rezoning process.

The proposed Neptune Resort redevelopment consists of hotel lodging units as well as a restaurant and tiki bar that are open to the public. The project will be sensitive to any existing or future residential uses by utilizing increased setbacks and extensive landscaping/buffering. The mixed-use resort will complement and benefit adjacent commercial uses. Additionally, the proposed Neptune Resort is contributing to the public realm by providing enhancement to the existing Delmar Avenue public beach access, creating a new view corridor along the eastern property boundary, and addressing improved landscaping/hardscape elements along Estero Boulevard. The Neptune Resort will also comply with all applicable design standards as required under the Land Development Code at the time of Development Order approval.

POLICY 4-C-2: The maximum intensity of allowable commercial development in any category may be controlled by height regulations (see Policy 4-C-4) or by other provisions of this plan and the Land Development Code. Standards in the Land Development Code will encourage more intense commercial uses only in the "Pedestrian Commercial" category. The Land Development Code shall specify maximum commercial intensities using floor-area-ratios (the total floor area of the building divided by the area of the site in the category allowing commercial uses). The Land Development Code may allow floor-area-ratios in the "Pedestrian Commercial" category as high as 2.5, and in other categories as high as 1.5.

Under the provisions of Policy 4-C-2, "other" categories can achieve a Floor Area Ratio (FAR) of 1.5. A maximum FAR of 1.5 is proposed utilizing the Commercial Planned Development process to rezone the subject property from CR to CPD, which is consistent with Policy 4-C-2.

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POLICY 4-C-4 BUILDING HEIGHTS: The Land Development Code shall limit the height of new buildings under most conditions to two stories above flood elevation (exceptions may include the buildback situations (see Policies 4-D-1 and 4-E-1), and different heights may be applied to officially designated redevelopment areas such as Times Square, Red Coconut/Gulf View Colony, and Villa Santini Plaza). In those few cases where individual parcels of land are so surrounded by tall buildings on lots that are contiguous (or directly across a street) that this two-story height limit would be unreasonable, landowners may seek relief through the planned development rezoning process, which requires a public hearing and notification of adjacent property owners. The town will approve, modify, or deny such requests after evaluating the level of unfairness that would result from the specific circumstances and the degree the specific proposal conforms with all aspects of this comprehensive plan, including its land-use and design policies, pedestrian orientation, and natural resource criteria. Particular attention would be paid to any permanent view corridors to Gulf or Bay waters that could be provided in exchange for allowing a building to be taller than two stories. In each case, the town shall balance the public benefits of the height limit against other public benefits that would result from the specific proposal.

The Neptune Resort proposes 4 stories of habitable hotel space above 2 levels of parking. This design results in a maximum zoned height of 51 feet as measured from design flood elevation plus 3 feet to the mid-point of the main structural roof and a maximum actual height of 78 feet and 11 inches as measured from grade to the peak of the highest roof.

The existing Neptune Inn varies in height from 2 to 3 stories. The proposed Neptune Resort height is consistent with other adjacent multi-story buildings that vary in height from 3-13 stories. Directly adjacent to the east and west of the subject property are 3 story buildings. Farther to the west is the Surf Song Condominiums at five stories and the Diamond Head Resort at 13 stories. The proposed resort is not located in an area of the town that is specifically identified to strictly limit building heights. A proposed height of 4 habitable stories over 2 levels of parking is not synonymous to or considered to be a high-rise tower, but more consistent with other mid-level (4-5 story) multi-family/hotel condo developments throughout the island. The surrounding existing/planned commercial uses to the north will not be negatively impacted by the Neptune Resort. Allowing for increased heights beyond the typical limits, provides opportunities for architectural design alternatives and varied rooflines. Strictly limiting or restricting height often results in flat roofs or limited roofline variations that negatively impact a community's desired aesthetic.

Redeveloping the property requires compliance with the Florida Building Code and FEMA standards to ensure structures are more resilient and can withstand impacts from future storms. All newly constructed buildings on this property must be elevated so that the habitable space is above the design flood elevation

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plus 3 feet (DFE)/FDEP 100-Year Storm elevation of 22.3 feet. Any habitable space must be at least 22.3 feet in elevation. This creates a significant amount of unutilized space under the building and presents an ideal location for covered parking (parking garage) and support facilities. Due to these requirements, it is impossible to redevelop the Neptune Resort as it existed prior to Hurricane Ian. Any new structure must be more resilient, stronger, and taller. Only one additional story of habitable space is proposed for this project; however, the ramifications of meeting modern building standards and FEMA requirements dictate much of the need for additional height.

Consistent with the planned development rezoning process, the Neptune Resort is providing public benefits by enhancing the view corridor along Delmar Avenue, providing public parking along Delmar Avenue, and providing a new 25-foot-wide view corridor along the eastern property line. The ability to provide for these view corridors, and additional public parking result from additional height and increasing side setbacks. Additionally, the project will be designed to eliminate the non-conforming encroachments over the Coastal Construction Control Line (CCCL) and side setbacks. The proposed buildings will be constructed landward of the current Coastal Construction Control Line, thereby bringing the site into compliance with the coastal construction regulations, setback requirements, and removing the existing nonconformity. These elements would not be easily achieved or feasible if not for the increasing the height of the proposed structure.

POLICY 4-C-6 – MOTEL DENSITIES The Land Development Code shall specify equivalency factors between guest units (which include motel rooms) and full dwelling units. These factors may vary based on size of guest unit and on land-use categories on the Future Land Use Map. They may vary between a low of one guest unit and a high of three guest units for each dwelling unit. (These factors would apply only where guest units are already permitted.)

Consistent with and in support of this policy, LDC Sec. 34-1803 establishes equivalency factors for various Future Land Use categories. The equivalency factor for the Boulevard Future Land Use category and applicable to his property is as follows:

Comprehensive Plan Land Use Category	**Equivalency Factors for Guest Units of Various Sizes (in square feet)**		
	<450	450 to 750	750 to 1,000
Boulevard	2.5	2.0	1.5

Due to the catastrophic damage caused by Hurricane Ian and the need to create a resilient luxury resort with amenities expected by today's consumers, building back of the property as it existed is not feasible. Conditions have changed significantly since the original construction of the Neptune Inn. The cost of construction materials, the availability of labor, the construction requirements mandated by the Florida

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Building Code and FEMA regulations are some of the many challenges. Due to the exponential increase in construction cost and today's consumer preferences, additional hotel units are needed to justify this level of investment and deliver an economically feasible development.

The only reasonable way to build back a better and more resilient Neptune Resort is through the proposed CPD rezoning process that will allow for increased hotel units and development flexibility. Through Policy 4-C-6 and the implementing regulations of LDC Sec. 34-1803(a)(2), hotel unit limits that are based on the established equivalency factors can be increased as a result of "exceptional circumstances" and the public benefits attributed to the project when approved as a deviation through the planned development rezoning process. The exceptional circumstances can be attributed mostly to the unprecedented impacts of Hurricane Ian, but also to the increasing impacts and risks to local tourism such as the nationwide COVID shutdown and regularly occurring red tide/algae blooms. Recognizing the exceptional circumstances, proposed public benefits as outlined throughout this narrative, and the deviation request (See Deviation #6) of utilizing the underlying 24 "by-right" dwelling units for density conversion, the Neptune Resort is requesting 148 hotel units through this CPD rezone request. The total number of hotel units is derived as follows: 24 ("by right" dwelling units) x 6.2 (requested equivalency factor – See Deviation #6) = 148 hotel units.

OBJECTIVE 4-D POST-DISASTER REDEVELOPMENT: Provide for the organized and healthy reconstruction of Fort Myers Beach after a major storm by showcasing successful local examples of floodproofing, by requiring redevelopment activities to meet stricter standards for flood- and wind-resistance, and by improving the current post-disaster buildback policy.

Although the subject property is eligible to rebuild under Policy 4-D-1(i) which states "Buildings/development damaged less than 50% of their replacement cost (measured at the time of damage) can be rebuilt to their original condition, subject only to current building and life safety codes", the property owners have chosen to rebuild their site in compliance with the more stringent regulations as a measure of investment for the future.

Through the redevelopment of the site many non-conformities will be eliminated. The new construction will improve public health and safety by replacing the outdated structures with Florida Building Code and FEMA compliant structures, by removing existing structures seaward of the Coastal Construction Control Line and providing additional freeboard by elevation all habitable space above the minimum design elevation. As such, the proposed development will not only meet Object 4-D of the Comprehensive Plan but exceeds what is required through Policy 4-D-1(i).

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POLICY 4-E-2 COASTAL SETBACKS: To protect against future storm damage and to maintain healthy beaches, the Town of Fort Myers Beach wishes to see all buildings relocated landward of the 1978 Coastal Construction Control Line. This line has been used on the Future Land Use Map to delineate the edge of land-use categories allowing urban development.

Some existing buildings lie partially seaward of this line; when these buildings are reconstructed (either before or after a natural disaster), they shall be rebuilt landward of this line. Exceptions to this rule may be permitted by the town only where it can be scientifically demonstrated that the 1978 line is irrelevant because of more recent changes to the natural shoreline. The town shall seek the opinion of the Florida Department of Environmental Protection in evaluating any requests for exceptions.

The redeveloped project site will remove all existing structures seaward of the 1978 CCCL and new building will be constructed landward of the 1978 CCCL. Thus, complying with Policy 4-E-2.

COASTAL MANAGEMENT ELEMENT:

GOAL 5: To keep the public aware of the potential effects of hurricanes and tropical storms and to plan a more sustainable redevelopment pattern that protects coastal resources, minimizes threats to life and property, and limits public expenditures in areas subject to destruction by storms.

POLICY 5-A-1: The town shall maintain and enforce building codes at least as stringent as required by Florida law to limit the potential damage of structures from hurricanes and tropical storms. These codes shall include wind-resistance commensurate with the risk of a coastal environment and building elevation requirements that conform with federal laws and Flood Insurance Rate Maps.

The Coastal Management Element addresses special coastal management concerns which are specific to the Town of Fort Myers Beach and its need to protect resources, human life and property which are vulnerable to events such as hurricanes and flooding. The proposed development will be constructed in compliance with up-to-date Florida Building Codes, FEMA standards and landward of the 1978 Coastal Construction Control Line (CCCL), thus complying with GOAL 5 and Policy 5-A-1.

OBJECTIVE 5-D BEACHES AND DUNES: Conserve and enhance the shoreline of Estero Island by increasing the amount of dunes, renourishing beaches to counter natural erosion, and reducing negative man-made impacts on beaches and dunes.

POLICY 5-D-1: The town's policies on shoreline protection measures shall be as follows:

> **ii. Sand dunes should be protected and recreated wherever they have been removed. Native dune plants should be protected, and non-native exotics removed. Dune walkovers should be constructed where they do not exist, and existing structures should be maintained.**

To facilitate the Beach recovery, the property owners have entered into an easement agreement with the Town of Fort Myers for the purpose of nourishing the beach, repairing the dune system, removing debris, and providing erosion control. Through these actions and proposed new construction, this project complies with Objective 5-D and Policy 5-D-1.

OBJECTIVE 5-E ACCESS TO THE WATER: Increase the number of well-maintained accesses to beaches, bays, and navigable waters to serve the existing and future population and visitors.

The proposed improvements to the public beach access on Delmar included in the development plan will be an amenity to not only the hotel visitors but will also serve existing and future island residents. Through this provision, the developers will provide improvements to existing beach access and comply with Objective 5-E.

CONSERVATION ELEMENT:

POLICY 6-B-4 UPLAND HABITATS: Preserve all remaining coastal strand and hammocks, and improve the existing habitat through removal infestations of exotic plants and replanting with native species. When these habitats are in private ownership:

> **ii. Beaches seaward of the 1978 Coastal Construction Control Line are designated on the Future Land Use Map as "Recreation" to preclude their use for further urban development.**

The property owners have granted a Temporary Beach Management and Access Easement to the Town of Fort Myers Beach for dune restoration and beach renourishment to support the restoration and preservation of the dunes and beaches. No urban development will be permitted on the beaches seaward of the 1978 Coastal Construction Control Line consistent with Policy 6-B-4.

POLICY 6-E-4: The following activities are prohibited to protect dunes and beaches:

iv. Any construction activity seaward of the Coastal Construction Control Line not specifically approved by the DEP.

The proposed redevelopment of the site will remove all existing buildings that are within the 1978 CCCL. The proposed MCP shows that all new structures will be built out of the 1978 CCCL and through the granting of a temporary easement will support the beach/dune system repair and ongoing maintenance.

TRANSPORTATION ELEMENT:

GOAL 7: To improve peak-season mobility without reducing the permeability of Estero Boulevard to foot traffic or damaging the small-town character of Fort Myers Beach. The town seeks to reduce speeding, improve evacuation capabilities, and improve mobility through balanced transportation improvements such as a continuous system of sidewalks and bikeways, a network of trolleys and water taxis linked to off island systems, and parking options matched to road capacity.

POLICY 7-A-2 PARKING: Even though existing parking lots are not used to capacity; parking is not abundant at Fort Myers Beach. The welcome rebirth of commercial activity near Times Square will increase the demand for parking. The Town of Fort Myers Beach will address parking shortages through the methods outlined in this plan.

The parking for the proposed development will be provided onsite. Parking space calculations are based on the number and size of hotel units and the accessory uses and square footage as outlined in the Land Development Code. The site, as conceptually designed, provides 164 spaces and 16 parking spaces along Delmar Avenue to be dedicated to the Town for public use. The resort will also provide bicycle parking racks for both the public and guests, as well as golf cart parking to encourage this alternative mode of transportation on the island.

POLICY 7-D-3 ALTERNATE TRAVEL MODES: The town shall support alternatives to car travel to free up road capacity for trips that do require a car. Public funding sources shall include county/state gasoline taxes and road impact fees. The town shall modify Its road impact fee ordinance by 1999 to allow these fees to be spent (within legal limits) on capital improvements that relieve road congestion, such as better sidewalks, trolley improvements, and off-island parking areas.

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The Town of Fort Myers Beach has completed extensive improvements to Estero Boulevard and through the Comprehensive Plan encourages a variety of travel modes to address traffic congestion caused by the influx of visitors drawn to the town every year. The developer has incorporated additional bike racks for public use and will be providing bicycles as an amenity for its guests as a way to encourage a less car centric experience for those on the island. The proposed development will also provide enhanced landscaping, pedestrian amenity areas and sidewalks both adjacent to and within the development to encourage walkability both on and off property.

The developers are willing to participate in and make appropriate contributions to programs which the town may set up to alleviate mobility challenges on the island during peak traffic times. Alternatives which have been discussed to date such as, but not limited to, shuttle service from local airports with central drop-off points for guests, a water taxi, a hidden-path system through Fort Myers Beach for bicycles and pedestrians and a trolley system for visitors with both on and off island locations are all options which may benefit the Town, its visitors and residents.

OBJECTIVE 7-I LEVEL-OF-SERVICE STANDARD: Maintain minimum acceptable levels of service for the transportation system.

POLICY 7-J-2 TRAFFIC IMPACT ANALYSIS: A thorough traffic impact analysis is currently required only for major rezonings and very large development orders. The town shall amend its Land Development Code during 2010 to:

- **i. decrease the thresholds for requiring traffic impact analyses;**
- **ii. require them to study the cumulative impacts of potential development; and**
- **iii. use the results in assessing whether impacts are acceptable, and whether an improved design could offset some of the impacts.**

A traffic impact assessment has been performed by T.R. Transportation Consultants and concludes that the development of this 148-unit resort hotel along with restaurant and tiki bar, open to the public, will not place an undue burden on the island roadway network. The level of service information provided is based on data collected prior to Hurricane Ian and shows that Estero Boulevard was over capacity during season. Due to the destruction caused by the Hurricane, and the need for the Town to rebuild and re-establish its population, traffic levels that existed in peak season prior to the storm will not be reached for some time. The impact mitigation strategies such on-site bicycle spaces, golf cart parking and airport shuttle service all contribute to reducing the overall transportation related impacts from this redevelopment project.

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UTILITIES ELEMENT:

GOAL 8: To improve the existing systems that provide safe drinking water, irrigation water, sewer service, and solid waste disposal in order to reduce environmental impacts on land and water while keeping costs as economical as possible.

POLICY 8-A-1 Mandatory customer connections to water and sewer utilities shall continue to be the policy of the Town of Fort Myers Beach.

Complying with GOAL 8 and Policy 8-A-1, the proposed development will connect to central water and sewer utilities.

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C. DESIGN STANDARDS COMPLIANCE

The post-hurricane redevelopment of the Neptune Resort will be generally consistent with the overall purpose and intent of the commercial design standards provided under LDC Sections 34-991 through 34-997. The following outlines compliance with the specified design standards within the applicable LDC sections:

As demonstrated through the architectural elevations prepared by Meyers & Associates and included in this submittal, the Neptune Resort is designed in a contemporary coastal architectural style. The building features exterior walls with façade elements including balconies, railings, awnings, wood look architectural elements, and stucco finishes to achieve compliance with Sec. 34-994 and Sec. 34-995. The hipped roof will have tower features both at the front and rear of the buildings and will be constructed of metal to comply with Sec. 34-996. The u-shaped building will have an open area at the rear of the building containing an events plaza, two pools with deck area, open restaurant seating and a tiki bar. The pedestrian passage improvements proposed along Delmar Ave. include additional vehicle and bicycle parking as well as sidewalks on the property to provide safe, designated access for vehicular, bicycle and pedestrian traffic.

The redeveloped Neptune Resort achieves the goals set forth in the Comprehensive Plan and the Land Development Code by creating a development that will enhance the town's sense of place, implements the design concepts in the LDC and creates an attractive destination which will enhance the island and its property values.

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D. DECISION MAKING COMPLIANCE

The following considerations from LDC Sec. 34-85 shall be considered by town council whenever applicable:

(1) Whether there exists an error or ambiguity which must be corrected.

There are no known errors or ambiguity that must be corrected in relation to the requested rezoning from Commercial Resort to CPD. If any exist, they will be discussed and resolved during staff review and public hearings before the Local Planning Agency (LPA) and Town Council. Utilizing the proposed CPD rezone request, reductions or elimination of an existing non-conformities will be corrected as applicable.

(2) Whether there exist changed or changing conditions which make approval of the request appropriate.

The existing site was significantly damaged by Hurricane Ian and although the property owner could build back under the 50% threshold, they desire to redevelop the site to meet today's life-safety best practices, and Florida Building Code and FEMA standards, which are much more stringent than regulation which exited when the Neptune Inn was originally constructed. The Applicant's wish to improve the site will provide a better resort product for the island, will increase the ad valorum tax base as well as provide additional bicycle parking, employment opportunities, public restaurant choices and an additional view corridor for the Town of Fort Myers Beach, its citizens and visitors.

(3) The impact of a proposed change on the intent of this chapter.

The proposed change will not have any impact on the intent of this chapter (LDC). The CPD will encourage and promote the redevelopment of a devastated popular and historic hotel/motel into a high-quality amenity-rich resort that will be a benefit to the island. Through the rezoning process allowed under this chapter and subsequent development order review and approvals, the redeveloped Neptune Resort will not negatively impact the community's health, safety, and general welfare.

(4) The testimony of any applicant.

The professional experts retained by the applicant to support this petition will provide testimony at both the Local Planning Agency (LPA) hearing and the Town Council hearing.

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(5) The recommendation of staff and of the local planning agency.

The Town staff will review the petition and provide a written report to be presented to the local planning agency at their appropriate public hearing. The petition along with the staff's report and the LPA recommendation will then be presented to the Town Council at the designated public hearing.

(6) The testimony of the public.

The public will be provided with the opportunity to present testimony to the LPA and Town Council.

(7) Whether the request is consistent with the goals, objectives, policies, and intent, and with the densities, intensities, and general uses as set forth in the Fort Myers Beach Comprehensive Plan.

As evidenced throughout this narrative, the request is consistent with the goals, objectives, policies, and intent, and with the densities, intensities, and general uses as set forth in the Fort Myers Beach Comprehensive Plan.

(8) Whether the request meets or exceeds all performance and locational standards set forth for the proposed use.

The request to rezone to a CPD is ideal for this location. The proposed CPD demonstrates sound planning principles and best management practices through redeveloping a resort use in a location proximate to the downtown core, with existing infrastructure, by providing an additional view corridor, enhanced landscaping, and additional buffering from adjacent properties. The property across Estero Boulevard is developed with commercial and retail uses and will provide a natural gradient in intensity of use from the proposed resort use on the subject property to the residences on the bay side of Estero Boulevard. The Commercial Resort zoning designation to the east and the Residential Multifamily to the west are compatible with the proposed development and will benefit from the improvements proposed to this site. The proposed resort with detailed development standards included in the CPD and the benefits outlined in this application will meet and exceed performance and locational standards.

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(9) ***Whether urban services are, or will be, available and adequate to serve a proposed land use change*.**

All urban services were in place and utilized by the existing Neptune Inn and will remain in place to adequately serve the subject site. Additionally, adequate services were in place for well over 2,000 hotel/motel units prior to both Hurricanes Charley and Ian, but now approximately 400 hotel/motel units are online. This is a decline of almost 81%. 2020 Census data also shows that the overall permanent population in Fort Myers Beach has declined roughly 11% since the 1990 Census. The Town's population estimates associated with transient lodging also show a decline over the last 30 years and the percentage of the in-season population attributed transient lodging has declined from 24% to 18%.

- 1990 Peak Season Population Estimate – Lodging: 3,620 or 24% of the overall population.
- 2020 Peak Season Population Estimate – Lodging: 3,133 or 18% of the total population.

Based on the data outlined above, existing urban services are and will be available to support not only the proposed Neptune Resort but many other proposed projects that will assist in the rebuilding of Fort Myers Beach.

(10) Whether the request will protect, conserve, or preserve environmentally critical areas and natural resources.

The proposed redevelopment will remove all existing structures beyond the 1978 Coastal Construction Control Line and will participate, as required, in the support of the beach renourishment/dune system repair and ongoing maintenance of the beaches. The proposed rezoning and subsequent redevelopment will ensure the protection and preservation of the beach/dune system.

(11) Whether the request will be compatible with existing or planned uses and not cause damage, hazard, nuisance, or other detriment to persons or property.

The request is compatible with existing or planned commercial and multi-family uses adjacent to the subject redevelopment and will not cause damage, hazard, nuisance or other detriment to persons or property of Fort Myers Beach. A hotel/motel use was in existence prior to Hurricane Ian and the proposed improvements to the site create a new resort which is compatible with the surrounding uses. As discussed above, overall site design, setback, buffers, sand separation from adjacent properties will ensure compatibility.

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(12) Whether the location of the request places an undue burden upon existing transportation or other services and facilities and will be served by streets with the capacity to carry traffic generated by the development.

Based on the TIS as prepared by TR Transportation, the proposed request will not place an undue burden upon existing transportation or other services and facilities and can be served by Estero Boulevard, which has the capacity to carry traffic generated by the development. Adequate transportation services, utilities and recreational facilities were in place for well over 2,000 hotel/motel units prior to both Hurricanes Charley and Ian. With now just over 400 hotel/motel units available for occupancy, there will continue to be available transportation capacity and level of service to not only support the proposed Neptune Resort, but many more future transient lodging units and other non-residential developments needed in the Town. Additionally, the Town is actively working to promote alternative modes of transportation and provide mobility solutions to mitigate peak seasonal traffic.

(13) For planned development rezonings, see § 34-216 for additional considerations.

This request to rezone the subject property from Commercial Resort (CR) to Commercial Planned Development (CPD) will be presented at public hearings before the LPA and the Town Council consistent with LDC Sec. 34-216(a)(1). As demonstrated throughout this narrative and Exhibit A: "Review Criteria for Sec. 34-216(2)", the proposed CPD meets the following findings criteria under LDC Sec. 34-216(2):

a. The proposed uses are appropriate to the location as they are compatible with surrounding uses and lodging in existence for years prior to Hurricane Ian.

b. Sufficient safeguards are in place or will be provided through applicable special conditions within the rezoning approval document, to protect the public interest.

c. Special conditions will be provided through the rezoning approval document as determined to be necessary.

d. The proposed uses meet all specific requirements of the comprehensive plan that are relevant to the requested planned development, such as the following:

    1. Policies 4-B-5 and 4-C-3 on commercial rezonings in the "boulevard" category. See Section "C" within the above narrative.

    2. Policy 4-C-4 on building heights taller than the standard height limit. See Section "C" within the above narrative.

    3. Policy 4-C-8 on density transfers. Not Applicable.

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4. Policy 4-E-1 on pre-disaster build back. See Section “C” within the above narrative.
5. Policy 7-J-2 on traffic impact analyses and potential design improvements that could offset traffic impacts. See Section “C” within the above narrative.

CONCLUSION

As detailed in the above narrative, supporting application documents, and the proposed MCP, the application demonstrates consistency and compliance with both the Fort Myers Beach Comprehensive Plan and Land Development Code. Addressing the unique characteristics of the subject property through the CPD process, elimination of prior non-conformities, and compliance with today’s Florida Building Codes and FEMA standards, the developer will provide a project that is better, safer and will provide multiple public benefits.

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www.theneighborhood.company

THE NEIGHBORHOOD COMPANY

October 12, 2023

Town of Fort Myers Beach
Community Development Department
2525 Estero Blvd.
Ft Myers Beach, FL 33931

Subject: **The Neptune Resort Commercial Planned Development (CPD) - Submittal #1**
Rezone from Commercial Resort (CR) to Commercial Planned Development (CPD)

Intake Team:

The Neighborhood Company is pleased to submit on behalf of our client, CHG Neptune Acquisitions, LLC, an Application for a Planned Development Rezone associated with the subject property located at 2310/2316/2320 Estero Blvd., Ft Myers Beach, FL 33931. The proposed request is to seek the following:

- Rezoning of the subject property to allow flexibility to redevelop the subject property and to build a transient lodging/resort with supporting commercial retail/services/restaurants.

Please find attached the following items to consistent with the application submittal requirement checklist:

1. Application Filing Fee
2. Application for Public Hearing
   a. Additional Agent List
   b. Approved Application Waiver for Submittal Requirements;(Exhibit 3-1)
   c. List of Property Owners (Exhibit 5-1)
   d. Explanatory Notes – Affidavit (Exhibit 5-3 Condominium)
   e. Letter of Opinion (Exhibit 5-4)
   f. Affidavit of Authorization & Letter of Authorization
   g. Legal Description
   h. Boundary Survey (Exhibit 6-2)
   i. Area Location Map; (Exhibit 6-3)
   j. Surrounding Property Owners List (Exhibit 6-6)
   k. Surrounding Property Owners Map (Exhibit (6-7)
   l. Surrounding Property Owners Mailing Labels
3. Supplement PH-D for a Planned Development
   a. Request Narrative with Attachment(s)
   b. Schedule of Deviations & Justifications
   c. Master Concept Plan; PV & Felipe
   d. Traffic Impact Statement
   e. Architectural Elevations
   f. Schedule of Uses
   g. Development Standards

5618 Whispering Willow Way, Fort Myers, FL 33908 | 239.398.2016
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4. Supplemental Information
    a. Stormwater Narrative
    b. Public Outreach Summary
    c. Landscaping/Planting Plan -To be provided under separate cover.
    d. Dune Easement Agreement
    e. Parking Analysis – To be provided under separate cover TR Transportation

We look forward to your review and are available to answer questions related to this application.

Sincerely,
The Neighborhood Company

Kenrick Gallander, AICP
Vice President, Partner

Attachments: Application Submittal Requirements (listed above)

cc: Mark A. Damante
Noel Davies
File: # 220056.01.02

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www.theneighborhood.company

Neptune Resort Planned Development (PD)

Planned Development Rezone

Filing Fee

Town Fee Schedule 2022:

- Planned Development Rezone Base Fee = $8,000 + $1,000/additional acre ($8,000*1.46AC) = $9,460

TOTAL: $9,460

COMMUNITY DEVELOPMENT DEPARTMENT
APPLICATION for PUBLIC HEARING

This is a first part of a two-part application. Please be sure to fill out this form, which requires general information, as well as the Supplemental Form application specific to action requested for the subject property. Please submit a complete Public Hearing application with required, supplemental information, exhibits and documents to zoningpermits@fmbgov.com. Please do not submit the instructions at the end of the application.

Site Address: 2310/2316/2320 Estero Blvd., Ft Myers Beach, Florida 33931

STRAP Number: 19-46-24-W3-0430N.0001, 19-46-24-W3-0110A.0010; 19-46-24-W3-04300.00CE

Applicant: CHG Neptune Acquisitions, LLC Phone: 614-507-2203

Contact Name: Mark Damante Phone: _____

Email: mdamante@continental-realestate.com Fax: _____

Current Zoning District: Commercial Resort (CR)

Future Land Use Map (FLUM) Category: Boulevard

FLUM Density Range: 6 du/acre Platted Overlay: ☐ YES ☑ NO

ACTION REQUESTED	SUPPLEMENTAL FORM REQUIRED
☐ Special Exception	PH-A
☐ Variance	PH-B
☐ Conventional Rezoning	PH-C
☑ Planned Development ■ Commercial ☐ Residential	PH-D
☐ Master Concept Plan Extension	PH-E
☐ Appeal of Administrative Action	PH-F
☐ Vacation of Platted Right-of-way and Easement	PH-G
☐ Other – cite LDC Section: _____	attach on separate sheet

PART I – General Information

A. Applicant*: CHG Neptune Acquisitions, LLC Phone: 614-507-2203

**Applicant must submit a statement under oath that he/she is the authorized representative of the property owner. Please see PART III to complete the appropriate Affidavit form for the type of applicant.*

Applicant Mailing Address: 145 School St. Fort Myers Beach, FL 33931

Email: mdamante@continental-realestate.com Fax: _____

Contact Name: Mark Damante Phone: 614-507-2203

Town of Fort Myers Beach 2525 Estero Blvd Fort Myers Beach, Florida 33931
Phone: 239-765-0202 zoningpermits@fmbgov.com Fax: 239-765-0909

B. Relationship of Applicant to subject property:

- [x] Owner*
- [ ] Land Trust*
- [ ] Partnership*
- [ ] Corporation*
- [ ] Association*
- [ ] Condominium*
- [ ] Subdivision*
- [ ] Timeshare Condo*
- [x] Contract Purchaser*
- [ ] Authorized Representative*
- [ ] Other* (please indicate)_____

**Applicant must submit a statement under oath that he/she is the authorized representative of the property owner. Please see PART III to complete the appropriate Affidavit form for the type of applicant.*

C. Authorized Agent(s). Please list the name of Agent authorized to receive correspondence Agents

Name: Kenrick Gallander, AICP Phone: 850-803-5621

Address: 5618 Whispering Willow Way, Ft Myers, FL 33908

Email: kg@theneighborhood.company Fax: _____

D. Other Agent(s). Please list the names of all Authorized Agents (attach extra sheets if necessary)

Name: See Attached Sheet for Additional Names Phone: _____

Address: _____

Email: _____ Fax: _____

Name: _____ Phone: _____

Address: _____

Email: _____ Fax: _____

PART II – Nature of Request

Requested Action (each request requires a separate application)

- [ ] Special Exception
- [ ] Variance from LDC Section _____ - _____
- [ ] Conventional Rezoning from _____ to _____
- [x] Planned Development
- [x] Rezoning from CR to [x] Commercial PD [ ] Residential PD
- [ ] Amendment. List the project number: _____
- [ ] Extension/reinstatement of Master Concept Plan. List project number: _____

Town of Fort Myers Beach 2525 Estero Blvd Fort Myers Beach, Florida 33931
Phone: 239-765-0202 zoningpermits@fmbgov.com Fax: 239-765-0909

☐ Appeal of Administrative Action

☐ Vacation ☐ Right-of-Way ☐ Easement

☐ Other. Please Explain: _____

_____

_____

PART III – Waivers

Please indicate any specific submittal items that have been waived by the Director for the request. Attach a copy of the signed approval as Exhibit 3-1. (Use additional sheets if necessary)

Code Section: LDC Sec. 10-416 Description: See exhibit 3-1 for complete waiver application package.

Code Section: _____ Description: _____

_____

Code Section: _____ Description: _____

_____

PART IV – Property Ownership (Single Owner)

☐ Single Owner (individual or husband and wife)

Name: _____ Phone: _____

Mailing Address: _____

Email: _____ Fax: _____

AFFIDAVIT
APPLICATION IS SIGNED BY AN INDIVIDUAL OWNER OR APPLICANT

I, _____ swear or affirm under oath, that I am the owner or the authorized representative of the owner(s) of the property and that:

I have full authority to secure the approval(s) requested and to impose covenants and restrictions on the referenced property as a result of any action approved by the Town of Fort Myers Beach in accordance with this application and the Land Development Code;
All answers to the questions in this application and any sketches, data or other supplementary matter attached hereto and made a part of this application are honest and true;

PART IV – Property Ownership (Single Owner)

☐ Single Owner (individual or husband and wife)

Name:_____ Phone: _____

Mailing Address: _____

Email:_____ Fax: _____

AFFIDAVIT
APPLICATION IS SIGNED BY AN INDIVIDUAL OWNER OR APPLICANT

I, Mark A. Damante swear or affirm under oath, that I am the owner or the authorized representative of the owner(s) of the property and that:

I have full authority to secure the approval(s) requested and to impose covenants and restrictions on the referenced property as a result of any action approved by the Town of Fort Myers Beach in accordance with this application and the Land Development Code;
All answers to the questions in this application and any sketches, data or other supplementary matter attached hereto and made a part of this application are honest and true;

I have authorized the staff of the Town of Fort Myers Beach Community Development to enter upon the property during normal working hours for the purpose of investigating and evaluating the request made thru this application; and that
The property will not be transferred, conveyed, sold or subdivided unencumbered by the conditions and restrictions imposed by the approved action.

_____ Mark A. Damante
Signature Printed Name

STATE OF OHIO **COUNTY OF** FRANKLIN

The foregoing instrument was certified and subscribed before me by means of ✓ physical presence OR_____online notarization, this 29 day of August, 2023, by _____, ☑ who is personally known to me OR ☐ who has produced _____ as identification.

Notary Public

SHAYLA MOFFITT
Notary Public, State of Ohio
My Commission Expires 01-21-25

Town of Fort Myers Beach 2525 Estero Blvd Fort Myers Beach, Florida 33931
Phone: 239-765-0202 zoningpermits@fmbgov.com Fax: 239-765-0909

PART V
Property Ownership (Multiple Owners)

☑ Multiple Owners (including corporation, partnership, trust, association, condominium, timeshare, or subdivision)

- ☑ Complete Disclosure of Interest Form (see below)
- ☑ Attach list of property owners as Exhibit 5-1
- ☐ Attach map showing property owners interests as Exhibit 5-2 (for multiple parcels)
- ☑ For condominiums and timeshares see Explanatory Notes Part V – Exhibit 5-3 (Affidavit of mailing & meeting minutes)
- ☒ Letter of Opinion - Exhibit 5-4

DISCLOSURE OF OWNERSHIP INTEREST

If the property is owned in fee simple by an INDIVIDUAL, tenancy by the entirety, tenancy in common, or joint tenancy, list all parties with an ownership interest as well as the percentage of such interest.

Name and Address	Percentage Ownership
Joanne Leheney - 4716 Azalea Lane, Olmstead, Ohio 44070	Fractional Interest 9 of Unit 109N
Brian and Deborah Welsh 12510 Pinecrest Drive, Plymouth, Michigan, 48170	Fractional Interest 9 of Unit 115N

If the property is owned by a CORPORATION, list the officers and stockholders and the percentage of stock owned by each.

Name, Address and Office	Percentage of Stock

If the property is in the name of a TRUSTEE, list the beneficiaries of the trust with percentage of interest.

Name and Address	Percentage of Interest

Town of Fort Myers Beach 2525 Estero Blvd Fort Myers Beach, Florida 33931
Phone: 239-765-0202 zoningpermits@fmbgov.com Fax: 239-765-0909

COMMUNITY DEVELOPMENT DEPARTMENT
APPLICATION for PUBLIC HEARING

If the property is in the name of a ~~GENERAL PARTNERSHIP OR LIMITED PARTNERSHIP~~ Limited Liability Company, list the names of the general and limited partners.

Name and Address	Percentage of Ownership
CH6 Neptune Acquisitions, LLC	Fee simple owner of all
150 East Broad Street, Suite 800	units and fractional interests,
Columbus, Ohio 43215	except as listed above

If there is a CONTRACT FOR PURCHASE, whether contingent on this application or not, and whether a Corporation, Trustee, or Partnership, list the names of the contract purchasers below, including the officers, stockholders, beneficiaries, or partners.

Name, Address and Office	Percentage of Stock

Date of Contract: _____

If any contingency clause or contract terms involve additional parties, list all individuals or officers, if a corporation, partnership, or trust.

Name	Address

For any changes of ownership or changes in contracts for purchase subsequent to the date of the application, but prior to the date of final certificate of compliance, a supplemental disclosure of interest must be filed.

The above is a full disclosure of all parties of interest in this application, to the best of my knowledge and belief.

_____ Signature

_____ Printed Name

Town of Fort Myers Beach 2525 Estero Blvd Fort Myers Beach, Florida 33931
Phone: 239-765-0202 zoningpermits@fmbgov.com Fax: 239-765-0909

_____
Name of Entity (corporation, partnership, LLP, LLC, etc)

_____ _____
Signature Title

_____ _____
Typed or Printed Name Date

STATE OF _____ COUNTY OF _____

The foregoing instrument was certified and subscribed before me by means of ___ physical presence OR ☐ online notarization, this _____day of _____, 20_____ , by _____, ☐ who is personally known to me OR ☐ who has produced _____ as identification.

Seal

_____
Notary Public Signature

PART VI– Property Information

A. Legal Description:

STRAP: 19-46-24-W3-0110A.0010; 19-46-24-W3-04300.00CE

Property Address: 2310/2316/2320 Estero Blvd., Ft Myers Beach, Florida 33931

Is the subject property within a platted subdivision recorded in the official Plat Books of Lee County?

☑ No. Attach a legible copy of the legal description as Exhibit 6-1.

☐ Yes. Property identified in subdivision: _____

Book: _____ Page: _____ Unit: _____ Block: _____ Lot(s): _____

B. Boundary Survey:

☑ Attach a Boundary Survey of the property meeting the minimum standards of Chapter 61G17-6 of the Florida Administrative Code. A Boundary Survey must bear the raised seal and original signature of a Professional Surveyor and Mapper licensed to practice Surveying and Mapping by the State of Florida. Attach and label as Exhibit 6-2.

C. Property Dimensions:

Width (please provide an average width if irregular in shape) 318+/- feet

Depth (please provide an average width if irregular in shape) 294.2+/- feet

Frontage on street: 318+/- feet. Frontage on waterbody: 318+/- feet

Total land area: 2.46+/- ☑ acres ☐ square feet

D. General Location of Subject Property (from Sky Bridge or Big Carlos Pass Bridge):

Southeast of the intersection of Delmar Ave and Estero Blvd.

☑ Attach Area Location Map as Exhibit 6-3

E. Property Restrictions (check applicable):

☑ There are no deed restrictions and/or covenants on the subject property.

☐ A list of deed restrictions and/or covenants affecting the subject property is attached as Exhibit 6-4.

☐ A narrative statement detailing how the restrictions/covenants may or may not affect the request is attached as Exhibit 6-5.

F. Surrounding Property Owners (these items can be obtained from the Lee County Property Appraiser):

☑ Attach a list of surrounding property owners within 500 feet as Exhibit 6-6.

☑ Attach a map showing the surrounding property owners as Exhibit 6-7.

☑ Provide Staff with two (2) sets of surrounding property owner mailing labels.

G. Future Land Use Category (see Future Land Use Map):

☐ Low Density	☐ Marina
☐ Mixed Residential	☐ Recreation
☑ Boulevard	☐ Wetlands
☐ Pedestrian Commercial	☐ Platted Overlay

Town of Fort Myers Beach 2525 Estero Blvd Fort Myers Beach, Florida 33931
Phone: 239-765-0202 zoningpermits@fmbgov.com Fax: 239-765-0909

EXPLANATORY NOTES

Please do not print, copy and submit these instructions

Please submit required applications, supplemental information, exhibits and documents to zoningpermits@fmbgov.com .

Application fees are set by resolution of the Town Council of the Town of Fort Myers Beach and must be paid before any materials submitted will be considered an application.

The applicant is responsible for the accuracy and completeness of this application. Time delays or additional expenses necessitated by submitting inaccurate or incomplete information will be the responsibility of the applicant. Decisions regarding requests to waive submittal requirements are at the discretion of the Community Development Director and may not be appealed.

All information submitted with the application becomes a part of the public record and will be a permanent part of the file.

All attachments and exhibits must be legible, suitable for recording, and of a size that will fit or conveniently fold into a letter size (8 ½ by 11) folder.

Explanatory Notes – Part I

A. Applicant's name: The applicant may be the landowner or an authorized agent.
B. Relationship of applicant to property: Indicate if the applicant is the property owner, and if so, the type of ownership. If the applicant is not the owner of the property, indicate the relationship of the applicant to the owner and submit a notarized authorization from the owner(s) to the applicant.
C. Agent's name: If the applicant will have others representing him/her in processing the application, indicate name, address, and phone number.
D. Other agents: Provide contact information for any other agents that may be involved in the request.

Explanatory Notes – Part II

Indicate the requested action.

Explanatory Notes – Part III

If waiver of any application requirement has been approved by the Community Development Director, attach a copy of the approval. Please request waivers prior to applying. Exhibit 3-1

Explanatory Notes – Part IV

A. If the property owner is an individual or husband and wife, check the box and provide the information.

Town of Fort Myers Beach 2525 Estero Blvd Fort Myers Beach, Florida 33931
Phone: 239-765-0202 zoningpermits@fmbgov.com Fax: 239-765-0909

Explanatory Notes – Part V

A. If there are multiple property owners exhibit 5-1, complete the disclosure form and include the names and mailing addresses of all persons or entities having an ownership interest in the property, including the names of all stockholders and trust beneficiaries. Disclosure is not required of any entity whose interests are solely equity interests that are regularly traded on an established securities market in the United States or another country.
B. If more than one parcel is involved, submit a list of all property owners and their mailing addresses. Provide a map keyed to the list of property owners showing their interests. The applicant is responsible for the accuracy of the list and map Exhibit 5-2
C. Where the property is a condominium or timeshare condominium, the application must be initiated by both the condominium association and no less than 75% of the total number of unit owners. To verify ownership, the list of property owners must be identified by unit number and/or timeshare period as applicable, along with proof that the owners who did not join in the application were given actual written notice of the application by the applicants, who must verify the list and the notice by sworn affidavit. Attach this affidavit as Exhibit 5-3.
D. In addition, a letter of opinion from an attorney licensed to practice law in the State of Florida addressing the considerations in LDC Section 34-201(a)(1)b.3. must be attached as Exhibit 5-4.

Explanatory Notes – Part VI

A. Include the street address of the subject property. List STRAP number. If more than one parcel is involved, list all STRAP numbers. If you don't know the STRAP number, you can look up the property in the records of the Lee County Property Appraiser at http://www.leepa.org. If the application includes only one or more undivided platted lots within a subdivision officially recorded in the Plat Books of Lee County, Florida, identify the property by lot number(s), block if applicable, subdivision unit if applicable, subdivision name, and plat book number and page number. If the property is not one or more undivided platted lots or is in an "unrecorded" subdivision, attach a metes and bounds legal description giving accurate bearings and distances for each course. If multiple parcels are involved, the metes and bounds legal description must describe the perimeter of the entire property subject to the request. The initial point in the description must be related to at least one established identifiable real property corner, such as a government corner or a recorded corner. The bearings used in the description must be clearly referenced to a well-established and monumented line. Exhibit 6-1
B. Submit a Boundary Survey meeting the minimum technical standards for surveying set out in Chapter 61G17-6 of the Florida Administrative Code. Make sure that the surveyor is aware of any specific needs of the survey (location of Coastal Construction Lines, locations of existing structures, locations of easements, etc) that are relevant to your request. The perimeter boundary of the entire subject property should be indicated clearly with a heavy

line. Exhibit 6-2

C. Provide the property dimensions or the approximate dimensions if the property is not a regular quadrilateral.
D. Describe how to get to the property starting from either the Sky Bridge or the Big Carlos Pass Bridge (specify which). Exhibit 6-3
E. If there are any deed restrictions or covenants that might affect the requested action, provide the information. Exhibit 6-4
F. A narrative statement detailing how the restrictions/covenants may or may not affect the request is attached as Exhibit 6-5
G. Attach a list of the surrounding property owners within 500 feet of the perimeter of the area of the request. Also include two sets of mailing labels providing the names and addresses of the owners on this list, and a map showing the parcel boundaries within the 500-foot radius Exhibit 6-6. This information can be acquired for a small fee by requesting a "variance report" from the Map Sales Office at the Lee County Property Appraiser's Office. Contact information for the Property Appraiser can be found at http://www.leepa.org.
H. Indicate the Future Land Use Map category or categories of the property as shown on the Fort Myers Beach Comprehensive Plan's Future Land Use Map, and whether the property is located in the "platted overlay" on the map.
I. Indicate the current zoning of the property. In most cases the current zoning is shown on the official zoning map of the Town of Fort Myers Beach, as adopted by ordinance. If zoning actions affecting the subject property have been taken since March 2004, call Town Hall to verify the current zoning.

Explanatory Notes – Part IV & V

The applicant must sign and submit either of the affidavits in Part V & VI, as applicable.

The Neptune Resort Planned Development (PD)
A Commercial Planned Development

ADDITIONAL AGENTS LIST

Attorney
Noel Davies
Davies Duke, PLLC
1415 Panther Lane, Suite 442
Naples, FL 34109
239-216-2792
Noel.davies@daivesduke.com

Environmental Consultant
Shane Johnson
Passarella & Associates, Inc.
13620 Metropolis Ave., Suite 200
Fort Myers, FL 33912
239-274-0067
Shanej@passarella.net

Stormwater Management
JR Evans Engineering
9351 Corkscrew Road, Suite 102
Estero, FL 33928
239-405-9148
239-288-2537 Fax

Elizabeth Fountain, P.E.
Elizabeth@jrevansengineering.com

Traffic Consultant
Ted Treesh
TR Transportation Consultants Inc.
2726 Oak Ridge Ct., Suite 503
Fort Myers, FL 33901
TBT@trtrans.net

Surveyor
Stephen E. Berry, L.S.
BBLS Surveyors Inc.
8860 Terrene Court
Bonita Springs, FL 34135
239-597-1315

5618 Whispering Willow Way, Fort Myers, FL 33908 | 239.398.2016
www.theneighborhood.company

Town of Fort Myers Beach

COMMUNITY DEVELOPMENT DEPARTMENT

Application for Waiver of Submittal Requirements

Submit a request for waiver of submittal requirements prior to submitting an application for public hearing or administrative action. Requesting a waiver of submittal requirements simultaneously with an application may delay your application. The request and the director's response will become part of the application file.

Waiver is requested for items required for:

Public Hearing

_____General Requirements
_____DRI
_____Planned Development
_____Conventional Rezoning
_____Special Exception
_____Variance
_____Appeal
_____Other

Administrative Action

_____General Requirements
_____Planned Dev. Amendment
_____Commercial Antenna
_____Consumption on Premises
_____Forced Relocation of a Business
_____Interpretation of LDC
_____Minimum Use Determination
_____Setback Variance
_____Other

Name of Project: Neptune Resort
Applicant: CHG Neptune Acquisitions, LLC
Strap Number: 119-46-24-W3-0110A.0010; 19-46-24-W3-04300.00CE
Street Address: 2310/2316/2320 Estero Blvd., Ft Myers Beach, Florida 33931
Phone Number: 850-803-5621
Email: mdamante@continental-realestate.com

Town of Fort Myers Beach

COMMUNITY DEVELOPMENT DEPARTMENT

Application for Waiver of Submittal Requirements

Specific requirements from which waiver is sought

Section Number	Requirement
LDC Sec. 10-473	Listed Species Survey

Scope of project and reasons for request

Explain the nature of the project and give reasons why you think specific requirements are inapplicable or otherwise should be waived.

See attached Waiver Narrative.

I hereby state that the information provided above is accurate to the best of my knowledge. I recognize that if my project changes from what is described above approval of this waiver request may no longer be valid.

[signature] Sept. 13, 2023

Signature Date

Director's Decision ✓ **Approved** _____ **Denied**

Comments:

[signature] 9/14/23

Signature Date

SUBMIT

THE NEIGHBORHOOD COMPANY

The Neptune Resort Planned Development (PD)
A Commercial Planned Development

Waiver Justification Narrative

The property located at 2310/2316/2320 Estero Blvd., Fort Myers Beach, FL 33931 is the subject property for the application to be submitted for a rezoning request from Commercial Resort (CR) to Commercial Planned Development (CPD). This rezone request is necessary to allow the redevelopment of the Neptune Resort site due to the destruction which was caused by Hurricane Ian in September 2022.

The Neighborhood Company, on behalf of our client, CHG Neptune Acquisitions, LLC is submitting this Waiver Request from LDC Sec. 10-473 which requires a Listed Species Survey to be completed and submitted with the rezone request application. This request is made due to the property being previously developed and no native vegetation exists on the property.

It should be noted that the property owners have signed the Town's Beach Renourishment Easement and it is our understanding that there will be dune restoration with that effort.

This waiver was previously discussed with Chadd Chustz, Town of Fort Myers Beach Environmental Project Manager. Per his email response dated August 3, 2023 (Exhibit A), he was agreeable to this waiver of submittal requirement request. This waiver is requested due to the fact that the property was previously developed, and the redevelopment will be within the limits of the previously developed site. Therefore, there is no listed species to impact on this site.

Laura Tefft

From: Chadd Chustz <Chadd@fmbgov.com>
Sent: Thursday, August 3, 2023 8:27 PM
To: Laura Tefft
Cc: Pat Vanasse; Ken Gallander; Stephen Poposki; Sarah Propst; Jason Smalley
Subject: RE: PD Rezone Application Question

Yes, I am comfortable waiving the listed species survey requirement for the Neptune Property at 2310 Estero Blvd.

Chadd Chustz
Environmental Project Manager
Town of Fort Myers Beach

From: Laura Tefft <lt@theneighborhood.company>
Sent: Wednesday, August 2, 2023 12:00 PM
To: Chadd Chustz <Chadd@fmbgov.com>
Cc: Pat Vanasse <pv@theneighborhood.company>; Ken Gallander <kg@theneighborhood.company>
Subject: PD Rezone Application Question

Good A. ernoon Chad,

This is a follow up to my call this morning. We are working on the PD rezone application package for the Neptune Resort and wanted to know if a waiver request would be supported by staff for a listed species survey since the property was previously developed. The property is located at 2310 Estero Blvd.

Please feel free to contact me at 239-462-3452 when you are available to discuss this matter.

We look forward to speaking with you and appreciate your attention to this matter.

Sincerely,

Laura

THE NEIGHBORHOOD COMPANY
-LAND PLANNING + DESIGN-

LAURA TEFFT, AICP
Land Use Planner
239.462.3452
www.theneighborhood.company

Note: Florida has a very broad public records law. Most communication(s) to or from Fort Myers Beach officials regarding Town business are public records available to the public and media upon request. Your email communications and email address may be subject to public disclosure.

Note: Florida has a very broad public records law. Most communication(s) to or from Fort Myers Beach officials regarding Town business are public records available to the public and media upon request. Your email communications and email address may be subject to public disclosure.

THE NEIGHBORHOOD COMPANY

The Neptune Resort Planned Development (PD)
A Commercial Planned Development

Exhibit 5-1
Property Owners List

19-46-24-W3-0110A.0010
CHG Neptune Acquisitions LLC
150 E. Broad St., STE 800
Columbus, OH 43215

19-46-24-W3-0430N.0001
CHG Neptune Acquisitions LLC
150 E. Broad St., STE 800
Columbus, OH 43215

19-46-24-W3-04300.00CE
Neptune Inn Condo Association Inc.
P. O. Box 508
Richmond, IL 60071

AFFIDAVIT OF MAILING

NOTICE OF APPLICATION FOR PUBLIC HEARING

STATE OF FLORIDA)
) SS:
COUNTY OF LEE)

Noel J. Davies ("Affiant"), being duly sworn, deposes and says that:

1. That Affiant has knowledge of the facts set forth in this Affidavit.

2. That on the 19th day of September, 2023, Affiant did mail a Notice of Application for Public Hearing ("Notice"), a copy of which is attached hereto as **Exhibit "A"**.

3. The Notice was mailed to each addressee listed on **Exhibit "B"** by enclosing the same in an envelope and depositing it in an official depository under the exclusive care and custody of the United States Postal Service by regular and certified mail.

NOEL J. DAVIES

STATE OF FLORIDA)
) ss:
COUNTY OF LEE)

The foregoing instrument was acknowledged before me by means of [X] physical presence or [ ] online notarization, this 20th day of September, 2023, by Noel J. Davies. He [✓] is personally known to me or [ ] has produced a driver's license as identification.

Notary Seal:

KATHLEEN ELLEN VALENTINE
MY COMMISSION # HH 024852
EXPIRES: September 28, 2024
Bonded Thru Notary Public Underwriters

Kathleen Ellen Valentine
Notary Public

Printed Name: Kathleen Ellen Valentine

My Commission Expires: 9/28/2024

EXHIBIT "A"

NOTICE OF APPLICATION OF PUBLIC HEARING

VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED
AND REGULAR U.S. MAIL

NOTICE OF APPLICATION FOR PUBLIC HEARING

As a fractional owner of a unit within The Neptune, a Condominium, you are entitled to receive the notice provided herein. Please be advised that a formal application for Public Hearing will be submitted to the Town of Fort Myers Beach seeking approval for rezoning from CR to Commercial PD for the following described property:

Site Address:	2310/2316/2320 Estero Blvd., Ft Myers Beach, Florida 33931 (Neptune Inn)
STRAP Number:	19-46-24-W3-0110A.0010; 19-46-24-W3-04300.00CE and 19-46-24-W3-0430N.0001
Applicant:	CHG Neptune Acquisitions, LLC
Current Zoning District:	Commercial Resort (CR)
Current Future Land Use Map (FLUM) Category:	Boulevard
Current FLUM Density Range:	6 du/acre
Action Requested:	Planned Development
Rezoning:	CR to Commercial PD

Below is a location map of the parcel:

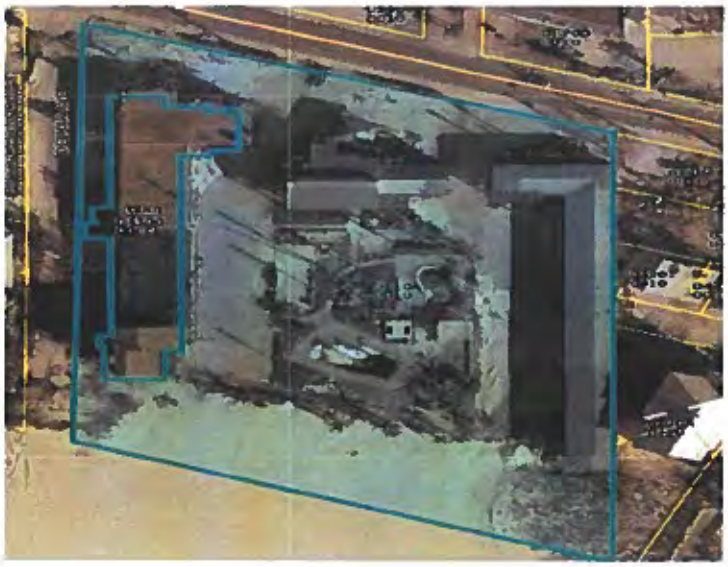


EXHIBIT "B"

LIST OF OWNERS

Joanne Leheney and Deborah Leheney
4716 Azalea Lane 28063 Andorra Drive
Olmstead, OH 44070 North Olmstead, OH 44070

Brian and Deborah Walsh
12510 Pinecrest Dr
Plymouth, MI 48170

THE NEPTUNE INN CONDOMINIUM ASSOCIATION, INC.
REGULAR BOARD MEETING MINUTES
Monday, September 18, 2023
Neptune Resort, 2310 Estero Blvd, Fort Myers Beach

The following are the minutes of the Board of Directors meeting for the Neptune Inn Condominium Association, Inc., a Florida corporation (hereafter "Association") conducted pursuant to the By-Laws

1. Roll call made by Mark Damante on behalf of CHG Neptune Acquisitions
   Present:
   Adam Valente, Director
   Mark Damante, Director
   Adam Giere, Director
   Sean Williams
   Erin Atwood, General Manager of the Neptune Resort

2. Quorum of Association Members (representatives of CHG Neptune Acquisitions, LLC, holding 1728/1734 weeks ~99.65%)
   Mark Damante certified a quorum of Association members was present

3. Quorum of Directors
   Mark Damante certified all three Directors are present

4. Call to Order made by Mark Damante at 2:00 PM

5. Proof of Notice
   Sean Williams produced evidence of proper notice sent via email on 9/14/23 to owners and posted on the property on 9/13/23 in accordance with FL statutes and recorded Condominium Documents (attached)

6. Consider and take action on submittal of formal application for Public Hearing to the Town of Fort Myers Beach seeking approval for rezoning from CR to Commercial PD for 2310/2316/2320 Estero Blvd., Ft Myers Beach, Florida 33931 (Neptune Inn)
   As counted by Sean Williams, CHG Neptune Acquisitions, LLC placed 1728 votes each for
   Mark Damante
   Adam Valente
   Adam Giere

7. Adjournment
   Mark Damante made a motion to adjourn the meeting. Adam Giere seconded the motion and it passed unanimously.

Matthew Bernholc

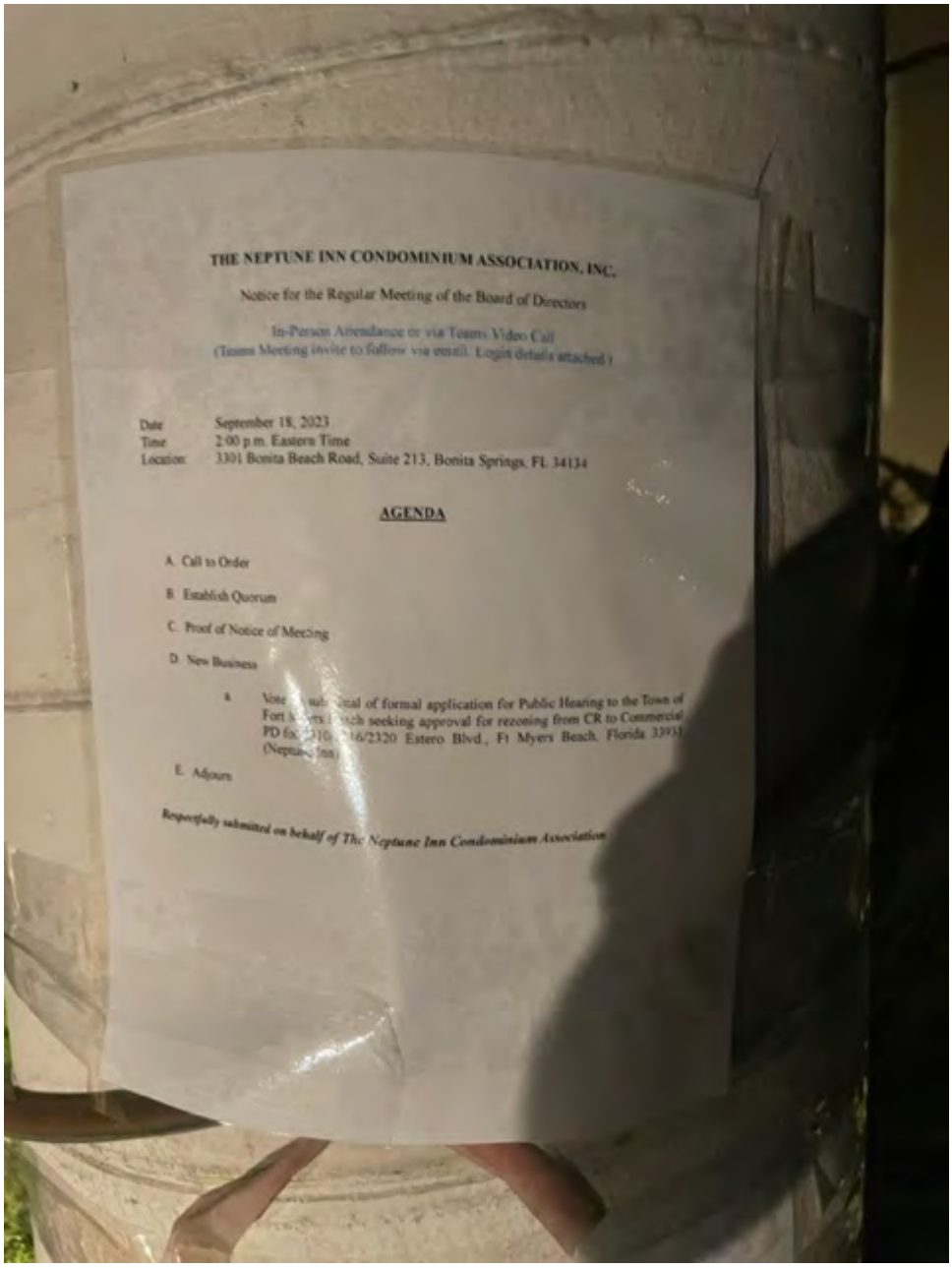
From: Erin Atwood <eatwood@springboardhospitality.com>
Sent: Wednesday, September 13, 2023 8:54 PM
To: Matthew Bernholc
Subject: Re: [External] Neptune Resort - Notice for Regular Meeting of Board of Directors

Hi Matt

Pls see the pic attached showing the sign posted.

If you need anything else pls let me know.

Erin



THE NEPTUNE INN CONDOMINIUM ASSOCIATION, INC.

Notice for the Regular Meeting of the Board of Directors

In-Person Attendance or via Teams Video Call
(Teams Meeting invite to follow via email. Login details attached.)

Date September 18, 2023
Time 2:00 p.m. Eastern Time
Location 3301 Bonita Beach Road, Suite 213, Bonita Springs, FL 34134

AGENDA

A. Call to Order

B. Establish Quorum

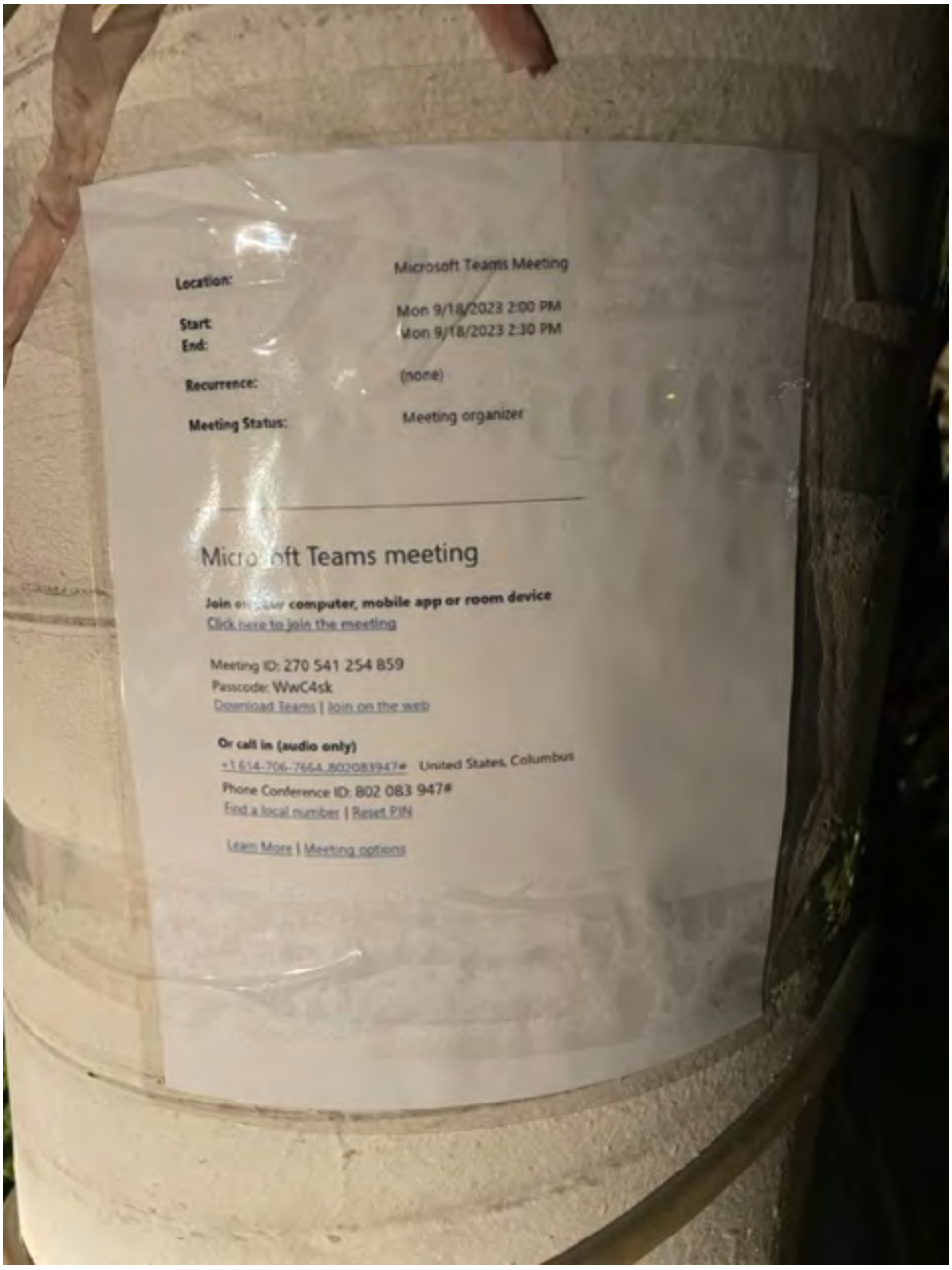
C. Proof of Notice of Meeting

D. New Business

a. Vote [illegible]tal of formal application for Public Hearing to the Town of Fort [illegible]ch seeking approval for rezoning from CR to Commercial PD fo[illegible]16/2320 Estero Blvd., Ft Myers Beach, Florida 33931 (Neptu[illegible]nn)

E. Adjourn

Respectfully submitted on behalf of The Neptune Inn Condominium Association


Location: Microsoft Teams Meeting
Start: Mon 9/18/2023 2:00 PM
End: Mon 9/18/2023 2:30 PM
Recurrence: (none)
Meeting Status: Meeting organizer
Microsoft Teams meeting
computer, mobile app or room device
Click here to join the meeting
Meeting ID: 270 541 254 859
Passcode: WwC4sk
Download Teams | Join on the web
Or call in (audio only)
+1 614-706-7664,,802083947# United States, Columbus
Phone Conference ID: 802 083 947#
Find a local number | Reset PIN
Learn More | Meeting options

Sent from my iPhone

Matthew Bernholc

From: Matthew Bernholc
Sent: Thursday, September 14, 2023 1:30 PM
To: brian; Dwalsh34@hotmail.com
Cc: Mark Damante; Adam Valente; Adam Giere; 'Sean Williams'
Subject: THE NEPTUNE INN CONDOMINIUM ASSOCIATION - NOTICE OF BOARD OF DIRECTORS MEETING
Attachments: Neptune Resort - Notice for Regular Meeting of Board of Directors.pdf

Brian and Debbie,

Thank you for taking part in the Teams Meeting earlier today. As mentioned, we have scheduled an upcoming Regular Board Meeting of The Neptune Inn Condominium Association, Inc., which will be held on **September 18, 2023 at 2:00 p.m. Eastern Time at 3301 Bonita Beach Road, Suite 213, Bonita Springs, FL 34134** for the purpose of approving the submittal of an application for rezoning to the Town of Fort Myers Beach. A copy of the Meeting Notice is attached. Please let us know if you will be able to attend in person or via the Teams Meeting video call. The Teams Meeting invite will follow this email.

Thank you,

Matt Bernholc
Counsel
Continental Real Estate Companies
150 East Broad Street, Suite 800
Columbus, Ohio 43215
mbernholc@continental-realestate.com
614-883-1005 (direct dial)

Matthew Bernholc

From: Matthew Bernholc
Sent: Thursday, September 14, 2023 1:30 PM
To: dleheney@gmail.com
Cc: Mark Damante; Adam Valente; Adam Giere; 'Sean Williams'
Subject: THE NEPTUNE INN CONDOMINIUM ASSOCIATION - NOTICE OF BOARD OF DIRECTORS MEETING
Attachments: Neptune Resort - Notice for Regular Meeting of Board of Directors.pdf

Joanne and Debbie:

I hope you are doing well. We are still awaiting your reply on scheduling an informal phone/Teams Meeting video call regarding future plans for The Neptune Resort. Please let us know your availability for the call as soon as possible. We have also scheduled an upcoming Regular Board Meeting of The Neptune Inn Condominium Association, Inc., which will be held on **September 18, 2023 at 2:00 p.m. Eastern Time at 3301 Bonita Beach Road, Suite 213, Bonita Springs, FL 34134** for the purpose of approving the submittal of an application for rezoning to the Town of Fort Myers Beach. A copy of the Meeting Notice is attached. Please let us know if you will be able to attend in person or via the Teams Meeting video call. The Teams Meeting invite will follow this email.

Thank you,

Matt Bernholc
Counsel
Continental Real Estate Companies
150 East Broad Street, Suite 800
Columbus, Ohio 43215
mbernholc@continental-realestate.com
614-883-1005 (direct dial)

DAVIES | DUKE

1415 Panther Lane, Suite 442
Naples, FL 34109

www.DaviesDuke.com
Offices: Naples, Fort Myers

Noel J. Davies, Esq.
239.216.2792
Noel.Davies@DaviesDuke.com

September 19, 2023

Becky Vose
Vose Law Firm
Town of Fort Myers Beach Attorney
2525 Estero Boulevard
Fort Myers, Beach, FL 33931

Re: CHG Neptune Acquisitions, LLC – Application for Public Hearing - Rezoning

Dear Ms. Vose:

Please be advised that I represent CHG Neptune Acquisitions, LLC regarding their Application for Public Hearing pertaining to their request for rezoning from CR to Commercial PD. To the best of my knowledge, I am providing this letter of opinion in accordance with LDC Section 34-201(a)(1)b.3.

I have reviewed the following documents pertaining to The Neptune, a Condominium:

1. Declaration of Condominium;
2. Amendment to Declaration of Condominium, and
3. Second Amendment to Declaration of Condominium.

Based on my examination of the above documents, I conclude, to the best of my knowledge, that the act of applying or petitioning the Town of Fort Myers Beach violates none of the provisions therein, or any federal or state laws regulating condominiums or timeshare plans, or the rights of any of the nonparticipating unit owners, as derived from such documents and laws, and that approval of the requested act by the Town of Fort Myers Beach would violate no such rights.

Sincerely,

Noel J. Davies, Esq.
DAVIES DUKE, PLLC

THE NEIGHBORHOOD COMPANY

I Mark A. Damante, as Vice President of CHG Neptune Acquisitions, LLC owner of property located at 2310 Estero Blvd., Fort Myers Beach, FL, identified by STRAP Number 19-46-24-W3-0110A.0010, hereby authorizes The Neighborhood Company to serve as owners' agent for the Town of Ft. Myers Beach Planned Development Rezone Application regarding the above-referenced property.

CHG Neptune Acquisitions, LLC.

By: _____
Print Name: Mark A. Damante
Title: Vice President

STATE OF OHIO
COUNTY OF FRANKLIN

The foregoing instrument was acknowledged before me by means of □ physical presence or □ online notarization, this 29 day of August, 2023 by Mark A. Damante, as Vice President of CHG Neptune Acquisitions, LLC, on behalf of the company(s), who □ is personally known to me OR □ has produced a(n) driver's license as identification.

(NOTARY STAMP)

_____
Notary Public, State of _____
Print Name: _____
My Commission Expires: _____

NOTARIAL SEAL STATE OF OHIO

SHAYLA MOFFITT
Notary Public, State of Ohio
My Commission Expires 01-21-25

THE NEIGHBORHOOD COMPANY

NEPTUNE RESORT COMMERCIAL PLANNED DEVELOPMENT (CPD)
Planned Development Rezone

EXHIBIT 6-1: STRAP # & LEGAL DESCRIPTION

- **STRAP #:** 19-46-24-W3-0430N.0000, 19-46-24-W3-0110A.0010, & 19-46-24-W3-04300.00CE

- **LEGAL DESCRIPTION**

  A PORTION OF LOTS 1-10, BLOCK A, W.W. WATSONS SUBDIVISION, ACCORDING TO THE PLAT THEREOF RECORDED IN PLAT BOOK 5, AT PAGE 67 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA, AND A PORTION OF LOTS 1 THROUGH 6 BLOCK B, AND LOTS 1 THROUGH 7 BLOCK A, BEACH ESTATES ACCORDING TO THE PLAT THEREOF RECORDED IN PLAT BOOK 6, AT PAGE 68 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

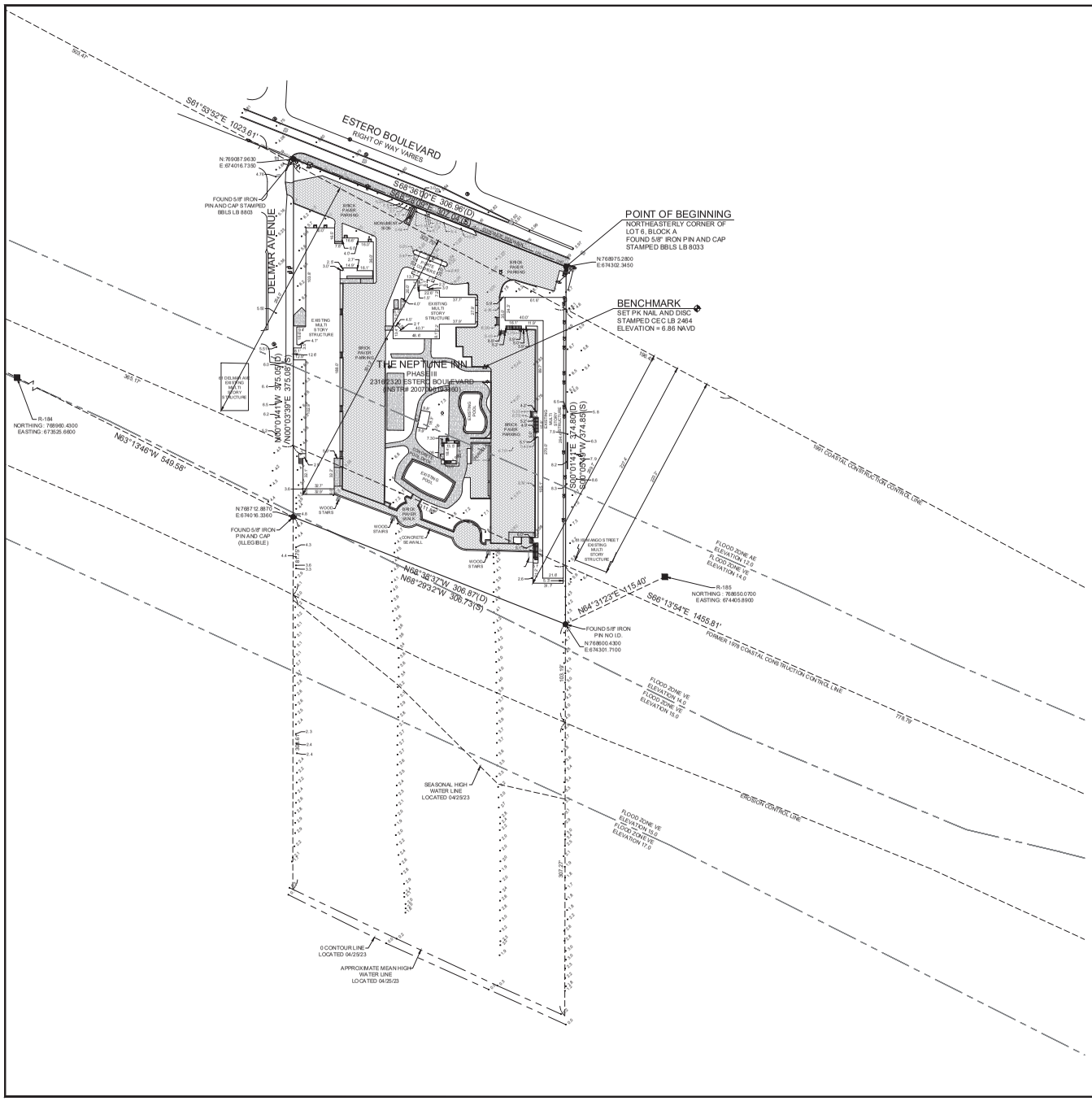
  BEGIN AT THE NORTHEASTERLY CORNER OF LOT 6, BLOCK A OF SAID BEACH ESTATES; THENCE RUN S00°01'41"E, ALONG THE EASTERLY LINE OF SAID BEACH ESTATES FOR A DISTANCE OF 374.80 FEET TO THE SOUTHEASTERLY CORNER OF LOT 1, BLOCK A OF SAID BEACH ESTATES; THENCE RUN N68°38'37"W, ALONG THE SOUTHEASTERLY LINE OF SAID BEACH ESTATES AND THE SOUTHERLY LINE OF SAID W.W. WATSONS SUBDIVISION A DISTANCE OF 306.87 FEET TO THE SOUTHWESTERLY CORNER OF LOT 1, BLOCK A, OF SAID W.W. WATSONS SUBDIVISION; THENCE RUN N22°01'41"W, ALONG THE WESTERLY LINE OF SAID W.W. WATSONS SUBDIVISION FOR A DISTANCE OF 375.05 FEET TO THE NORTHWESTERLY CORNER OF LOT 10, BLOCK A, OF SAID W.W. WATSONS SUBDIVISION; THENCE RUN S68°36'00"E, ALONG THE NORTHERLY LINE OF SAID W.W. WATSONS SUBDIVISION AND THE NORTHERLY LINE OF SAID BEACH ESTATES FOR A DISTANCE OF

  306.96 FEET TO THE POINT OF BEGINNING.

  THE ABOVE DESCRIBES AN AREA OF APPROXIMATELY 107,107 SQUARE FEET OR 2.46 ACRES OF LAND.

  SUBJECT TO EASEMENTS, RESTRICTIONS AND RESERVATIONS OF RECORD.

5618 Whispering Willow Way, Fort Myers, FL 33908 | 239.398.2016
www.theneighborhood.company



LEGEND

(S) = SURVEY DATA
(D) = DESCRIPTION DATA
(TYP.) = TYPICAL
OHU = OVERHEAD UTILITY LINE
= SANITARY SEWER MANHOLE
= WOOD POWER POLE
= CONCRETE POWER POLE
= CLEANOUT
= LIGHT POLE
= FIRE DEPARTMENT CONNECTION
= FIRE HYDRANT
= GAS VALVE
= TELEPHONE RISER
= UNDERGROUND PROPANE TANK

GENERAL NOTES

1. ● = FOUND 5/8" IRON PIN AS NOTED.
2. BEARINGS BASED ON A GRID BEARING OF S68°28'09"E ON THE SOUTH RIGHT OF WAY LINE OF ESTERO BOULEVARD.
3. DESCRIBED PROPERTY LIES IN FLOOD ZONE AE, ELEVATION 12.0, AND FLOOD ZONE VE, ELEVATIONS 14.0, 15.0 AND 17.0 PER F.I.R.M. COMMUNITY PANEL NO. 120673 MAP NO. 12071C 0554G DATED NOVEMBER 17, 2022.
4. ELEVATIONS SHOWN HEREON ARE RELATIVE TO NORTH AMERICAN VERTICAL DATUM 1988 (N.A.V.D. 88).
5. ELEVATIONS AND DISTANCES SHOWN HEREON ARE IN FEET AND DECIMALS THEREOF.
6. THIS SURVEY IS CERTIFIED TO THE DATE OF THE FIELD SURVEY, NOT THE DATE OF SIGNATURE.

LEGAL DESCRIPTION

A PORTION OF LOTS 1-10, BLOCK A, W.W. WATSONS SUBDIVISION, ACCORDING TO THE PLAT THEREOF RECORDED IN PLAT BOOK 5, AT PAGE 67 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA, AND A PORTION OF LOTS 1 THROUGH 6 BLOCK B, AND LOTS 1 THROUGH 7 BLOCK A, BEACH ESTATES ACCORDING TO THE PLAT THEREOF RECORDED IN PLAT BOOK 6, AT PAGE 68 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

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THE ABOVE DESCRIBES AN AREA OF APPROXIMATELY 107,107 SQUARE FEET OR 2.46 ACRES OF LAND.

SUBJECT TO EASEMENTS, RESTRICTIONS AND RESERVATIONS OF RECORD.

ACREAGE CALCULATIONS:

THE AREA **SEAWARD** OF THE **1991 CCCL** IS 100,043 SQUARE FEET OR 2.30 ACRES OF LAND.

THE AREA **LANDWARD** OF THE **1991 CCCL** IS 7,064 SQUARE FEET OR 0.16 ACRES OF LAND.

THE AREA **SEAWARD** OF THE **1978 CCCL TO THE WESTERLY LINE OF THE DESCRIBED PROPERTY** IS 19,464 SQUARE FEET OR 0.45 ACRES OF LAND.

FOR THE BENEFIT OF
J.R. EVANS ENGINEERING, P.A.

COASTAL ENGINEERING CONSULTANTS, INC.
FLORIDA BUSINESS AUTHORIZATION NO. LB 2464

Digitally signed by Richard J Ewing
DN: c=US, o=Florida, dnQualifier=A01410C000001 84C4 118C3100048B91, cn=Richard J Ewing
Date: 2023.08.08 05:46:46 -04'07'

RICHARD J. EWING, VP
PROFESSIONAL SURVEYOR AND MAPPER
FLORIDA CERTIFICATE NO. 5295
NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER
DATE OF FIELD SURVEY: 04/25/23
DATE OF SIGNATURE:

NO.	DATE	BY	REVISION DESCRIPTION
23.097			

DATE: 04/28/23 | SCALE: 1" = 50'
DRAWN: MMW | F.B. LC705
CHECKED: RJE | PG. 4-5
SEC. 19 | TWP. 46S | RNG. 24E
ACAD NO. 23.097
REF. NO. 23.097

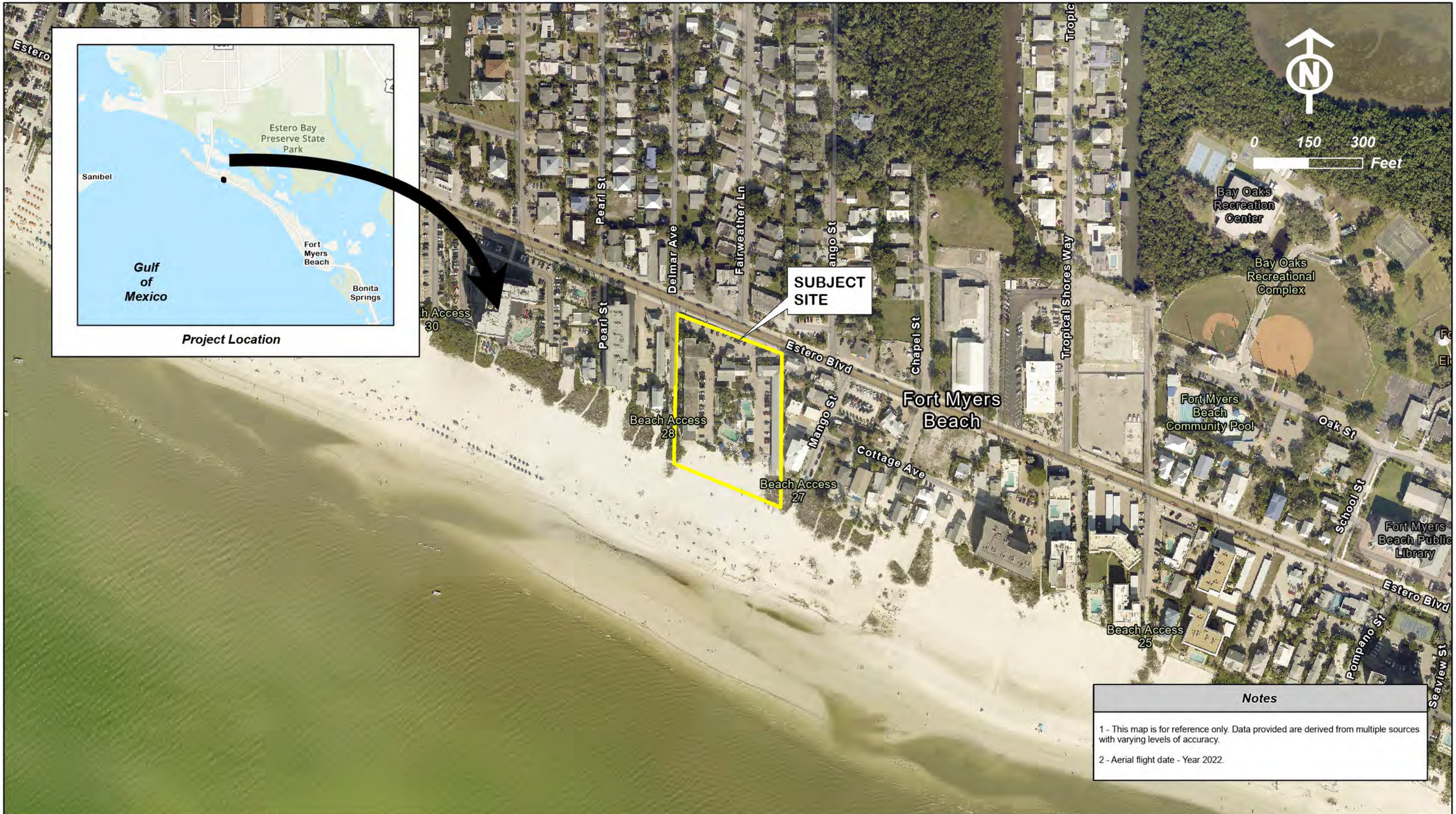
THESE DRAWINGS AND PLANS CONSIST OF PROFESSIONAL WORK PRODUCT AND ARE THE PROPERTY OF COASTAL ENGINEERING CONSULTANTS, INC. AND MAY NOT BE REPRODUCED, ISSUED OR ANY IMPORTED INCLUDED ON THIS DOCUMENT WITHOUT WRITTEN AUTHORIZATION AND COMPENSATION TO COASTAL ENGINEERING CONSULTANTS, INC. ANY UNAUTHORIZED USE SHALL BE WITHOUT LIABILITY TO COASTAL ENGINEERING CONSULTANTS, INC.

CLIENT: J.R. EVANS ENGINEERING, P.A.

TITLE: BOUNDARY SURVEY OF A PORTION OF LOTS 1-10, BLOCK A, W.W. WATSONS SUBDIVISION, ACCORDING TO THE PLAT THEREOF RECORDED IN PLAT BOOK 5, AT PAGE 67 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA, AND A PORTION OF LOTS 1 THROUGH 6 BLOCK B, AND LOTS 1 THROUGH 7 BLOCK A, BEACH ESTATES ACCORDING TO THE PLAT THEREOF RECORDED IN PLAT BOOK 6, AT PAGE 68 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA

COASTAL ENGINEERING CONSULTANTS INC.
COASTAL AND MARINE ENGINEERING
ENVIRONMENTAL AND GEOLOGICAL SERVICES
LAND AND MARINE SURVEY AND MAPPING
Serving Florida Since 1977
28421 BONITA CROSSINGS BOULEVARD
BONITA SPRINGS, FLORIDA 34135
PHONE: (239)643-2324
FAX: (239)643-1143
www.coastalengineering.com
E-Mail: info@cecifl.com

SHEET 1 OF 1
FILE NO.: 23.097



Notes

1 - This map is for reference only. Data provided are derived from multiple sources with varying levels of accuracy.

2 - Aerial flight date - Year 2022.

THE NEIGHBORHOOD COMPANY

Neptune

Project Location

FILE NO:	220037.01.01
DRAWN BY:	F.L.
DESIGN BY:	P.V.
DATE:	FEBRUARY 2023

List Size: 150

OwnerName	OwnerName2	MailAddress	MailAddress2	MailCity	MailState	MailZip	MailCountr
CHG NEPTUNE ACQUISITIONS LLC	MARK A DAMANTE	150 E BROAD ST	STE 800	COLUMBUS	OH	43215	
2201 ESTERO LLC		8360 SW 112TH ST		MIAMI	FL	33156	
2201 ESTERO LLC		8360 SW 112 ST		MIAMI	FL	33156	
2201 ESTERO LLC		8360 SW 112 ST		MIAMI	FL	33156	
BROWN LENNDA JOE TR		16210 LARSEN AVE		GOWEN	MI	49326	
JMP&W LLC		7906 ARIEL WAY		MCLEAN	VA	22102	
KOSTER RODNEY & THERESE		880 3RD ST		FORT MYERS BEACH	FL	33931	
MATTHEWS JOHN MORRIS		221 S ADAMS ST		WEST CHESTER	PA	19382	
FERRARO KIM A +		800 BENJAMIN FRANKLIN DR #208		SARASOTA	FL	34236	
TOLLETTE JEFFREY R &		1959 135TH AVE NW		ANDOVER	MN	55304	
B + B CASH GROCERY STORES INC		PO BOX 1808 #78		TAMPA	FL	33601	
BC MASTERPIECE LLC		12601 LAS OLAS LANE # 123		FORT MYERS	FL	33919	
BIRKART HANS +		12601 LAS OLAS LN #123		FORT MYERS	FL	33919	
DEWESE BRUCE R +		14685 WESTON RD		WESTON	OH	43569	
WHITE SWAN INVESTMENTS LLC		148 BAYLOR AVE		HILLSDALE	NJ	7642	
COULTER BEAU & TRACY R		760 STONEGATE PASS		COLGATE	WI	53017	
1249 ESTERO ADVENTURES LLC		290 BAHIA VIA		FORT MYERS BEACH	FL	33931	
DYE GARY A & LOIS +		S53 W31115 OLD VILLAGE RD		MUKWONAGO	WI	53149	
DEWEY KEITH CARTER & AMANDA		118 FAIRWEATHER LN		FORT MYERS BEACH	FL	33931	
MAIER SIMEON E II		1999 92ND ST		CALEDONIA	MI	49316	
WOAD LLC		1999 92ND ST		CALEDONIA	MI	49316	
WD RETREAT LTD		330 LOUISIANA AVE		PERRYSBURG	OH	43551	
WD RETREAT LTD		330 LOUISIANA AVE		PERRYSBURG	OH	43551	
KATTA DAN II LLC		5040 SE BENT WOOD DR		STUART	FL	34997	
CHITTENDEN DALE R & JOANN TR		15925 138TH AVE		SPRING LAKE	MI	49456	
WOLFPACK PROPERTIES LLC		567 SIMBURY ST		COLUMBUS	OH	43228	
WOLFPACK PROPERTIES LLC		567 SIMBURY ST		COLUMBUS	OH	43228	
NANKO RAYMOND S		919 WEST JACKSON ST		MUNCIE	IN	47305	
YANKE RONALD		328 BUCKLIN ST		LA SALLE	IL	61301	
YANKE RONALD		328 BUCKLIN ST		LA SALLE	IL	61301	
THOMAS E SWANBECK PA		2450 ESTERO BLVD		FORT MYERS BEACH	FL	33931	
YANKE RONALD		328 BUCKLIN ST		LA SALLE	IL	61301	
EMPIRE HOLDING CORP TR		PO BOX 19492		INDIANAPOLIS	IN	46219	
EMPIRE HOLDING CORP TR	RAINBOW REALTY GROUP INC	6104 E 21ST ST		INDIANAPOLIS	IN	46219	
FRENCH EDWIN T III		PO BOX 22538		INDIANAPOLIS	IN	46222	
FRENCH EDWIN T III		PO BOX 22538		INDIANAPOLIS	IN	46222	
COASTAL COTTAGES LLC		6850 W SOUTH LAKE GAGE DR		ANGOLA	IN	46703	
COASTAL COTTAGES LLC		6850 W SOUTH LAKE GAGE DR		ANGOLA	IN	46703	
TEZAK HELEN C TR		50 CHAPEL ST #4		FORT MYERS BEACH	FL	33931	
GOLDBERG GENNIE M TR		11793 ROYAL TEE CT		CAPE CORAL	FL	33991	
FMB COTTAGE LLC		2440 COTTAGE AVE		FORT MYERS BEACH	FL	33931	
BONFIGLI ANDREW & SUSAN		2434 COTTAGE AVE		FORT MYERS BEACH	FL	33931	
PAISLEY LLC		414 MARKET ST		IOWA CITY	IA	52245	
MCLAUGHLIN SAMUEL R &		4700 EDEN PARK DR		ZANESVILLE	OH	43701	
SCHLICHTE EDITH		61 MANGO ST		FORT MYERS BEACH	FL	33931	
CHAPEL BY THE SEA		PO BOX 2997		FORT MYERS BEACH	FL	33932	
GERSTENHABER RAM TR	BEACH CONNECTION	2401 ESTERO BLVD		FORT MYERS BEACH	FL	33931	
CZULEWICZ MARYLU TR		4281 ORANGE RIVER LOOP RD		FORT MYERS	FL	33905	
BOREK TINA D		1605 PENNSAUKEN ST		CINNAMINSON	NJ	8077	
MANGO STREET LLC		126 MANGO ST		FORT MYERS BEACH	FL	33931	
PAOLERCIO WILLIAM		2367 JIM HENRY RD		DANDRIDGE	TN	37725	
MERIDIAN ENTERPRISES II LLC		2248 OLD STATE RD		BEAUFORT	MO	63013	
BURNS PROPERTY MANAGEMENT LLC		536 SONOMA DR		BOLINGBROOK	IL	60490	
ROTH ALLAN T & RHONDA K		12232 JAY CIR NW		COON RAPIDS	MN	55448	
STALTER RICHARD		169 CHAPEL ST		FORT MYERS BEACH	FL	33931	
YANKE RONALD		328 BUCKLIN ST		LA SALLE	IL	61301	
MEEHAN PATRICIA LYNN		293 ELM ST W		SUDBURY	ON	P3C 1V6	CANADA
BIG MARLIN PROPERTIES LLC		4704 VINCENNES BLVD		CAPE CORAL	FL	33904	
PFAFFINGER HEDWIG TR	JAMES SCHULTZ	1030 SPINDLE HILL RD		WOLCOTT	CT	6716	
RYAN JAMES		139 CHAPEL ST		FORT MYERS BEACH	FL	33931	
CHAPEL BY THE SEA		PO BOX 2997		FORT MYERS BEACH	FL	33932	
1249 ESTERO ADVENTURES LLC		290 BAHIA VIA		FORT MYERS BEACH	FL	33931	
1249 ESTERO ADVENTURES LLC		290 BAHIA VIA		FORT MYERS BEACH	FL	33931	
1249 ESTERO ADVENTURES LLC		290 BAHIA VIA		FORT MYERS BEACH	FL	33931	
BESSEY JAMES D		2 BARTLETT RD		NANTUCKET	MA	2554	
TOMMAR INC		9616 ROUND LAKE BLVD		WHITE LAKE	MI	48386	
SOTO JESUS +		PO BOX 366265		BONITA SPRINGS	FL	34136	
WICKETT LLOYD A &		5647 SHADDELEE LN W		FORT MYERS	FL	33919	

WICKETT LLOYD A &		5647 SHADDELEE LN W		FORT MYERS	FL	33919	
ROTH ALLAN		12232 JAY CIRCLE		COON RAPIDS	MN	55448	
ROTH ALLAN T		12232 JAY CIRCLE		COON RAPIDS	MN	55448	
SEA BREEZE ESTATES CONDO ASSN		325 W LOCUST LN		KENNETT SQUARE	PA	19348	
71 MANGO LLC		15440 CATALPA COVE LANE		FORT MYERS	FL	33908	
71 MANGO LLC		15440 CATALPA COVE LN		FORT MYERS	FL	33908	
NEPTUNE INN CONDO ASSN INC	BLUE VISTA CAPITAL LLC	PO BOX 508		RICHMOND	IL	60071	
PALMA FRED JR & RHONDA +		139 S PARK BLVD		GLEN ELLYN	IL	60137	
MAUGANS ALICE B		12890 SPENCER STREET		FORT MYERS	FL	33908	
MCMILLAN MICHAEL		150 PEARL ST		FORT MYERS BEACH	FL	33931	
MORIONDO LARRY E TR		15482 LAWRENCE 2130		MOUNT VERNON	MO	65712	
LANGLEY COLIN M TR		130 PEARL ST		FORT MYERS BEACH	FL	33931	
LANGLEY COLIN M & DIONE C TR		130 PEARL ST		FORT MYERS BEACH	FL	33931	
HORKAN CHAD M TR		1189 FOUR WINDS WAY		HARTLAND	WI	53029	
PAREDERO CLEMENTE & MARY L		140 PEARL ST		FORT MYERS BEACH	FL	33931	
NEAF JAMES C		125 PEARL ST		FORT MYERS BEACH	FL	33931	
2085 ESTERO LLC		2001 ESTERO BLVD		FORT MYERS BEACH	FL	33931	
WILLIAMS JENNILEE R +		1913 SE 12TH ST		CAPE CORAL	FL	33990	
ERICKSON CELIA		131 PEARL ST		FORT MYERS BEACH	FL	33931	
MORLOCK WADE T &		10317 SE 28TH PL		BEAUX ARTS	WA	98004	
BUICE NANCY HURD TR		15174 PORTSIDE DR		FORT MYERS	FL	33908	
PEARL STREET PROPERTY HOLDINGS		PO BOX 2611		FORT MYERS BEACH	FL	33931	
JENKINS WAYNE +		829 NORWEST RD STE 421		KINGSTON	ON	K7P 2N3	CANADA
DIAMONDHEAD BEACH RESORT LLC		2000 ESTERO BLVD		FORT MYERS BEACH	FL	33931	
2001 ESTERO LLC		400 BAYLAND RD		FORT MYERS BEACH	FL	33931	
NIESE LYNNE A		13781 RD X		LEIPSIC	OH	45856	
SURFUS JOHN D		PO BOX 2415		FORT MYERS BEACH	FL	33932	
ALFARO-MALDONADO LINDA		121 DELMAR AVE		FORT MYERS BEACH	FL	33931	
127 DELMAR LLC		7449 CEDAR RIDGE DR		PORTLAND	MI	48875	
FRIEDRICH CHARLES DAVID +		114 FAIRBANKS ST		SANTA CRUZ	CA	95060	
DELMAR BROTHERS LLC		135 DELMAR AVE		FORT MYERS BEACH	FL	33931	
MARTIN RICHARD E &		11034 E KRAMER RD		BOWLING GREEN	OH	43402	
BAISCH GAYLE LYNN +		1443 CLARET CT		FORT MYERS	FL	33919	
CBD LLC		414 E MARKET ST		IOWA CITY	IA	52245	
SURF SONG CONDO ASSOC INC		2088 ESTERO BLVD UNIT 2H		FORT MYERS BEACH	FL	33931	
POLYNESIAN VACATION VILLAS		2096 ESTERO BLVD		FORT MYERS BEACH	FL	33931	
CHG NEPTUNE ACQUISITIONS LLC	MARK A DAMANTE	150 E BROAD ST	STE 800	COLUMBUS	OH	43215	
BENNETT ROBERT W		5889 WATSON RD		EAU CLAIRE	MI	49111	
R DOUGLAS HOVENDEN TRUST +		2088 ESTERO BLVD #2A		FORT MYERS BEACH	FL	33931	
JOHNSON ROGER A TR		2088 ESTERO BLVD APT 2B		FORT MYERS BEACH	FL	33931	
KAUFMAN CHRISTINE V TR		26442 BRICK LN		BONITA SPRINGS	FL	34134	
HILL DOUGLAS E & KAYLA K		43 ONONDAGA ST		SKANEATELES	NY	13152	
HAMILTON ROGER A & JANE M		580 WRENCROFT CT		LEBANON	OH	45036	
OLIVER KENT D & JO-ANN A		18900 NALLE RD		NORTH FORT MYERS	FL	33917	
MENDENHALL MURRAY J III &		10407 WOODLAND RIDGE WEST		FORT WAYNE	IN	46804	
RAUSHEL JAN R TR		103 SOUTH DR		AITKIN	MN	56431	
WALCHLI JAMES		2088 ESTERO BLVD #3B		FORT MYERS BEACH	FL	33931	
FERGUS CHARLOTTE TR		2088 ESTERO BLVD #3C		FORT MYERS BEACH	FL	33931	
JACKSON JOHN K TR		1400 N 100 E		HARTFORD CITY	IN	47348	
MIZEL WILLIAM C & THERESA L		2088 ESTERO BLVD UNIT 4B		FORT MYERS BEACH	FL	33931	
DUNDEE NICHOLAS J & LINDA M		2088 ESTERO BLVD #3F		FORT MYERS BEACH	FL	33931	
SURF SONG CARNEY LLC		2809 GREAT NORTHERN LOOP #100		MISSOULA	MT	59808	
HAPKIEWICZ ANNIS M TR		2088 ESTERO BLVD # 4A		FORT MYERS BEACH	FL	33931	
MIZEL WILLIAM C & THERESA L		2088 ESTERO BLVD 4B		FORT MYERS BEACH	FL	33931	
COURRIER DAWN LARAE		16005 25TH AVE N		PLYMOUTH	MN	55447	
RAVENSCROFT JEAN A TR		69525 CHRISTIANN CREEK DR		EDWARDSBURG	MI	49112	
KEITH THOMAS E & EILEEN M		5853 HACKER DR		WEST BEND	WI	53095	
THREE SISTERS MANAGEMENT		3340 WELLINGTON BLVD		CRAWFORDSVILLE	IN	47933	
MAZER BERNARD A & DIANNE M TR		W221S7455 CAROL DRIVE		MUSKEGO	WI	53150	
WILLIAMS MARY J TR		11131 WOODS BAY LN		INDIANAPOLIS	IN	46236	
FRANTZ M RYAN & ERIKA E		5480 LARISSA PL		CARMEL	IN	46033	
FRIEDMAN JEFFREY &		2013 WILDERNESS TR		SPRINGFIELD	IL	62711	
DECONCINI CHRISTOPHER M TR		45281 RED PINE LOOP		PERHAM	MN	56573	
SCHOLTZ STEPHEN A		124 KINGSWAY CRESCENT		TORONTO	ON	M8X 2S2	CANADA
NELSON ROBERT A TR		1302 STANFIELD ST		SOUTH BEND	IN	46617	
STENSRUDE LARRY C TR		2088 ESTERO BLVD UNIT 5G		FORT MYERS BEACH	FL	33931	
LYONS KRISTIN E		2096 ESTERO BLVD #1		FORT MYERS BEACH	FL	33931	
RAGAN JOHN		5600 REVERE RUN		CANFIELD	OH	44406	
JONES FRANK TR		2010 46TH AVE #2		GREELEY	CO	80634	
SAVERY TIMOTHY LYDEN &		406 SW 30TH AVE		CAPE CORAL	FL	33991	

MOGLIA SANDRA		17 DIVISION ST W APT 2		GREENWICH	CT	6830
DUNFEE ALLEN MARK & SUSAN M		402 SW 30TH AVE		CAPE CORAL	FL	33991
PARILLA DAVID R TR		1335 SANTOS RD		FORT MYERS BEACH	FL	33931
MALOTT PATRICK T		7840 MELBOURNE RD		SAGINAW	MI	48604
BERMEL STEVEN		900 PARK AVE		MUSCATINE	IA	52761
LEINDECKER ROBERT JOHN		6961 WILLOW HWY		GRAND LEDGE	MI	48837
STRONG DANIEL		3610 BAYNARD DR		PUNTA GORDA	FL	33950
GABRIEL RUSTIE L +		6961 WILLOW HWY		GRAND LEDGE	MI	48837
LOFFRENO CHRISTIAN P		17916 GREY HERON CT		FORT MYERS BEACH	FL	33931
LOFFRENO CHRISTIAN P		17916 GREY HERON CT		FORT MYERS BEACH	FL	33931
LOFFRENO CHRISTIAN P		17916 GREY HERON CT		FORT MYERS BEACH	FL	33931
2000 ESTERO BOULEVARD	CORE HOTELS & RESORTS LLC	DIAMONDHEAD ISLAND BCH RESORT	2000 ESTERO BLVD	FORT MYERS BEACH	FL	33931

THE NEIGHBORHOOD COMPANY

The Neptune Resort Planned Development (PD)
A Commercial Planned Development

Exhibit 6-7
Surrounding Property Owners Map

2201 ESTERO LLC
8360 SW 112TH ST
MIAMI FL 33156

2201 ESTERO LLC
8360 SW 112 ST
MIAMI FL 33156

2201 ESTERO LLC
8360 SW 112 ST
MIAMI FL 33156

BROWN LENNDA JOE TR
16210 LARSEN AVE
GOWEN MI 49326

JMP&W LLC
7906 ARIEL WAY
MCLEAN VA 22102

KOSTER RODNEY & THERESE
880 3RD ST
FORT MYERS BEACH FL 33931

MATTHEWS JOHN MORRIS
221 S ADAMS ST
WEST CHESTER PA 19382

FERRARO KIM A +
800 BENJAMIN FRANKLIN DR #208
SARASOTA FL 34236

TOLLETTE JEFFREY R &
1959 135TH AVE NW
ANDOVER MN 55304

B + B CASH GROCERY STORES INC
PO BOX 1808 #78
TAMPA FL 33601

BC MASTERPIECE LLC
12601 LAS OLAS LANE # 123
FORT MYERS FL 33919

BIRKART HANS +
12601 LAS OLAS LN #123
FORT MYERS FL 33919

DEWESE BRUCE R +
14685 WESTON RD
WESTON OH 43569

WHITE SWAN INVESTMENTS LLC
148 BAYLOR AVE
HILLSDALE NJ 07642

COULTER BEAU & TRACY R
760 STONEGATE PASS
COLGATE WI 53017

1249 ESTERO ADVENTURES LLC
290 BAHIA VIA
FORT MYERS BEACH FL 33931

DYE GARY A & LOIS +
S53 W31115 OLD VILLAGE RD
MUKWONAGO WI 53149

DEWEY KEITH CARTER & AMANDA
118 FAIRWEATHER LN
FORT MYERS BEACH FL 33931

MAIER SIMEON E II
1999 92ND ST
CALEDONIA MI 49316

WOAD LLC
1999 92ND ST
CALEDONIA MI 49316

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WD RETREAT LTD
330 LOUISIANA AVE
PERRYSBURG OH 43551

KATTA DAN II LLC
5040 SE BENT WOOD DR
STUART FL 34997

WOLFPACK PROPERTIES LLC
567 SIMBURY ST
COLUMBUS OH 43228

NANKO RAYMOND S
919 WEST JACKSON ST
MUNCIE IN 47305

YANKE RONALD
328 BUCKLIN ST
LA SALLE IL 61301

YANKE RONALD
328 BUCKLIN ST
LA SALLE IL 61301

EMPIRE HOLDING CORP TR
RAINBOW REALTY GROUP INC
6104 E 21ST ST
INDIANAPOLIS IN 46219

FRENCH EDWIN T III
PO BOX 22538
INDIANAPOLIS IN 46222

COASTAL COTTAGES LLC
6850 W SOUTH LAKE GAGE DR
ANGOLA IN 46703

GOLDBERG GENNIE M TR
11793 ROYAL TEE CT
CAPE CORAL FL 33991

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WD RETREAT LTD
330 LOUISIANA AVE
PERRYSBURG OH 43551

CHITTENDEN DALE R & JOANN TR
15925 138TH AVE
SPRING LAKE MI 49456

WOLFPACK PROPERTIES LLC
567 SIMBURY ST
COLUMBUS OH 43228

YANKE RONALD
328 BUCKLIN ST
LA SALLE IL 61301

THOMAS E SWANBECK PA
2450 ESTERO BLVD
FORT MYERS BEACH FL 33931

EMPIRE HOLDING CORP TR
PO BOX 19492
INDIANAPOLIS IN 46219

FRENCH EDWIN T III
PO BOX 22538
INDIANAPOLIS IN 46222

COASTAL COTTAGES LLC
6850 W SOUTH LAKE GAGE DR
ANGOLA IN 46703

TEZAK HELEN C TR
50 CHAPEL ST #4
FORT MYERS BEACH FL 33931

FMB COTTAGE LLC
2440 COTTAGE AVE
FORT MYERS BEACH FL 33931

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BONFIGLI ANDREW & SUSAN
2434 COTTAGE AVE
FORT MYERS BEACH FL 33931

MCLAUGHLIN SAMUEL R &
4700 EDEN PARK DR
ZANESVILLE OH 43701

CHAPEL BY THE SEA
PO BOX 2997
FORT MYERS BEACH FL 33932

CZULEWICZ MARYLU TR
4281 ORANGE RIVER LOOP RD
FORT MYERS FL 33905

MANGO STREET LLC
126 MANGO ST
FORT MYERS BEACH FL 33931

MERIDIAN ENTERPRISES II LLC
2248 OLD STATE RD
BEAUFORT MO 63013

ROTH ALLAN T & RHONDA K
12232 JAY CIR NW
COON RAPIDS MN 55448

YANKE RONALD
328 BUCKLIN ST
LA SALLE IL 61301

BIG MARLIN PROPERTIES LLC
4704 VINCENNES BLVD
CAPE CORAL FL 33904

RYAN JAMES
139 CHAPEL ST
FORT MYERS BEACH FL 33931

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PAISLEY LLC
414 MARKET ST
IOWA CITY IA 52245

SCHLICHTE EDITH
61 MANGO ST
FORT MYERS BEACH FL 33931

GERSTENHABER RAM TR
BEACH CONNECTION
2401 ESTERO BLVD
FORT MYERS BEACH FL 33931

BOREK TINA D
1605 PENNSAUKEN ST
CINNAMINSON NJ 08077

PAOLERCIO WILLIAM
2367 JIM HENRY RD
DANDRIDGE TN 37725

BURNS PROPERTY MANAGEMENT LLC
536 SONOMA DR
BOLINGBROOK IL 60490

STALTER RICHARD
169 CHAPEL ST
FORT MYERS BEACH FL 33931

MEEHAN PATRICIA LYNN
293 ELM ST W
SUDBURY ON P3C 1V6
CANADA

PFAFFINGER HEDWIG TR
JAMES SCHULTZ
1030 SPINDLE HILL RD
WOLCOTT CT 06716

CHAPEL BY THE SEA
PO BOX 2997
FORT MYERS BEACH FL 33932

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1249 ESTERO ADVENTURES LLC
290 BAHIA VIA
FORT MYERS BEACH FL 33931

1249 ESTERO ADVENTURES LLC
290 BAHIA VIA
FORT MYERS BEACH FL 33931

TOMMAR INC
9616 ROUND LAKE BLVD
WHITE LAKE MI 48386

WICKETT LLOYD A &
5647 SHADDELEE LN W
FORT MYERS FL 33919

ROTH ALLAN
12232 JAY CIRCLE
COON RAPIDS MN 55448

SEA BREEZE ESTATES CONDO ASSN
325 W LOCUST LN
KENNETT SQUARE PA 19348

71 MANGO LLC
15440 CATALPA COVE LN
FORT MYERS FL 33908

PALMA FRED JR & RHONDA +
139 S PARK BLVD
GLEN ELLYN IL 60137

MCMILLAN MICHAEL
150 PEARL ST
FORT MYERS BEACH FL 33931

LANGLEY COLIN M TR
130 PEARL ST
FORT MYERS BEACH FL 33931

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1249 ESTERO ADVENTURES LLC
290 BAHIA VIA
FORT MYERS BEACH FL 33931

BESSEY JAMES D
2 BARTLETT RD
NANTUCKET MA 02554

SOTO JESUS +
PO BOX 366265
BONITA SPRINGS FL 34136

WICKETT LLOYD A &
5647 SHADDELEE LN W
FORT MYERS FL 33919

ROTH ALLAN T
12232 JAY CIRCLE
COON RAPIDS MN 55448

71 MANGO LLC
15440 CATALPA COVE LANE
FORT MYERS FL 33908

NEPTUNE INN CONDO ASSN INC
BLUE VISTA CAPITAL LLC
PO BOX 508
RICHMOND IL 60071

MAUGANS ALICE B
12890 SPENCER STREET
FORT MYERS FL 33908

MORIONDO LARRY E TR
15482 LAWRENCE 2130
MOUNT VERNON MO 65712

LANGLEY COLIN M & DIONE C TR
130 PEARL ST
FORT MYERS BEACH FL 33931

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HORKAN CHAD M TR
1189 FOUR WINDS WAY
HARTLAND WI 53029

NEAF JAMES C
125 PEARL ST
FORT MYERS BEACH FL 33931

WILLIAMS JENNILEE R +
1913 SE 12TH ST
CAPE CORAL FL 33990

MORLOCK WADE T &
10317 SE 28TH PL
BEAUX ARTS WA 98004

PEARL STREET PROPERTY HOLDINGS
PO BOX 2611
FORT MYERS BEACH FL 33931

DIAMONDHEAD BEACH RESORT LLC
2000 ESTERO BLVD
FORT MYERS BEACH FL 33931

NIESE LYNNE A
13781 RD X
LEIPSIC OH 45856

ALFARO-MALDONADO LINDA
121 DELMAR AVE
FORT MYERS BEACH FL 33931

FRIEDRICH CHARLES DAVID +
114 FAIRBANKS ST
SANTA CRUZ CA 95060

MARTIN RICHARD E &
11034 E KRAMER RD
BOWLING GREEN OH 43402

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PAREDERO CLEMENTE & MARY L
140 PEARL ST
FORT MYERS BEACH FL 33931

2085 ESTERO LLC
2001 ESTERO BLVD
FORT MYERS BEACH FL 33931

ERICKSON CELIA
131 PEARL ST
FORT MYERS BEACH FL 33931

BUICE NANCY HURD TR
15174 PORTSIDE DR
FORT MYERS FL 33908

JENKINS WAYNE +
829 NORWEST RD STE 421
KINGSTON ON K7P 2N3
CANADA

2001 ESTERO LLC
400 BAYLAND RD
FORT MYERS BEACH FL 33931

SURFUS JOHN D
PO BOX 2415
FORT MYERS BEACH FL 33932

127 DELMAR LLC
7449 CEDAR RIDGE DR
PORTLAND MI 48875

DELMAR BROTHERS LLC
135 DELMAR AVE
FORT MYERS BEACH FL 33931

BAISCH GAYLE LYNN +
1443 CLARET CT
FORT MYERS FL 33919

Page Break

CBD LLC
414 E MARKET ST
IOWA CITY IA 52245

POLYNESIAN VACATION VILLAS
2096 ESTERO BLVD
FORT MYERS BEACH FL 33931

BENNETT ROBERT W
5889 WATSON RD
EAU CLAIRE MI 49111

JOHNSON ROGER A TR
2088 ESTERO BLVD APT 2B
FORT MYERS BEACH FL 33931

HILL DOUGLAS E & KAYLA K
43 ONONDAGA ST
SKANEATELES NY 13152

OLIVER KENT D & JO-ANN A
18900 NALLE RD
NORTH FORT MYERS FL 33917

RAUSHEL JAN R TR
103 SOUTH DR
AITKIN MN 56431

FERGUS CHARLOTTE TR
2088 ESTERO BLVD #3C
FORT MYERS BEACH FL 33931

MIZEL WILLIAM C & THERESA L
2088 ESTERO BLVD UNIT 4B
FORT MYERS BEACH FL 33931

SURF SONG CARNEY LLC
2809 GREAT NORTHERN LOOP #100
MISSOULA MT 59808

SURF SONG CONDO ASSOC INC
2088 ESTERO BLVD UNIT 2H
FORT MYERS BEACH FL 33931

CHG NEPTUNE ACQUISITIONS LLC
MARK A DAMANTE
150 E BROAD ST STE 800
COLUMBUS OH 43215

R DOUGLAS HOVENDEN TRUST +
2088 ESTERO BLVD #2A
FORT MYERS BEACH FL 33931

KAUFMAN CHRISTINE V TR
26442 BRICK LN
BONITA SPRINGS FL 34134

HAMILTON ROGER A & JANE M
580 WRENCROFT CT
LEBANON OH 45036

MENDENHALL MURRAY J III &
10407 WOODLAND RIDGE WEST
FORT WAYNE IN 46804

WALCHLI JAMES
2088 ESTERO BLVD #3B
FORT MYERS BEACH FL 33931

JACKSON JOHN K TR
1400 N 100 E
HARTFORD CITY IN 47348

DUNDEE NICHOLAS J & LINDA M
2088 ESTERO BLVD #3F
FORT MYERS BEACH FL 33931

HAPKIEWICZ ANNIS M TR
2088 ESTERO BLVD # 4A
FORT MYERS BEACH FL 33931

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MIZEL WILLIAM C & THERESA L
2088 ESTERO BLVD 4B
FORT MYERS BEACH FL 33931

RAVENSCROFT JEAN A TR
69525 CHRISTIANN CREEK DR
EDWARDSBURG MI 49112

THREE SISTERS MANAGEMENT
3340 WELLINGTON BLVD
CRAWFORDSVILLE IN 47933

WILLIAMS MARY J TR
11131 WOODS BAY LN
INDIANAPOLIS IN 46236

FRIEDMAN JEFFREY &
2013 WILDERNESS TR
SPRINGFIELD IL 62711

SCHOLTZ STEPHEN A
124 KINGSWAY CRESCENT
TORONTO ON M8X 2S2
CANADA

STENSRUDE LARRY C TR
2088 ESTERO BLVD UNIT 5G
FORT MYERS BEACH FL 33931

RAGAN JOHN
5600 REVERE RUN
CANFIELD OH 44406

SAVERY TIMOTHY LYDEN &
406 SW 30TH AVE
CAPE CORAL FL 33991

DUNFEE ALLEN MARK & SUSAN M
402 SW 30TH AVE
CAPE CORAL FL 33991

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COURRIER DAWN LARAE
16005 25TH AVE N
PLYMOUTH MN 55447

KEITH THOMAS E & EILEEN M
5853 HACKER DR
WEST BEND WI 53095

MAZER BERNARD A & DIANNE M TR
W221S7455 CAROL DRIVE
MUSKEGO WI 53150

FRANTZ M RYAN & ERIKA E
5480 LARISSA PL
CARMEL IN 46033

DECONCINI CHRISTOPHER M TR
45281 RED PINE LOOP
PERHAM MN 56573

NELSON ROBERT A TR
1302 STANFIELD ST
SOUTH BEND IN 46617

LYONS KRISTIN E
2096 ESTERO BLVD #1
FORT MYERS BEACH FL 33931

JONES FRANK TR
2010 46TH AVE #2
GREELEY CO 80634

MOGLIA SANDRA
17 DIVISION ST W APT 2
GREENWICH CT 06830

PARILLA DAVID R TR
1335 SANTOS RD
FORT MYERS BEACH FL 33931

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MALOTT PATRICK T
7840 MELBOURNE RD
SAGINAW MI 48604

LEINDECKER ROBERT JOHN
6961 WILLOW HWY
GRAND LEDGE MI 48837

GABRIEL RUSTIE L +
6961 WILLOW HWY
GRAND LEDGE MI 48837

LOFFRENO CHRISTIAN P
17916 GREY HERON CT
FORT MYERS BEACH FL 33931

2000 ESTERO BOULEVARD
CORE HOTELS & RESORTS LLC
DIAMONDHEAD ISLAND BCH RESORT
2000 ESTERO BLVD
FORT MYERS BEACH FL 33931

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BERMEL STEVEN
900 PARK AVE
MUSCATINE IA 52761

STRONG DANIEL
3610 BAYNARD DR
PUNTA GORDA FL 33950

LOFFRENO CHRISTIAN P
17916 GREY HERON CT
FORT MYERS BEACH FL 33931

LOFFRENO CHRISTIAN P
17916 GREY HERON CT
FORT MYERS BEACH FL 33931

Case # _____ Date Received: _____

Town of Fort Myers Beach

COMMUNITY DEVELOPMENT DEPARTMENT

Supplement PH-D

Additional Required Information for a Planned Development Application

This is the second part of a two-part application. This part requests specific information for a planned development rezoning or an amendment to an approved planned development. Include this form with the Request for Public Hearing form.

Fee in the amount of $8000.00 up to 1 acre +1000.00 per additional acre
$2000.00 PD Amendment minor (< acre total property area)
$4000.00 PD Reinstatement or $6500.00 PD Amendment

Project Name: The Neptune Resort PD Rezone
Authorized Applicant: CHG Neptune Acquisitions, LLC
STRAP Number(s): 19-46-24-W3-0430N.0001, 19-46-24-W3-0110A.0010;
19-46-24-W3-04300.00CE

Current Property Status: Damaged/Vacant
Current Zoning: CR
Future Land Use Map (FLUM) Category: Boulevard
Platted Overlay? ☐ **yes,** ☐ **no** **FLUM Density Range:** 6 dwelling units per acre

Requested Action:

☐	DRI (with rezoning)
✔	Planned Development (also check below)
☐	Rezoning from: CR to: CPD
☐	Amendment to Master Concept Plan/attendant documentation

Town of Fort Myers Beach 2525 Estero Blvd. Fort Myers Beach, FL 33931
Phone 239 765-0202 Zoningpermits@fmbgov.com Fax 239 765-0909

PART I
Narrative Statements

A. **Comprehensive Plan Amendments** (check one)

☑ There are NO Comprehensive Plan Amendments pending that could affect the future use of this property.
☐ The following Comprehensive Plan Amendments ARE pending and could affect the future use of this property (list the amendment and give a brief explanation of its possible effect)
Please see attached Narrative.

B. **Phasing of Construction**

☐ The development is to be constructed in a single phase.
☐ The development is to be constructed in phases as follows: (describe proposed phasing below)

C. **Comprehensive Plan Compliance.**

Explain how the proposed development complies with applicable Goals, Objectives, and Policies of the Fort Myers Beach Comprehensive Plan.

Please see attached Narrative.

D. Design Standards Compliance

For projects required to meet Commercial Design Standards, explain how the proposed development complies with the design standards set forth in LDC Sections 34-991 through 34-997.

Please see attached Narrative.

E. Decision-making Compliance

Explain how the proposed development complies with the guidelines for decision-making embodied in LDC Section 34-85.

Please see attached Narrative.
Southeast of the intersection of Delmar Ave and Estero Blvd.

F. Schedule of deviations and written justification

Provide a list of the requested deviations keyed to the Master Concept Plan and provide a written justification for each deviation. The location of each deviation should be indicated on the Master Concept Plan.

G. Administrative amendments to approved Master Concept Plan

For amendments to an approved Master Concept Plan, indicate the specific amendments that could not be approved administratively as set forth in LDC Section 34-219.

N/A

PART 2

Submittal Requirements

All applications for a planned development must submit fourteen (14) copies of this application form and all applicable exhibits.

Required Items

Public Hearing Request Form
Supplement Form PH-D
Master Concept Plan
Traffic Impact Statement
Architectural Elevations
Schedule of Uses
Fee in the amount of $8000.00 up to 1 acre +1000.00 per additional acre
$2000.00 PD Amendment minor (< acre total property area)
$4000.00 PD Reinstatement or $6500.00 PD Amendment

For DRI: A Binding letter of interpretation from DCA or a complete and sufficient ADA.

TR TRANSPORTATION CONSULTANTS, INC

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TRAFFIC ENGINEERING
TRANSPORTATION PLANNING
SIGNAL SYSTEMS/DESIGN

TRAFFIC IMPACT STATEMENT

FOR

NEPTUNE RESORT REZONING

(PROJECT NO. F2308.31)

PREPARED BY:
TR Transportation Consultants, Inc.
Certificate of Authorization Number: 27003
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September 17, 2023

TRANSPORTATION CONSULTANTS, INC

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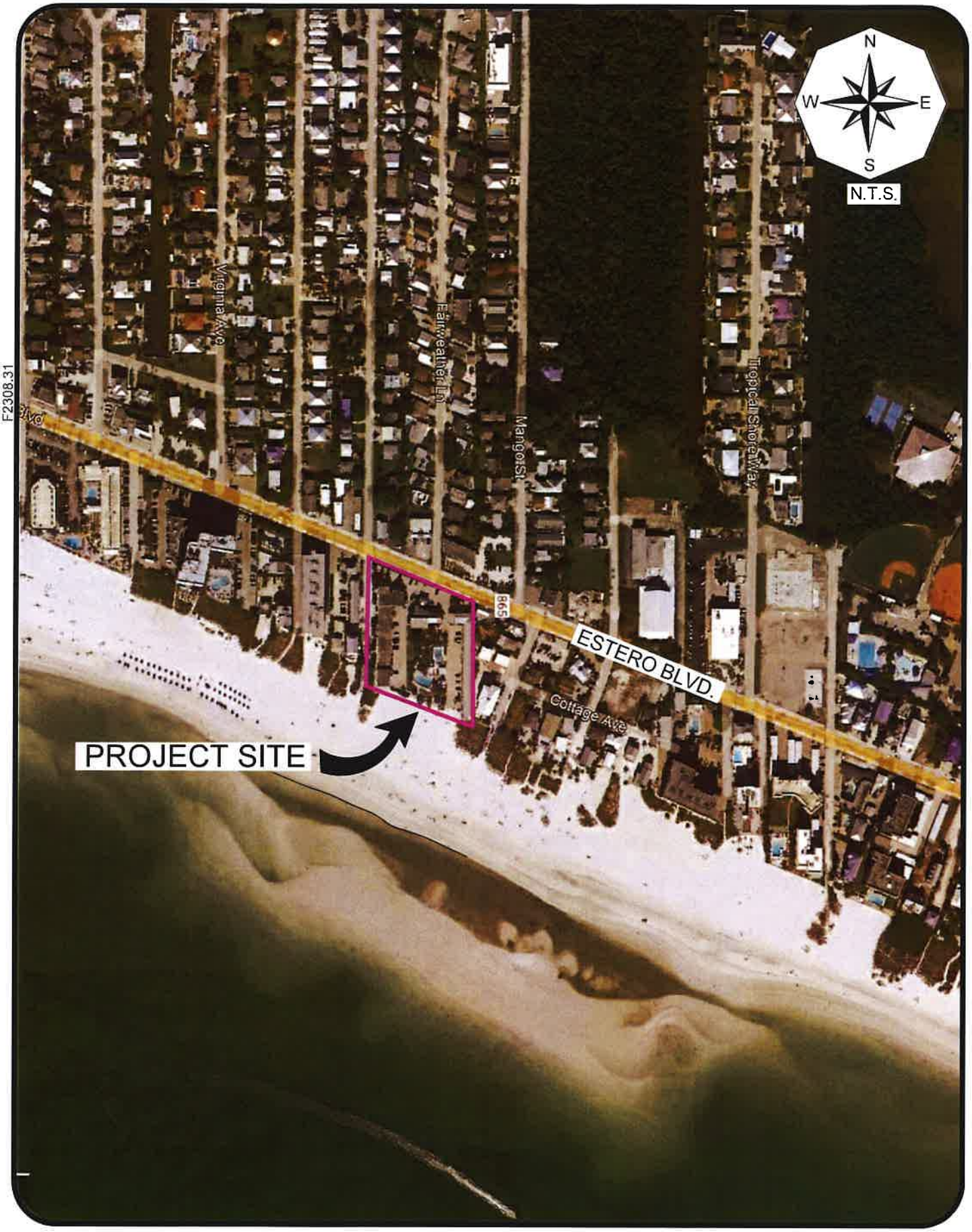
TR TRANSPORTATION CONSULTANTS, INC

I. INTRODUCTION

TR Transportation Consultants, Inc. has conducted a traffic impact statement to fulfill requirements set forth by the Town of Fort Myers Beach for projects seeking a zoning amendment approval. The subject site is located along the Gulf side of Estero Boulevard just to the south of Delmar Avenue in the Town of Fort Myers Beach in Lee County, Florida. **Figure 1** illustrates the approximate location of the subject site.

The analysis in this report will determine the impacts of rezoning approximately 2.3 acres from Commercial Resort (CR) to a Commercial Planned Development (CPD) zoning. The zoning will permit the Resort to be reconstructed after being heavily damaged in Hurricane Ian to include up to 140 hotel rooms, a restaurant and Tiki bar and other amenities on-site to support the Resort Hotel use.

The transportation related impacts of the proposed application will be evaluated based on the estimated build-out year of the project and the impacts the proposed development will have on the surrounding roadway infrastructure. Access to the subject site will continue to be provided to Estero Boulevard.



TR TRANSPORTATION CONSULTANTS, INC

NEPTUNE RESORT
SITE LOCATION

Fig. 1

II. EXISTING CONDITIONS

The Neptune Resort is located on the Gulf side of Estero Boulevard. Prior to Hurricane Ian, the Resort contained a total of 71 rooms and was originally developed in the 1960's. The site is bordered by Del Mar Avenue on the west, Estero Boulevard on the north, residential uses to the east and the Gulf of Mexico to the south.

Estero Boulevard is a two-lane undivided Arterial roadway that borders the subject site. Estero Boulevard has a posted speed limit of 25 mph and is under the jurisdiction of the Lee County Department of Transportation. Estero Boulevard from Center Street to Big Carlos Pass has been designated as a "Constrained Roadway" by the Lee County Board of County Commissioners by Lee Plan Objective 37.2 and Policy 37.2.1, which indicates that due to scenic, historic, environmental, aesthetic, and right-of-way characteristics and considerations, a reduced peak hour Level of Service will be accepted on these roadways. A copy of Table 2(a) from the Lee Plan highlighting Estero Boulevard as well as the San Carlos Boulevard Bridge over Matanzas Pass as "Constrained Facilities" is included in the Appendix of this report for reference.

III. PROPOSED ZONING

The proposed request would amend the zoning from Commercial Resort (CR) to a Commercial Planned Development (CPD) on the 2.3 acre site to permit the site to be redeveloped with a Resort Hotel with a restaurant and associated amenities. Access to the site will continue to be provided to Estero Boulevard. **Table 1** summarizes the land uses that could be considered in the zoning application being requested to generate external vehicle trips.

Table 1
Neptune Resort Zoning Amendment
Land Uses

Use	Proposed
Resort Hotel	140 Rooms
Restaurants/Bar	6,000 Sq. Ft.

The floor area of the restaurant includes outdoor seating area

IV. TRIP GENERATION

The trip generation for the proposed uses within the development were determined by referencing the Institute of Transportation Engineer's (ITE) report, titled ***Trip Generation***, 11th Edition. Land Use Code 330 (Resort Hotel) was utilized for the trip generation purposes of the hotel rooms. Land Use Code 932 (High Turn-Over Sit-Down Restaurant) was utilized for trip generation of the restaurant use on-site. Trips were generated for the restaurant use since it will be open to the Public. It is anticipated that a certain number of restaurant guests will be the guests of the Resort, thus reducing the overall external trip generation of the restaurant use. However, for this analysis, it was assumed that there were no reductions due to this interaction to ensure a "worst case" analysis of the transportation related impacts. There will certainly be an interaction that will cause a reduction in the overall parking demand for these uses, which will be discussed under separate cover as part of this application. The trip generation equations for these land uses are included in the Appendix of this report for reference. **Table 2** outlines the anticipated weekday AM and PM peak hour trip generation based on these land use categories.

Table 2
Neptune Resort Zoning Amendment
Trip Generation

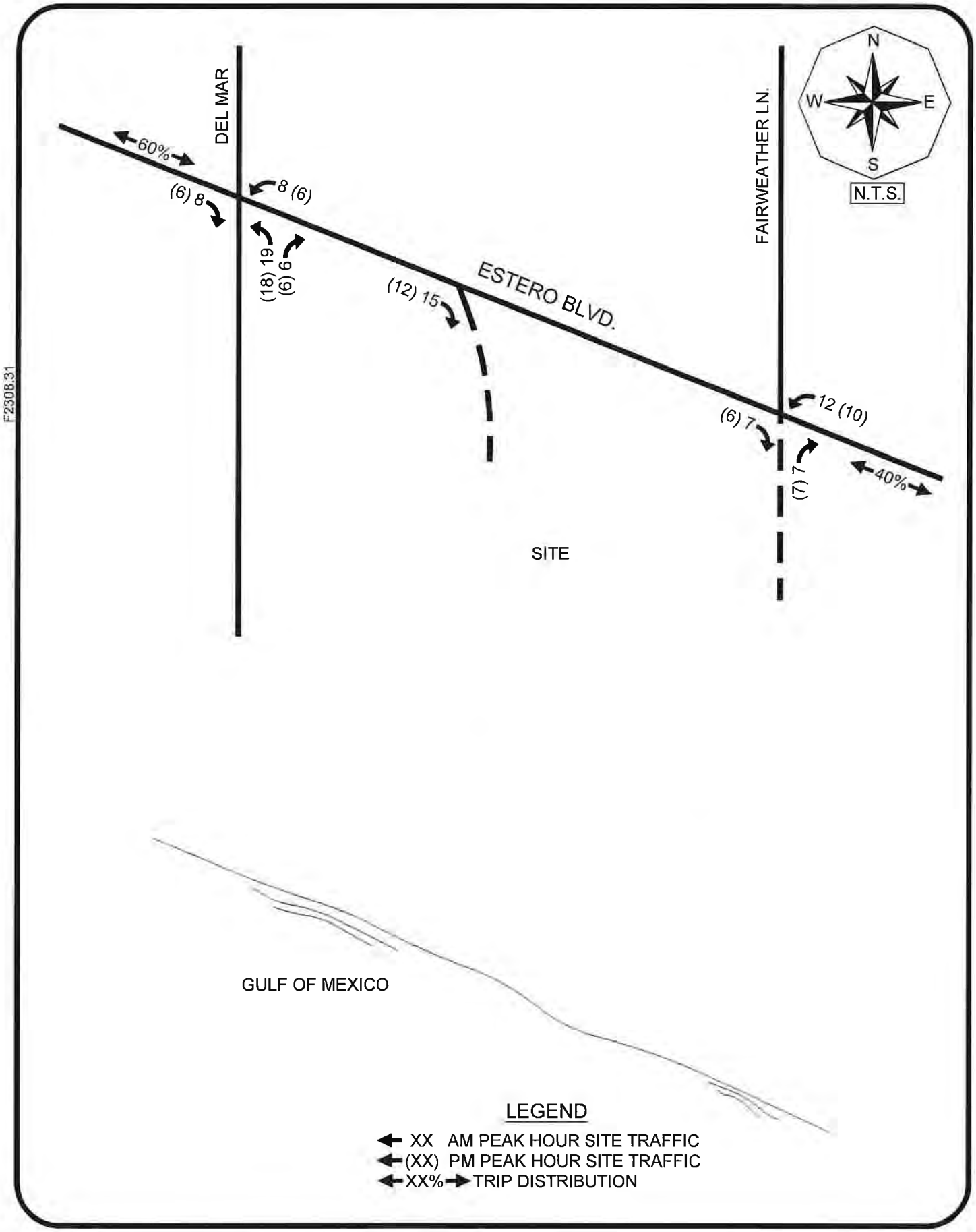
Land Use	Weekday AM Peak Hour			Weekday PM Peak Hour			Daily (2-way)
	In	Out	Total	In	Out	Total	
Resort Hotel (140 Rooms)	18	7	25	7	10	17	n/a
Restaurant (6,000 Sq. Ft.)	32	25	57	33	21	54	643
Total Trips	50	32	82	40	31	71	643

V. TRIP DISTRIBTION

The trips the proposed development is anticipated to generate, as shown in Table 2, were assigned to the surrounding roadway network. The trips were assigned based upon the routes drivers are anticipated to utilize to approach the subject site. **Figure 2** illustrates the anticipated trip distribution. Also shown in Figure 2, is the site traffic assignment of the proposed development.

In order to determine which roadway segments surrounding the site will be significantly impacted, **Table 1A**, contained in the Appendix, was created. This table indicates which roadway links will experience a significant impact as a result of the added development traffic. Significant impact is defined as any roadway projected to experience greater than 10% of the Peak Hour – Peak Direction Level of Service "C" volumes.

The Level of Service Threshold volumes for each roadway link were taken from the Lee County Generalized Peak Hour Directional Service Volume table. This table is included in the Appendix of this report for reference. Based on the information contained within Table 1A, no roadway segment is shown to experience a significant impact due to the addition of the project traffic.



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TRANSPORTATION CONSULTANTS, INC

TRIP DISTRIBUTION & SITE TRAFFIC ASSIGNMENT NEPTUNE RESORT

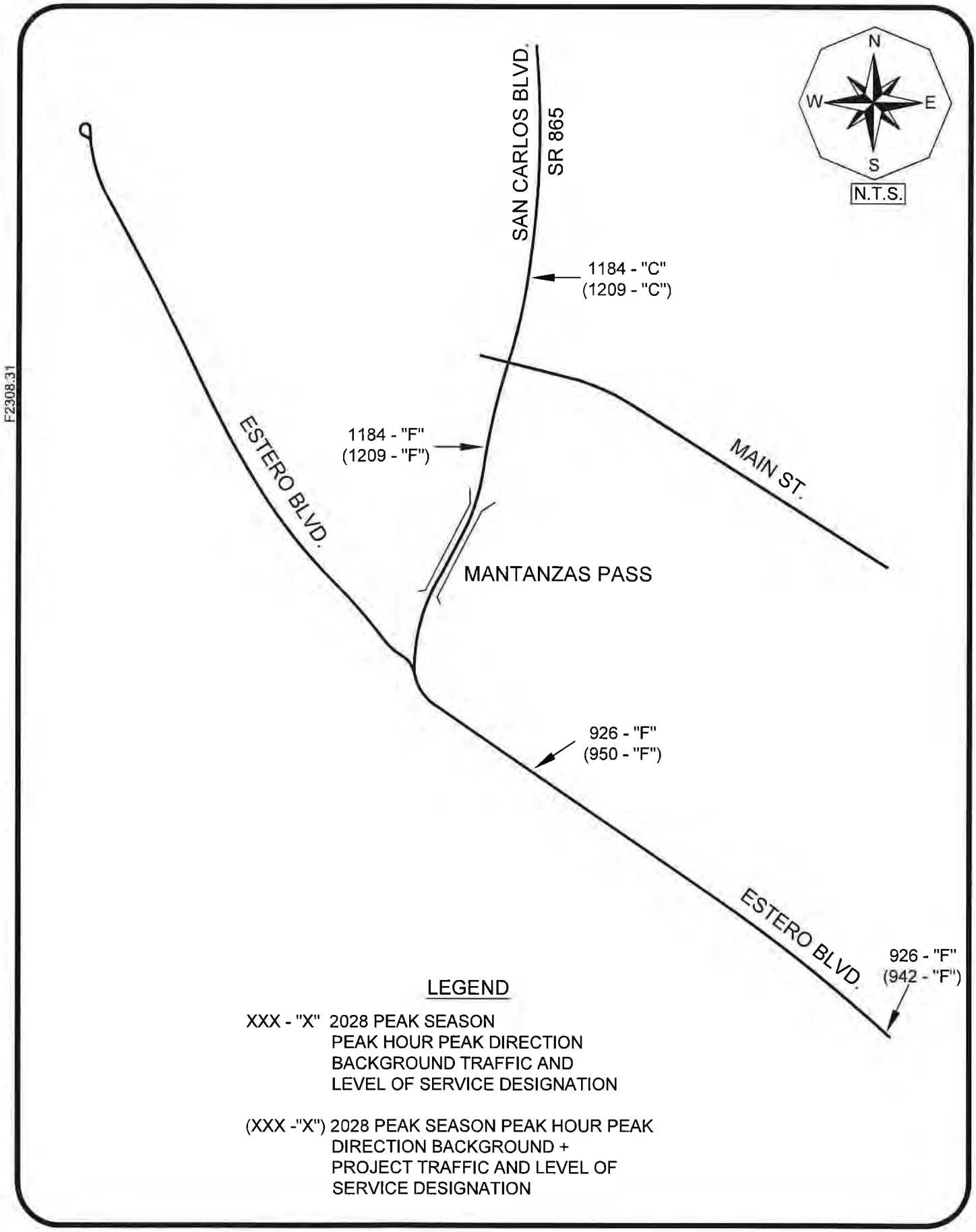
Fig. 2

VI. LEVEL OF SERVICE ANALYSIS

The future Level of Service analysis was based on the development build-out horizon, which was selected as the year 2028. Based on this horizon year analysis, the surrounding roadway network was analyzed under 2028 traffic conditions. Even though historical growth patterns have illustrated that there has been very little traffic increase on Estero Boulevard in the past eight (8) years, a growth rate of 2% per year, compounded annually, was applied to the existing traffic conditions for the traffic volume reported by Lee County for Estero Boulevard. The existing traffic data for Estero Boulevard was obtained from the Lee County 2022 ***Lee County Public Facilities Level of Service and Concurrency Report***. This data was collected pre-Hurricane Ian.

Table 2A in the Appendix of the report indicates the methodology utilized to obtain the year 2028 build-out traffic volumes as well as the growth rate utilized for each roadway segment analyzed. The data obtained from the 2022 Lee County resource is attached to the Appendix of this report for reference.

Figure 3 indicates the year 2028 peak hour – peak direction traffic volumes and Level of Service for the various roadway links within the study area. Noted on Figure 3 is the peak hour – peak direction volume and Level of Service of each link should no development occur on the subject site and the peak hour – peak direction volume and Level of Service for the weekday A.M and P.M. peak hours with the development traffic added to the roadways. Figure 3 is derived from Table 2A contained in the Appendix.



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2028 LEVEL OF SERVICE ANALYSIS
NEPTUNE RESORT

Fig. 3

It should be noted that Estero Boulevard west of San Carlos Boulevard as well as the Matanzas Bridge has been designated as a "Constrained Roadway" by the Lee County Board of County Commissioners pursuant to Lee Plan Policy 37.2.2 and Table 2(a). As expected, during peak season, Estero Boulevard adjacent to the site and San Carlos Boulevard over the Matanzas Pass Bridge are shown to operate at LOS "F" prior to any project trips being added to these segments.

The Lee County Department of Transportation has recently completed pedestrian and transit stop improvements to Estero Boulevard along the segment of Estero Boulevard adjacent to the site and FDOT has recently released the construction project to begin improvements to San Carlos Boulevard from Buttonwood Drive to Estero Boulevard that will create two travel lanes over Matanzas Bridge and redesign the intersection of San Carlos Boulevard and Estero Boulevard, signalizing the intersection and better accommodating pedestrian movements through this intersection. This project is scheduled to begin construction in the Spring of 2024.

Although not reflected in the trip generation calculation is the desire of the Resort as well to encourage guests to arrive by Shuttle and car service from the local airports. The hotel will encourage airport shuttle service and participate in any ferry service that may become available on the island. The location of the site is also within walking distance of Times Square, which will encourage guests to visit these areas on foot and not travel by vehicle. The site will also be designed with on-site bicycle parking as well as golf cart parking spaces to encourage other modes of transportation, which is consistent with the Town of Fort Myers Beach Comprehensive Plan.

VII. CONCLUSION

The proposed zoning amendment of the Neptune Resort to permit the development of up to 140 Resort Hotel rooms along with a restaurant ancillary uses that will be open to the public will not place an undue burden on the adjacent roadway network. The Level of Service information for Estero Boulevard shows that this roadway is already over capacity during season based on data collected prior to Hurricane Ian. It will take some time for the Beach to rebuild and re-establish the population and traffic levels that existed in the peak season prior to Hurricane Ian.

The Resort hotel is requesting to increase the number of rooms from the previously existing 71 rooms prior to Hurricane Ian to 140 rooms and allow for the additional amenities such as the restaurant and Tiki Bar to enhance the property and meet today's consumers expectations that will provide multiple benefits to the Town and its residents. On-site bicycle spaces and golf cart parking spaces will encourage guests to use alternative modes of transportation once on-site. Airport shuttle service will also be encouraged by the Management of the Resort, thus reducing the overall transportation related impacts of the use on the island roads.

APPENDIX

TABLES 1A & 2A

TABLE 1A
PEAK DIRECTION PROJECT TRAFFIC VS. 10% LOS C LINK VOLUMES
NEPTUNE RESORT REZONING

TOTAL AM PEAK HOUR PROJECT TRAFFIC =	82 VPH	IN=	50	OUT=	32
TOTAL PM PEAK HOUR PROJECT TRAFFIC =	71 VPH	IN=	40	OUT=	31

ROADWAY	SEGMENT	ROADWAY CLASS	LOS A VOLUME	LOS B VOLUME	LOS C VOLUME	LOS D VOLUME	LOS E VOLUME	PERCENT PROJECT TRAFFIC	PROJECT TRAFFIC	PROJ/ LOS C
Estero Blvd.	W. of Site	2LN	0	0	330	710	780	60%	30	9.1%
	E. of Site	2LN	0	0	330	710	780	40%	20	6.1%
Matanzas Pass Bridge	N. of Estero Blvd.	2LU	0	0	330	710	780	50%	25	7.6%
San Carlos Blvd.	N. of Main St.	4LN	0	250	1,840	1,960	1,960	50%	25	1.4%

* Level of Service thresholds were obtained from Lee County Generalized Peak Hour Directional Service Volume Table (April 2016)

TABLE 2A
LEE COUNTY TRAFFIC COUNTS AND CALCULATIONS
NEPTUNE RESORT REZONING

							Site #	K-Factor	D-Factor	T-Factor
TOTAL PROJECT TRAFFIC AM =	82	VPH	IN =	50	OUT=	32	126008	0.090	0.537	0.083
TOTAL PROJECT TRAFFIC PM =	71	VPH	IN=	40	OUT=	31	126044	0.090	0.539	0.083

ROADWAY	SEGMENT	FDOT SITE #	BASE YR ADT	2016 ADT	YRS OF GROWTH	ANNUAL RATE [1]	2022 PK HR PK SEASON PEAK DIR.[2] VOLUME	2028 PK HR PK SEASON PEAK DIRECTION VOLUME	LOS	PERCENT PROJECT TRAFFIC	AM PROJ TRAFFIC	PM PROJ TRAFFIC	2028 BCKGRND + AM PROJ VOLUME	LOS	2028 BCKGRND + PM PROJ VOLUME	LOS
Estero Blvd.	W. of Site	126044	13,753	12,500	11	2.00%	716	926	F	60%	30	24	956	F	950	F
	E. of Site	126044	13,753	12,500	11	2.00%	716	926	F	40%	20	16	946	F	942	F
Matanzas Pass Bridge	N. of Estero Blvd.	126008	22,541	22,000	11	2.00%	1,051	1,184	F	50%	25	20	1,209	F	1,204	F
San Carlos Blvd.	N. of Main St.	126008	22,541	22,000	11	2.00%	1,051	1,184	C	50%	25	20	1,209	C	1,204	C

1 Annual Growth Rate was calculating utilizing AADT data from FDOT Florida Traffic Online resource.

2 Current peak hour peak season peak direction traffic volumes for Estero Blvd. & San Carlos Blvd. taken from Lee County Public Facilities Level of Service Report and Concurrency Report (2022) Traffic Data is Pre-Hurricane Ian Data

LEE COUNTY PUBLIC FACILITIES
LEVEL OF SERVICE AND
CONCURRENCY REPORT

Table 21 b): Link-Level Service Volumes and LOS Table

Table 21 b) 2 of 7

LEE COUNTY ROAD LINK VOLUMES (County- and State-Maintained Roadways)

Link No.	NAME	ROADWAY LINK FROM	ROADWAY LINK TO	F. Class	ROAD TYPE	PERFORMANCE STANDARD LOS	PERFORMANCE STANDARD DIRECTIONAL CAPACITY	2021 100TH HIGHEST HOUR LOS	2021 100TH HIGHEST HOUR VOL	2021 100TH HIGHEST HOUR V/C	FUTURE FORECAST (2026) LOS	FUTURE FORECAST (2026) VOL	FUTURE FORECAST (2026) V/C	Notes
04800	CEMETERY RD	BUCKINGHAM RD	HIGGINS AVE	Maj. Col	2LN	E	860	C	308	0.36	C	323	0.38	
04900	CHAMBERLIN PKWY	AIRPORT ENT	DANIELS PKWY	Maj. Col	4LN	E	1,790	C	105	0.06	C	150	0.08	Port Authority maintained
05000	COCONUT RD	WEST END	VIA VENETTO BLVD	Maj. Col	2LN	E	860	C	268	0.31	C	420	0.49	Estero maintains to east
05100	COLLEGE PKWY	McGREGOR BLVD	WINKLER RD	P. Art	6LD	E	2,980	D	2,292	0.77	D	2,409	0.81	*
05200	COLLEGE PKWY	WINKLER RD	WHISKEY CREEK DR	P. Art	6LD	E	2,980	D	2,059	0.69	D	2,164	0.73	
05300	COLLEGE PKWY	WHISKEY CREEK DR	SUMMERLIN RD	P. Art	6LD	E	2,980	D	2,059	0.69	D	2,164	0.73	
05400	COLLEGE PKWY	SUMMERLIN RD	US 41	P. Art	6LD	E	2,980	D	1,898	0.64	D	1,995	0.67	
05500	COLONIAL BLVD	McGREGOR BLVD	SUMMERLIN RD	P. Art	6LD	E	2,840	F	3,049	1.07	F	3,204	1.13	*
05600	COLONIAL BLVD	SUMMERLIN RD	US 41	P. Art	6LD	E	2,840	D	2,650	0.93	D	2,785	0.98	
06200	COLONIAL BLVD	DYNASTY DR	SR 82	P. Art	6LD	D	3,040	B	2,070	0.68	C	2,175	0.72	*
06300	COLUMBUS BLVD	SR 82	MILWAUKEE BLVD	Maj. Col	2LN	E	860	C	100	0.12	C	105	0.12	old count
06400	CONSTITUTION BLVD	US 41	CONSTITUTION CIR	Maj. Col	2LN	E	860	C	217	0.25	C	245	0.28	old count projection(2010)
06500	CORBETT RD	SR 78 (PINE ISLAND RD)	LITTLETON RD	Maj. Col	2LN	E	860	C	22	0.03	C	226	0.26	old count, added VA clinic(2009)
06600	CORKSCREW RD	US 41	THREE OAKS PKWY	P. Art	4LD	E	1,900	C	1,047	0.55	C	1,312	0.69	Galleria at Corkscrew
06700	CORKSCREW RD	THREE OAKS PKWY	W OF I-75	P. Art	4LD	E	1,900	F	2,129	1.12	F	2,368	1.25	Estero Crossing
06800	CORKSCREW RD	E OF I-75	BEN HILL GRIFFIN BLVD	P. Art	4LD	E	1,900	C	1,069	0.56	C	1,281	0.67	
06900	CORKSCREW RD	BEN HILL GRIFFIN BLVD	ALICO RD	P. Art	4LD	E	1,960	C	1,186	0.61	C	1,398	0.71	
07000	CORKSCREW RD	ALICO RD	COUNTY LINE	P. Art	2LN	E	1,140	C	464	0.41	F	1,244	1.09	EEPCO Study, The Place
07100	COUNTRY LAKES BLVD	LUCKETT RD	TICE ST	Maj. Col	2LN	E	860	C	143	0.17	C	293	0.34	old count projection(2010)
07200	CRYSTAL DR	US 41	METRO PKWY	Maj. Col	2LN	E	860	C	360	0.42	C	379	0.44	
07300	CRYSTAL DR	METRO PKWY	PLANTATION RD	Maj. Col	2LN	E	860	C	242	0.28	C	254	0.30	
07400	CYPRESS LAKE DR	McGREGOR BLVD	SOUTH POINT BLVD	P. Art	4LD	E	1,940	D	1,129	0.58	D	1,186	0.61	
07500	CYPRESS LAKE DR	SOUTH POINT BLVD	WINKLER RD	P. Art	4LD	E	1,940	D	1,419	0.73	D	1,491	0.77	
07600	CYPRESS LAKE DR	WINKLER RD	SUMMERLIN RD	P. Art	4LD	E	1,940	D	1,419	0.73	D	1,491	0.77	
07700	CYPRESS LAKE DR	SUMMERLIN RD	US 41	P. Art	6LD	E	2,940	D	2,085	0.71	D	2,191	0.75	
07800	DANIELS PKWY	US 41	METRO PKWY	Controlled xs	6LD	E	2,680	D	2,288	0.85	D	2,405	0.90	
07900	DANIELS PKWY	METRO PKWY	SIX MILE PKWY	Controlled xs	6LD	E	2,680	D	2,109	0.79	E	2,520	0.94	Constrained
08000	DANIELS PKWY	SIX MILE PKWY	PALOMINO LN	Controlled xs	6LD	E	3,040	E	2,985	0.98	F	3,256	1.07	Constrained
08100	DANIELS PKWY	PALOMINO LN	I-75	Controlled xs	6LD	E	3,040	E	2,985	0.98	F	3,137	1.03	Constrained
08200	DANIELS PKWY	I-75	TREELINE AVE	Controlled xs	6LD	E	3,260	B	2,996	0.92	B	3,149	0.97	
08300	DANIELS PKWY	TREELINE AVE	CHAMBERLIN PKWY	Controlled xs	6LD	E	3,260	B	2,996	0.92	B	3,149	0.97	
08400	DANIELS PKWY	CHAMBERLIN PKWY	GATEWAY BLVD	Controlled xs	6LD	E	3,260	B	2,765	0.85	B	2,906	0.89	
08500	DANIELS PKWY	GATEWAY BLVD	SR 82	Controlled xs	4LD	E	2,160	F	2,163	1.00	F	2,307	1.07	SKY Walk *
08600	DANLEY DR	US 41	METRO PKWY	Maj. Col	2LN	E	860	C	255	0.30	C	286	0.33	
08700	DAVIS RD	McGREGOR BLVD	IONA RD	Maj. Col	2LN	E	860	C	15	0.02	C	29	0.03	old count projection(2010)
08800	DEL PRADO BLVD	CAPE CORAL PKWY	SE 46TH ST	P. Art	6LD	E	2,660	C	1,404	0.53	C	1,586	0.60	old count projection(2009)
08900	DEL PRADO BLVD	SE 46TH ST	CORONADO PKWY	P. Art	6LD	E	2,660	C	1,404	0.53	C	1,586	0.60	old count projection(2009)
09000	DEL PRADO BLVD	CORONADO PKWY	CORNWALLIS PKWY	P. Art	6LD	E	2,660	D	1,869	0.70	D	1,964	0.74	
09100	DEL PRADO BLVD	CORNWALLIS PKWY	CORAL POINT DR	P. Art	6LD	E	2,660	D	2,565	0.96	F	2,696	1.01	
09200	DEL PRADO BLVD	CORAL POINT DR	HANCOCK B. PKWY	P. Art	6LD	E	2,800	D	1,997	0.71	D	2,098	0.75	
09300	DEL PRADO BLVD	HANCOCK B. PKWY	SR 78	P. Art	6LD	E	2,800	C	1,642	0.59	C	1,725	0.62	*
09400	DEL PRADO BLVD	US 41	SLATER RD	M. Art	2LN	E	860	C	489	0.57	D	742	0.86	Crane Landing
09700	EAST 21ST ST	JOEL BLVD	GRANT AVE	Min. Col	2LN	E	860	C	31	0.04	C	33	0.04	*
09800	ESTERO BLVD	BIG CARLOS PASS BRIDGE	PESCADORA AVE	M. Art	2LN	E	726	A	356	0.49	A	374	0.52	Constrained*
09900	ESTERO BLVD	PESCADORA AVE	VOORHIS ST	M. Art	2LN	E	726	B	602	0.83	C	633	0.87	Constrained*
10000	ESTERO BLVD	VOORHIS ST	TROPICAL SHORES WAY	M. Art	2LN	E	726	B	602	0.83	C	633	0.87	Constrained*
10100	ESTERO BLVD	TROPICAL SHORES WAY	CENTER ST	M. Art	2LN	E	671	F	716	1.07	F	779	1.16	Constrained, old count(2010)
00007	ESTERO PKWY	US 41	THREE OAKS PKWY	P. Art	4LD	E	2,000	B	861	0.43	B	1,154	0.58	Not County Mntnd

County-Maintained Collector Roadway - Unincorporated Lee County

State-Maintained Arterial Roadway - Unincorporated Lee County

County-Maintained Collector Roadway - Incorporated Lee County

County Maintained Controlled Access Aterial Facility

County-Maintained Arterial Roadway - Unincorporated Lee County

County Maintained Expressway

County-Maintained Arterial Roadway - Incorporated Lee County

Table 21 b): Link-Level Service Volumes and LOS Table

Table 21 b) 5 of 7

LEE COUNTY ROAD LINK VOLUMES (County- and State-Maintained Roadways)

Link No.	NAME	ROADWAY LINK FROM	ROADWAY LINK TO	F. Class	ROAD TYPE	PERFORMANCE STANDARD LOS	PERFORMANCE STANDARD DIRECTIONAL CAPACITY	2021 100TH HIGHEST HOUR LOS	2021 100TH HIGHEST HOUR VOL	2021 100TH HIGHEST HOUR V/C	FUTURE FORECAST (2026) LOS	FUTURE FORECAST (2026) VOL	FUTURE FORECAST (2026) V/C	Notes
19400	ORANGE RIVER BLVD	STALEY RD	BUCKINGHAM RD	Maj. Col	2LN	E	1,000	D	477	0.48	D	511	0.51	
19500	ORIOLE RD	SAN CARLOS BLVD	ALICO RD	Maj. Col	2LN	E	860	C	129	0.15	C	136	0.16	
19600	ORTIZ AVE	COLONIAL BLVD	SR 82	Controlled xs	2LN	E	900	B	716	0.80	B	753	0.84	
19700	ORTIZ AVE	SR 82	LUCKETT RD	P. Art	2LN	E	900	B	745	0.83	B	784	0.87	4 Ln design & ROW
19800	ORTIZ AVE	LUCKETT RD	SR 80	P. Art	2LN	E	900	B	309	0.34	B	325	0.36	4 Ln design & ROW
19900	PALM BEACH BLVD (SR 8	PROSPECT AVE	ORTIZ AVE	State	4LD	D	2,100	C	1,089	0.52	C	1,240	0.59	
20000	PALM BEACH BLVD (SR 8	ORTIZ AVE	I-75	State	6LD	D	3,171	C	1,242	0.39	C	1,391	0.44	
20100	PALM BEACH BLVD (SR 8	I-75	SR 31	State	6LD	D	3,171	C	1,616	0.51	C	2,001	0.63	
20200	PALM BEACH BLVD (SR 8	SR 31	BUCKINGHAM RD	State	4LD	D	2,100	D	2,043	0.97	F	2,495	1.19	
20300	PALM BEACH BLVD (SR 8	BUCKINGHAM RD	WERNER DR	State	4LD	D	3,280	B	1,426	0.43	C	1,802	0.55	
20330	PALM BEACH BLVD (SR 8	WERNER DR	JOEL BLVD	State	4LD	C	2,210	B	1,179	0.53	C	1,531	0.69	
20400	PALM BEACH BLVD (SR 8	JOEL BLVD	HENDRY CO. LINE	State	4LD	C	2,210	B	1,053	0.48	B	1,343	0.61	
20500	PALOMINO LN	DANIELS PKWY	PENZANCE BLVD	Min. Col	2LN	E	860	C	380	0.44	C	403	0.47	
20600	PARK MEADOWS DR	SUMMERLIN RD	US 41	Maj. Col	2LN	E	860	C	205	0.24	C	216	0.25	
20800	PENZANCE BLVD	RANCHETTE RD	SIX MILE PKWY	Maj. Col	2LN	E	860	C	148	0.17	C	160	0.19	
20900	PINE ISLAND RD	STRINGFELLOW RD	BURNT STORE RD	P. Art	2LN	E	950	E	594	0.63	E	644	0.68	Constrained
21400	PINE ISLAND RD (SR 78)	CITY LIMITS E OF BARRETT RD	US 41	State	4LD	D	2,100	C	1,821	0.87	F	2,171	1.03	
21500	PINE ISLAND RD (SR 78)	US 41	BUS 41	State	4LD	D	2,100	C	1,590	0.76	C	1,754	0.84	
21600	PINE RIDGE RD	SAN CARLOS BLVD	SUMMERLIN RD	Maj. Col	2LN	E	860	C	515	0.60	D	587	0.68	*
21700	PINE RIDGE RD	SUMMERLIN RD	GLADIOLUS DR	Maj. Col	2LN	E	860	C	245	0.28	C	405	0.47	Heritage Isle*
21800	PINE RIDGE RD	GLADIOLUS DR	McGREGOR BLVD	Maj. Col	2LN	E	860	C	245	0.28	C	257	0.30	
21900	PLANTATION RD	SIX MILE PKWY	DANIELS PKWY	M. Art	2LN	E	860	C	267	0.31	C	369	0.43	Intermed Park
22000	PLANTATION RD	DANIELS PKWY	IDLEWILD ST	M. Art	2LN	E	860	D	692	0.80	D	728	0.85	FDOT Metro Pkwy 6-laning
22050	PLANTATION RD	IDLEWILD ST	COLONIAL BLVD	M. Art	4LN	E	1,790	C	687	0.38	C	722	0.40	
22100	PONDELLA RD	SR 78	ORANGE GROVE BLVD	P. Art	4LD	E	1,890	B	1,012	0.54	B	1,063	0.56	*
22200	PONDELLA RD	ORANGE GROVE BLVD	US 41	P. Art	4LD	E	1,890	B	1,405	0.74	B	1,480	0.78	
22300	PONDELLA RD	US 41	BUS 41	P. Art	4LD	E	1,890	B	1,052	0.56	B	1,105	0.58	
22400	PRITCHETT PKWY	SR 78	RICH RD	Maj. Col	2LN	E	860	C	73	0.08	C	541	0.63	old count, Stoneybrook North(2009)
22500	RANCHETTE RD	PENZANCE BLVD	IDLEWILD ST	Maj. Col	2LN	E	860	C	93	0.11	C	98	0.11	
22600	RICH RD	SLATER RD	PRITCHETT PKWY	Maj. Col	2LN	E	860	C	55	0.06	C	62	0.07	old count projection(2009)
22700	RICHMOND AVE	LEELAND HEIGHTS	E 12TH ST	Maj. Col	2LN	E	860	C	82	0.10	C	94	0.11	
22800	RICHMOND AVE	E 12TH ST	GREENBRIAR BLVD	Maj. Col	2LN	E	860	C	82	0.10	C	86	0.10	
23230	SAN CARLOS BLVD	US 41	THREE OAKS PKWY	Maj. Col	2LN	E	860	C	401	0.47	C	422	0.49	*
23000	SAN CARLOS BLVD (SR 8	MANTANZAS PASS BL	MAIN ST	State	2LD	D	970	F	1,051	1.08	F	1,176	1.21	Constrained
23100	SAN CARLOS BLVD (SR 8	MAIN ST	SUMMERLIN RD	State	4LD	D	2,100	C	1,051	0.50	C	1,176	0.56	PD&E Study
23180	SAN CARLOS BLVD (SR 8	SUMMERLIN RD	KELLY RD	State	2LD	D	970	C	772	0.80	C	795	0.82	
23200	SAN CARLOS BLVD (SR 8	KELLY RD	GLADIOLUS DR	State	4LD	D	2,100	C	772	0.37	C	795	0.38	
23260	SANIBEL BLVD	US 41	LEE RD	Maj. Col	2LN	E	860	C	489	0.57	C	514	0.60	
23300	SANIBEL CAUSEWAY	SANIBEL SHORELINE	TOLL PLAZA	P. Art	2LN	E	1,140	E	987	0.87	E	1,037	0.91	
23400	SHELL POINT BLVD	McGREGOR BLVD	PALM ACRES	Maj. Col	2LN	E	860	C	231	0.27	C	243	0.28	*
23600	SIX MILE CYPRESS	METRO PKWY	DANIELS PKWY	Controlled xs	4LD	E	2,000	B	1,371	0.69	B	1,441	0.72	Unincorporated LC
23700	SIX MILE CYPRESS	DANIELS PKWY	WINKLER EXT.	Controlled xs	4LD	E	1,900	B	951	0.50	B	1,154	0.61	Unincorporated LC
23800	SIX MILE CYPRESS	WINKLER EXT.	CHALLENGER BLVD	Controlled xs	4LD	E	1,900	B	1,061	0.56	B	1,115	0.59	Incorporated LC
23900	SIX MILE CYPRESS	CHALLENGER BLVD	COLONIAL BLVD	Controlled xs	6LD	E	2,860	A	1,061	0.37	A	1,115	0.39	Incorporated LC
23500	SIX MILE PKWY (SR 739)	US 41	METRO PKWY	State	4LD	D	2,100	C	1,941	0.92	F	2,243	1.07	
24000	SLATER RD	SR 78	NALLE GRADE RD	M. Art	2LN	E	1,010	C	376	0.37	C	395	0.39	*
24100	SOUTH POINTE BLVD	CYPRESS LAKE DR	COLLEGE PKWY	Maj. Col	2LD	E	910	D	602	0.66	D	633	0.70	*
24200	SR 31 (ARCADIA RD)	SR 80	SR 78	State	2LN	D	970	C	763	0.79	F	989	1.02	PD&E/SEIR Study

County-Maintained Collector Roadway - Unincorporated Lee County

State-Maintained Arterial Roadway - Unincorporated Lee County

County-Maintained Collector Roadway - Incorporated Lee County

County Maintained Controlled Access Aterial Facility

County-Maintained Arterial Roadway - Unincorporated Lee County

County Maintained Expressway

County-Maintained Arterial Roadway - Incorporated Lee County

LEE COUNTY GENERALIZED PEAK HOUR DIRECTIONAL SERVICE VOLUMES

Lee County
Generalized Peak Hour Directional Service Volumes
Urbanized Areas

April 2016 c:\input5

Uninterrupted Flow Highway

Level of Service

Lane	Divided	A	B	C	D	E
1	Undivided	130	420	850	1,210	1,640
2	Divided	1,060	1,810	2,560	3,240	3,590
3	Divided	1,600	2,720	3,840	4,860	5,380

Arterials

Class I (40 mph or higher posted speed limit)

Level of Service

Lane	Divided	A	B	C	D	E
1	Undivided	*	140	800	860	860
2	Divided	*	250	1,840	1,960	1,960
3	Divided	*	400	2,840	2,940	2,940
4	Divided	*	540	3,830	3,940	3,940

Class II (35 mph or slower posted speed limit)

Level of Service

Lane	Divided	A	B	C	D	E
1	Undivided	*	*	330	710	780
2	Divided	*	*	710	1,590	1,660
3	Divided	*	*	1,150	2,450	2,500
4	Divided	*	*	1,580	3,310	3,340

Controlled Access Facilities

Level of Service

Lane	Divided	A	B	C	D	E
1	Undivided	*	160	880	940	940
2	Divided	*	270	1,970	2,100	2,100
3	Divided	*	430	3,050	3,180	3,180

Collectors

Level of Service

Lane	Divided	A	B	C	D	E
1	Undivided	*	*	310	660	740
1	Divided	*	*	330	700	780
2	Undivided	*	*	730	1,440	1,520
2	Divided	*	*	770	1,510	1,600

Note: the service volumes for I-75 (freeway), bicycle mode, pedestrian mode, and bus mode should be from FDOT's most current version of LOS Handbook.

TRAFFIC DATA

FDOT FLORIDA TRAFFIC ONLINE

FLORIDA DEPARTMENT OF TRANSPORTATION
TRANSPORTATION STATISTICS OFFICE
2022 HISTORICAL AADT REPORT

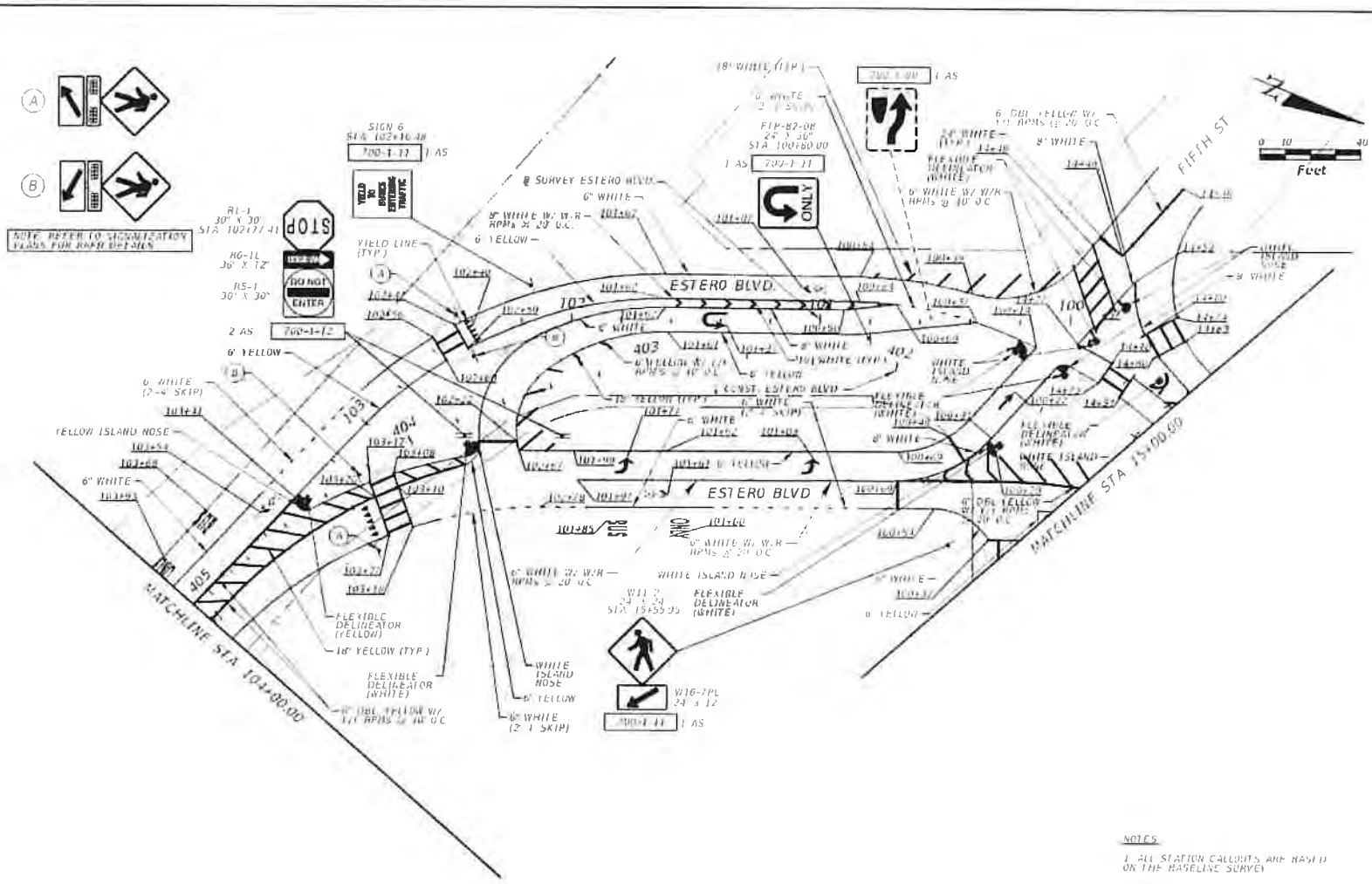
COUNTY: 13 - MANATEE

SITE: 5061 - SR789/LONGBOAT KEY, SW OF BINNACLE POINT DR

YEAR	AADT	DIRECTION 1	DIRECTION 2	*K FACTOR	D FACTOR	T FACTOR
2022	9900 C	N 4900	S 5000	9.00	57.20	5.00
2021	10600 C	N 5300	S 5300	9.00	60.50	3.70
2020	10800 E	N 0	S 0	9.00	59.30	4.00
2019	10500 C	N 0	S 0	9.00	59.60	5.20
2018	10200 C	N 5100	S 5100	9.00	53.20	4.70
2017	9700 C	N 4800	S 4900	9.00	52.70	5.30
2016	8300 F	N 4200	S 4100	9.00	52.90	5.30
2015	8300 C	N 4200	S 4100	9.00	52.90	5.30
2014	7400 C	N 3700	S 3700	9.00	53.30	5.20
2013	8600 F	N 4300	S 4300	9.00	53.50	3.60
2012	8600 C	N 4300	S 4300	9.00	53.90	3.60
2011	7500 F	N 3800	S 3700	9.00	54.50	6.80
2010	7500 C	N 3800	S 3700	10.78	55.28	6.80
2009	9200 C	N 4600	S 4600	11.40	53.60	4.00
2008	8000 C	N 4000	S 4000	12.25	52.91	7.30
2007	8500 C	N 4300	S 4200	12.15	51.63	5.80

AADT FLAGS: C = COMPUTED; E = MANUAL ESTIMATE; F = FIRST YEAR ESTIMATE
S = SECOND YEAR ESTIMATE; T = THIRD YEAR ESTIMATE; R = FOURTH YEAR ESTIMATE
V = FIFTH YEAR ESTIMATE; 6 = SIXTH YEAR ESTIMATE; X = UNKNOWN
*K FACTOR: STARTING WITH YEAR 2011 IS STANDARDK, PRIOR YEARS ARE K30 VALUES

FDOT PLANS FOR
ESTERO BLVD. @ SAN CARLOS BLVD.



NOTES

1. ALL STATION CALLOUTS ARE BASED ON THE BASELINE SURVEY

LEGEND

SHARED LANE MARKING PER INDEX 711-002

REVISIONS			
DATE	DESCRIPTION	DATE	DESCRIPTION

HENRI V. BELLOSE, P.E
P.E LICENSE NUMBER 56761
WGI, INC
800 N MAGNOLIA AVENUE SUITE 1750
ORLANDO, FL 32803

STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION

HIGHWAY NO.	COUNTY	FINANCIAL PROJECT ID
SR 865	LEE	433126-2-52-01

SIGNING AND PAVEMENT MARKING PLAN (12)

SHEET NO: 5-17

THE OFFICIAL RECORD OF THIS SHEET IS THE ELECTRONIC FILE DIGITALLY SIGNED AND SEALED. FILES RIDE KIOSKS 75 904 5 2 C

FDOT WORK PROGRAM

SR 865 – SAN CARLOS BLVD.

Five Year Work Program

Selection Criteria	
District 01 **Lee County** **Item Number:**433726-2	**2024-2029 AD** **Category:**Highways

Transportation System **Description**	**Fiscal Year:**	**District** **2024**	**Length** **2025**	**Type of Work** **2026**	**Item** **2027**	**2028**
INTRASTATE STATE HIGHWAY		District 01 - Lee County	1.149	INTERSECTION IMPROVEMENT	433726-2	
SR 865 (SAN CARLOS) FROM N CRESCENT ST TO N OF HURRICANE PASS BRIDGE						
Highways /Preliminary Engineering ***(On-Going)***		$5,791				
Highways /Construction ***(On-Going)***		$16,469				
Highways /Environmental ***(On-Going)***		$36,842				

This site is maintained by the Office of Work Program and Budget, located at 605 Suwannee Street, MS 21, Tallahassee, Florida 32399.

View Contact Information for Office of Work Program and Budget

Application Home: Work Program
Office Home: Office of Work Program and Budget

LEE COUNTY COMPREHENSIVE PLAN

TABLE 2(a)

TABLE 2(a)

CONSTRAINED STATE AND COUNTY ROADS

ROADWAY	SEGMENT	MAINTENANCE RESPONSIBILITY	CONSTRAINED CONDITIONS
Captiva Road	Blind Pass/ South Seas Plantation	County	ROW, Scenic, Aesthetic, Environmental
Daniels Parkway	Metro Parkway/ I-75	County	ROW
Estero Boulevard	Center Street/ Big Carlos Pass	County	ROW, Scenic, Aesthetic
Hickory Boulevard	Big Carlos Pass/ Bonita Beach Road	County	Scenic, Aesthetic, Environmental
McGregor Boulevard (SR 867)	Colonial Boulevard/ College Parkway	State	ROW, Scenic, Aesthetic, Historic, Environmental
Pine Island Road (Matlacha)	Shoreview Drive/ Little Pine Island	County	ROW, Scenic, Aesthetic, Historic, Environmental
San Carlos Boulevard (SR 865) (Matanzas Bridge)	Center Street/ Main Street	State	ROW, Scenic, Aesthetic, Environmental
US 41	South of Daniels Road/ North Airport Road	State	ROW
Gulf Boulevard	Boca Grande	County	Scenic, Aesthetic, Historic, Environmental
Stringfellow Road	8th Avenue/ Main Street	County	Environmental

TRIP GENERATION EQUATIONS

High-Turnover (Sit-Down) Restaurant
(932)

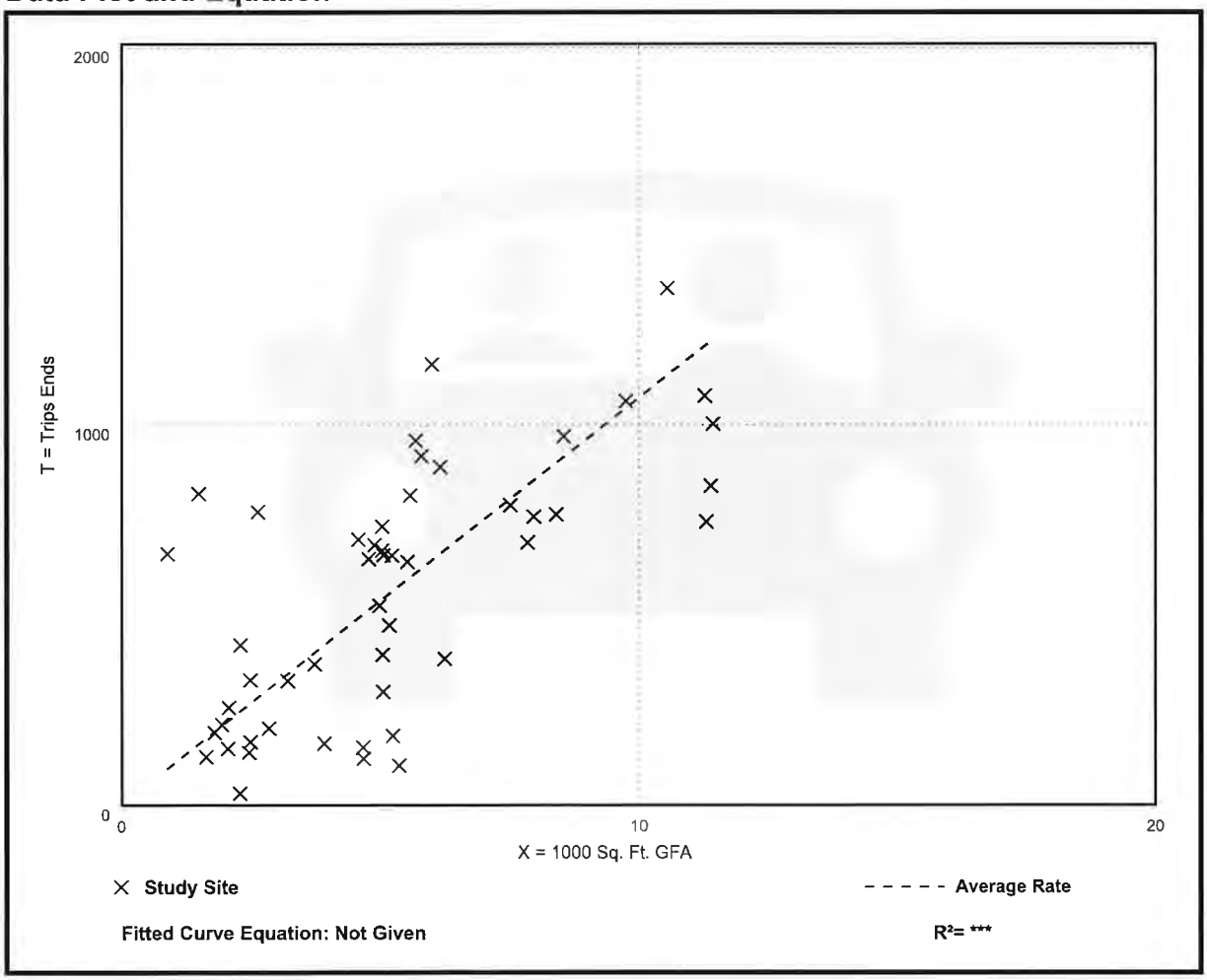
Vehicle Trip Ends vs: 1000 Sq. Ft. GFA
On a: Weekday

Setting/Location: General Urban/Suburban
Number of Studies: 50
Avg. 1000 Sq. Ft. GFA: 5
Directional Distribution: 50% entering, 50% exiting

Vehicle Trip Generation per 1000 Sq. Ft. GFA

Average Rate	Range of Rates	Standard Deviation
107.20	13.04 - 742.41	66.72

Data Plot and Equation



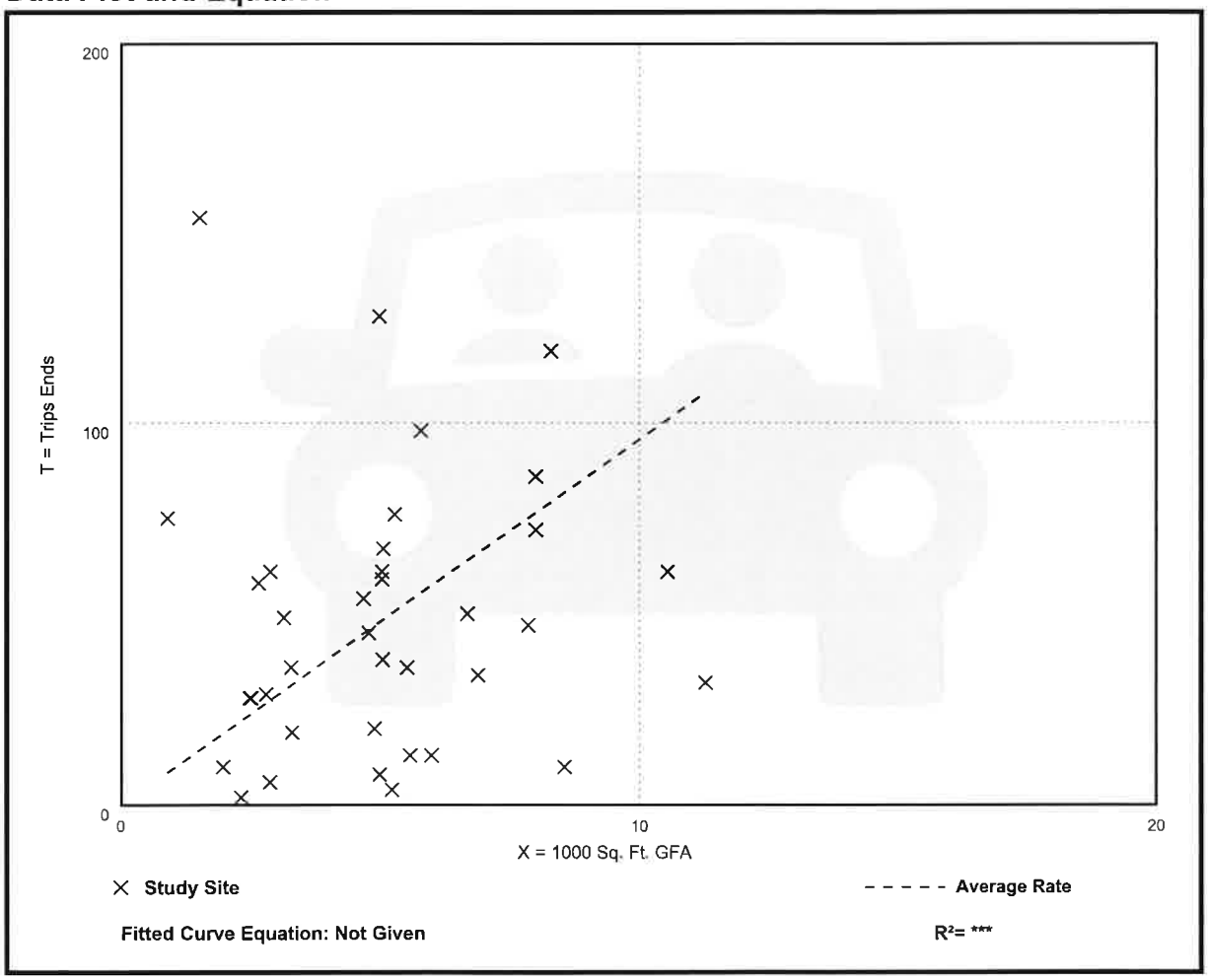
High-Turnover (Sit-Down) Restaurant
(932)

Vehicle Trip Ends vs: 1000 Sq. Ft. GFA
On a: Weekday,
Peak Hour of Adjacent Street Traffic,
One Hour Between 7 and 9 a.m.
Setting/Location: General Urban/Suburban
Number of Studies: 37
Avg. 1000 Sq. Ft. GFA: 5
Directional Distribution: 55% entering, 45% exiting

Vehicle Trip Generation per 1000 Sq. Ft. GFA

Average Rate	Range of Rates	Standard Deviation
9.57	0.76 - 102.39	11.61

Data Plot and Equation



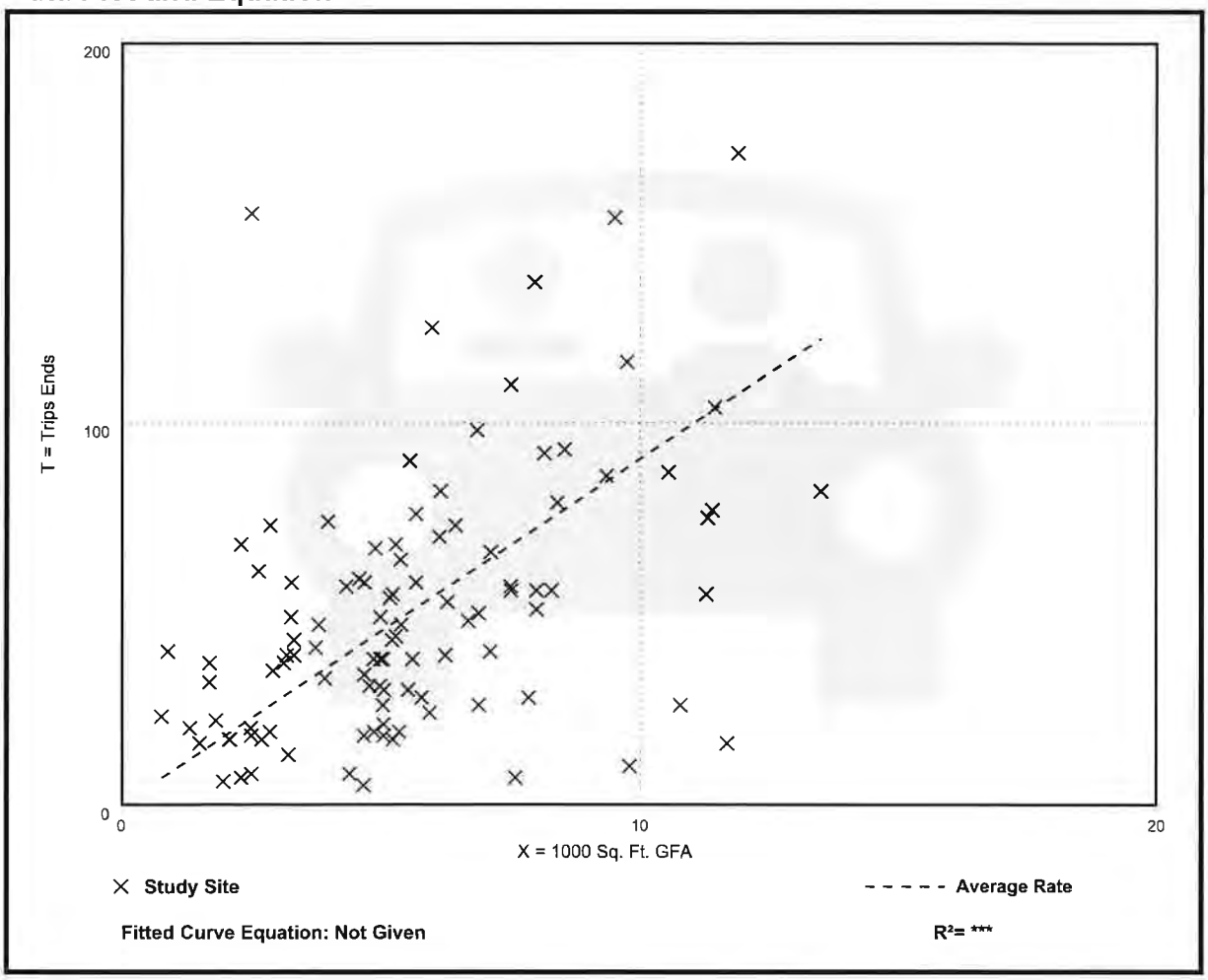
High-Turnover (Sit-Down) Restaurant (932)

Vehicle Trip Ends vs: 1000 Sq. Ft. GFA
On a: Weekday,
Peak Hour of Adjacent Street Traffic,
One Hour Between 4 and 6 p.m.
Setting/Location: General Urban/Suburban
Number of Studies: 104
Avg. 1000 Sq. Ft. GFA: 6
Directional Distribution: 61% entering, 39% exiting

Vehicle Trip Generation per 1000 Sq. Ft. GFA

Average Rate	Range of Rates	Standard Deviation
9.05	0.92 - 62.00	6.18

Data Plot and Equation



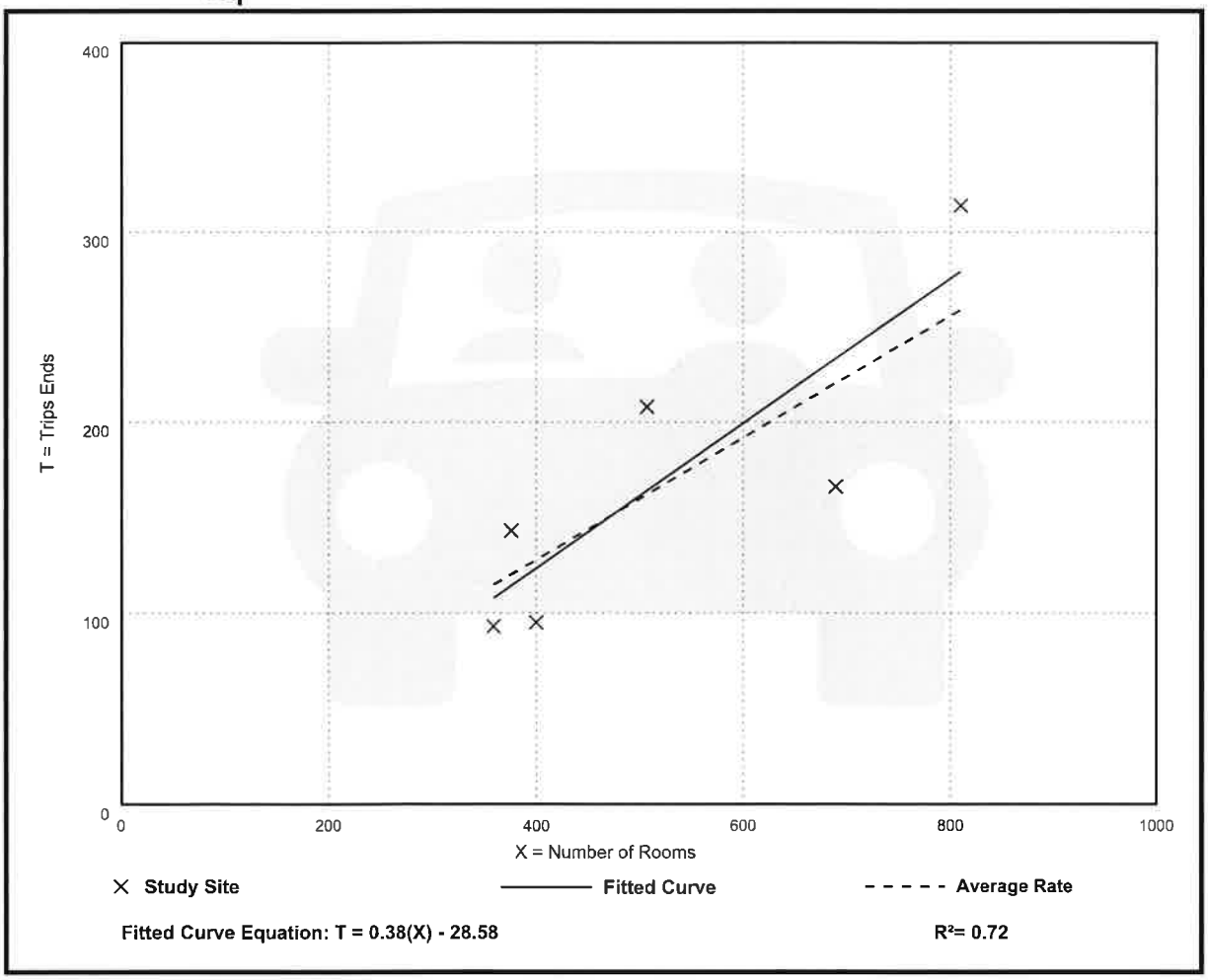
Resort Hotel
(330)

Vehicle Trip Ends vs: Rooms
On a: Weekday,
Peak Hour of Adjacent Street Traffic,
One Hour Between 7 and 9 a.m.
Setting/Location: General Urban/Suburban
Number of Studies: 6
Avg. Num. of Rooms: 524
Directional Distribution: 72% entering, 28% exiting

Vehicle Trip Generation per Room

Average Rate	Range of Rates	Standard Deviation
0.32	0.24 - 0.41	0.08

Data Plot and Equation



Fitted Curve Equation: T = 0.38(X) - 28.58

R^2= 0.72

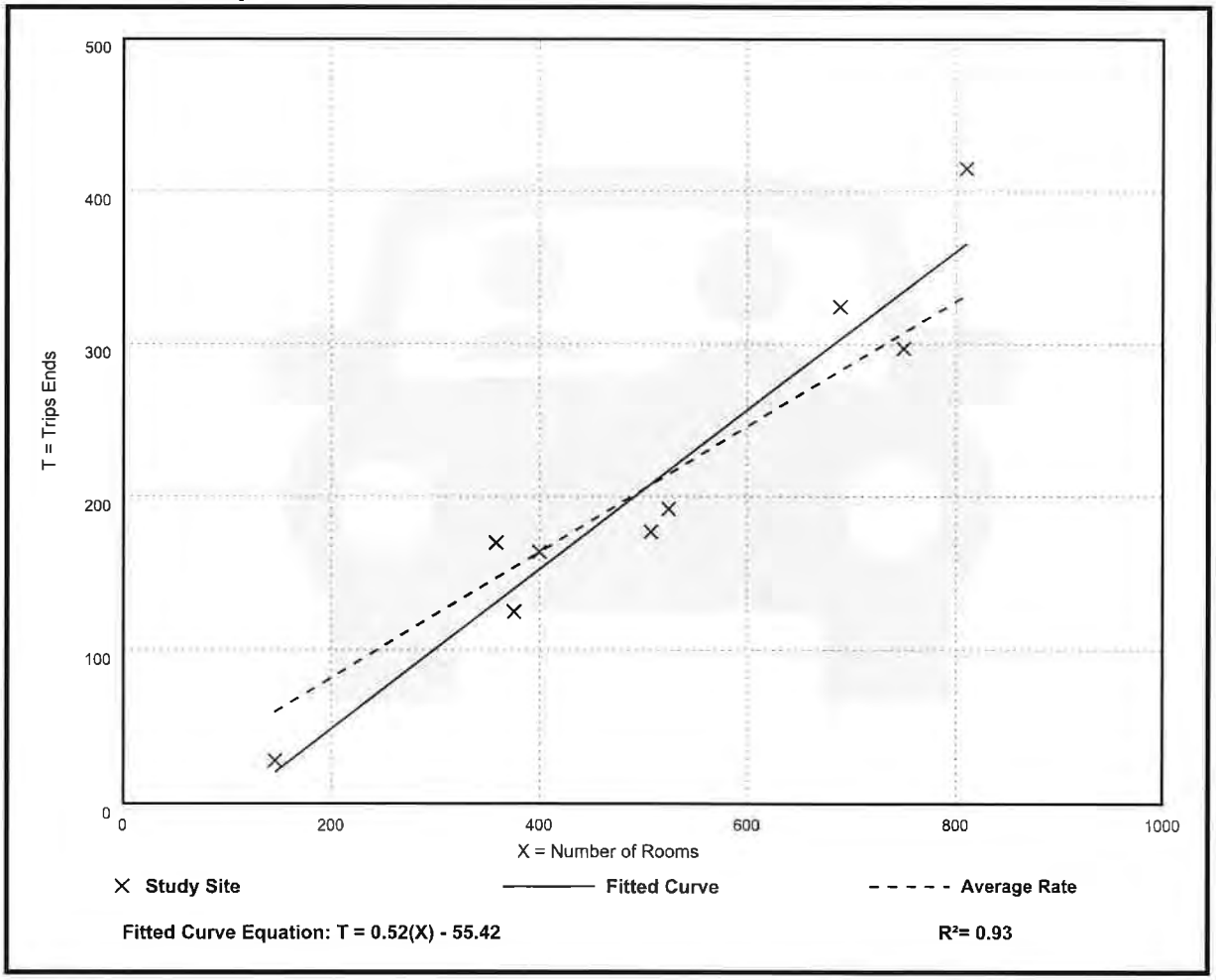
Resort Hotel
(330)

Vehicle Trip Ends vs: Rooms
On a: Weekday,
Peak Hour of Adjacent Street Traffic,
One Hour Between 4 and 6 p.m.
Setting/Location: General Urban/Suburban
Number of Studies: 9
Avg. Num. of Rooms: 507
Directional Distribution: 43% entering, 57% exiting

Vehicle Trip Generation per Room

Average Rate	Range of Rates	Standard Deviation
0.41	0.19 - 0.51	0.08

Data Plot and Equation



Fitted Curve Equation: T = 0.52(X) - 55.42

R^2= 0.93

NEPTUNE BEACH RESORT REDEVELOPMENT

August 8th, 2023
5:00 - 6:30 p.m. at DiamondHead
2000 Estero Blvd, FMB

Join us!

Meet the ownership and redevelopment team.
See & discuss the proposed resort.

MEMO

To: **The Neptune Resort Team**

From: **Laura Tefft**

cc:

Date: **August 9, 2023**

Subject: **Summary of Questions from the Chamber of Commerce/Realtor Meeting**

Please find below a summary of the questions which were posed by audience members during the Fort Myers Beach Chamber of Commerce/Realtor meeting which took place on August 8, 2023. I have provided a few of the replies in *italics*.

1. Do you have the anticipated seating county for the ballroom and restaurant?
2. Where will the public parking be located?
3. Are you willing to participate in a transit system with other local hotels to bring guests to your hotel?
4. Loved the new plan but will you be using the photo of the old Neptune Inn somewhere in the hotel?
5. Will there be rooms to accommodate larger families?
6. Will there be incentives for locals for both hotel and restaurant?
7. Only see steps at the rear of the building. Will there be handicap access at the rear of the building?
8. Does this project as presented today fit into the current LDC?
9. Do we have a list of public benefits that The Neptune Resort is proposing to provide?
10. Will slides of the renderings presented be available on a website?
11. What is the acreage of the site?
12. Workforce questions
    a. How many employees do you anticipate?
    b. What is the parking plan for employees?
13. When is cleanup of the site anticipated?
14. What are the plans for recruiting of workforce?
15. Suggestions presented- Beach School, start and ending times around school schedule.
16. Will there be timeshare units?

5618 Whispering Willow Way, Ft Myers, FL 33908 | 850-803-5621
www.theneighborhood.company

THE NEIGHBORHOOD COMPANY

Sign-In Sheet

Public Information Meeting: The Neptune Resort
August 8, 2023 - 5:00pm

	Name	Street Address	City & Zip Code	Phone #	Email
1	MIKE MILLER	1290 BAHIA VIA	FMB	614-361-1982	MIKE@IDEAL-INVESTMENTS.COM
2	NEIL HOPGOOD	2000 ESTERO BLVD	FMB	239 765 7674	dhrgm@sunstream.com
3	Bill Waichulis	275 Estero Blvd	33931	239-872-5914	Bwaichulis@Bonkin.com
4	BEV & RICHARD LARSON	P.O. BOX 4002 FMB 7	33932	239-281-7290	Bev1314@aol.com
5		one Neptune - 100 San Carlos Blvd #288 Fort Myers, FL 33908	33908		
6	Marie & Dan Hamilton	4332 Harbour Lane	33903	443.255.8475	info@nauticaltiki.com
7	ED RYAN		33913		
8	Danielle Bamber		33913		dramber@johnrwood.com
9	KAREN WOODSON	820 3RD ST	33931	612.802.8349	KWOODSON820@gmail.com
10	Tom & Karen Swambeck	4753 Estero Blvd #1103	33931	239-292-6285	karen@teamswambeck.com
11	Annie Meehan	4745 Estero Blvd	33931	952-994-8356	Annie @ AnnieMeehan.com
12	JACKI LISZAK	FMB chamber		9544152233	Jacki@FMBChamber.com
13	ERIKA ZSAK	FMB Chamber	33931	239 454 7500	ERIKA@FMBChamber.com
14	KAT KLAL	FMB REALTY	33931	561-346-6616	Kklar43@gmail.com
15	JOHN Richard	FMB		239-565-9554	JWR2370@Gmail.com
16	Megan Allers	5465 Avenida Rescadore	33931	770.329.5435	zelevak@hotmail.com
17	David Cesaro	1170 Estero Blvd.	33931		David.Cesaro@TPG Hospitality.com
18	Jane Plummer	340 Fairweather	33931	239-851-9568	jbpreator@aol.com
19	Dawn Miller	290 Bahia Via	33931	16145782588	hmmbailey@gmail.com
20	JAKE SHAFFER	17811 SAN CARLOS BLVD	33931	239-410-7819	office@luxedaspa.com
21					
22					
23					
24					
25					

THE NEPTUNE RESORT REDEVELOPMENT PLAN

PRESENTED TO:

THE FORT MYERS BEACH CHAMBER OF COMMERCE & ROYAL PALM COAST REALTOR ASSOCIATION

THE NEPTUNE RESORT

INTRODUCTIONS

Continental Hospitality Group

- Columbus, OH / hotel developer and owner of 15 high-quality lodging properties

Springboard Hospitality

- Los Angeles, CA operator of 43 desirable, eclectic, mostly independently-owned and non-branded hotels and resorts in the lower 48 states and Hawaii

Meyers & Associates

- Columbus, OH / architecture and interior design with specializations in a wide variety of hospitality projects, golf clubs, and high-end residential

The Neighborhood Company

- Fort Myers, FL / land planning and design

ABOUT THE NEPTUNE RESORT

- Built in the 1960s as a motor inn
- Large guestrooms encouraged families and weeklong stays
- Spacious outdoor amenity core with two pools, grills, and social gathering and activity zones
- Beloved for decades by significant repeat clientele looking for a relaxing, intimate, and quiet place to enjoy Fort Myers Beach, an unrivaled sunset, and the many dining and entertainment options on the island
- Common guest feedback:
  - ***Positive***: the location, beautiful sunsets, multiple swimming pools, spacious amenity area, large guestrooms with kitchenettes, and family-friendly vibe
  - ***Negative***: the rooms were quite dull in design; very outdated functionally with low ceilings, guestrooms didn't maximize views, not many balconies, and no elevators; and, no food and beverage on site.

OUR PROPERTY HISTORY & RECOVERY EFFORT

Our Property History

- Purchased in September 2021
- We purchased the property given our regard for the island, strong guest loyalty and consistent property performance
- Our intent was long-term ownership of the property and to maintain it well, not redevelop or expand the hotel
- The Hurricane has forced us to redevelop

Post-Storm Recovery Effort

- We are in front of you today after what has been a long journey in the aftermath of Hurricane Ian – to appropriately address many key factors in our redevelopment plan: associates, insurance, financial stakeholders, FEMA and other site requirements, community benefits, and local and macro market conditions
- The reality is that the Neptune can't be repaired or rebuilt as it was and it can't be in this situation again
- The Property will need to be built to FEMA and local codes and address project economic feasibility concerns to enable a financeable and insurable property that is successful for the community and property stakeholders for many decades to come

THE NEPTUNE RESORT FEASIBILITY

- We have spent much of the last 8 months trying to generate a plan to reconstruct the Neptune of 60 years to be a better version of itself: a very high-quality, approachable, and welcoming resort with a neighborhood feel and public amenities – that Fort Myers Beach residents and visitors alike will enjoy for the **next 60 years**
- However, the storm created a feasibility problem
- The redevelopment plan attempts to address feasibility with focus on the following critical ideas:

1. The needs and wants of our previously loyal guests as well as prospective customers
2. Provide community benefits such as more expansive view corridors, a neighborhood restaurant and bar, a new pedestrian beach access point, improved parking and traffic mitigation, and higher tax revenues
3. Lasting quality and architecture to contribute to the uniqueness of Fort Myers Beach
4. Adequate revenue sources necessary to attract capital to invest in the redevelopment. This revenue is a function of the number of guestrooms, amenity spaces, and F&B outlets programmed into the project

- **We hope you like the plan and thank you for your support**

The Neptune Resort

Fort Myers Beach, Florida

Community Presentation

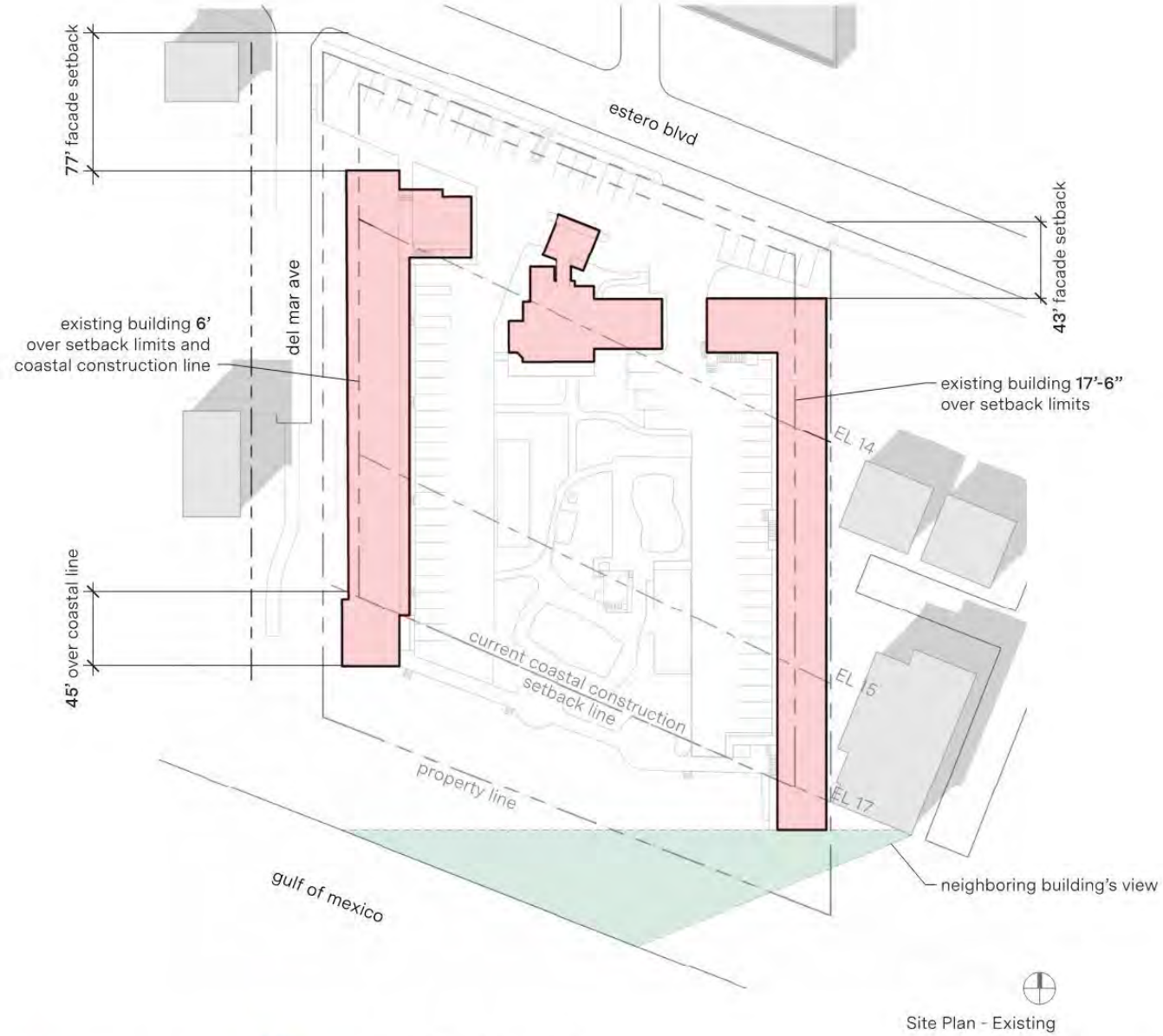
August 8, 2023

continental hospitality group

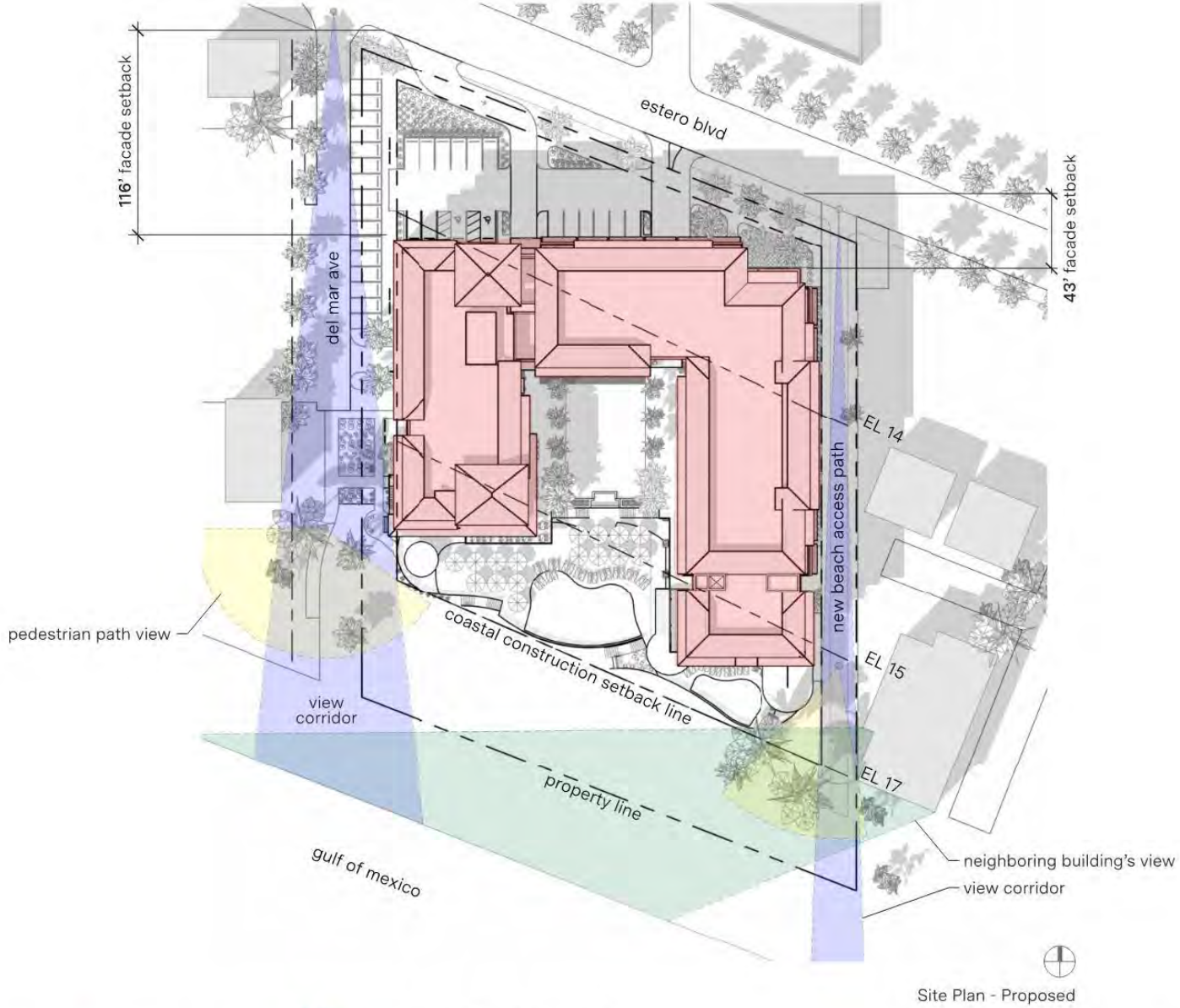
meyers associates
ARCHITECTURE · INTERIOR DESIGN

Springboard. HOSPITALITY

THE NEIGHBORHOOD COMPANY



Site Plan - Existing



Site Plan - Proposed

Site & Context

Site Influences:

- Adjacent structures and preservation of views
- View corridor at Del Mar Ave.
- Flood zone elevations
- Setbacks & coastal construction line

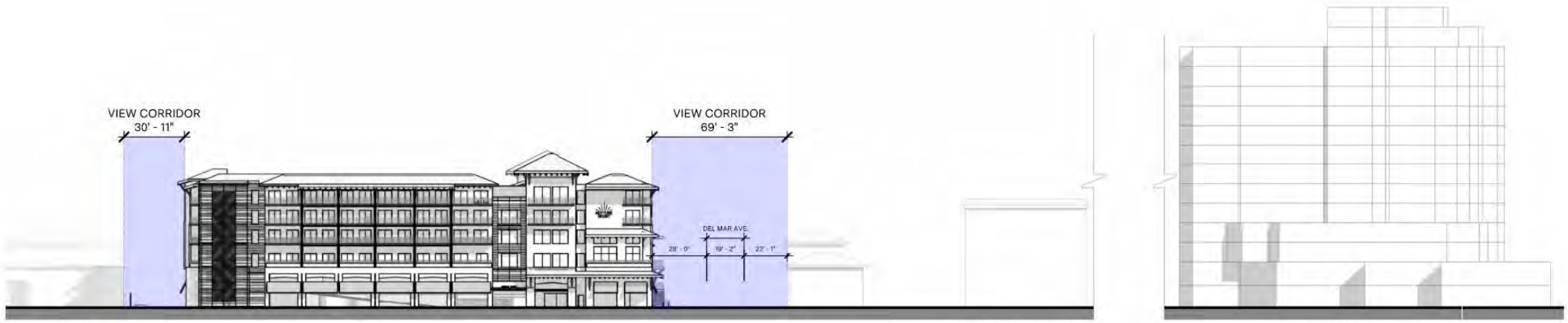
west context buildings

east context building

1/64" = 1'-0"

THE NEPTUNE RESORT | Site Plan

continental hospitality group
meyers+associates
THE NEIGHBORHOOD COMPANY
Springboard. HOSPITALITY



Estero Blvd Site Elevation

4
Stories
(Over 2 parking levels)

±57'-6"
Main Roof Height
(Above BFE + 3' Freeboard)

1.48
F.A.R. Value
(Excludes parking areas)

164
Onsite Parking Spaces

16
Public Parking Spaces
(on Del Mar Ave)

140
Guestrooms

continental hospitality group | meyers+associates | THE NEIGHBORHOOD COMPANY | Springboard. HOSPITALITY

1/32" = 1'-0"

THE NEPTUNE RESORT | Level P1 Floorplan

1/32" = 1'-0"

THE NEPTUNE RESORT | Level P2 Floorplan

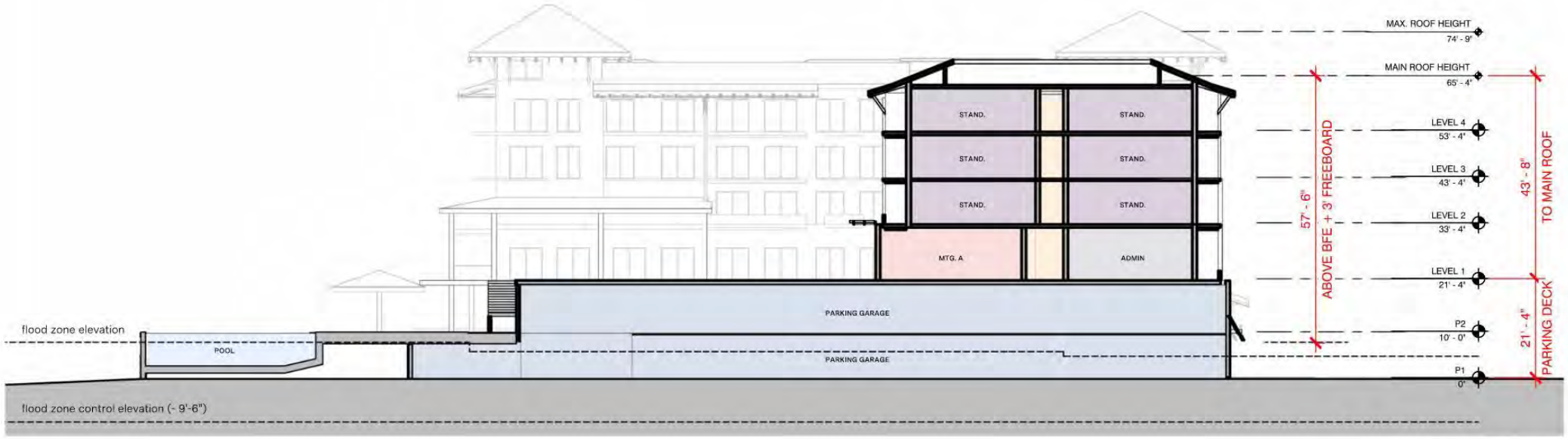
1/32" = 1'-0"

THE NEPTUNE RESORT | Level 1 Floorplan

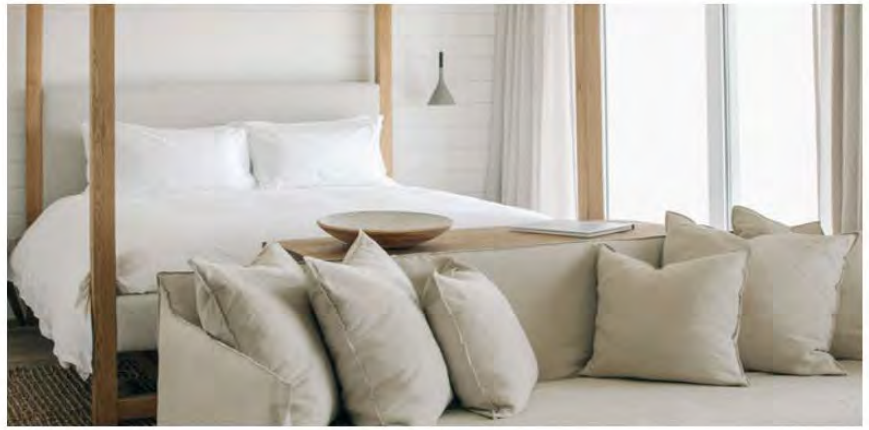
1/32" = 1'-0"

continental hospitality group | meyers+associates | THE NEIGHBORHOOD COMPANY | Springboard. HOSPITALITY

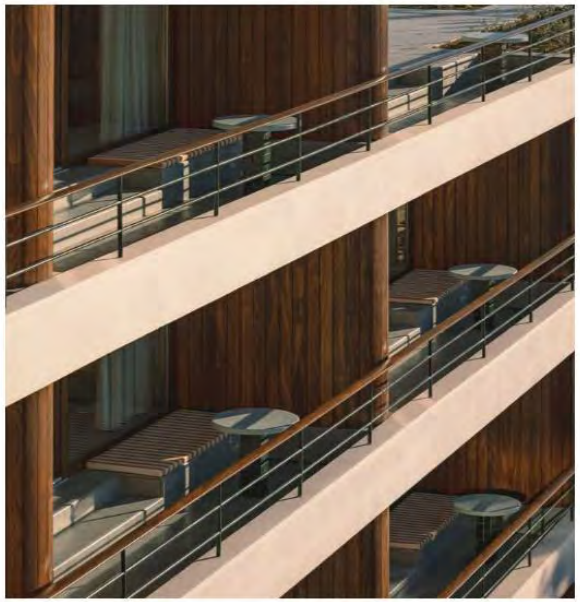
THE NEPTUNE RESORT | Typical Guest Level Floorplan

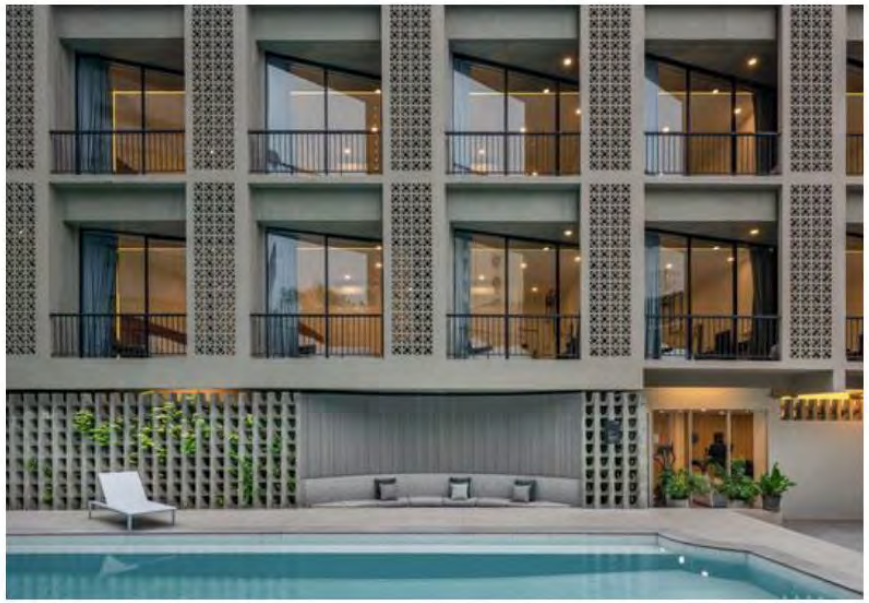


North-South Building Section



A GOOD TIME





continental hospitality group CHG meyers+associates THE NEIGHBORHOOD COMPANY Springboard. HOSPITALITY

THE NEPTUNE RESORT | Aerial View in Context

continental hospitality group | meyers+associates | THE NEIGHBORHOOD COMPANY | Springboard. HOSPITALITY

THE NEPTUNE RESORT | View from northwest

continental hospitality group CHG

meyers+associates

THE NEIGHBORHOOD COMPANY

Springboard. HOSPITALITY

THE NEPTUNE RESORT | View from northwest corner

continental hospitality group CHG

meyers+associates

THE NEIGHBORHOOD COMPANY

Springboard. HOSPITALITY

THE NEPTUNE RESORT | View from northwest

NEPTUNE
RESORT

continental hospitality group CHG | meyers+associates | THE NEIGHBORHOOD COMPANY | Springboard. HOSPITALITY

THE NEPTUNE RESORT | Restaurant Stair

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THE NEPTUNE RESORT | View from balcony

continental hospitality group CHG

meyers+associates

THE NEIGHBORHOOD COMPANY

Springboard. HOSPITALITY

THE NEPTUNE RESORT | View from south

continental hospitality group CHG

meyers+associates

THE NEIGHBORHOOD COMPANY

Springboard. HOSPITALITY

THE NEPTUNE RESORT | View from southwest

Return original or certificated
document to: Town of Fort Myers
Beach
Department of Community
Services 2525 Estero Blvd
Fort Myers Beach, FL 33931

(above area for recording information)

TEMPORARY BEACH ACCESS, RESTORATION AND MANAGEMENT EASEMENT

THIS TEMPORARY BEACH ACCESS, RESTORATION AND MANAGEMENT EASEMENT (the "Easement") is given this 31st day of July, 20, by CHG Neptune Acquisitions, LLC, an Ohio limited liability company ("Grantor"), whose mailing address is 150 East Broad Street, Suite 800, Columbus, Ohio 43215, to the Town of Fort Myers Beach ("Grantee"). As used herein, the term "Grantor" shall include all heirs, successors, and assigns of the Grantor, and all subsequent owners of the "Property" (as hereinafter defined) and the term "Grantee" shall include any successor or assignee of Grantee.

W I T N E S S E T H

WHEREAS, Grantor is the owner of certain lands situated in Lee County, Florida, and more specifically described in Exhibit "A" attached hereto and incorporated herein (the "Property"); and

WHEREAS, Grantor has agreed to grant and convey to Grantee, a non-exclusive temporary access easement over, upon, and across a portion of the Property for the specific and limited purposes set forth herein more specifically described in Exhibit "B" attached hereto and incorporated herein (the "Easement Land").

NOW, THEREFORE, in consideration of the sum of one dollar ($1.00) provided to Grantor and the mutual covenants, promises, terms and conditions set forth herein, the adequacy and receipt of which are hereby acknowledged, Grantor hereby voluntarily grants, creates, conveys, and establishes an Easement for and in favor of Grantee for the limited purposes set forth herein, which shall run with the land and be binding upon the Grantor. The scope, nature, and character of this Easement shall be as follows:

1. Recitals. The recitals herein are true and correct and incorporated into and made a part of this Easement.

2. Purpose. It is the purpose of this Easement to grant a non-exclusive temporary easement over, on, upon, and across the Easement Land for the limited purposes of:

a. Vehicular and pedestrian ingress and egress to and from certain real property and related appurtenances in the vicinity of the Property that is related to constructing, preserving, patrolling, operating, maintaining, repairing, rehabilitating, and replacing the beach and dune system and other erosion control and storm damage reduction measures.

b. Depositing sand, accomplishing any alterations of contours on said land, constructing berms and dunes, planting and maintaining dune vegetation, nourishing and renourishing periodically, for moving, temporarily storing and removing equipment and supplies, erecting temporary structures (as used herein, "temporary structures" does not include buildings of any kind), and performing any work necessary and incident to the construction, periodic renourishment, maintenance, and implementation of the Grantee's beach renourishment plan or hurricane recovery project.

c. Facilitating preservation of dunes and vegetation.

d. Removing debris and obstructions within the limits of the easement.

e. Further reserving to the Grantor, its successors and assigns all such rights and privileges as may be used and enjoyed without interfering or abridging the rights and easements hereby acquired; subject however to existing easements for public utilities and pipelines.

Such sand, dune, and berm work specified in this Section 2 to be completed by Grantee within the Easement Land and Additional Land shall collectively be referred to as "Grantee's Sand Work" and shall be constructed in conformance with the plans and specifications set forth on Exhibit D attached hereto and incorporated herein.

If the property in Exhibit "C" attached hereto and incorporated herein is not owned by Grantor, this Easement shall be interpreted to mean that the Grantor grants a temporary easement applicable to whatever interest the Grantor may possess in such property.

Access by Grantee to the Easement Land and the Additional Land shall be through the public street adjacent to the Property known as Delmar Avenue.

3. Limitations. None of the Easement rights granted hereunder are intended to be a dedication or gift to or for the public, nor give the Grantee the right to prohibit or restrict the Grantor and its successors and assigns from using and enjoying the portion of the land described in Exhibit "A" for recreational purposes in compliance with applicable federal, state, county and Town laws, ordinances, rules, and regulations.

4. Grantee's Liability. Grantee's liability is limited as provided in § 704.06(10), Fla. Stat. and § 768.28, Fla. Stat. Nothing herein shall constitute a waiver by Grantee of its sovereign immunity or the provisions of § 768.28, Fla. Stat. Additionally, Grantee shall not be responsible for any costs or liabilities related to the operation, upkeep, or maintenance of

this Easement.

5. Duration. This Easement shall be for a fixed period and shall automatically terminate June 1, 2038, without the necessity of any further instrument of record.

6. Modification. This Easement may be amended, altered, released, or revoked only by written agreement between the parties hereto or their heirs, assigns or successors-in-interest, which shall be filed in the public records in Lee County, Florida.

7. Title Warranties. Grantor warrants that Grantor has good and indefeasible fee simple title to and possession of the Easement Land and that it has good and lawful right to grant this Easement. Grantor represents that execution and delivery of this Easement and performance of its obligations pursuant to this Easement will not violate any agreement, instrument, order, judgment, decree, permit, approval, license, law, regulation, or ordinance to which Grantor is a party or by which Grantor or Grantor's assets or the Property is bound, or which otherwise affects the Property. Grantor shall indemnify, defend, and hold Grantee and its successors and assigns harmless from and against all claims, damages, liabilities, losses, costs, and expenses, including, without limitation, reasonable attorneys' fees arising from a breach of the representations, warranties, guarantees or covenants of Grantor contained in this Easement.

8. Authority. The undersigned person executing this Easement on behalf of Grantor represents and certifies that he or she is authorized to execute and deliver this Easement; that Grantor has full capacity to convey the Easement and other rights herein; and that all necessary action for the making of such conveyance has occurred. The undersigned person executing this Agreement on behalf of Grantee represents and certifies that he or she is authorized to execute and deliver this Easement; and that all necessary action for the execution of this Easement has occurred.

9. Notices. All notices, demands and requests required or permitted to be given under this Easement must be in writing and addressed to the appropriate Party at the appropriate address as set forth below and shall be deemed given and received (i) when hand delivered to the intended recipient, by any means; (ii) three (3) business days after the same is deposited in the United States mails, with adequate postage prepaid, and sent by registered or certified mail, with return receipt requested; (iii) one (1) business day after the same is deposited with an overnight courier service of national or international reputation having a delivery area encompassing the address of the intended recipient, with the delivery charges prepaid; or (iv) when received via electronic mail at the intended recipient's email address set forth below (provided such email delivery and receipt is confirmed via return receipt of the noticing Party). The initial addresses of the Parties shall be:

If to Grantor:

CHG Neptune Acquisitions, LLC
150 East Broad Street, Suite 800
Columbus, Ohio 43215
Attn: Adam D. Valente

Email: avalente@continental-realestate.com

With a copy to:

CHG Neptune Acquisitions, LLC
150 East Broad Street, Suite 800
Columbus, Ohio 43215
Attn: Mark A. Damante
Email: mdamante@continental-realestate.com

If to Grantee:

Town of Fort Myers
Beach 2525 Estero
Blvd.
Fort Myers Beach, FL
33931 Attn: Town
Manager
Email: townmanager@fmbgov.com

A Party may change its address, intended recipient party or email address by notice given in accordance with this Section.

10. Amendment and Termination. This Easement may only be amended or terminated by a written agreement signed by the Parties.

11. Counterparts. This Easement may be executed in counterparts, each of which when executed shall be deemed an original, and all of which together shall constitute one instrument.

12. Enforcement; Attorneys' Fees. If any Party is required to commence any action or proceeding against the other to enforce or interpret the provisions hereof, the prevailing Party in such action shall be awarded, in addition to any amounts or relief otherwise awarded, all reasonable costs incurred in connection therewith, including reasonable attorneys' fees.

13. Severability. If any provision in this Agreement is held invalid, illegal, or unenforceable in any jurisdiction, the validity, legality, and enforceability of the remaining provisions of this Agreement shall not be impaired thereby.

14. Governing Law and Recordation. This Agreement shall be governed by the laws of the State of Florida.

15. Interpretation. Nothing contained herein is to be construed as creating a joint venture or partnership between Grantee and Grantor. Furthermore, it is acknowledged that each party had the opportunity to consult with counsel in the preparation of and contributed equally to the terms and conditions of this Easement and, accordingly, the rule that an

instrument shall be interpreted strictly against the party preparing same shall not apply herein due to the joint contributions of both Parties.

16. Headings. The Section headings are included only for convenience and shall not be construed to modify or affect the covenants, terms, or provisions of any Section.

17. No Third-Party Rights. Nothing contained in this Easement shall create a contractual relationship with or duties, obligations or causes of action in favor of any third party.

18. Remedies Cumulative. The rights and remedies given in this Easement and by law to a non-defaulting party shall be deemed cumulative, and the exercise of one of such remedies shall not operate to bar the exercise of any other rights and remedies reserved to a non-defaulting party under the provisions of this Easement or given to a non-defaulting party by law.

19. No Waiver. One or more waivers of the breach of any provision of this Easement by either Party shall not be construed as a waiver of a subsequent breach of the same or any other provision, nor shall any delay or omission by a non-defaulting party to seek a remedy for any breach of this Easement or to exercise the rights accruing to a non-defaulting party of its remedies and rights with respect to such breach.

20. WAIVER OF JURY TRIAL. EACH PARTY WAIVES ALL RIGHTS TO ANY TRIAL BY JURY IN ALL LITIGATION RELATING TO OR ARISING OUT OF THIS EASEMENT.

21. Miscellaneous.

a. The Parties hereto covenant and agree that they will from time to time, upon the request of another Party, and without further consideration, execute, acknowledge, and deliver in proper form any further instruments, and take such other actions, as such Party may reasonably require to conduct the intent of this Easement.

b. This Easement is the final expression of the complete and exclusive agreement between the Parties with respect to the subject matter hereof.

c. As soon as reasonably practicable after the execution and acknowledgment hereof, the Parties shall cause this Easement to be recorded in the Official Records of Lee County, Florida.

[Remainder of Page Intentionally Left Blank, Signature Page to Follow]

IN WITNESS WHEREOF, this Easement is entered into as of the date first set forth above.

GRANTOR:

CHG NEPTUNE ACQUISITIONS, LLC,
an Ohio limited liability company

By: _____
Name: Mark A Damante
Title: Vice President

WITNESSES:

_____
Name: Matthew Berkhole

_____
Name: Nannette C Buel

STATE OF OHIO)
) ss.
COUNTY OF FRANKLIN)

The foregoing instrument was acknowledged before me this 31st day of July, 2023, by Mark A. Damante, Vice President of CHG Neptune Acquisitions, LLC, who is personally known to me.

NOTARIAL SEAL STATE OF OHIO

NANNETTE C. BUEL
Notary Public, State of Ohio
My Commission Expires 10-07-24

_____
Print or Stamp Name: Nannette C Buel
Notary Public, State of Ohio at Large
Commission No.: _____
My Commission Expires: 10-07-24

GRANTEE:

Town of Fort Myers Beach, a Florida municipal corporation

By:_____
Name:_____
Title:_____

WITNESSES:

_____
Name: _____

_____
Name:_____

STATE OF FLORIDA)
) ss.
COUNTY OF LEE)

The foregoing instrument was acknowledged before me this ___ day of _____ 20___, by_____as _____ of the Town of Fort Myers, Beach, who (check one) [ ] is personally known to me or [ ] produced a valid_____driver's license as identification.

_____
Print or Stamp Name:_____
Notary Public, State of Florida at Large
Commission No.:_____
My Commission Expires:_____

EXHIBIT A

PROPERTY

Block "A" and "B", in that certain Subdivision known as BEACH ESTATES, according to the map or plat thereof on file and recorded in the Public Records of Lee County, Florida, in Plat Book 6, Page 68 together with that portion of the street or alley lying between said blocks vacated by order of the Board of County Commissioners of Lee County, Florida, together with all of Block "A", together with the vacated alley that formerly separated Lots 1 and 2 from Lot 3 all being in that certain subdivision known as W.W.WATSON'S SUBDIVISION, according to the map or plat thereof on file and recorded in the office of the Clerk of the Circuit Court of Lee County, Florida, in Plat Book 5 at Page 67.

AND

All Units and Fractional Interests in The Neptune, a Condominium, together with an undivided interest in the common elements, according to the Declaration of Condominium thereof recorded in Clerk's Number 2007000193360, as amended from time to time, of the Public Records of Lee County, Florida.

LESS AND EXCEPT THE FOLLOWING:

Unit 109N, Fractional Interest 9, The Neptune, a Condominium, together with an undivided interest in the common elements, according to the Declaration of Condominium thereof recorded in Instrument Number 2007000193360, as amended from time to time, of the Public Records of Lee County, Florida.

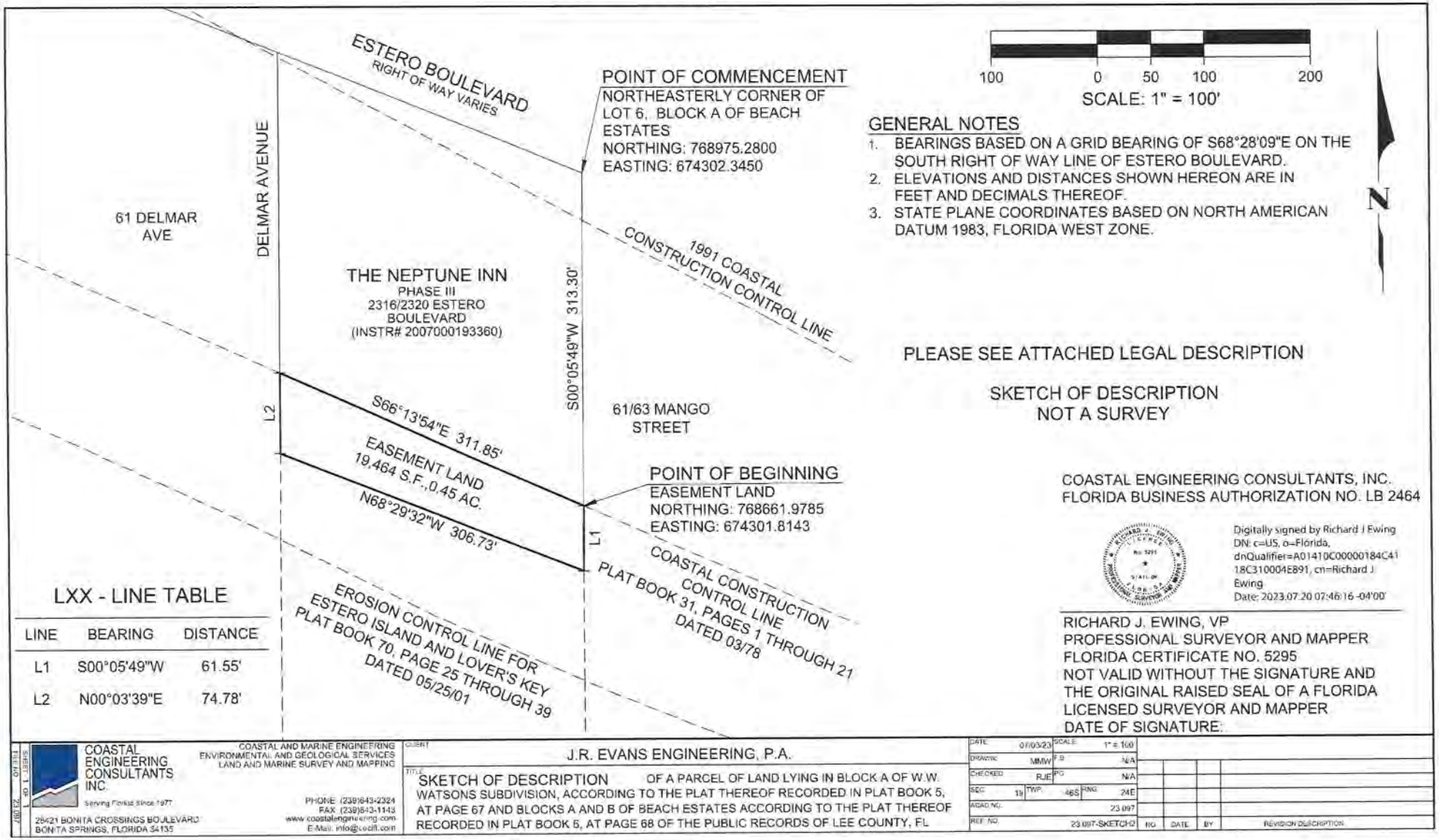
Unit 115N, Fractional Interest 9, The Neptune, a Condominium, together with an undivided interest in the common elements, according to the Declaration of Condominium thereof recorded in Instrument Number 2007000193360, as amended from time to time, of the Public Records of Lee County, Florida.

EXHIBIT B

EASEMENT LAND

(See attached)

Exhibit B
Easement Land



LXX - LINE TABLE

LINE	BEARING	DISTANCE
L1	S00°05'49"W	61.55'
L2	N00°03'39"E	74.78'

COASTAL ENGINEERING CONSULTANTS, INC.
FLORIDA BUSINESS AUTHORIZATION NO. LB 2464

Digitally signed by Richard J Ewing
DN: c=US, o=Florida, dnQualifier=A01410C00000184C4118C310004E891, cn=Richard J Ewing
Date: 2023.07.20 07:46:16 -04'00'

RICHARD J. EWING, VP
PROFESSIONAL SURVEYOR AND MAPPER
FLORIDA CERTIFICATE NO. 5295
NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER
DATE OF SIGNATURE:

COASTAL ENGINEERING CONSULTANTS INC.
Serving Florida Since 1977
COASTAL AND MARINE ENGINEERING
ENVIRONMENTAL AND GEOLOGICAL SERVICES
LAND AND MARINE SURVEY AND MAPPING
28421 BONITA CROSSINGS BOULEVARD
BONITA SPRINGS, FLORIDA 34135
PHONE (239)643-2324
FAX (239)643-1143
www.coastalengineering.com
E-Mail: info@cecifl.com

CLIENT: J.R. EVANS ENGINEERING, P.A.

TITLE: SKETCH OF DESCRIPTION OF A PARCEL OF LAND LYING IN BLOCK A OF W.W. WATSONS SUBDIVISION, ACCORDING TO THE PLAT THEREOF RECORDED IN PLAT BOOK 5, AT PAGE 67 AND BLOCKS A AND B OF BEACH ESTATES ACCORDING TO THE PLAT THEREOF RECORDED IN PLAT BOOK 5, AT PAGE 68 OF THE PUBLIC RECORDS OF LEE COUNTY, FL

DATE:	07/03/23	SCALE:	1" = 100'
DRAWN:	MMW	F.B.	N/A
CHECKED:	RJE	PG.	N/A
SEC. 19	TWP. 46S	RNG.	24E
ACAD NO.			23.097
REF. NO.			23.097-SKETCH2

NO.	DATE	BY	REVISION DESCRIPTION

SHEET 1 OF 2 SHEETS

Exhibit B
Easement Land

COASTAL ENGINEERING CONSULTANTS INC.

Coastal and Marine Engineering
Environmental and Geological Services
Land and Marine Survey and Mapping
Website: www.coastalengineering.com

EASEMENT LAND

LEGAL DESCRIPTION

A PARCEL OF LAND LYING IN BLOCK A OF W.W. WATSONS SUBDIVISION, ACCORDING TO THE PLAT THEREOF RECORDED IN PLAT BOOK 5, AT PAGE 67 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA, AND BLOCKS A AND B OF BEACH ESTATES ACCORDING TO THE PLAT THEREOF RECORDED IN PLAT BOOK 6, AT PAGE 68 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEASTERLY CORNER OF LOT 6, BLOCK A OF SAID BEACH ESTATES, RUN S00°05'49"W ALONG THE EASTERLY LINE OF SAID BEACH ESTATES FOR A DISTANCE OF 313.30 FEET TO THE "FORMER" 1978 LEE COUNTY COASTAL CONSTRUCTION CONTROL LINE AS RECORDED IN PLAT BOOK 31, PAGES 1 THROUGH 21 OF SAID PUBLIC RECORDS AND THE POINT OF BEGINNING;

THENCE CONTINUE S00°05'49"W FOR A DISTANCE OF 61.55 FEET TO THE SOUTHEASTERLY CORNER OF LOT 1, BLOCK A OF SAID BEACH ESTATES;
THENCE N68°29'32"W ALONG THE SOUTHEASTERLY LINE OF SAID BEACH ESTATES AND THE SOUTHERLY LINE OF SAID W.W. WATSONS SUBDIVISION FOR A DISTANCE OF 306.73 FEET TO THE SOUTHWESTERLY CORNER OF LOT 1, BLOCK A, OF SAID W.W. WATSONS SUBDIVISION;
THENCE N00°03'39"E ALONG THE WESTERLY LINE OF SAID W.W. WATSONS SUBDIVISION FOR A DISTANCE OF 74.78 FEET TO SAID CONSTRUCTION CONTROL LINE;
THENCE ALONG SAID LINE S66°13'54"E FOR A DISTANCE OF 311.85 FEET TO THE POINT OF BEGINNING.

THE ABOVE DESCRIBES AN AREA OF APPROXIMATELY 19,464 SQUARE FEET OR 0.45 ACRES OF LAND.

BEARINGS BASED ON FLORIDA STATE PLANE COORDINATE SYSTEM, FLORIDA WEST ZONE.

COASTAL ENGINEERING CONSULTANTS, INC.
FLORIDA BUSINESS AUTHORIZATION NO. LB 2464

Digitally signed by Richard J Ewing
DN: c=US, o=Florida, dnQualifier=A01410C00000184C411 8C310004E891, cn=Richard J Ewing
Date: 2023.07.20 07:48:28 -04'00'

RICHARD J. EWING, V.P.
PROFESSIONAL SURVEYOR AND MAPPER
FLORIDA CERTIFICATE NO. 5295
NOT VALID WITHOUT THE SIGNATURE AND
THE ORIGINAL RAISED SEAL OF A FLORIDA
LICENSED SURVEYOR AND MAPPER
DATE OF SIGNATURE:

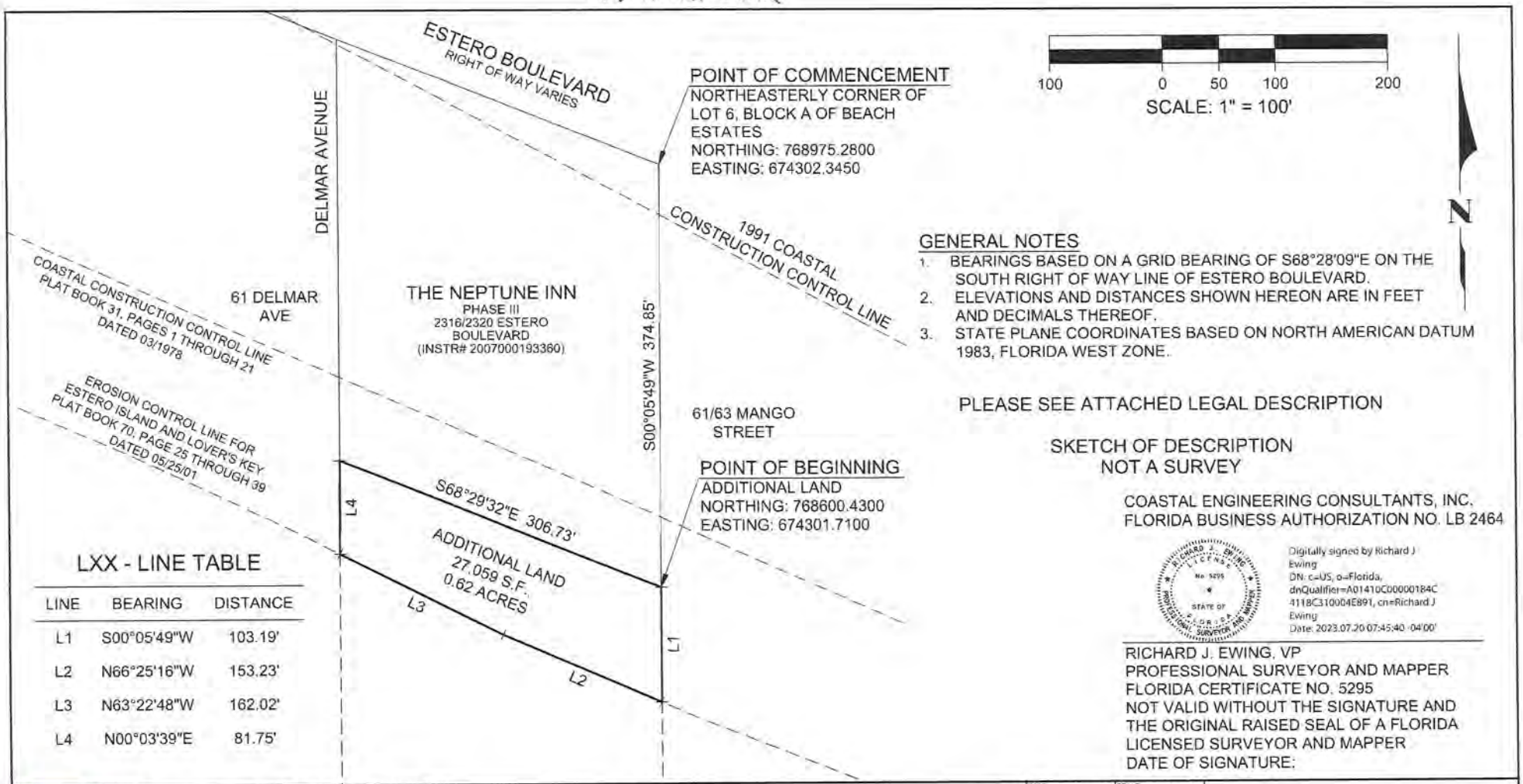
28421 Bonita Crossings Blvd., Bonita Springs, FL 34135
70726 Phone (239) 643-2324 • Fax (239) 643-1143
1211 North Range Ave., Suite E, Denham Springs, LA
Phone (225) 523-7403
E-mail: info@cecifl.com
SERVING COASTAL COMMUNITIES SINCE 1977

EXHIBIT C

ADDITIONAL LAND

(See attached)

Exhibit C
Additional Land



GENERAL NOTES

1. BEARINGS BASED ON A GRID BEARING OF S68°28'09"E ON THE SOUTH RIGHT OF WAY LINE OF ESTERO BOULEVARD.
2. ELEVATIONS AND DISTANCES SHOWN HEREON ARE IN FEET AND DECIMALS THEREOF.
3. STATE PLANE COORDINATES BASED ON NORTH AMERICAN DATUM 1983, FLORIDA WEST ZONE.

PLEASE SEE ATTACHED LEGAL DESCRIPTION

SKETCH OF DESCRIPTION
NOT A SURVEY

LXX - LINE TABLE

LINE	BEARING	DISTANCE
L1	S00°05'49"W	103.19'
L2	N66°25'16"W	153.23'
L3	N63°22'48"W	162.02'
L4	N00°03'39"E	81.75'

COASTAL ENGINEERING CONSULTANTS, INC.
FLORIDA BUSINESS AUTHORIZATION NO. LB 2464

RICHARD J. EWING LICENSE No. 5295 STATE OF FLORIDA PROFESSIONAL SURVEYOR AND MAPPER

Digitally signed by Richard J Ewing
DN: c=US, o=Florida, dnQualifier=A01410C000001B4C4118C310004E891, cn=Richard J Ewing
Date: 2023.07.20 07:45:40 -04'00'

RICHARD J. EWING, VP
PROFESSIONAL SURVEYOR AND MAPPER
FLORIDA CERTIFICATE NO. 5295
NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER
DATE OF SIGNATURE:

COASTAL ENGINEERING CONSULTANTS INC.
Serving Florida Since 1977
26421 BONITA CROSSINGS BOULEVARD
BONITA SPRINGS, FLORIDA 34135

COASTAL AND MARINE ENGINEERING
ENVIRONMENTAL AND GEOLOGICAL SERVICES
LAND AND MARINE SURVEY AND MAPPING

PHONE: (239)643-2324
FAX: (239)643-1143
www.coastalengineering.com
E-Mail: info@ceaft.com

CLIENT: J.R. EVANS ENGINEERING, P.A.

TITLE: SKETCH OF DESCRIPTION OF A PARCEL OF LAND LYING SOUTHERLY OF AND CONTIGUOUS TO THE SOUTHEASTERLY LINE OF BEACH ESTATES ACCORDING TO THE PLAT THEREOF RECORDED IN P.B. 6, PG. 68 AND THE SOUTHERLY LINE OF W.W. WATSONS SUBDIVISION RECORDED IN PLAT BOOK 5, AT PAGE 67, LEE COUNTY, FLORIDA.

DATE:	07/05/23	SCALE:	1" = 100'
DRAWN:	MMW	F.B.	N/A
CHECKED:	RJE	PG.	N/A
SEC:	19	TWP: 46S	RNG: 24E
ACAD NO:			23.097
REF. NO:			23.097-PARCEL 2

SHEET 1 OF 1 23.097

NO.	DATE	BY	REVISION DESCRIPTION

Exhibit C
Additional Land

COASTAL ENGINEERING CONSULTANTS INC.

Coastal and Marine Engineering
Environmental and Geological Services
Land and Marine Survey and Mapping
Website: www.coastalengineering.com

ADDITIONAL LAND

LEGAL DESCRIPTION

A PARCEL OF LAND LYING SOUTHERLY OF AND CONTIGUOUS TO THE SOUTHEASTERLY LINE OF BEACH ESTATES ACCORDING TO THE PLAT THEREOF RECORDED IN PLAT BOOK 6, AT PAGE 68 AND THE SOUTHERLY LINE OF W.W. WATSONS SUBDIVISION ACCORDING TO THE PLAT THEREOF RECORDED IN PLAT BOOK 5, AT PAGE 67, ALL OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEASTERLY CORNER OF LOT 6, BLOCK A OF SAID BEACH ESTATES, RUN S00°05'49"W ALONG THE EASTERLY LINE OF SAID BEACH ESTATES FOR A DISTANCE OF 374.85 FEET TO THE SOUTHEASTERLY CORNER OF LOT 1, BLOCK A OF SAID BEACH ESTATES AND THE POINT OF BEGINNING;

THENCE CONTINUE S00°05'49"W FOR A DISTANCE OF 103.19 FEET TO THE ESTERO ISLAND AND LOVERS KEY EROSION CONTROL LINE AS RECORDED IN PLAT BOOK 70, PAGES 25 THROUGH 39 OF SAID PUBLIC RECORDS;
THENCE ALONG SAID EROSION CONTROL LINE N66°25'16"W FOR A DISTANCE OF 153.23 FEET;
THENCE N63°22'48"W FOR A DISTANCE OF 162.02 FEET TO THE SOUTHERLY EXTENSION OF THE WESTERLY LINE OF BLOCK A SAID W.W. WATSONS SUBDIVISION;
THENCE ALONG SAID LINE N00°03'39"E FOR A DISTANCE OF 81.75 FEET TO THE SOUTHWESTERLY CORNER OF LOT 1, BLOCK A OF SAID W.W. WATSONS SUBDIVISION;
THENCE S68°29'32"E ALONG THE SOUTHEASTERLY LINE OF SAID BEACH ESTATES AND THE SOUTHERLY LINE OF SAID W.W. WATSONS SUBDIVISION FOR A DISTANCE OF 306.73 FEET TO THE POINT OF BEGINNING.

THE ABOVE DESCRIBES AN AREA OF APPROXIMATELY 27,059 SQUARE FEET OR 0.62 ACRES OF LAND.

BEARINGS BASED ON FLORIDA STATE PLANE COORDINATE SYSTEM, FLORIDA WEST ZONE.

COASTAL ENGINEERING CONSULTANTS, INC.
FLORIDA BUSINESS AUTHORIZATION NO. LB 2464

Digitally signed by Richard J Ewing
DN: c=US, o=Florida, dnQualifier=A01410C000001 84C411 8C310004E891, cn=Richard J Ewing
Date: 2023.07.20 07:47:23 -04'00'

RICHARD J. EWING, V.P.
PROFESSIONAL SURVEYOR AND MAPPER
FLORIDA CERTIFICATE NO. 5295
NOT VALID WITHOUT THE SIGNATURE AND
THE ORIGINAL RAISED SEAL OF A FLORIDA
LICENSED SURVEYOR AND MAPPER
DATE OF SIGNATURE:

28421 Bonita Crossings Blvd., Bonita Springs, FL 34135
70726 Phone (239) 643-2324 • Fax (239) 643-1143

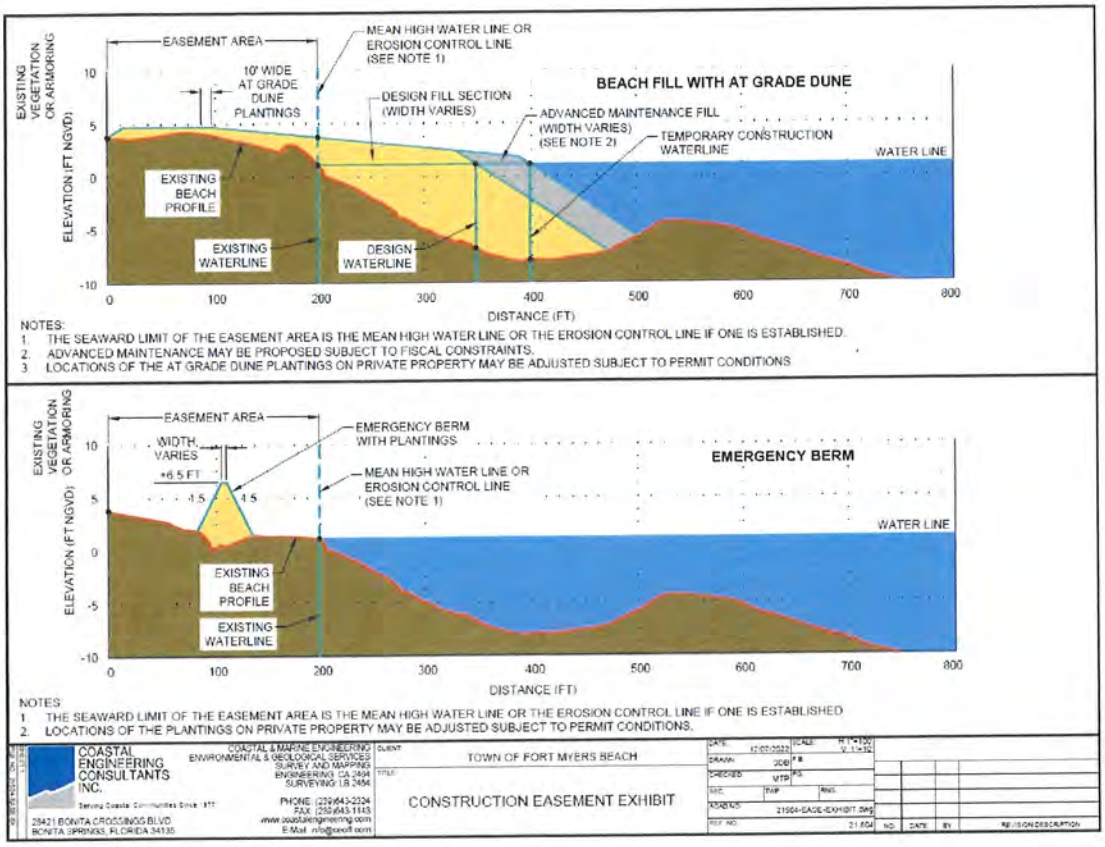
1211 North Range Ave., Suite E, Denham Springs, LA
Phone (225) 523-7403

E-mail: info@cecifl.com

SERVING COASTAL COMMUNITIES SINCE 1977

EXHIBIT D

GRANTEE'S SAND WORK



Town of Fort Myers Beach
Agenda Item Summary Yellow Sheet Number: **2025-58**

1. **Request:** **Meeting Date: November 12, 2024**

Announcement of upcoming review of guidelines in the LPA manual at the December 2024 LPA meeting with proposed changes for discussion.

Why the action is necessary:

What the action accomplishes:

2. **Agenda:** 3. **Requirement/Purpose:**

ADMINISTRATIVE AGENDA Other

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5. **Background:**

Per Sec. 34-118 of the town's Code of Ordinances, "...The rules may be amended from time to time, but only upon notice to all members that said proposed amendments shall be acted upon at a specified meeting..."
At a prior LPA meeting, the chair directed the LPA Attorney to prepare a simplified manual for further review and discussion by the LPA.

Attachments:

1. Updated November 2024 LPA Policies and Procedures Manual. -Word Version
2. DIVISION_3.___LOCAL_PLANNING_AGENCY
3. J Boan PnP suggestions
4. J McLean PnP suggestions

Financial Impact:

6. **Alternative Action**

7. **Staff Recommendations:**

8. **Recommended Approval:**

_____ Date: November 05, 2024
nancy stuparich, Town Attorney

_____ Date: November 05, 2024
Amy Baker, Town Clerk

Town of Fort Myers Beach Local Planning Agency
Policies and Procedures Manual

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- ~~E. Legislative Change Process~~
- ~~F. Historic Plaque Resolution and Agreement~~
- ~~G. Conflict of Interest Advice~~

1. Introduction

This Local Planning Agency (LPA) Policies and Procedures Manual is a guide to ~~for the purpose of~~ help~~ing the~~ LPA Members in the discharge of their duties. Experience may show that some of these policies and procedures need to be modified or eliminated and new ones adopted.

By adopting this manual, members of the LPA will find in one handy reference, answers to ~~policy and procedure~~ questions that come up from time to time. By having an agreed-upon guide, members of the LPA also may develop common expectations on proper conduct of LPA meetings, dealings with the public, and the way it interacts with Town staff.

This manual should be used in conjunction with the Town Charter, Comprehensive Plan, Land Development Code (LDC), strategic plan and other applicable laws, as necessary.Any conflict between the information in this Manual and other codes shall be resolved in favor of the other codes. Topics included in the Land Development Code shall not be included in this Manual:

1. Composition, appointment and compensation (Section 34-112, LDC)
2. Terms and vacancies (Section 34-114)
3. Forfeiture of office (Section 34-115)
4. Election and duties of officers (Section 34-116)
5. Support staff (Clerk-Section 34-117, Attorney–Section 34-124, Experts/Staff-Section 34-119)
6. Rules and Procedures (Section 34-118)
7. Functions, powers and duties regarding the Comprehensive plan and LDC (Section 34-120)
8. Functions, powers and duties regarding zoning matters (Section 34-121)
9. Service as the Historic Preservation Board (Section 34-122)

Upon a majority vote, the LPA can waive application of these guidelines. Any waiver or disregard of a guideline shall not be a basis for challenge to any action by the LPA. The Manual may be amended as needed and subject to review each year following the vote for LPA officers.

~~2. Local Planning Agency Mission and Job Description~~

~~Mission: To further the welfare of the citizens of the Town by helping to promote a better, more helpful, convenient, efficient, healthy, safe community and attractive environment. To insure by strategic planning that the unique and natural characteristics of the island are preserved.~~

~~Functions, Powers and Duties:~~

- ~~Review and interpret the Comprehensive Plan and conduct public hearings as may be needed to fulfill its duties under Town ordinance and Comprehensive Plan.~~
- ~~Review and interpret the Land Development Code and conduct public hearings as may be needed to fulfill its duties under LDC, Town ordinance and Comprehensive Plan.~~
- ~~In an advisory capacity to the Town Council, either at Town Manager's, Town Council's, or its own initiation, conduct hearings to fulfill its duties regarding zoning matters.~~
- ~~Review the Capital Improvement Budget for consistency with the Comprehensive Plan and make recommendations to the Town Council.~~
- ~~Serve as the Historic Preservation Board for the Town.~~
- ~~Establish sub-committees as needed.~~
- ~~Elect a chair and vice chair for the LPA.~~
- ~~Elect a chair and vice chair for the Historic Preservation Board~~
- ~~Perform any other duties that lawfully may be assigned to it by the Town Council and/or Town Manager.~~

~~LPA Member Requirements:~~

- ~~Be a resident or property owner in the Town of Fort Myers Beach~~
- ~~File a Statement of Financial Interests (Form 1) with the Lee County Supervisor of Elections every year.~~
- ~~Complete and file Form 1F – Final Statement of Financial Interest, within 60 days of leaving office.~~

~~Desired LPA Member Qualities:~~

- ~~Analytical – ability to research and analyze information and data~~
- ~~Decisive~~
- ~~Knowledgeable – Such as, the Town Charter, Comprehensive Plan, Land Development Code, Sunshine Laws, Ethics Laws, Parliamentary Procedure~~
- ~~Communication – Listening, Speaking, Writing~~
- ~~Proactive – identify and seek solutions~~
- ~~Ethical - open, sincere and truthful~~
- ~~Ability to work in a team environment~~
- ~~Ability to work with and listen to people having diverse interests~~
- ~~Fair with no strong allegiance to any individual or group~~
- ~~Common sense~~
- ~~Time to do the job effectively~~

~~3.~~ Training & Materials ~~and First Meeting~~

~~**Training Materials**~~

Each new member of the Local Planning Agency will be provided an orientation and training by staff regarding the following resources, which are available on line or in print upon request: ~~copies of:~~

- Town Charter
- Comprehensive Plan
- Land Development Code
- Florida Code of Ethics
- Florida Sunshine Laws
- ~~Policy and Procedures Manual~~
- ~~Other materials as determined by the LPA Attorney, Community Development Director and LPA members~~

Election of Officers

Annually, at the first meeting of the Local Planning Agency, after expired member positions have been filled by the Town Council, a chair and vice chair will be chosen. ~~Each~~ A LPA member may nominate a person for each of these positions or state their own interest in service as Chair or Vice-Chair. Once all nominations are received, the LPA will vote in the same manner as the Town Council votes for appointments to committees, boards, and commissions. If nominated, the LPA member shall accept the nomination on the record. If a nominated LPA member is not present, acceptance of the nomination and a vote on all nominations shall be taken at the next LPA meeting. ~~A second is not required. A vote is taken in the order that a candidate was nominated. The positions are filled by a majority vote. If a majority is not received on the first ballot, a second ballot is taken for the two candidates receiving the most votes from the first ballot.~~

Sunshine Issues

Members of Town advisory committees, boards, and agencies are subject to the Sunshine Law (F.S. 286.011). The same Sunshine rules that apply to Town Council apply to the members of the LPA and other Town advisory committees, boards and agencies.

~~This means that~~ A~~a~~ny gathering of two or more members of the same advisory committee, board or agency must comply with all the Sunshine Law requirements if they participate in any discussion, directly or indirectly, regarding any matter where there is known or could be foreseeable action to be taken by the committee. Examples of indirect discussions are the use of email to a committee member or communication through a spouse or other go-between.

Advisory committee members cannot engage in discussions with each other (directly or indirectly) at outside meetings such as the Chamber of Commerce or Civic Association regarding any matter on which it is known or foreseeable that action may be taken, unless the Sunshine requirements are met.

These rules apply equally to any gathering, formal or casual, such as a Rotary Club (or other business or fraternal club gathering), fund-raiser, etc. They also apply to social events and functions unconnected to the advisory committee, such as a neighbor's backyard barbeque. They also apply to casual discussions between or among members coming in the door for the committee meeting, at breaks during the meeting, and going out the door after the meeting. Every component of the decision-making process must occur in the Sunshine.

The penalties for violating the Sunshine law are severe and can include criminal and civil sanctions. The process of investigation of Sunshine violations is always unpleasant, embarrassing, and expensive, even if the person is ultimately cleared.

4. Historic Preservation Board

The LPA also functions as the Historic Preservation Board (HPB) for the Town of Fort Myers Beach. The Historic Preservation Board has the power, authority, and jurisdiction to designate, regulate, and administer historical, cultural, archaeological, and architectural resources in the Town as set forth in LDC section 22-74. For any quasi-judicial or legislative hearings that come before the HPB, the hearing process shall conform to those outlined in Section 7 of this manual.

Annually, at the first meeting of the Local Planning Agency, after expired member positions have been filled by the Town Council, a meeting of the HPB will be convened and a chair and vice chair will be chosen using the same methodology as LPA chair and vice chair election.

Also at that meeting, a sub-committee, the Historic Advisory Committee (HAC), comprised of an approximately equal number of LPA members and Estero Island Historic Society members is established. Members of the Estero Island Historic Society interested in being on the Historic Advisory Committee must submit a statement of interest to the Town Clerk prior to the first annual meeting of the LPA. This sub-committee comprised of a total of six or seven members shall be selected by the HPB.

The HAC sub-committee will meet as needed to discuss and make recommendations to be brought before the Historic Preservation Board for consideration. Recommendations will be consistent with the requirements of the Comprehensive Plan and Land Development Code. At its first meeting after re-formation, the HAC shall select a chair, vice chair and secretary.

5. Ad Hoc Sub-Committees and Interaction with Other Advisory Committees

The LPA has the authority to form other ad hoc sub-committees requesting participation by volunteers. The objectives of a sub-committee, expected products, membership and timelines should be clearly stated and agreed to by the LPA. One LPA member will be asked to chair the ad hoc sub-committee. The intent would be to minimize participation and action items directed at Staff. All Ad Hoc Sub-Committees will be subject to Sunshine and public records laws.

A standing ad hoc sub-committee named the Historic Advisory Committee was established by Resolution 2006-03 (Appendix B).

During discussions arising from land use cases, long-range planning and capital improvement discussions, the LPA will proactively communicate to other appropriate advisory committees while keeping Town Council informed. These interactions could result in the development of joint resolutions.

6. Meeting Preparation and Planning

Meeting Schedule

Section 34-118 of the Land Development Code (LDC) states: "The local planning agency shall meet at least 8 times per year and shall meet no less often than bimonthly…" ~~This statement was included in the LDC to emphasize that the LPA should meet regularly to conduct required Town business. Thus, as a minimum, the LPA must meet at least 8 times per year.~~

Regularly planned meetings of the Local Planning Agency (LPA) are scheduled by mutual agreement between the LPA, LPA Attorney and Community Development Director. Special, continued or rescheduled meetings will be determined by consensus of the LPA members, the Director of the Department of Community Development and the LPA attorney.

Length of Agenda Items

In order to set reasonable LPA agendas, the Community Development Director will use best efforts to establish the time needed for presentations, public comment and subsequent discussions of agenda items by the LPA. Any person submitting Administrative topics to the Community Development Director will provide an estimate of the time needed. If the time needed for a hearing, legislative matter or administrative topic exceeds the allotted time by more than 15 minutes, the Chair may table the item until later in the meeting or continue the item until a subsequent meeting.

Public Notice of LPA Quasi-Judicial Hearings

Except as specifically addressed in the Town Land Development Code, Town Clerk shall notice ~~advertise~~ all LPA quasi-judicial hearings as provided in the Land Development Code and Florida law. ~~so that a legal notice will appear at least seven (7) calendar days prior to the LPA hearing date, to enable all interested parties to have notice and the ability to attend. The Community Development Director or designee will enter the *News-Press* Affidavit of Publication into the record at the beginning of the hearing. In the absence of the Affidavit of Publication, the Community Development Director or designee will enter a copy of the actual advertisement as run by the *News-Press* into the record at the beginning of the hearing after being sworn in. The affidavit, or actual advertisement, as the case may be, will be attached to the LPA Resolution following the hearing~~.

Continued Hearings and Legislative Issues

It is the goal of the LPA to complete a hearing during the scheduled meeting. If additional time is required and the hearing must be continued to a later date, any LPA member who missed the initial hearing should review the audio and/or videotapes prior to participating in the continued hearing or legislative discussion and resolution.

If the applicant submits new information or modification(s) to previously submitted information at the hearing, or immediately prior to the hearing, the LPA shall consult with the Director of the Department of Community Development and the LPA Attorney and vote ~~to determine if a~~ to continu~~ance of~~e the hearing. ~~is appropriate and proceed accordingly.~~ Nothing contained in this section shall be construed to limit the Director's discretion to defer or continue the public hearing as set forth in LDC Section 34-213(3).

Meeting Preparation

Any LPA member, the Community Development Director, the LPA attorney, Town Council and Town Manager can submit meeting agenda topics for the LPA to the Community Development Director. Topics should be submitted at least fourteen (14) days prior to a planned meeting. The Director of the Department of Community Development and LPA attorney are responsible for scheduling hearings. Potential dates for hearings should be communicated to all participating parties as far in advance of the planned meeting as possible. All staff reports should be complete before a hearing is scheduled. Except in the case of an emergency, cancellation of a planned meeting should be at least 14 days in advance. Only under serious, extenuating circumstances should a hearing be cancelled after it has been publicly noticed.

The goal is to have finalized agenda and supporting material seven (7) days prior to a planned and noticed meeting. ~~However, meeting materials will be placed in the LPA members' mailboxes no later than noon of the Friday prior to the scheduled Tuesday meeting~~. The Town Clerk shall email a copy of the agenda packet to all LPA members. ~~Community Development Director or assistant will send an email to the LPA members when the packets are available.~~

The LPA members' packets should include complete documentation for agenda items (actions required, implications, backup information, memos, ordinances, resolutions, etc.) A sincere effort is made to see that LPA packets are complete. As a general rule, items requiring documentation (recommendations, memos, ordinances, resolutions, etc.) will not be included on an agenda until the documentation is complete.

A copy of the agenda ia available on the Town's website. ~~The agenda is posted at Town Hall. Copies of the agenda are available to the public.~~

Occasionally an item comes up late and may be placed on an amended agenda, or as an "add on" (added too late to be included on the published agenda). Such additions are kept to an absolute minimum so as not to burden the LPA or the public with items not receiving sufficient advance notice. Important, potentially controversial items are not made as "add on items" except in extreme emergencies.

Attendance Policy

Section 34-115(3) of the Land Development Code (LDC) states: "A Local Planning Agency member shall forfeit office if the member is absent from three (3) regular local planning agency meetings per year without being excused by the local planning agency." ~~This statement was included in the LDC to recognize that because of the significant pre-hearing preparation required by staff, applicants and other supporting personnel it is imperative that a quorum of the Local Planning Agency (LPA) members be present for all noticed meetings.~~

An LPA member should notify the Town Clerk of an anticipated absence. The Town Clerk will request a vote from the LPA regarding whether the absence is excused or unexcustedd The LPA should be notified of a planned absence as soon as known. It is important that the LPA know that it will have a quorum of its members as soon as possible prior to an LPA meeting The LDC implies that the LPA has the discretion to define what will be an "excused" absence. The policy of the LPA is that if an absence is reported at least fourteen (14) days prior to a planned meeting the absence will automatically be considered an excused absence. This will allow sufficient time for a planned meeting to be rescheduled if it appears that a quorum will be questionable.

Absence notification less than ~~14~~ 7 days prior to a planned meeting is considered an "emergency." If an excused absence is desired in less than ~~14~~ 7 days, a request must be forwarded to the Community Development Director with an explanation of the nature of the emergency. The Local Planning Agency will decide whether the request will be considered an excused absence. If the LPA or Community Development Director receives no request for an excused absence, the absence is counted as an unexcused absence.

Three unexcused absences for regularly scheduled LPA meetings will result in automatic forfeiture of office.

"Chronic" absence is defined as missing three consecutive regularly scheduled meetings or four of the last six meetings of the LPA, regardless of whether the absence is excused or unexcused. If a chronic absence occurs, the Community Development Director will be asked to send a letter to the LPA member requesting an explanation of the reasons for the chronic absence. A copy of the letter will be sent to the Town Manager and Town Council. The LPA member will be asked to forward to the Community Development Director a statement of whether the LPA member wishes to remain on the LPA. Failure to reply will automatically make all absences unexcused and grounds for forfeiture of office.

In order to provide a diverse representation, it is important that the LPA strive to have as full representation as possible when conducting the Town's business.

Meetings and Communication between LPA and Town Council

As needed, the Chair at the request of the LPA members may appear before the Town Council and present information discussed at an LPA meeting or as otherwise requested by a vote of the LPA. ~~agreed at a workshop between LPA and Town Council members in September of 2009, efforts should be made to improve communications between the Local Planning Agency and Town Council. Previous means and those adopted at the above meeting shall be:~~

- ~~The LPA shall appoint and send a representative to Town council public hearings on land use and proposed ordinances which have been acted upon by the LPA. This representative shall submit brief testimony (Council should have LPA resolution and meeting minutes, unless minutes approval waived by LPA) regarding the LPA hearings on the matter.~~
- ~~The LPA "Action List" as updated subsequent to LPA meetings shall be submitted to the Director of Community Development, who shall in turn transmit to each Town Council member and the Town Manager and include this list in the next LPA meeting packet.~~

- A quarterly meeting to be attended by the Town Manager, Town Mayor and Local Planning Agency Chairperson shall take place at 1:00 PM on the third Wednesday of each of the following months; October, January, April and July. The purpose of this meeting will be to discuss current activities of the LPA and assure these are in accordance with direction from Town Staff and Town Council, as well as convey information to Staff and Council regarding the complexities or related issues of those activities.
- Routine workshops (informational meetings) to discuss current LPA activities and Town Council understanding of those activities shall be held between all LPA members, Town Council members, Town Manager, Community Development Director and Town and LPA Attorney starting at 9:00 AM and lasting no later than noon on the first regularly scheduled LPA meeting day of April and September.

7. Meeting Procedures

LPA Code of Conduct

LPA members shall follow the Florida Code of Ethics for Public Officers and Employees found in Chapter 112 of Part III of the Florida Statutes. Recognizing that persons holding a position of public trust are under constant observation, and recognizing that maintaining the integrity and dignity of the public office is essential for maintaining high levels of public confidence in our institutions of government, every member of the Local Planning Agency pledges to adhere to the following CODE OF CONDUCT.

1. Regularly attend all scheduled meetings of the LPA as well as special or called meetings relevant to the office.
2. Prepare for each meeting.
3. Create a positive environment in meetings of the LPA.
4. Maintain an attitude of courtesy and consideration toward colleagues, citizens and staff during all discussions and deliberations.
5. Allow citizens, colleagues and staff sufficient opportunity to present their views, within the prescribed rules for conduct of meeting of the LPA.
6. Avoid the use of abusive, threatening or intimidating language or gestures directed at colleagues, citizens of staff.
7. Avoid comments, body language or distracting activity that conveys a message of disrespect and lack of interest.
8. Respect all local, state and federal laws, rules and other regulations.
9. Submit completed financial disclosure forms to the Lee County Supervisor of Elections by the specified deadline.
10. Publicly acknowledge the adopted position when asked about a decision of the LPA.

LPA Code of Ethics

Members shall ethically serve the public interest by making decisions and taking actions that will enhance the public health, safety and welfare of the region and the citizens served by the Local Planning Agency and by promoting public confidence in the integrity, independence, ability and impartiality of the LPA.

1. Members shall uphold the prestige of their office and avoid impropriety and the appearance of impropriety.
2. Members shall not convey the impression that they are in a position to influence the outcome of a decision of the LPA and shall not attempt to use their office to influence or sway the professional staff recommendation.
3. Members shall discharge their duties and responsibilities without favor or prejudice toward any person or group. Members shall not allow personal or business relationships to impact upon their conduct or decisions in connection with LPA business and shall not lend their influence towards

the advancement of personal interests or towards the advancement of the interests of friends or business associates.

4. Members shall avoid creating the appearance of impropriety by following the requirements of the Land Development Code with regard to ex parte about specific upcoming LPA quasi-judicial hearings. If a Member receives a private written or electronic communication about an upcoming LPA quasi-judicial hearing, the Member will promptly forward the information to the Town Clerk, with a copy to the Director of the Community Development Department and the LPA Attorney so that it may be shared with all other Members as part of the agenda packet for that hearing. Members shall refrain from any private discussion of LPA business with other Members if required by Florida's Government-in-the-Sunshine Law, Chapter 286, Florida Statutes.
5. Members shall not accept or solicit a gift, loan, payment, favor, service, promise of employment or business contract, meal, transportation or anything else of value, if such thing is given with the understanding or possibility that it will influence the official action of the Members during LPA proceedings. The same standard shall apply to a gift, loan, favor, etc. for the spouse, child, relative or business partner of the Member.
6. Members should refrain from participation in any proceeding in which their impartiality may reasonably be questioned. A Member whose personal, employment or business relationship with a person or entity that is subject to a recommendation of the LPA shall seek the advice and counsel of the LPA Attorney, if such relationship could conceivably influence the Member's impartiality during the LPA's discussion of the subject. The provisions of Chapter 112, Florida Statutes, and the Code of Ethics for Public Officers and Employees, shall govern conflict of interest determination.
7. Members shall remain vigilant against deviations from LPA policies and mission statement.

As a legislative and quasi-judicial body, the LPA must be ever cognizant of the important legal requirements of due process and equal protection. These principles are derived from the United States Constitution, the Constitution of the State of Florida, and Florida Statutes, and apply to legislative and quasi-judicial actions.

The legal requirement for due process is separated into two prongs: substantive due process and procedural due process. The principle of substantive due process requires the benefits of a given regulation be within the scope of governmental authority, i.e., health, safety, morals, or general welfare, and that the regulations be accomplished in a rational manner, i.e., not be arbitrary or capricious. This is a principle of fundamental fairness in the substance of a given regulatory scheme or provision.

The other due process prong, procedural due process, requires a fair method of adjudicating the rights of property owners, requiring notice and an opportunity to be heard by an impartial decision maker. In legislative matters, this requirement is derived from Florida Statutes, which provide the type and period of notice depending on the nature of the property interest subject to regulation at a public hearing. Quasi-judicial decisions have an underlying Constitutional requirement for procedural due process.

Equal protection limits governmental regulation from establishing irrational classifications, protects the rights of suspect and quasi-suspect classes, and assures against the exercise of fundamental or important rights of persons in ways different from others.

Key overarching principles to keep in mind is that every person must be treated equally and reasonably by the quasi-judicial or legislative substance and process and that decisions and recommendations be deliberated in an open process with adequate notice and allowance for participation of affected parties. Reasonable, consistent, and timely notifications in quasi-judicial matters to be heard by the LPA provide an applicant and other parties potentially affected by a requested decision these fundamental protections.

Order of Agenda Items

The general order of the agenda will proceed as follows. However, the procedures may ~~will~~ differ depending on what type of hearings is being held.

1. Call To Order – Identify for the record the committee that is meeting, the date of the meeting and who is present.
2. Pledge of Allegiance
3. Invocation
4. Changes to the Agenda
5. Public Comment on any topic – Chair will advise of opportunity to speak during the public hearing of a particular agenda item.

~~4.~~6. Approval of Minutes – Requires a motion and vote.

~~5.~~7. Public Hearings – Public Comment on the topic of the public hearing will be included as part of the record of the hearing

~~6.~~8. Administrative Agenda – Topics submitted by LPA members, staff, LPA Attorney or items from previous agendas

~~7.~~9. Adjourn as LPA; Reconvene as Historic Preservation Board (HPB) if needed

~~8.~~10. Adjourn as HPB; Reconvene as LPA

~~9.~~11. LPA Members Items and Reports

~~10.~~12. LPA Attorney Items

~~11.~~13. Community Development Director Items

~~12.~~14. ~~Action List Review~~

~~13.~~15. Public Comment

~~14.~~16. Adjournment – Requires a motion and vote. A privileged motion allowing no discussion before vote.

~~**Invocation**~~

~~The Chair of the LPA has the discretion of deciding how the Invocation at the beginning of an LPA meeting is handled. However, there is a tradition that has been followed by many LPA's. At the first LPA meeting on April 9, 1996, Chair John Mulholland read an invocation that he had written while Commander of the Power Squadron. Betty Simpson, who was Vice Chair at that time, has carried John's invocation to each subsequent LPA. The Chair has either read the invocation or different LPA members have been asked or volunteered to read the invocation. The invocation reads as follows:~~

~~Heavenly Father, we ask that you bless us with your presence here today.~~
~~Grant to us the wisdom to see all things in true perspective.~~
~~Grant to us the patience to hear one another with open minds and hearts.~~
~~Grant us the strength to meet all present challenges.~~
~~May all that we do this day, bring honor to you and credit to ourselves. Amen.~~

Conduct of LPA Meetings

The Chair will conduct the LPA meetings, and in the Chair's absence by the Vice Chair.

Robert's Rules of Order may be consulted ~~shall be the reference~~ for parliamentary procedure governing the conduct of the LPA meetings when not in conflict with the Town Charter or Florida Statutes and questions arise. Otherwise, the conduct of the meeting may follow as directed by the LPA. ~~It is not intended that LPA meetings be unnecessarily formalistic, but rather that parliamentary procedure be invoked only when necessary for orderly conduct of the meeting.~~

~~The approval of the minutes is intended for LPA members to accurately document the proceedings of the Agency. Before moving approval the minutes should be amended, if necessary, to more accurately~~

~~portray what occurred at the LPA meeting. This time is not intended for comment or discussion on what should have or should not have been done, but rather to document what actually was done. Audiotapes of the proceedings become the official record of what transpired during a meeting.~~

When the Chair recognizes a speaker during public comment, they will advance to the podium and state their name for the public record. Public comments will generally be limited to three minutes per speaker. The Chair may modify the three-minute limit with approval by majority vote of the LPA. If a special interest group would prefer to have one person speak for a group of individuals in attendance their allotted times can be combined up to a maximum of 15 minutes. This process could save meeting time if the content of what each person of a special interest group intends to say is similar. It could also allow more time for a presentation containing detailed facts and data. If a special interest group chooses to have a spokesperson represent them, request cards having the names and addresses of all individuals present must be provided prior to the meeting. The public comment times are intended as opportunities for interested parties to present their viewpoints to the LPA members; they are not intended as question-and-answer sessions or as dialog with the LPA unless the LPA otherwise approves.

~~After a proper motion, discussion by the LPA members shall be limited to agenda items. No member will speak twice on the item until all others who want to speak have spoken.~~

The time period for LPA members' comments is intended as an opportunity for LPA members to share their viewpoints with each other. Since this opportunity does not exist outside of LPA meetings under the Florida Sunshine Law, this is the primary purpose of this time and it generally should not be used to obtain information from the Community Development Director or Town Attorney which could he obtained outside of the LPA meeting. ~~While there is no time limit or censorship on comments, LPA members should take into consideration the total time available in the meeting for the published agenda.~~

Legislative Hearing Procedures

1. The Chair opens the hearing on……
2. ~~Staff presents Affidavit of Publication or copy of the legal advertisement from the Newspaper of Record which shall become an exhibit to the Hearing's resulting Resolution.~~
3.2. The Chair or the LPA Attorney reads the ordinance title ~~caption~~.
4.3. Staff and/or the LPA attorney present(s) a brief overview of the draft ordinance.
5.4. Public input is taken.
6.5. Public input is closed.
7.6. LPA members ask questions, if any, of staff/LPA attorney.
8.7. LPA members discuss ordinance, including changes, deletions, etc. and make a finding that the proposed Ordinance is consistent or not consistent with the Comprehensive Plan or otherwise is in conflict with the Land Development Code without other changes.
9.8. A Motion is made and seconded to either recommend approval of ~~move~~ the Ordinance ~~forward~~ to Town Council, as-is or with modifications, or to take some other action. ~~The LPA's recommendation is set forth in an LPA Resolution which is provided to Town Council at the time of Council's consideration of the Ordinance.~~ If the motion to approve fails, a member should make a motion to recommend denial and state the reason for denial.
10.9. The Motion is discussed and voted upon. If successful, the Chair declares the hearing on the ordinance to be concluded. ~~If not successful, further motions(s) are made until one passes.~~

Notes:

- There is no ex parte disclosure requirement for legislative hearings.
- Members of the public are not sworn in.
- ~~Generally there is no discussion between the LPA and public.~~

Procedure for Quasi-Judicial Land Use Hearing

1. At the onset of the quasi-judicial matters, the LPA addresses matters relating to all items on the agenda that are quasi-judicial in nature.
~~1.~~2. ~~The Chair opens the hearing on ……~~.
3. The LPA Attorney explains the quasi-judicial process and asks whether there are any conflict of interest situations or predetermined results that would prevent a member from voting to make sure a quorem is present for that agenda item. If a conflict is disclosed, the LPA member shall announce and complete Form 8B as required by the Florida Code of Ethics.
4. The Town Clerk ~~s~~wears in all witnesses. Any individuals who would like to be considered as experts in a particular area should so state and ask to be accepted as an expert unless already qualified and considered as an expert which shall be disclosed on the record.
~~2.~~5. The Town Clerk reports if all agenda items have been properly noticed and if needed advertised.
~~3. Staff presents Affidavit of Publication or copy of the legal advertisement from the Newspaper of Record which shall become an exhibit to the Hearing's resulting Resolution.~~
~~6.~~ The Chair announces the agenda item.
~~7.~~ The Chair asks if any LPA member has had an ex parte communication regarding this matter. This includes any site visit, receipt of expert opinion, conducting of investigations, discussions with any person, or any direct or indirect communication in any form with any person outside a public hearing and not on the record. The Chair asks the Town Clerk if copies of any emails forwarded to the LPA have been provided to the applicant. The Chair asks if the applicant is present and has received a copy of the agenda materials.
~~4.~~8. Staff presents a brief introduction of the agenda item.
~~5.~~9. The applicant presents its case and LPA asks questions.
~~6.~~10. Staff presents its case in response to the applicant's presentation and the LPA asks questions.
~~7.~~11. Public comment/testimony is opened. The applicant may question any public speaker.
- After public testimony/comment is concluded, the Chair closes public comment/testimony.

12. Staff makes any closing comments.
~~8.~~13. The Applicant presents rebuttal, if any to staff's presentation or any public comment and closing comments.
~~9.~~14. ~~Staff presents rebuttal, if any.~~
~~10.~~15. The testimony portion of the hearing is closed.
~~11.~~16. LPA discusses the matter and may direct questions to the applicant or staff ~~ion.~~
~~12.~~17. The Chair r~~R~~equests ~~for~~ a motion on the agenda item. ~~resolution.~~
~~13.~~18. LPA votes on ~~a resolution regarding the application~~ the agenda item.

Voting Conflicts

Florida Statue has very specific rules regarding voting conflicts and municipal advisory committees, boards and agencies. These rules are different from the rules that apply to the Council.

If an LPA member has a voting conflict, he/she must disclose that conflict in writing to Town staff prior to the meeting in question and this disclosure must be publicly read. A form is available from the Town Clerk. The rules also contain an exception for disclosure at the meeting itself. The committee member is permitted to participate in the discussion and vote on the subject. The specific rules are set out in F.S. 112.3145(4), quoted below:

(4) No **appointed** public officer shall participate in any matter which would inure to the officer's special private gain or loss; which the officer knows would inure to the special private gain or loss of any principal by who he or she is retained or to the parent organization or subsidiary of a corporate principal by which he or she is retained; or which he or she knows would inure to the special private gain or loss of a relative or business associate of the public officer, **without first disclosing the nature of his or her interest in the matter.**

(a) Such disclosure, indication the nature of the conflict, shall be made in a written memorandum filed with the person responsible for recording the minutes of the meeting, **prior to** the meeting in which consideration of the matter will take place, and shall be incorporated into the minutes. Any such memorandum shall become a public record upon filing, shall immediately be provided to the other members of the agency, and shall be read publicly at the next meeting held subsequent to the filing of this written memorandum.

(b) In the event that disclosure has not been made prior to the meeting or that any conflict is unknown prior to the meeting, the disclosure shall be made orally **at the meeting** when it becomes known that a conflict exists. A written memorandum disclosing the nature of the conflict shall then be filed within 15 days after the oral disclosure with the person responsible for recording the minutes of the meeting and shall be incorporated into the minutes of the meeting at which the oral disclosure was made. Any such memorandum shall become public record upon filing, shall immediately be provided to the other members of the agency, and shall be read publicly at the next meeting held subsequent to the filing of this written memorandum.

(c) For purposes of this subsection, the term "participate" means any attempt to influence the decision by oral or written communication, whether made by the officer or at the officer's direction.

~~Perceived conflicts of interest can be as detrimental to public trust as real conflicts. In an attempt to aid LPA members' manage such perceptions, the LPA Attorney has prepared advice regarding frequent situations in which LPA members find themselves. These are found in Appendix G.~~

~~NOTE: F.S. 112.3143(b) defines "relative" as follows: "any father, mother, son, daughter, husband, wife, brother, sister, father-in-law, mother-in-law, son-in-law, or daughter-in-law.~~

8. LPA Meeting Output

Unless otherwise directed by the LPA, staff shall be responsible for reporting actions by the LPA to the Town Council. The Chair shall sign a resolution evidencing the LPA's findings and decision regarding any matter in which the LPA has final agency action. ~~The primary responsibility of the LPA is to provide recommendations to the Town Council regarding comprehensive planning policies, land development code regulations, zoning matters and make decisions regarding historic preservation opportunities.~~

~~LPA output to the Town Council will include the following at the discretion of the LPA:~~

~~A. Quasi-Judicial Hearing:~~
~~1. A signed resolution of findings of fact and conclusions from the LPA hearing.~~
~~2. LPA approved minutes providing a summary of:~~
~~a. Testimony by applicants, their attorneys, Town and/or County staff, the LPA attorney, witnesses and people who offer public comment, and~~

b. Issues raised by LPA members with subsequent discussion content including clarifications, conclusions and agreements, and Motions and votes by LPA.
3. One or more members of the LPA will attend the Town Council meeting in order to provide clarification on their recommendations and to answer inquiries.

B. Legislative Hearing:

1. A signed resolution of findings of fact and conclusions from the LPA hearing.
2. LPA approved minutes.
3. One or more members of the LPA will use best efforts to attend the Town Council meeting in order to provide clarification on their recommendations and to answer inquiries.

These LPA outputs must be available before the first Town Council hearing on an issue. However, at the discretion of the LPA exceptions may be made in emergency situations. Minutes from hearings will normally be approved at the subsequent LPA meeting. A "fast-tracked" hearing may have the minutes waived for the Town Council hearing at the discretion of the LPA.

It is noted that audio and /or video recordings of LPA meetings may be available for public, LPA, or Town Council review should clarification, additional understanding of discussions, or for finding errors or omissions.

On a regular basis, as often as monthly, the LPA will submit to the Town Council a synopsis of accomplishments and any issues that might be of interest. As needed, a request will be made to address Town Council.

9. LPA's Role in Initiating Legislative Changes to the Land Development Code

In the course of performing its duties, the LPA is made aware of legislative issues that could be considered as amendments to the Land Development Code. Before initiating a request for support from Town Staff, the LPA attorney and/or our Planning Consultant to pursue potential LDC amendments, a resolution will be sent to Council requesting their approval to proceed. The format to be used is included in Appendix A and can be modified without re-approving the Policies and Procedure Manual.

The Town of Fort Myers Beach Local Planning Agency Policies and Procedures Manual was adopted on February 27, 2007. Revised May 15, 2007. Revised March 18, 2008. Revised September 9, 2008. Revised January 27, 2009. Revised June 23, 2009, Revised September 17, 2009, Revised September 29, 2009.

Appendix A – Sample Resolution Requesting to Proceed with an LDC Change

FORT MYERS BEACH, FLORIDA

RESOLUTION NUMBER 20__-__

WHEREAS, the Local Planning Agency (LPA) is mandated by Florida Statutes Section 163.3174; and

WHEREAS, the LPA is statutorily responsible for the review of proposed land development regulations, land development codes, or amendments thereto, and for making recommendations to the Town Council as to the consistency of such proposals with the adopted Comprehensive Plan (Plan); and

WHEREAS, Section 34-120(4) of the Town Land Development Code (LDC) states that the LPA will review proposed LDC amendments and make recommendations to the Town Council regarding their consistency with the Plan, and

WHEREAS, Section 34-120 (12) of the LDC states that the LPA will aid Town officials charged with the direction of projects or improvements embraced within the Plan and generally promote the realization of the Plan; and

WHEREAS, Section 34-120 (14) of the LDC states that the LPA will perform any other duties which lawfully may be assigned to it by Town Council; and

WHEREAS, the Town Council determined at its meeting of October 9, 2006, that prior to the LPA's initiation of any proposed LDC changes, the LPA must inquire of the Town Council whether the Town Council wished to have such legislative changes initiated by the LPA.

IT IS HEREBY RESOLVED BY THE LPA OF THE TOWN OF FORT MYERS BEACH, FLORIDA as follows:

1. At its regularly scheduled meeting(s) of _____, 20__, the LPA determined that it wishes to initiate legislation on the following subject(s): _____

_____

_____

2. The LPA hereby requests direction from the Town Council as to whether the Town Council wishes to have the LPA initiate legislative changes to the LDC on such subjects.

The foregoing Resolution was adopted by the LPA upon a motion by LPA Member _____ and seconded by LPA Member _____, and upon being put to a vote, the result was as follows:

Name _____ Name _____
Name _____ Name _____
Name _____ Name _____
Name _____

DULY PASSED AND ADOPTED THIS ___ day of _____, 20__.

LPA of the Town of Fort Myers Beach

By: _____
Name, LPA Chair

Approved as to legal sufficiency: ATTEST:

By: _____ By: _____
Name, Esquire, LPA Attorney Name, Town Clerk

Appendix B - Resolution HPB 2006-03 Establishing the Historic Advisory Committee

RESOLUTION OF THE HISTORIC PRESERVATION BOARD OF
THE TOWN OF FORT MYERS BEACH, FLORIDA
RESOLUTION NUMBER HPB 2006-03

A RESOLUTION OF THE HISTORIC PRESERVATION BOARD OF FORT MYERS BEACH, FLORIDA:

WHEREAS, the Local Planning Agency of the Town of Fort Myers Beach, Florida, serves as the historic preservation board for the Town of Fort Myers Beach ("HPB") pursuant to Chapter 22, Article II, Division 2, Section 22-71 and Chapter 30, Section 30-56(b) of the Land Development Code ("LDC") of the Town of Fort Myers Beach; and

WHEREAS, the HPB is vested with the power, authority and jurisdiction to designate, regulate and administer historical, cultural, archaeological, and architectural resources in the Town, pursuant to LDC Section 22-71; and

WHEREAS, the HPB has the power and duty to designate eligible historic resources, evaluate the significance and eligibility of historic resources for designation pursuant to Chapter 22 of the LDC, increase awareness of historic preservation and its community benefits by promoting public education programs, and administer programs aimed at the proper recognition of designated historic resources pursuant to Section 22-74 of the LDC; and

WHEREAS, the HPB has the power to create an advisory committee to assist the HPB with historic preservation matters and to charge such committee with various and sundry duties; and

WHEREAS, this advisory committee will have no quasi-judicial or legislative powers but rather will function in an informal advisory capacity to the HPB; and

WHEREAS, the advisory committee will be subject to the Sunshine and Public Records Laws of the State of Florida.

NOW, THEREFORE BE IT RESOLVED BY THE HISTORIC PRESERVATION BOARD OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AS FOLLOWS:

The Historic Preservation Board does hereby create the Fort Myers Beach Historical Advisory Committee (FMBHAC), with the following restrictions:

1. The FMBHAC shall be subject to the Sunshine and Public Records Laws of the State of Florida.

2. The FMBHAC will be comprised of seven (7) members appointed by the HPB, all of whom shall be residents, business owners, or property owners within the Town of Fort Myers Beach.

3. Three (3) members of FMBHAC shall be current members of the HPB and four (4) members shall be appointed by the HPB after due consideration of recommendations by the Estero Island Historic Society.

4. The FMBHAC shall meet on an as-needed basis, keep its own minutes, and hold all meetings at Town Hall.

5. The HPB shall appoint all initial members of FMBHAC no later than the first meeting of the HPB in October, 2006. Thereafter, commencing with June, 2007, the HPB shall appoint all members of FMBHAC on an annual basis at the first meeting of the HPB in June.

The foregoing Resolution was adopted by the Historic Preservation Board upon a vote following motion by Board member Tom Babcock and second by Board member Bob Raymond, the result of which was as follows:

Tom Babcock	aye
Randy Brown	aye
Rochelle Kay	absent
Larry Kiker	aye
Alan Mandel	aye
Bob Raymond	aye
Bob Simon	absent

DULY PASSED AND ADOPTED THIS 12th day of September, 2006.

HISTORIC PRESERVATION BOARD OF THE
TOWN OF FORT MYERS BEACH

By: _____
Larry Kiker, Chair

Approved as to legal sufficiency: ATTEST:

By: _____ By: _____
Anne Dalton, Esquire Michelle Mayer, Town Clerk
HPB/LPA Attorney

Appendix C – Recognition Resolutions

The following Resolution format has been used to recognize past members of the LPA.

RESOLUTION OF THE LOCAL PLANNING AGENCY OF THE TOWN OF FORT MYERS BEACH, FLORIDA
RESOLUTION NUMBER 2007-04

WHEREAS, the Local Planning Agency (LPA) is mandated by Florida Statutes Section 163.3174; and

WHEREAS, the LPA was established in accordance with the requirements of the Town of Fort Myers Beach Land Development Code section 34-111 et seq.; and

WHEREAS, Section 34-113 sets forth the requirements for membership on the LPA; and

WHEREAS, Randy Brown has been a member of the LPA from April 2006 to April, 2007; and

WHEREAS, during his membership on the LPA, Randy Brown has provided exemplary service to the Town of Fort Myers Beach.

IT IS HEREBY RESOLVED BY THE LPA OF THE TOWN OF FORT MYERS BEACH, FLORIDA as follows:

RANDY BROWN IS RECOGNIZED FOR HIS HARD WORK AND DEDICATED SERVICE TO THE TOWN OF FORT MYERS BEACH. HE CREATED A POSITIVE ENVIRONMENT FOR THE LOCAL PLANNING AGENCY WHILE MAINTAINING AN ATTITUDE OF COURTESY TOWARD COLLEAGUES, CITIZENS AND STAFF DURING ALL DISCUSSIONS AND DELIBERATIONS. HE DISCHARGED HIS DUTIES WITHOUT FAVOR OR PREJUDICE WHILE RESPECTING ALL LAWS, RULES AND REGULATIONS. HIS CONTRIBUTIONS INSURE THAT THE UNIQUE AND NATURAL CHARACTERISTICS OF THE TOWN OF FORT MYERS BEACH WILL BE PRESERVED.

The foregoing Resolution was adopted upon a motion by LPA Member Simon and seconded by LPA Member Mandel. Upon being put to a vote, the result was as follows:

Tom Babcock aye Alan Mandel aye Dennis Weimer aye
Evie Barnes aye Bob Raymond aye
Rochelle Kay aye Bob Simon aye
Bob Simon aye

DULY ADOPTED THIS 10TH day of APRIL 2007.
LPA of the Town of Fort Myers Beach

BY: _____
Tom Babcock, LPA Chair

Approved as to legal sufficiency: ATTEST:

By: _____ By: _____
Anne Dalton, Esquire Michelle D. Mayher, Town Clerk
LPA Attorney

Appendix D - Historic Sign Criteria and Integrity Evaluation

The following is the a form for use by the LPA to evaluate the criteria and integrity of historic sign applications. Staff has documents that were approved by the LPA to be made available to applicants for historic signs that will explain the intent of the Comprehensive Plan and clarify for documentation that would be useful when filing an application.

Historic Sign Criteria and Integrity Evaluation
Town of Fort Myers Beach

Eligibility Criteria (select one): ___Building ___District ___Site ___Structure ___Object

INTEGRITY		Quality of Significance Criteria (Select one)			
CONSIDERATIONS (Review all)	Events	Persons	Distinctive Characterisitics	Historical Information	Overall District Significance
Location					
Design					
Setting					
Materials					
Workmanship					
Feeling					
Association					

Eligibility Criteria

Building. A building is a structure created to shelter any form of human activity, such as a house, barn, church, hotel, or similar structure. Building may refer to a historically related complex such as a courthouse and jail or a house and barn.

Structure. A structure is a work made up of interdependent and interrelated parts in a definite pattern of organization. Constructed by man, it is often an engineering project large in scale.

Object. An object is a material thing of functional, aesthetic, cultural, historical or scientific value that may be, by nature or design, movable yet related to a specific setting or environment.

District. A district is a geographically definable area, urban or rural, possessing a significant concentration, linkage, or continuity of sites, buildings, structures, or objects united by past events or aesthetically by plan or physical development. A district may also comprise individual elements separated geographically but linked by association or history.

Site. A site is the location of a significant event, a prehistoric or historic occupation or activity, or a building or structure, whether standing, ruined, or vanished, where the location itself maintains historical or archeological value regardless of the value of any existing structure.

Quality of Significance Criteria

Events. It was associated with events that significantly contributed to broad patterns of our history.

Persons. It was associated with the lives of persons significant in our past.

Distinctive Characteristics. It embodies the distinctive characteristics of a type period, or method of construction, or possesses high artistic values, or represents a significant distinguishable entity whose components may lack individual distinction.

Historical Information. It has yielded (or may yield) information important to prehistory or history.

Integrity Considerations

Location is the place where significant activities took place. This quality requires that to a large extent the boundaries remain intact.

Design is the composition of elements comprising the form, plan, and spatial organization. Design may have resulted from conscious planning decisions set forth in the historic plat, project specifications, building contracts or deed restrictions, or it may be the result of the personal tastes and individual efforts of homeowners to shape their domestic environment. Integrity of design can be affected by changes. Small-scale additions may not detract in a major way from the historic character. Large-scale additions, however, alter the spatial relationship and generally threaten integrity of design.

Setting is the physical environment within and surrounding the resource. Integrity of setting requires that a strong sense of historical setting be maintained within the boundaries. This relies to a large extent on the retention of built resources, street plantings, parks and open space. Elements of design greatly affect integrity of setting, and those consistent with the historic character or dating from the period of significance add to integrity. Small-scale elements such as plantings, gateposts, fences, swimming pools, playground equipment, and parking lots detract from the integrity of setting unless they date to the period of significance.

Materials include the construction materials of dwellings, garages, roadways, walkways, fences, curbing, and other structures, as well as vegetation planted as lawns, shrubs, trees, and gardens. The presence of particular building materials (e.g., stone, stucco, brick, or horizontal siding) may be important indicators of architectural style and methods of construction that give some neighborhoods a cohesive historic character. Integrity of materials requires that the resource retains the key exterior materials that marked its identity during the historic period. The retention of original materials in individual dwellings may be less important in assessing the integrity of a neighborhood significant for its plan or landscape design. Original plant materials may enhance the integrity, but their loss does not necessarily destroy it. Vegetation similar in historic species, scale, type and visual effect will generally convey integrity of setting although integrity of materials may be lost.

Workmanship is evident in the ways materials have been fashioned for functional and decorative purposes to create houses, other buildings and structures, and a landscaped setting. This includes the treatment of materials in design, the planting and maintenance of vegetation, as well as the construction methods of small-scale features such as curbs and walls. Integrity of workmanship requires that architectural features exhibit the artistry or craftsmanship of their builders and that the vegetation historically planted for decorative and aesthetic purposes be maintained in an appropriate fashion and replaced in kind when damaged or destroyed.

Feeling, although intangible, is evoked by the presence of physical characteristics that convey the sense of past time and place. Integrity of feeling results from the cumulative effect of setting, design, materials, and workmanship.

Association is the direct link between a historic resource and the important events that shaped it. Continued residential use and community traditions, as well as the renewal of design covenants and deed restrictions, help maintain a neighborhood's integrity of association. Additions and alterations that introduce new land uses and erase historic elements of design threaten integrity. Integrity of association requires that a historic resource convey the period when it achieved importance and that, despite changing patterns of ownership, it continues to reflect the design principles and historic associations that shaped it during the historic period.

~~Appendix E – Legislative Change Process~~

~~The LPA evaluated the process of making legislative changes to the Land Development Code (LDC). The results of the study have been depicted as a flow chart as well as a written description of each sub-process. The arrows in the flow chart represent the direction that work "flows" through the process. Circles are inputs, such as a change request, or outputs, such as a resolution to be sent to Town Council. Rectangle boxes are places where action or work is taking place. A diamond is a decision point that may send the workflow in different directions dependent on the decision made. A "bullet" symbol is where the workflow is on "hold" until the next action can be scheduled. Holds are not necessarily a bad thing, but they can be areas of opportunity for moving change requests through the system faster. Finding ways to reduce the number of steps in a process flow is another way to reduce the time required to make changes to our LDC.~~

~~The flow chart also indicates who is "accountable" for each process operation. "Accountability" does not mean that person is "responsible" for doing all the work. It is their job to see that the work gets done.~~

~~Future LPAs and Town Councils may want to consider ways that the legislative change process can be altered to improve process time. Until then, performance can start to be measured in order to establish a baseline. One action that has been initiated is to generate a Legislative Change Action List (LCAL). The LCAL will provide clarification of the change requests, the priority and current status. Legislative requests will be categorized into LDC change that:~~

1. ~~Require policy recommendations from the LPA through workshops or ad hoc committee activities. These changes would be substantive and likely time consuming for staff, consultants and LPA, but not necessarily the highest priority.~~
2. ~~Are state mandated changes and recommendations of the Evaluation and Analysis Report (EAR) that are time sensitive. These may or may not be complex, but are high priority.~~
3. ~~May need to be clarified for legal reasons. Complexity and priority must be determined on an individual case.~~
4. ~~Need staff time. Most of these changes are clerical in nature, but can be time consuming. Priority is often low, but need to be made visible.~~

~~The LPA will prioritize, schedule and determine a path forward for legislative change requests that fall into LCAL category 1. Accountability for categories 2 through 4 belongs to the Town Manager, with likely input from the Director of Community Development, the LPA Attorney and the Town's Planning Consultant.~~

~~A regular approach to legislative changes allows interested parties a predictable methodology to participate in the legislative process. For example, the Florida Legislature meets on an annual basis—unless a special session is called—at the same time each year to consider changes to the laws of the State. The effective date of these laws may vary to allow for a phased approach to changes in the law that might best occur if affected parties are afforded a reasonable period of time for adjustment to the change. From time to time, the LPA may wish to establish and refine the timing aspects of its legislative process to improve manageability and predictability.~~

Town of Fort Myers Beach Legislative Change Process

Overarching Principles:

- Trust is placed in the hands of those accountable for each step in the process to do their job to their best of their ability.
- Open, honest and timely communication will be maintained at all times.
- All parties in this process will be treated with respect.

Sub-Processes

A. Request Initiation

Requests to change the Land Development Code (LDC) can be initiated by: the Town Manager, the Town Council, the Local Planning Agency, a group/committee or an individual.

Process:

- Requests from the Town Manager and Town Council proceed directly to the "assign action" sub-process.
- LPA change requests are forwarded to Town Council for approval to proceed.
- All individual or group initiated LDC change requests come to the LPA for review and action. Consistency with the Comprehensive Plan will be the criteria for approving or denying requests.
- The Town Clerk handles scheduling functions with direction from the Town Manager or designee (likely the Community Development Director).

B. Assign Action

Process:

- The Town Manager or designee is accountable for the Legislative Change Action List (LCAL) with input from Planning Consultant, Staff and LPA Attorney.
- Each legislative change request will be put into a category for the purpose of prioritizing and scheduling.
- The LCAL will be reviewed at every LPA meeting.

C. Assessment

Assessment of an LDC change request can follow several paths depending on the complexity of the request and the expertise required for making recommendations. The Town Manager or designee, the Planning Consultant and the LPA Attorney, choose the process path.

Process:

- Determine whether recommendations are needed from an ad hoc or standing committee.
- Determine whether a workshop is needed.

- Workshops will include: Planning Consultant, appropriate staff, LPA Attorney, LPA members, ad hoc or advisory committees (as needed) and the public.
- Recommendations from committees and/or workshops will be documented by resolution.
- Once all recommendations have been received, drafting of the LDC change can commence and an LPA hearing scheduled.

D. LPA Hearing

Process:

- The LPA must approve or reject LDC changes or possibly suggest multiple wording options for consideration by Town Council.
- Recommendations must be consistent with the Comprehensive Land Use Plan.
- Explanation of recommendations are forwarded to Town Council by resolution.

E. Town Council Hearings

Process:

- Introduction of Ordinance
- First Hearing
- Second Hearing. Approved or denied based on consistency with the Comprehensive Land Use Plan.
- At each hearing, Council may choose to deny the change request, return it to the LPA and/or committees and/or workshop participants for rework, or table it.

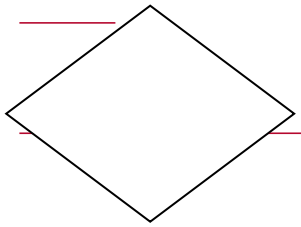
F. Documentation

Process:

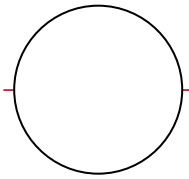
- If the ordinance is approved by Town Council, the Town Manager is accountable for seeing that appropriate steps are taken to codify and distribute changes in the Town of Fort Myers Beach Land Development Code.

Flow Chart Symbols Used:

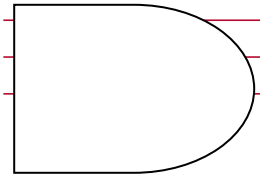
Process Operation



Decision (A Decision will have two or more directions of flow)



Input/Output

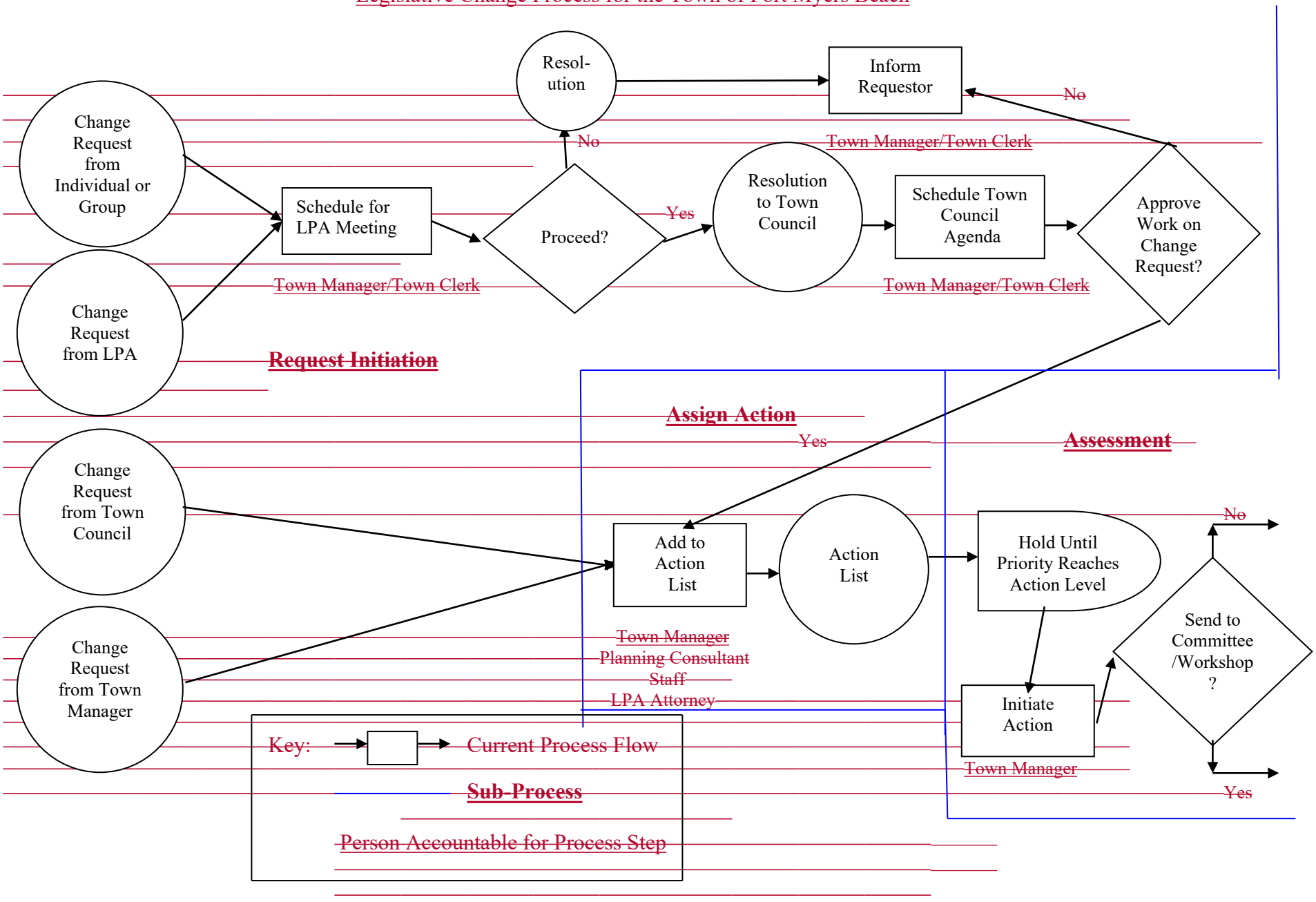


Delay/Wait/Hold

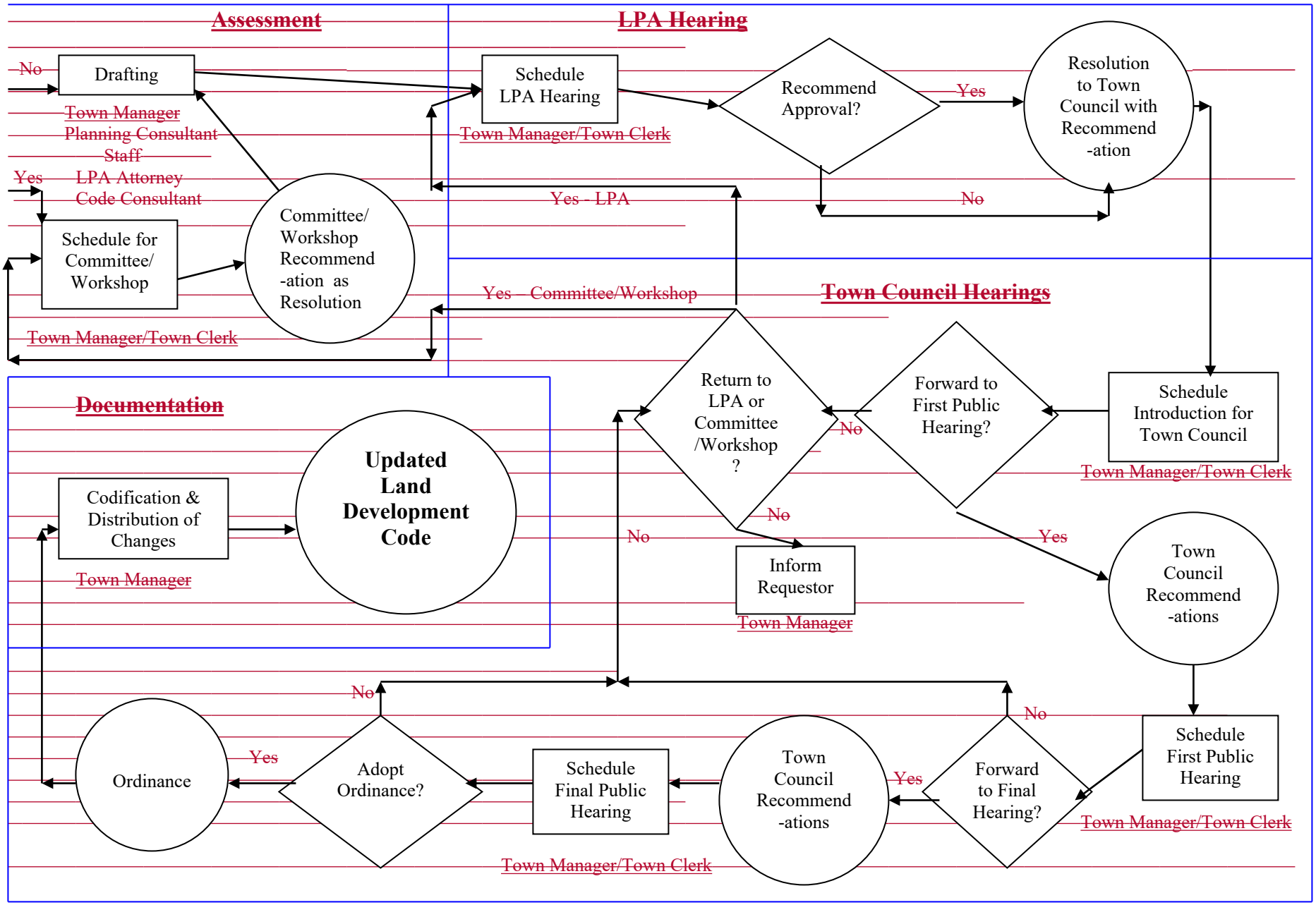
Direction of Flow

The flow chart is a graphic method for displaying a work process and sequence of activities. It graphically shows the process and potential opportunities for improvement within the process. It also identifies starting inputs and ending outputs that establish boundaries of ownership. This sequence of activities is represented by various flow chart symbols, which are connected by a direction of flow arrow.

Legislative Change Process for the Town of Fort Myers Beach



Legislative Change Process for the Town of Fort Myers Beach



F. Historic Plaque Resolution and Agreement

RESOLUTION OF THE HISTORIC PRESERVATION BOARD OF
THE TOWN OF FORT MYERS BEACH, FLORIDA
RESOLUTION NUMBER HPB 2008-01

A RESOLUTION OF THE HISTORIC PRESERVATION BOARD OF FORT MYERS BEACH, FLORIDA:

WHEREAS, the Local Planning Agency of the Town of Fort Myers Beach, Florida, serves as the historic preservation board for the Town of Fort Myers Beach ("HPB") pursuant to Chapter 22, Article II, Division 2, Section 22-71 and Chapter 30, Section 30-56(b) of the Land Development Code ("LDC") of the Town of Fort Myers Beach; and

WHEREAS, the HPB is vested with the power, authority and jurisdiction to designate, regulate and administer historical, cultural, archaeological, and architectural resources in the Town, pursuant to LDC Section 22-71; and

WHEREAS, the HPB has the power and duty to designate eligible historic resources, evaluate the significance and eligibility of historic resources for designation pursuant to Chapter 22 of the LDC, increase awareness of historic preservation and its community benefits by promoting public education programs, and administer programs aimed at the proper recognition of designated historic resources pursuant to LDC Section 22-74.

NOW THEREFORE, THE HISTORIC PRESERVATION BOARD RESOLVES AS FOLLOWS:

1. The HPB hereby approves the Town of Fort Myers Beach Historic Preservation Board Historic Plaque Agreement for use by the Town in the Historic Plaque Program. A copy of this Agreement is attached to this Resolution as Exhibit "A" and is hereby incorporated by reference.

The foregoing Resolution was adopted by the HPB upon a motion by _____ and second by _____. Upon being put to a vote, the result was as follows:

Thomas Babcock ____	Bob Raymond ____	Alan Mandel _____
Evie Barnes ____	Bob Simon ____	
Rochelle Kay ____	Dennis Weimer ____	
Alan Mandel ____		

DULY PASSED AND ADOPTED THIS 19th day of February, 2008, by the Historic Preservation Board of the Town of Fort Myers Beach

By: _____
Bob Raymond, HPB Chair

Approved as to Legal Sufficiency

ATTEST: _____ By: _____
Michelle D. Mayher, Town Clerk Anne Dalton, LPA/HPB Attorney

TOWN OF FORT MYERS BEACH: HISTORIC PLAQUE AGREEMENT

The undersigned person represents that he/she is the owner of the property with the following street address: _____, Fort Myers Beach, Florida 33931, with a strap number of _____ (hereafter "Owner").

By signing below, Owner agrees to affix an historic plaque provided by the Town of Fort Myers Beach, a municipal corporation, on the structure located on the subject property, as follows: _____ _____ *(location and method of affixing)*. The Owner shall own the plaque. In the event of damage, loss or other casualty involving the sign, the Town may replace it, but shall not be obligated to do so.

The plaque shall contain the following language: _____ _____ _____

This permission is non-transferable to another structure or property. The owner, or any subsequent owner shall have the ability to terminate this Agreement without cause. In the event of such termination, the owner will remove the plaque and return it to the Town.

The undersigned waives any claim against the Town of Fort Myers Beach, its officers, agents representatives and employees arising from loss, injury or damage resulting from the subject matter of this Release and covenants not to bring any claim against the Town of Fort Myers Beach and its officers, agents representatives and/or employees related to the subject matter of this Release.

The undersigned has fully read, understood and agrees to every term in this Agreement.

_____ _____ _____

DATE OWNER PRINT NAME

_____ _____

ADDRESS CITY,STATE,ZIP

(_____) _____

TELEPHONE

_____ _____

WITNESS PRINT NAME

_____ _____

WITNESS PRINT NAME

Appendix G – Conflict of Interest Advice

Below are several points which may be of interest to the LPA Members:

1. I have an ongoing attorney-client relationship in which the attorney gives legal advice but isn't otherwise involved in my business enterprises. That firm may represent others coming before the LPA in quasi-judicial hearings which are not related to his/her representation of me.

   (a) Can I participate in LPA discussions and decision-making processes where my attorney is representing a different client?

   ANSWER: yes. Assuming that this is a traditional attorney-client relationship, there would be no "special private gain or loss" to the LPA member under F.S. 112.3143(4) for his/her attorney to represent someone else before the LPA. An attorney relationship, by itself, does not create a "business associate" relationship under F.S. 112.312(4). If there are other relationships between the firm and the LPA member (joint ventures, employment of a relative, etc.), that would be covered by the conflict statute.

   If the attorney provided information which is covered by the ex parte disclosure sections of the Land Development Code, the LPA member would make the same ex parte disclosure as he/she would for anyone else.

   Even if this were a conflict of interest, the statute requires written, advance disclosure. It does not prohibit discussion or voting at the advisory committee level.

   (b) Should I disclose the existence of this attorney-client relationship at the time the hearing starts?

   ANSWER: It's a good idea. It's not legally required to disclose it since it's not a conflict of interest. However, in ethical matters, it's a good idea to go the extra mile. My suggestion would be to say something like "this law firm has represented me on matters which are not related to this hearing. The LPA attorney has advised me that there's no conflict of interest here but I wanted to disclose this for the record."

2. I have an ongoing relationship with local architects, engineers and other professionals. None of these persons are involved in my business enterprises in any other capacity. Those professionals may represent other persons coming before the LPA in quasi-judicial hearings which are not related to their representation of me. Is there a conflict of interest here?

   ANSWER: See #1 above.

Excerpted from LPA Attorney Anne Dalton memo dated April 28, 2008.

Sec. 34-111. Agency established.

The Town of Fort Myers Beach Local Planning Agency (LPA) is hereby established.

Sec. 34-112. Purpose and scope.

The broad objectives of town planning and the creation of the local planning agency are to further the welfare of the citizens of the town by helping to promote a better, more helpful, convenient, efficient, healthful, safe, and attractive community environment and to insure that the unique and natural characteristics of the island are preserved.

Sec. 34-113. Composition, appointment and compensation of members.

(a) The local planning agency shall consist of up to seven members appointed by the town council. No members of the local planning agency shall be salaried officials of the town. Membership on the local planning agency shall not affect a person's eligibility for membership on any other advisory committee for the Town of Fort Myers Beach during his/her term of office. One spouse per household will be eligible for membership on the local planning agency during any given term of office. No current member of town council shall be eligible to serve on the local planning agency. Except for inclusion of members required under Florida law, all members must be residents of, or owners of real property located within, the territorial limits of the Town of Fort Myers Beach at the time of application for membership on the local planning agency and during the period of service on the local planning agency. All applicants must apply on or before October 1 of the appointment year. Each application must include a short biography and short explanation as to why the applicant wishes to serve on the local planning agency.

(b) The members of the local planning agency shall serve without compensation but may be reimbursed for expenses as are necessary to conduct the work of the agency from funds appropriated by the town council.

(c) In addition to the up to seven voting members, the local planning agency shall also include as a nonvoting member a representative of the Lee County School District, as designated by the Lee County School Board, to attend and participate in those meetings at which the local planning agency considers comprehensive plan amendments and rezonings that would, if approved, increase residential density on the property that is the subject of the application (see F.S. 163.3174(1), 2002).

Sec. 34-114. Members' terms and vacancies.

(a) The term of office of a member of the local planning agency shall be staggered in increments of two years or until a successor has been appointed and has qualified, except that the respective terms of the members first appointed under Ordinance No. 08-11 shall be up to four members for a one-year term and three members for a two-year term. If otherwise qualified, a member may be repeatedly appointed for an additional term by Town Council without a limitation in number of terms served.

(b) Appointments shall be made annually at the first available meeting of the council in November. The term of any member which would otherwise expire in April, 2008, will be extended to the first available town council meeting in November, 2008, or until such member's successor has been appointed, whichever is sooner. The term of any member which would otherwise expire in April, 2009, will be extended to the first available town council meeting in November, 2009, or until their successor has been appointed, whichever is sooner. Vacancies in the local planning agency shall, within 60 days, be filled by the council for the remainder of the term created by such vacancy.

Sec. 34-115. Forfeiture of office.

A local planning agency member shall forfeit office if the member:

(1) Lacks at any time during the term of office any qualification for the office prescribed by town ordinance or state law; or

(2) Violates any standard of conduct or code of ethics established by law for public officials; or

(3) Is absent from three regular local planning agency meetings per year without being excused by the local planning agency.

Sec. 34-116. Election and duties of officers.

(a) The local planning agency shall elect a chairperson and a vice-chairperson each year at the first meeting of the newly appointed members.

(b) It shall be the duty of the chairperson to preside over all meetings of the local planning agency. In the absence of the chairperson, the vice-chairperson may preside.

Sec. 34-117. Clerk.

The town manager or designee shall be the clerk of the local planning agency. It shall be the duty of the clerk to keep a record of all proceedings of the local planning agency, transmit its recommendations when directed by the chairperson, maintain an updated complete file of all its proceedings at town hall, and perform such other duties as are usually performed by the clerk of a deliberative body.

Sec. 34-118. Rules and procedures.

The local planning agency shall meet at least eight times per year and shall meet no less often than bi-monthly or more frequently at regular intervals to be determined by it, and at such other times as the chairperson or as it may determine. It may adopt rules for the transaction of its business. The rules may be amended from time to time, but only upon notice to all members that said proposed amendments shall be acted upon at a specified meeting. A majority vote of the local planning agency shall be required for the approval of the proposed amendment. It shall keep a properly indexed record of its resolutions, transactions, findings, and determinations, which record shall be a public record. All meetings of the local planning agency shall be public meetings.

Sec. 34-119. Employment of staff and experts.

The local planning agency may, subject to the approval of the town council and within the financial limitations set by appropriations made or other funds available, recommend the town manager employ such experts, consultants, technicians and staff as may be deemed necessary to carry out the functions of the local planning agency. Such technical assistance to the local planning agency shall be under the day-to-day supervision of the town manager.

Sec. 34-120. Specific functions, powers and duties as to comprehensive planning and land development regulations.

The functions, powers and duties of the local planning agency as to comprehensive planning and adoption of land development regulations shall be to:

(1) Acquire and maintain such information and materials as are necessary to an understanding of past trends, present conditions, and forces at work to cause changes in these conditions, and provide data for estimates of future conditions. Such information and material may include maps and photographs of manmade and natural physical features, statistics on trends and present and future estimated conditions with respect to population, property values, economic base, land uses, municipal services, various parameters of environmental quality, and such other information as is important or likely to be important in determining the amount, direction and kind of development to be expected in the town and its various parts and the necessary regulation thereof to insure that the unique and natural characteristics of the island be preserved.

(2) Prepare principles and policies for guiding land uses and development in the town in order to preserve the unique and natural characteristics of the island, to overcome the island's present handicaps, and to prevent or minimize future problems.

(3) Make or cause to be made any necessary special studies on the location, condition, and adequacy of specific facilities in the town or portion thereof. These may include, but are not limited to, studies on housing, commercial facilities, utilities, traffic, transportation, parking, and emergency evacuation.

(4) Review proposed land development codes and amendments thereto, and make recommendations to the town council as to their consistency with the comprehensive plan.

(5) Recommend to the town council annually whether the proposed capital improvements program is consistent with the comprehensive plan.

(6) Make administrative interpretations of the comprehensive plan when such interpretations are referred to the local planning agency by its legal counsel, in accordance with the ch. 15 of the comprehensive plan and § 34-124(3) of this chapter.

(7) Request legislative interpretations of the comprehensive plan in accordance with ch. 15 of that plan, when deemed appropriate by the local planning agency.

(8) Make recommendations to the town council on legislative interpretations that have been requested in accordance with ch. 15 of the comprehensive plan.

(9) Recommend action to the town council on any amendments that are proposed to the comprehensive plan.

(10) Monitor and oversee the effectiveness and status of the comprehensive plan and recommend to the town council such changes in the comprehensive plan as may from time to time be required, including preparation of the periodic evaluation and appraisal reports required by F.S. § 163.3191.

(11) Conduct such public hearings as may be needed for updating the comprehensive plan and such additional public hearings as are specified by law.

(12) Aid town officials charged with the direction of projects or improvements embraced within the comprehensive plan and generally promote the realization of the comprehensive plan.

(13) Cooperate with municipal, county and regional planning commissions and other agencies or groups to further the local planning program and to assure harmonious and integrated planning for the area.

(14) Perform any other duties which lawfully may be assigned to it by the town council.

Sec. 34-121. Functions, powers and duties as to zoning matters.

The functions, powers and duties of the local planning agency as to zoning matters shall be to:

(1) Prepare recommendations for changes to the boundaries of the various zoning districts, or to the regulations applicable thereto, to the town council.

(2) Make recommendations on the following to the town council:

a. Applications for rezonings including planned developments.

b. Applications for developments of regional impact and Florida Quality Developments approval, which may or may not include a request for rezoning.

c. Special exceptions.

d. Variances from this code and any town ordinance which specifies that variances from such ordinance can only be granted by the town council.

e. Extensions of master concept plans for planned developments (see § 34-220(4) of this chapter).

f. Any other applications that require action by the local planning agency pursuant to this code.

(3) *Authority.*

a. The local planning agency shall serve in an advisory capacity to the town council with respect to zoning matters as set forth in subsections (1) and (2) of this section, and in such capacity may not make final determinations.

b. The local planning agency shall not recommend the approval of a rezoning, and the town council shall not approve a rezoning, other than the change published in the newspaper pursuant to § 34-236(b) of this chapter, unless such change is more restrictive and permitted within the land use classification as set forth in the Fort Myers Beach Comprehensive Plan.

c. In reaching its recommendations, the local planning agency shall have the authority to recommend special conditions to be attached to any request for a planned development, special exception or variance.

Sec. 34-122. Functions, powers and duties as to historic preservation.

The powers and duties of the local planning agency regarding historic preservation shall include performing all functions assigned to the historic preservation board as set forth in ch. 22, article II, division 2 of this LDC.

Sec. 34-123. Cooperation with the local planning agency.

Each officer and employee of the town is hereby directed to give all reasonable aid, cooperation, and information to the local planning agency or to the authorized assistants of such agency when so requested.

Sec. 34-124. Legal counsel to the local planning agency.

The local planning agency have its own legal counsel, whose duties shall include:

(1) Advising the local planning agency as to its legal responsibilities and options during the conduct of its business.

(2) Preparing resolutions reflecting actions of the local planning agency.

(3) Issuing administrative interpretations of the Fort Myers Beach Comprehensive Plan or referring requests for such interpretations to the local planning agency (see § 34-120(6) of this chapter) when applications are submitted to the town clerk in accordance with chapter 15 of the comprehensive plan.

Secs. 34-125—34-200. Reserved.

1. Introduction

This Local Planning Agency (LPA) Policies and Procedures Manual is for the purpose of helping the LPA Members in the discharge of their duties. Experience may show that some of these policies and procedures need to be modified or eliminated and new ones adopted.

By adopting this manual, members of the LPA will find in one handy reference, answers to policy and procedure questions that come up from time to time. By having an agreed-upon guide, members of the LPA also may develop common expectations on proper conduct of LPA meetings, dealings with the public, and the way it interacts with Town staff.

This manual should be used in conjunction with the Town Charter, Comprehensive Plan, Land Development Code (LDC) and other applicable laws, as necessary.

2. Local Planning Agency Mission and Job Description

Mission: To further the welfare of the citizens of the Town by helping to promote a better, more helpful, convenient, efficient, healthy, safe community and attractive environment. To insure by strategic planning that the unique and natural characteristics of the island are preserved.

Functions, Powers and Duties:

- Review and interpret the Comprehensive Plan and conduct public hearings as may be needed to fulfill its duties under Town ordinance and Comprehensive Plan.
- Review and interpret the Land Development Code and conduct public hearings as may be needed to fulfill its duties under LDC, Town ordinance and Comprehensive Plan.
- In an advisory capacity to the Town Council, either at Town Manager's, Town Council's, or its own initiation, conduct hearings to fulfill its duties regarding zoning matters.
- Review the Capital Improvement Budget for consistency with the Comprehensive Plan and make recommendations to the Town Council.
- Serve as the Historic Preservation Board for the Town.
- Establish sub-committees as needed.
- Elect a chair and vice chair for the LPA.
- Elect a chair and vice chair for the Historic Preservation Board
- Perform any other duties that lawfully may be assigned to it by the Town Council and/or Town Manager.

COULD BE 6, 1X, 1, 1X, F

LPA Member Requirements:

- Be a resident or property owner in the Town of Fort Myers Beach
- File a ~~Statement of Financial Interests (Form 1)~~ with the Lee County Supervisor of Elections every
- Complete and file Form 1F – Final Statement of Financial Interest, within 60 days of leaving office.

APPROPRIATE FINANCIAL DISCLOSURE

Desired LPA Member Qualities:

- Analytical – ability to research and analyze information and data
- Decisive
- Knowledgeable – Such as, the Town Charter, Comprehensive Plan, Land Development Code, Sunshine Laws, Ethics Laws, Parliamentary Procedure
- Communication – Listening, Speaking, Writing
- Proactive – identify and seek solutions
- Ethical - open, sincere and truthful

- Ability to work in a team environment
- Ability to work with and listen to people having diverse interests
- Fair with no strong allegiance to any individual or group
- Common sense
- Time to do the job effectively

3. Training Materials and First Meeting

Training Materials

Each new member of the Local Planning Agency will be provided copies of:

- Town Charter
- Comprehensive Plan
- Land Development Code
- Florida Code of Ethics
- Florida Sunshine Laws
- Policy and Procedures Manual
- Other materials as determined by the LPA Attorney, Community Development Director and LPA members

Election of Officers

Annually, at the first meeting of the Local Planning Agency, after expired member positions have been filled by the Town Council, a chair and vice chair will be chosen. Each LPA member may nominate a person for each of these positions. A second is not required. A vote is taken in the order that a candidate was nominated. The positions are filled by a majority vote. If a majority is not received on the first ballot, a second ballot is taken for the two candidates receiving the most votes from the first ballot.

Sunshine Issues

Members of Town advisory committees, boards, and agencies are subject to the Sunshine Law (F.S. 286.011). The same Sunshine rules that apply to Town Council apply to the members of the LPA and other Town advisory committees, boards and agencies.

This means that any gathering of two or more members of the same advisory committee, board or agency must comply with all the Sunshine Law requirements if they participate in any discussion, directly or indirectly, regarding any matter where there is known or could be foreseeable action to be taken by the committee. Examples of indirect discussions are the use of email to a committee member or communication through a spouse or other go-between.

Advisory committee members cannot engage in discussions with each other (directly or indirectly) at outside meetings such as the Chamber of Commerce or Civic Association regarding any matter on which it is known or foreseeable that action may be taken, unless the Sunshine requirements are met.

These rules apply equally to any gathering, formal or casual, such as a Rotary Club (or other business or fraternal club gathering), fund-raiser, etc. They also apply to social events and functions unconnected to the advisory committee, such as a neighbor's backyard barbeque. They also apply to casual discussions between or among members coming in the door for the committee meeting, at breaks during the meeting, and going out the door after the meeting. Every component of the decision-making process must occur in the Sunshine.

The penalties for violating the Sunshine law are severe and can include criminal and civil sanctions. The process of investigation of Sunshine violations is always unpleasant, embarrassing, and expensive, even if the person is ultimately cleared.

4. Historic Preservation Board

The LPA also functions as the Historic Preservation Board (HPB) for the Town of Fort Myers Beach. The Historic Preservation Board has the power, authority, and jurisdiction to designate, regulate, and administer historical, cultural, archaeological, and architectural resources in the Town as set forth in LDC section 22-74. For any quasi-judicial or legislative hearings that come before the HPB, the hearing process shall conform to those outlined in Section 7 of this manual.

Annually, at the first meeting of the Local Planning Agency, after expired member positions have been filled by the Town Council, a meeting of the HPB will be convened and a chair and vice chair will be chosen using the same methodology as LPA chair and vice chair election.

Also at that meeting, a sub-committee, the Historic Advisory Committee (HAC), comprised of an approximately equal number of LPA members and Estero Island Historic Society members is established. Members of the Estero Island Historic Society interested in being on the Historic Advisory Committee must submit a statement of interest to the Town Clerk prior to the first annual meeting of the LPA. This sub-committee comprised of a total of six or seven members shall be selected by the HPB.

The HAC sub-committee will meet as needed to discuss and make recommendations to be brought before the Historic Preservation Board for consideration. Recommendations will be consistent with the requirements of the Comprehensive Plan and Land Development Code. At its first meeting after re-formation, the HAC shall select a chair, vice chair and secretary.

5. Ad Hoc Sub-Committees and Interaction with Other Advisory Committees

The LPA has the authority to form other ad hoc sub-committees requesting participation by volunteers. The objectives of a sub-committee, expected products, membership and timelines should be clearly stated and agreed to by the LPA. One LPA member will be asked to chair the ad hoc sub-committee. The intent would be to minimize participation and action items directed at Staff.

A standing ad hoc sub-committee named the Historic Advisory Committee was established by Resolution 2006-03 (Appendix B).

During discussions arising from land use cases, long-range planning and capital improvement discussions, the LPA will proactively communicate to other appropriate advisory committees while keeping Town Council informed. These interactions could result in the development of joint resolutions.

6. Meeting Preparation and Planning

Meeting Schedule

Section 34-118 of the Land Development Code (LDC) states: "The local planning agency shall meet at least 8 times per year and shall meet no less often than bimonthly…" This statement was included in the LDC to emphasize that the LPA should meet regularly to conduct required Town business. Thus, as a minimum, the LPA must meet at least 8 times per year.

Regularly planned meetings of the Local Planning Agency (LPA) are scheduled by mutual agreement between the LPA, LPA Attorney and Community Development Director. Special, continued or rescheduled meetings will be determined by consensus of the LPA members, the Director of the Department of Community Development and the LPA attorney.

Length of Agenda Items

In order to set reasonable LPA agendas, the Community Development Director will use best efforts to establish the time needed for presentations, public comment and subsequent discussions of agenda items by the LPA. Any person submitting Administrative topics to the Community Development Director will provide an estimate of the time needed. If the time needed for a hearing, legislative matter or administrative topic exceeds the allotted time by more than 15 minutes, the Chair may table the item until later in the meeting or continue the item until a subsequent meeting.

Public Notice of LPA Quasi-Judicial Hearings

Except as specifically addressed in the Town Land Development Code, Town Clerk shall advertise all LPA quasi-judicial hearings so that a legal notice will appear at least seven (7) calendar days prior to the LPA hearing date, to enable all interested parties to have notice and the ability to attend. The Community Development Director or designee will enter the *News-Press* Affidavit of Publication into the record at the beginning of the hearing. In the absence of the Affidavit of Publication, the Community Development Director or designee will enter a copy of the actual advertisement as run by the *News-Press* into the record at the beginning of the hearing after being sworn in. The affidavit, or actual advertisement, as the case may be, will be attached to the LPA Resolution following the hearing.

Continued Hearings and Legislative Issues

It is the goal of the LPA to complete a hearing during the scheduled meeting. If additional time is required and the hearing must be continued to a later date, any LPA member who missed the initial hearing should review the audio and/or videotapes prior to participating in the continued hearing or legislative discussion and resolution.

If the applicant submits new information or modification(s) to previously submitted information at the hearing, or immediately prior to the hearing, the LPA shall consult with the Director of the Department of Community Development and the LPA Attorney to determine if a continuance of the hearing is appropriate and proceed accordingly. Nothing contained in this section shall be construed to limit the Director's discretion to defer or continue the public hearing as set forth in LDC Section 34-213(3).

Meeting Preparation

Any LPA member, the Community Development Director, the LPA attorney, Town Council and Town Manager can submit meeting agenda topics for the LPA to the Community Development Director. Topics should be submitted at least fourteen (14) days prior to a planned meeting. The Director of the Department of Community Development and LPA attorney are responsible for scheduling hearings. Potential dates for hearings should be communicated to all participating parties as far in advance of the planned meeting as possible. All staff reports should be complete before a hearing is scheduled. Except in the case of an emergency, cancellation of a planned meeting should be at least 14 days in advance. Only under serious, extenuating circumstances should a hearing be cancelled after it has been publicly noticed.

The goal is to have finalized agenda and supporting material seven (7) days prior to a planned and

We get Friday prior to Mtg 5 days

noticed meeting. However, meeting materials will be placed in the LPA members' mailboxes no later than noon of the Friday prior to the scheduled Tuesday meeting. The Community Development Director or assistant will send an email to the LPA members when the packets are available.

The LPA members' packets should include complete documentation for agenda items (actions required, implications, backup information, memos, ordinances, resolutions, etc.) A sincere effort is made to see that LPA packets are complete. As a general rule, items requiring documentation (recommendations, memos, ordinances, resolutions, etc.) will not be included on an agenda until the documentation is complete.

The agenda is posted at Town Hall. Copies of the agenda are available to the public.

Occasionally an item comes up late and may be placed on an amended agenda, or as an "add on" (added too late to be included on the published agenda). Such additions are kept to an absolute minimum so as not to burden the LPA or the public with items not receiving sufficient advance notice. Important, potentially controversial items are not made as "add on items" except in extreme emergencies.

Attendance Policy

Section 34-115(3) of the Land Development Code (LDC) states: "A Local Planning Agency member shall forfeit office if the member is absent from three (3) regular local planning agency meetings per year without being excused by the local planning agency." This statement was included in the LDC to recognize that because of the significant pre-hearing preparation required by staff, applicants and other supporting personnel it is imperative that a quorum of the Local Planning Agency (LPA) members be present for all noticed meetings.

The LPA should be notified of a planned absence as soon as known. It is important that the LPA know that it will have a quorum of its members as soon as possible prior to an LPA meeting The LDC implies that the LPA has the discretion to define what will be an "excused" absence. The policy of the LPA is that if an absence is reported at least fourteen (14) days prior to a planned meeting the absence will automatically be considered an excused absence. This will allow sufficient time for a planned meeting to be rescheduled if it appears that a quorum will be questionable.

Absence notification less than 14 days prior to a planned meeting is considered an "emergency." If an excused absence is desired in less than 14 days, a request must be forwarded to the Community Development Director with an explanation of the nature of the emergency. The Local Planning Agency will decide whether the request will be considered an excused absence. If the LPA or Community Development Director receives no request for an excused absence, the absence is counted as an unexcused absence.

Three unexcused absences for regularly scheduled LPA meetings will result in automatic forfeiture of office.

"Chronic" absence is defined as missing three consecutive regularly scheduled meetings or four of the last six meetings of the LPA, regardless of whether the absence is excused or unexcused. If a chronic absence occurs, the Community Development Director will be asked to send a letter to the LPA member requesting an explanation of the reasons for the chronic absence. A copy of the letter will be sent to the Town Manager and Town Council. The LPA member will be asked to forward to the Community Development Director a statement of whether the LPA member wishes to remain on the LPA. Failure to reply will automatically make all absences unexcused and grounds for forfeiture of office.

In order to provide a diverse representation, it is important that the LPA strive to have as full representation as possible when conducting the Town's business.

Meetings and Communication between LPA and Town Council

As agreed at a workshop between LPA and Town Council members in September of 2009, efforts should be made to improve communications between the Local Planning Agency and Town Council. Previous means and those adopted at the above meeting shall be:

- The LPA shall appoint and send a representative to Town council public hearings on land use and proposed ordinances which have been acted upon by the LPA. This representative shall submit brief testimony (Council should have LPA resolution and meeting minutes, unless minutes approval waived by LPA) regarding the LPA hearings on the matter.
- The LPA "Action List" as updated subsequent to LPA meetings shall be submitted to the Director of Community Development, who shall in turn transmit to each Town Council member and the Town Manager and include this list in the next LPA meeting packet.
- A quarterly meeting to be attended by the Town Manager, Town Mayor and Local Planning Agency Chairperson shall take place at 1:00 PM on the third Wednesday of each of the following months; October, January, April and July. The purpose of this meeting will be to discuss current activities of the LPA and assure these are in accordance with direction from Town Staff and Town Council, as well as convey information to Staff and Council regarding the complexities or related issues of those activities.
- Routine workshops (informational meetings) to discuss current LPA activities and Town Council understanding of those activities shall be held between all LPA members, Town Council members, Town Manager, Community Development Director and Town and LPA Attorney starting at 9:00 AM and lasting no later than noon on the first regularly scheduled LPA meeting day of April and September.

7. Meeting Procedures

LPA Code of Conduct

Recognizing that persons holding a position of public trust are under constant observation, and recognizing that maintaining the integrity and dignity of the public office is essential for maintaining high levels of public confidence in our institutions of government, every member of the Local Planning Agency pledges to adhere to the following CODE OF CONDUCT.

1. Regularly attend all scheduled meetings of the LPA as well as special or called meetings relevant to the office.
2. Prepare for each meeting.
3. Create a positive environment in meetings of the LPA.
4. Maintain an attitude of courtesy and consideration toward colleagues, citizens and staff during all discussions and deliberations.
5. Allow citizens, colleagues and staff sufficient opportunity to present their views, within the prescribed rules for conduct of meeting of the LPA.
6. Avoid the use of abusive, threatening or intimidating language or gestures directed at colleagues, citizens of staff.

Appendix B - Resolution HPB 2006-03 Establishing the Historic Advisory Committee

RESOLUTION OF THE HISTORIC PRESERVATION BOARD OF THE TOWN OF FORT MYERS BEACH, FLORIDA
RESOLUTION NUMBER HPB 2006-03

A RESOLUTION OF THE HISTORIC PRESERVATION BOARD OF FORT MYERS BEACH, FLORIDA:

WHEREAS, the Local Planning Agency of the Town of Fort Myers Beach, Florida, serves as the historic preservation board for the Town of Fort Myers Beach ("HPB") pursuant to Chapter 22, Article II, Division 2, Section 22-71 and Chapter 30, Section 30-56(b) of the Land Development Code ("LDC") of the Town of Fort Myers Beach; and

WHEREAS, the HPB is vested with the power, authority and jurisdiction to designate, regulate and administer historical, cultural, archaeological, and architectural resources in the Town, pursuant to LDC Section 22-71; and

WHEREAS, the HPB has the power and duty to designate eligible historic resources, evaluate the significance and eligibility of historic resources for designation pursuant to Chapter 22 of the LDC, increase awareness of historic preservation and its community benefits by promoting public education programs, and administer programs aimed at the proper recognition of designated historic resources pursuant to Section 22-74 of the LDC; and

WHEREAS, the HPB has the power to create an advisory committee to assist the HPB with historic preservation matters and to charge such committee with various and sundry duties; and

WHEREAS, this advisory committee will have no quasi-judicial or legislative powers but rather will function in an informal advisory capacity to the HPB; and

WHEREAS, the advisory committee will be subject to the Sunshine and Public Records Laws of the State of Florida.

NOW, THEREFORE BE IT RESOLVED BY THE HISTORIC PRESERVATION BOARD OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AS FOLLOWS:

The Historic Preservation Board does hereby create the Fort Myers Beach Historical Advisory Committee (FMBHAC), with the following restrictions:

1. The FMBHAC shall be subject to the Sunshine and Public Records Laws of the State of Florida.

2. The FMBHAC will be comprised of seven (7) members appointed by the HPB, all of whom shall be residents, business owners, or property owners within the Town of Fort Myers Beach.

3. Three (3) members of FMBHAC shall be current members of the HPB and four (4) members shall be appointed by the HPB after due consideration of recommendations by the Estero Island Historic Society.

John McLean

1. Introduction

This Local Planning Agency (LPA) Policies and Procedures Manual is for the purpose of helping the LPA Members in the discharge of their duties. Experience may show that some of these policies and procedures need to be modified or eliminated and new ones adopted.

By adopting this manual, members of the LPA will find in one handy reference, answers to policy and procedure questions that come up from time to time. By having an agreed-upon guide, members of the LPA also may develop common expectations on proper conduct of LPA meetings, dealings with the public, and the way it interacts with Town staff.

This manual should be used in conjunction with the Town Charter, Comprehensive Plan, Land Development Code (LDC) and other applicable laws, as necessary.

2. Local Planning Agency Mission and Job Description

Mission: To further the welfare of the citizens of the Town by helping to promote a better, more helpful, convenient, efficient, healthy, safe community and attractive environment. To insure by strategic planning that the unique and natural characteristics of the island are preserved.

Strategic Plan when available

Functions, Powers and Duties:

- Review and interpret the Comprehensive Plan and conduct public hearings as may be needed to fulfill its duties under Town ordinance and Comprehensive Plan.
- Review and interpret the Land Development Code and conduct public hearings as may be needed to fulfill its duties under LDC, Town ordinance and Comprehensive Plan.
- In an advisory capacity to the Town Council, either at Town Manager's, Town Council's, or its own initiation, conduct hearings to fulfill its duties regarding zoning matters.
- Review the Capital Improvement Budget for consistency with the Comprehensive Plan and make recommendations to the Town Council.
- Serve as the Historic Preservation Board for the Town. — ?
- Establish sub-committees as needed.
- Elect a chair and vice chair for the LPA.
- Elect a chair and vice chair for the Historic Preservation Board — ?
- Perform any other duties that lawfully may be assigned to it by the Town Council and/or Town Manager.

LPA Member Requirements:

- Be a resident or property owner in the Town of Fort Myers Beach
- File a Statement of Financial Interests (Form 1) with the Lee County Supervisor of Elections every year.
- Complete and file Form 1F – Final Statement of Financial Interest, within 60 days of leaving office.

Desired LPA Member Qualities:

- Analytical – ability to research and analyze information and data
- Decisive
- Knowledgeable – Such as, the Town Charter, Comprehensive Plan, Land Development Code, Sunshine Laws, Ethics Laws, Parliamentary Procedure
- Communication – Listening, Speaking, Writing
- Proactive – identify and seek solutions
- Ethical - open, sincere and truthful

- Ability to work in a team environment
- Ability to work with and listen to people having diverse interests
- Fair with no strong allegiance to any individual or group
- Common sense
- Time to do the job effectively

3. Training Materials and First Meeting

Training Materials

Each new member of the Local Planning Agency will be provided copies of:

- Town Charter
- Comprehensive Plan
- Land Development Code
- Florida Code of Ethics
- Florida Sunshine Laws
- Policy and Procedures Manual
- Other materials as determined by the LPA Attorney, Community Development Director and LPA members

Election of Officers

Annually, at the first meeting of the Local Planning Agency, after expired member positions have been filled by the Town Council, a chair and vice chair will be chosen. Each LPA member may nominate a person for each of these positions. A second is not required. A vote is taken in the order that a candidate was nominated. The positions are filled by a majority vote. If a majority is not received on the first ballot, a second ballot is taken for the two candidates receiving the most votes from the first ballot.

Sunshine Issues

Members of Town advisory committees, boards, and agencies are subject to the Sunshine Law (F.S. 286.011). The same Sunshine rules that apply to Town Council apply to the members of the LPA and other Town advisory committees, boards and agencies.

This means that any gathering of two or more members of the same advisory committee, board or agency must comply with all the Sunshine Law requirements if they participate in any discussion, directly or indirectly, regarding any matter where there is known or could be foreseeable action to be taken by the committee. Examples of indirect discussions are the use of email to a committee member or communication through a spouse or other go-between.

Advisory committee members cannot engage in discussions with each other (directly or indirectly) at outside meetings such as the Chamber of Commerce or Civic Association regarding any matter on which it is known or foreseeable that action may be taken, unless the Sunshine requirements are met.

These rules apply equally to any gathering, formal or casual, such as a Rotary Club (or other business or fraternal club gathering), fund-raiser, etc. They also apply to social events and functions unconnected to the advisory committee, such as a neighbor's backyard barbeque. They also apply to casual discussions between or among members coming in the door for the committee meeting, at breaks during the meeting, and going out the door after the meeting. Every component of the decision-making process must occur in the Sunshine.

The penalties for violating the Sunshine law are severe and can include criminal and civil sanctions. The process of investigation of Sunshine violations is always unpleasant, embarrassing, and expensive, even if the person is ultimately cleared.

4. Historic Preservation Board - Applicability?

The LPA also functions as the Historic Preservation Board (HPB) for the Town of Fort Myers Beach. The Historic Preservation Board has the power, authority, and jurisdiction to designate, regulate, and administer historical, cultural, archaeological, and architectural resources in the Town as set forth in LDC section 22-74. For any quasi-judicial or legislative hearings that come before the HPB, the hearing process shall conform to those outlined in Section 7 of this manual.

Annually, at the first meeting of the Local Planning Agency, after expired member positions have been filled by the Town Council, a meeting of the HPB will be convened and a chair and vice chair will be chosen using the same methodology as LPA chair and vice chair election.

Also at that meeting, a sub-committee, the Historic Advisory Committee (HAC), comprised of an approximately equal number of LPA members and Estero Island Historic Society members is established. Members of the Estero Island Historic Society interested in being on the Historic Advisory Committee must submit a statement of interest to the Town Clerk prior to the first annual meeting of the LPA. This sub-committee comprised of a total of six or seven members shall be selected by the HPB.

The HAC sub-committee will meet as needed to discuss and make recommendations to be brought before the Historic Preservation Board for consideration. Recommendations will be consistent with the requirements of the Comprehensive Plan and Land Development Code. At its first meeting after re-formation, the HAC shall select a chair, vice chair and secretary.

5. Ad Hoc Sub-Committees and Interaction with Other Advisory Committees

The LPA has the authority to form other ad hoc sub-committees requesting participation by volunteers. The objectives of a sub-committee, expected products, membership and timelines should be clearly stated and agreed to by the LPA. One LPA member will be asked to chair the ad hoc sub-committee. The intent would be to minimize participation and action items directed at Staff.

A standing ad hoc sub-committee named the Historic Advisory Committee was established by Resolution 2006-03 (Appendix B).

During discussions arising from land use cases, long-range planning and capital improvement discussions, the LPA will proactively communicate to other appropriate advisory committees while keeping Town Council informed. These interactions could result in the development of joint resolutions.

6. Meeting Preparation and Planning

Meeting Schedule

Section 34-118 of the Land Development Code (LDC) states: "The local planning agency shall meet at least 8 times per year and shall meet no less often than bimonthly..." This statement was included in the LDC to emphasize that the LPA should meet regularly to conduct required Town business. Thus, as a minimum, the LPA must meet at least 8 times per year.

for clarity, at least once every other month.

redundant statement.

Regularly planned meetings of the Local Planning Agency (LPA) are scheduled by mutual agreement between the LPA, LPA Attorney and Community Development Director. Special, continued or rescheduled meetings will be determined by consensus of the LPA members, the Director of the Department of Community Development and the LPA attorney.

Length of Agenda Items

In order to set reasonable LPA agendas, the Community Development Director will use best efforts to establish the time needed for presentations, public comment and subsequent discussions of agenda items by the LPA. Any person submitting Administrative topics to the Community Development Director will provide an estimate of the time needed. If the time needed for a hearing, legislative matter or administrative topic exceeds the allotted time by more than 15 minutes, the Chair may table the item until later in the meeting or continue the item until a subsequent meeting.

Public Notice of LPA Quasi-Judicial Hearings

Except as specifically addressed in the Town Land Development Code, Town Clerk shall advertise all LPA quasi-judicial hearings so that a legal notice will appear at least seven (7) calendar days prior to the LPA hearing date, to enable all interested parties to have notice and the ability to attend. The Community Development Director or designee will enter the *News-Press* Affidavit of Publication into the record at the beginning of the hearing. In the absence of the Affidavit of Publication, the Community Development Director or designee will enter a copy of the actual advertisement as run by the *News-Press* into the record at the beginning of the hearing after being sworn in. The affidavit, or actual advertisement, as the case may be, will be attached to the LPA Resolution following the hearing.

Continued Hearings and Legislative Issues

It is the goal of the LPA to complete a hearing during the scheduled meeting. If additional time is required and the hearing must be continued to a later date, any LPA member who missed the initial hearing should review the audio and/or videotapes prior to participating in the continued hearing or legislative discussion and resolution.

If the applicant submits new information or modification(s) to previously submitted information at the hearing, or immediately prior to the hearing, the LPA shall consult with the Director of the Department of Community Development and the LPA Attorney to determine if a continuance of the hearing is appropriate and proceed accordingly. Nothing contained in this section shall be construed to limit the Director's discretion to defer or continue the public hearing as set forth in LDC Section 34-213(3).

Meeting Preparation

Any LPA member, the Community Development Director, the LPA attorney, Town Council and Town Manager can submit meeting agenda topics for the LPA to the Community Development Director. Topics should be submitted at least fourteen (14) days prior to a planned meeting. The Director of the Department of Community Development and LPA attorney are responsible for scheduling hearings. Potential dates for hearings should be communicated to all participating parties as far in advance of the planned meeting as possible. All staff reports should be complete before a hearing is scheduled. Except in the case of an emergency, cancellation of a planned meeting should be at least 14 days in advance. Only under serious, extenuating circumstances should a hearing be cancelled after it has been publicly noticed.

The goal is to have finalized agenda and supporting material seven (7) days prior to a planned and

noticed meeting. However, meeting materials will be placed in the LPA members' mailboxes no later than noon of the Friday prior to the scheduled Tuesday meeting. The Community Development Director or assistant will send an email to the LPA members when the packets are available.

The LPA members' packets should include complete documentation for agenda items (actions required, implications, backup information, memos, ordinances, resolutions, etc.) A sincere effort is made to see that LPA packets are complete. As a general rule, items requiring documentation (recommendations, memos, ordinances, resolutions, etc.) will not be included on an agenda until the documentation is complete.

The agenda is posted at Town Hall. Copies of the agenda are available to the public.

Occasionally an item comes up late and may be placed on an amended agenda, or as an "add on" (added too late to be included on the published agenda). Such additions are kept to an absolute minimum so as not to burden the LPA or the public with items not receiving sufficient advance notice. Important, potentially controversial items are not made as "add on items" except in extreme emergencies.

Attendance Policy

Section 34-115(3) of the Land Development Code (LDC) states: "A Local Planning Agency member shall forfeit office if the member is absent from three (3) regular local planning agency meetings per year without being excused by the local planning agency." This statement was included in the LDC to recognize that because of the significant pre-hearing preparation required by staff, applicants and other supporting personnel it is imperative that a quorum of the Local Planning Agency (LPA) members be present for all noticed meetings.

The LPA should be notified of a planned absence as soon as known. It is important that the LPA know that it will have a quorum of its members as soon as possible prior to an LPA meeting The LDC implies that the LPA has the discretion to define what will be an "excused" absence. The policy of the LPA is that if an absence is reported at least fourteen (14) days prior to a planned meeting the absence will automatically be considered an excused absence. This will allow sufficient time for a planned meeting to be rescheduled if it appears that a quorum will be questionable.

Absence notification less than 14 days prior to a planned meeting is considered an "emergency." If an excused absence is desired in less than 14 days, a request must be forwarded to the Community Development Director with an explanation of the nature of the emergency. The Local Planning Agency will decide whether the request will be considered an excused absence. If the LPA or Community Development Director receives no request for an excused absence, the absence is counted as an unexcused absence.

Three unexcused absences for regularly scheduled LPA meetings will result in automatic forfeiture of office.

"Chronic" absence is defined as missing three consecutive regularly scheduled meetings or four of the last six meetings of the LPA, regardless of whether the absence is excused or unexcused. If a chronic absence occurs, the Community Development Director will be asked to send a letter to the LPA member requesting an explanation of the reasons for the chronic absence. A copy of the letter will be sent to the Town Manager and Town Council. The LPA member will be asked to forward to the Community Development Director a statement of whether the LPA member wishes to remain on the LPA. Failure to reply will automatically make all absences unexcused and grounds for forfeiture of office.

In order to provide a diverse representation, it is important that the LPA strive to have as full representation as possible when conducting the Town's business.

Meetings and Communication between LPA and Town Council

As agreed at a workshop between LPA and Town Council members in September of 2009, efforts should be made to improve communications between the Local Planning Agency and Town Council. Previous means and those adopted at the above meeting shall be:

- The LPA shall appoint and send a representative to Town council public hearings on land use and proposed ordinances which have been acted upon by the LPA. This representative shall submit brief testimony (Council should have LPA resolution and meeting minutes, unless minutes approval waived by LPA) regarding the LPA hearings on the matter.
- The LPA "Action List" as updated subsequent to LPA meetings shall be submitted to the Director of Community Development, who shall in turn transmit to each Town Council member and the Town Manager and include this list in the next LPA meeting packet.
- A quarterly meeting to be attended by the Town Manager, Town Mayor and Local Planning Agency Chairperson shall take place at 1:00 PM on the third Wednesday of each of the following months; October, January, April and July. The purpose of this meeting will be to discuss current activities of the LPA and assure these are in accordance with direction from Town Staff and Town Council, as well as convey information to Staff and Council regarding the complexities or related issues of those activities.
- Routine workshops (informational meetings) to discuss current LPA activities and Town Council understanding of those activities shall be held between all LPA members, Town Council members, Town Manager, Community Development Director and Town and LPA Attorney starting at 9:00 AM and lasting no later than noon on the first regularly scheduled LPA meeting day of April and September.

7. Meeting Procedures

LPA Code of Conduct

Recognizing that persons holding a position of public trust are under constant observation, and recognizing that maintaining the integrity and dignity of the public office is essential for maintaining high levels of public confidence in our institutions of government, every member of the Local Planning Agency pledges to adhere to the following CODE OF CONDUCT.

1. Regularly attend all scheduled meetings of the LPA as well as special or called meetings relevant to the office.
2. Prepare for each meeting.
3. Create a positive environment in meetings of the LPA.
4. Maintain an attitude of courtesy and consideration toward colleagues, citizens and staff during all discussions and deliberations.
5. Allow citizens, colleagues and staff sufficient opportunity to present their views, within the prescribed rules for conduct of meeting of the LPA.
6. Avoid the use of abusive, threatening or intimidating language or gestures directed at colleagues, citizens of staff.

7. Avoid comments, body language or distracting activity that conveys a message of disrespect and lack of interest.
8. Respect all local, state and federal laws, rules and other regulations.
9. Submit completed financial disclosure forms to the Lee County Supervisor of Elections by the specified deadline.
10. Publicly acknowledge the adopted position when asked about a decision of the LPA.

LPA Code of Ethics

Members shall ethically serve the public interest by making decisions and taking actions that will enhance the public health, safety and welfare of the region and the citizens served by the Local Planning Agency and by promoting public confidence in the integrity, independence, ability and impartiality of the LPA.

1. Members shall uphold the prestige of their office and avoid impropriety and the appearance of impropriety.
2. Members shall not convey the impression that they are in a position to influence the outcome of a decision of the LPA and shall not attempt to use their office to influence or sway the professional staff recommendation.
3. Members shall discharge their duties and responsibilities without favor or prejudice toward any person or group. Members shall not allow personal or business relationships to impact upon their conduct or decisions in connection with LPA business and shall not lend their influence towards the advancement of personal interests or towards the advancement of the interests of friends or business associates.
4. Members shall avoid creating the appearance of impropriety by following the requirements of the Land Development Code with regard to ex parte about specific upcoming LPA quasi-judicial hearings. If a Member receives a private written or electronic communication about an upcoming LPA quasi-judicial hearing, the Member will promptly forward the information to the Town Clerk, with a copy to the Director of the Community Development Department and the LPA Attorney so that it may be shared with all other Members as part of the agenda packet for that hearing. Members shall refrain from any private discussion of LPA business with other Members if required by Florida's Government-in-the-Sunshine Law, Chapter 286, Florida Statutes.
5. Members shall not accept or solicit a gift, loan, payment, favor, service, promise of employment or business contract, meal, transportation or anything else of value, if such thing is given with the understanding or possibility that it will influence the official action of the Members during LPA proceedings. The same standard shall apply to a gift, loan, favor, etc. for the spouse, child, relative or business partner of the Member.
6. Members should refrain from participation in any proceeding in which their impartiality may reasonably be questioned. A Member whose personal, employment or business relationship with a person or entity that is subject to a recommendation of the LPA shall seek the advice and counsel of the LPA Attorney, if such relationship could conceivably influence the Member's impartiality during the LPA's discussion of the subject. The provisions of Chapter 112, Florida Statutes, and the Code of Ethics for Public Officers and Employees, shall govern conflict of interest determination.
7. Members shall remain vigilant against deviations from LPA policies and mission statement.

As a legislative and quasi-judicial body, the LPA must be ever cognizant of the important legal requirements of due process and equal protection. These principles are derived from the United States Constitution, the Constitution of the State of Florida, and Florida Statutes, and apply to legislative and quasi-judicial actions.

The legal requirement for due process is separated into two prongs: substantive due process and procedural due process. The principle of substantive due process requires the benefits of a given

regulation be within the scope of governmental authority, i.e., health, safety, morals, or general welfare, and that the regulations be accomplished in a rational manner, i.e., not be arbitrary or capricious. This is a principle of fundamental fairness in the substance of a given regulatory scheme or provision.

The other due process prong, procedural due process, requires a fair method of adjudicating the rights of property owners, requiring notice and an opportunity to be heard by an impartial decision maker. In legislative matters, this requirement is derived from Florida Statutes, which provide the type and period of notice depending on the nature of the property interest subject to regulation at a public hearing. Quasi-judicial decisions have an underlying Constitutional requirement for procedural due process.

Equal protection limits governmental regulation from establishing irrational classifications, protects the rights of suspect and quasi-suspect classes, and assures against the exercise of fundamental or important rights of persons in ways different from others.

Key overarching principles to keep in mind is that every person must be treated equally and reasonably by the quasi-judicial or legislative substance and process and that decisions and recommendations be deliberated in an open process with adequate notice and allowance for participation of affected parties. Reasonable, consistent, and timely notifications in quasi-judicial matters to be heard by the LPA provide an applicant and other parties potentially affected by a requested decision these fundamental protections.

Order of Agenda Items

The general order of the agenda will proceed as follows. However, the procedures will differ depending on what type of hearings is being held.

1. Call To Order – Identify for the record the committee that is meeting, the date of the meeting and who is present.
2. Pledge of Allegiance
3. Invocation
4. Approval of Minutes – Requires a motion and vote.
5. Public Hearings – Public Comment will be included as part of the hearing
6. Administrative Agenda – Topics submitted by LPA members, staff, LPA Attorney or items from previous agendas
7. Adjourn as LPA; Reconvene as Historic Preservation Board (HPB) } Relevance?
8. Adjourn as HPB; Reconvene as LPA
9. LPA Members Items and Reports
10. LPA Attorney Items
11. Community Development Director Items
12. Action List Review
13. Public Comment
14. Adjournment – Requires a motion and vote. A privileged motion allowing no discussion before vote.

Invocation

The Chair of the LPA has the discretion of deciding how the Invocation at the beginning of an LPA meeting is handled. However, there is a tradition that has been followed by many LPA's. At the first LPA meeting on April 9, 1996, Chair John Mulholland read an invocation that he had written while Commander of the Power Squadron. Betty Simpson, who was Vice Chair at that time, has carried John's invocation to each subsequent LPA. The Chair has either read the invocation or different LPA members have been asked or volunteered to read the invocation. The invocation reads as follows:

> Heavenly Father, we ask that you bless us with your presence here today.
> Grant to us the wisdom to see all things in true perspective.

Grant to us the patience to hear one another with open minds and hearts.
Grant us the strength to meet all present challenges.
May all that we do this day, bring honor to you and credit to ourselves. Amen.

Conduct of LPA Meetings

The Chair will conduct the LPA meetings, and in the Chair's absence by the Vice Chair.

Robert's Rules of Order shall be the reference for parliamentary procedure governing the conduct of the LPA meetings when not in conflict with the Town Charter or Florida Statutes. It is not intended that LPA meetings be unnecessarily formalistic, but rather that parliamentary procedure be invoked only when necessary for orderly conduct of the meeting.

The approval of the minutes is intended for LPA members to accurately document the proceedings of the Agency. Before moving approval the minutes should be amended, if necessary, to more accurately portray what occurred at the LPA meeting. This time is not intended for comment or discussion on what should have or should not have been done, but rather to document what actually was done. Audiotapes of the proceedings become the official record of what transpired during a meeting.

When the Chair recognizes a speaker during public comment, they will advance to the podium and state their name for the public record. Public comments will generally be limited to three minutes per speaker. The Chair may modify the three-minute limit with approval by majority vote of the LPA. If a special interest group would prefer to have one person speak for a group of individuals in attendance their allotted times can be combined up to a maximum of 15 minutes. This process could save meeting time if the content of what each person of a special interest group intends to say is similar. It could also allow more time for a presentation containing detailed facts and data. If a special interest group chooses to have a spokesperson represent them, request cards having the names and addresses of all individuals present must be provided prior to the meeting. The public comment times are intended as opportunities for interested parties to present their viewpoints to the LPA members; they are not intended as question-and-answer sessions or as dialog with the LPA.

After a proper motion, discussion by the LPA members shall be limited to agenda items. No member will speak twice on the item until all others who want to speak have spoken.

The time period for LPA members' comments is intended as an opportunity for LPA members to share their viewpoints with each other. Since this opportunity does not exist outside of LPA meetings under the Florida Sunshine Law, this is the primary purpose of this time and it generally should not be used to obtain information from the Community Development Director or Town Attorney which could he obtained outside of the LPA meeting. While there is no time limit or censorship on comments, LPA members should take into consideration the total time available in the meeting for the published agenda.

Legislative Hearing Procedures

1. The Chair opens the hearing on.....
2. Staff presents Affidavit of Publication or copy of the legal advertisement from the Newspaper of Record which shall become an exhibit to the Hearing's resulting Resolution.
3. The Chair or the LPA Attorney reads the ordinance caption.
4. Staff and/or the LPA attorney present(s) a brief overview of the ordinance.
5. Public input is taken.
6. Public input is closed.
7. LPA members ask questions, if any, of staff/LPA attorney.
8. LPA members discuss ordinance, including changes, deletions, etc.

9. A Motion is made and seconded to either move the Ordinance forward to Town Council as-is or with modifications, or to take some other action. The LPA's recommendation is set forth in an LPA Resolution which is provided to Town Council at the time of Council's consideration of the Ordinance.
10. The Motion is discussed and voted upon. If successful, the Chair declares the hearing on the ordinance to be concluded. If not successful, further motions(s) are made until one passes.

Notes:

- There is no ex parte disclosure requirement for legislative hearings.
- Members of the public are not sworn in.
- Generally there is no discussion between the LPA and public.

Procedure for Quasi-Judicial Land Use Hearing

1. The Chair opens the hearing on .....
2. The LPA Attorney swears in all witnesses.
3. Staff presents Affidavit of Publication or copy of the legal advertisement from the Newspaper of Record which shall become an exhibit to the Hearing's resulting Resolution.
4. The Chair asks if any LPA member has had an ex parte communication regarding this matter. This includes any site visit, receipt of expert opinion, conducting of investigations, discussions with any person, or any direct or indirect communication in any form with any person outside a public hearing and not on the record.
5. The applicant presents its case and LPA asks questions. → Switch Order?
6. Staff presents its case and LPA asks questions.
7. Public comment/testimony is opened.
   - After public testimony/comment is concluded, the Chair closes public comment/testimony.
8. Applicant presents rebuttal, if any.
9. Staff presents rebuttal, if any.
10. The testimony portion of the hearing is closed.
11. LPA discussion.
12. Request for a motion on the resolution.
13. LPA votes on a resolution regarding the application.

Voting Conflicts

Florida Statue has very specific rules regarding voting conflicts and municipal advisory committees, boards and agencies. These rules are different from the rules that apply to the Council.

If an LPA member has a voting conflict, he/she must disclose that conflict in writing to Town staff prior to the meeting in question and this disclosure must be publicly ~~read~~. A form is available from the Town Clerk. The rules also contain an exception for disclosure at the meeting itself. The committee member is permitted to participate in the discussion ~~and vote~~ on the subject. The specific rules are set out in F.S. 112.3145(4), quoted below:

> (4) No **appointed** public officer shall participate in any matter which would inure to the officer's special private gain or loss; which the officer knows would inure to the special private gain or loss of any principal by who he or she is retained or to the parent organization or subsidiary of a corporate principal by which he or she is retained; or which he or she knows would inure to the

special private gain or loss of a relative or business associate of the public officer, **without first disclosing the nature of his or her interest in the matter.**

(a) Such disclosure, indication the nature of the conflict, shall be made in a written memorandum filed with the person responsible for recording the minutes of the meeting, **prior to** the meeting in which consideration of the matter will take place, and shall be incorporated into the minutes. Any such memorandum shall become a public record upon filing, shall immediately be provided to the other members of the agency, and shall be read publicly at the next meeting held subsequent to the filing of this written memorandum.

(b) In the event that disclosure has not been made prior to the meeting or that any conflict is unknown prior to the meeting, the disclosure shall be made orally **at the meeting** when it becomes known that a conflict exists. A written memorandum disclosing the nature of the conflict shall then be filed within 15 days after the oral disclosure with the person responsible for recording the minutes of the meeting and shall be incorporated into the minutes of the meeting at which the oral disclosure was made. Any such memorandum shall become public record upon filing, shall immediately be provided to the other members of the agency, and shall be read publicly at the next meeting held subsequent to the filing of this written memorandum.

(c) For purposes of this subsection, the term "participate" means any attempt to influence the decision by oral or written communication, whether made by the officer or at the officer's direction.

Perceived conflicts of interest can be as detrimental to public trust as real conflicts. In an attempt to aid LPA members' manage such perceptions, the LPA Attorney has prepared advice regarding frequent situations in which LPA members find themselves. These are found in Appendix G.

NOTE: F.S. 112.3143(b) defines "relative" as follows: "any father, mother, son, daughter, husband, wife, brother, sister, father-in-law, mother-in-law, son-in-law, or daughter-in-law.

8. LPA Meeting Output

The primary responsibility of the LPA is to provide recommendations to the Town Council regarding comprehensive planning policies, land development code regulations, zoning matters and make decisions regarding historic preservation opportunities.

LPA output to the Town Council will include the following at the discretion of the LPA:

A. Quasi-Judicial Hearing:
1. A signed resolution of findings of fact and conclusions from the LPA hearing.
2. LPA approved minutes providing a summary of:
    a. Testimony by applicants, their attorneys, Town and/or County staff, the LPA attorney, witnesses and people who offer public comment, and
    b. Issues raised by LPA members with subsequent discussion content including clarifications, conclusions and agreements, and Motions and votes by LPA.
3. One or more members of the LPA will attend the Town Council meeting in order to provide clarification on their recommendations and to answer inquiries. — We only do this for important or controversial items

B. Legislative Hearing:
1. A signed resolution of findings of fact and conclusions from the LPA hearing.
2. LPA approved minutes.

3. One or more members of the LPA will use best efforts to attend the Town Council meeting in order to provide clarification on their recommendations and to answer inquiries. — same as above

These LPA outputs must be available before the first Town Council hearing on an issue. However, at the discretion of the LPA exceptions may be made in emergency situations. Minutes from hearings will normally be approved at the subsequent LPA meeting. A "fast-tracked" hearing may have the minutes waived for the Town Council hearing at the discretion of the LPA.

It is noted that audio and /or video recordings of LPA meetings may be available for public, LPA, or Town Council review should clarification, additional understanding of discussions, or for finding errors or omissions.

On a regular basis, as often as monthly, the LPA will submit to the Town Council a synopsis of accomplishments and any issues that might be of interest. As needed, a request will be made to address Town Council. — who does this?

9. LPA's Role in Initiating Legislative Changes to the Land Development Code

In the course of performing its duties, the LPA is made aware of legislative issues that could be considered as amendments to the Land Development Code. Before initiating a request for support from Town Staff, the LPA attorney and/or our Planning Consultant to pursue potential LDC amendments, a resolution will be sent to Council requesting their approval to proceed. The format to be used is included in Appendix A and can be modified without re-approving the Policies and Procedure Manual.

The Town of Fort Myers Beach Local Planning Agency Policies and Procedures Manual was adopted on February 27, 2007. Revised May 15, 2007. Revised March 18, 2008. Revised September 9, 2008. Revised January 27, 2009. Revised June 23, 2009, Revised September 17, 2009, Revised September 29, 2009.

Appendix A – Sample Resolution Requesting to Proceed with an LDC Change

FORT MYERS BEACH, FLORIDA

RESOLUTION NUMBER 20__-__

WHEREAS, the Local Planning Agency (LPA) is mandated by Florida Statutes Section 163.3174; and

WHEREAS, the LPA is statutorily responsible for the review of proposed land development regulations, land development codes, or amendments thereto, and for making recommendations to the Town Council as to the consistency of such proposals with the adopted Comprehensive Plan (Plan); and

WHEREAS, Section 34-120(4) of the Town Land Development Code (LDC) states that the LPA will review proposed LDC amendments and make recommendations to the Town Council regarding their consistency with the Plan, and

WHEREAS, Section 34-120 (12) of the LDC states that the LPA will aid Town officials charged with the direction of projects or improvements embraced within the Plan and generally promote the realization of the Plan; and

WHEREAS, Section 34-120 (14) of the LDC states that the LPA will perform any other duties which lawfully may be assigned to it by Town Council; and

WHEREAS, the Town Council determined at its meeting of October 9, 2006, that prior to the LPA's initiation of any proposed LDC changes, the LPA must inquire of the Town Council whether the Town Council wished to have such legislative changes initiated by the LPA.

IT IS HEREBY RESOLVED BY THE LPA OF THE TOWN OF FORT MYERS BEACH, FLORIDA as follows:

1. At its regularly scheduled meeting(s) of _____, 20__, the LPA determined that it wishes to initiate legislation on the following subject(s): _____

_____

2. The LPA hereby requests direction from the Town Council as to whether the Town Council wishes to have the LPA initiate legislative changes to the LDC on such subjects.

The foregoing Resolution was adopted by the LPA upon a motion by LPA Member _____ and seconded by LPA Member _____, and upon being put to a vote, the result was as follows:

Name	_____	Name	_____
Name	_____	Name	_____
Name	_____	Name	_____
Name	_____		

DULY PASSED AND ADOPTED THIS ___ day of _____, 20__.

LPA of the Town of Fort Myers Beach

By: _____
Name, LPA Chair

Approved as to legal sufficiency:

By: _____
Name, Esquire, LPA Attorney

ATTEST:

By: _____
Name, Town Clerk

Appendix B - Resolution HPB 2006-03 Establishing the Historic Advisory Committee

RESOLUTION OF THE HISTORIC PRESERVATION BOARD OF
THE TOWN OF FORT MYERS BEACH, FLORIDA
RESOLUTION NUMBER HPB 2006-03

A RESOLUTION OF THE HISTORIC PRESERVATION BOARD OF FORT MYERS BEACH, FLORIDA:

WHEREAS, the Local Planning Agency of the Town of Fort Myers Beach, Florida, serves as the historic preservation board for the Town of Fort Myers Beach ("HPB") pursuant to Chapter 22, Article II, Division 2, Section 22-71 and Chapter 30, Section 30-56(b) of the Land Development Code ("LDC") of the Town of Fort Myers Beach; and

WHEREAS, the HPB is vested with the power, authority and jurisdiction to designate, regulate and administer historical, cultural, archaeological, and architectural resources in the Town, pursuant to LDC Section 22-71; and

WHEREAS, the HPB has the power and duty to designate eligible historic resources, evaluate the significance and eligibility of historic resources for designation pursuant to Chapter 22 of the LDC, increase awareness of historic preservation and its community benefits by promoting public education programs, and administer programs aimed at the proper recognition of designated historic resources pursuant to Section 22-74 of the LDC; and

WHEREAS, the HPB has the power to create an advisory committee to assist the HPB with historic preservation matters and to charge such committee with various and sundry duties; and

WHEREAS, this advisory committee will have no quasi-judicial or legislative powers but rather will function in an informal advisory capacity to the HPB; and

WHEREAS, the advisory committee will be subject to the Sunshine and Public Records Laws of the State of Florida.

NOW, THEREFORE BE IT RESOLVED BY THE HISTORIC PRESERVATION BOARD OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AS FOLLOWS:

The Historic Preservation Board does hereby create the Fort Myers Beach Historical Advisory Committee (FMBHAC), with the following restrictions:

1. The FMBHAC shall be subject to the Sunshine and Public Records Laws of the State of Florida.

2. The FMBHAC will be comprised of seven (7) members appointed by the HPB, all of whom shall be residents, business owners, or property owners within the Town of Fort Myers Beach.

3. Three (3) members of FMBHAC shall be current members of the HPB and four (4) members shall be appointed by the HPB after due consideration of recommendations by the Estero Island Historic Society.

4. The FMBHAC shall meet on an as-needed basis, keep its own minutes, and hold all meetings at Town Hall.

5. The HPB shall appoint all initial members of FMBHAC no later than the first meeting of the HPB in October, 2006. Thereafter, commencing with June, 2007, the HPB shall appoint all members of FMBHAC on an annual basis at the first meeting of the HPB in June.

The foregoing Resolution was adopted by the Historic Preservation Board upon a vote following motion by Board member Tom Babcock and second by Board member Bob Raymond, the result of which was as follows:

Tom Babcock	aye
Randy Brown	aye
Rochelle Kay	absent
Larry Kiker	aye
Alan Mandel	aye
Bob Raymond	aye
Bob Simon	absent

DULY PASSED AND ADOPTED THIS 12th day of September, 2006.

HISTORIC PRESERVATION BOARD OF THE
TOWN OF FORT MYERS BEACH

By:_____
Larry Kiker, Chair

Approved as to legal sufficiency:

By:_____
Anne Dalton, Esquire
HPB/LPA Attorney

ATTEST:

By: _____
Michelle Mayer, Town Clerk

Appendix C – Recognition Resolutions

The following Resolution format has been used to recognize past members of the LPA.

RESOLUTION OF THE LOCAL PLANNING AGENCY OF THE TOWN OF FORT MYERS BEACH, FLORIDA
RESOLUTION NUMBER 2007-04

WHEREAS, the Local Planning Agency (LPA) is mandated by Florida Statutes Section 163.3174; and

WHEREAS, the LPA was established in accordance with the requirements of the Town of Fort Myers Beach Land Development Code section 34-111 et seq.; and

WHEREAS, Section 34-113 sets forth the requirements for membership on the LPA; and

WHEREAS, Randy Brown has been a member of the LPA from April 2006 to April, 2007; and

WHEREAS, during his membership on the LPA, Randy Brown has provided exemplary service to the Town of Fort Myers Beach.

IT IS HEREBY RESOLVED BY THE LPA OF THE TOWN OF FORT MYERS BEACH, FLORIDA as follows:

RANDY BROWN IS RECOGNIZED FOR HIS HARD WORK AND DEDICATED SERVICE TO THE TOWN OF FORT MYERS BEACH. HE CREATED A POSITIVE ENVIRONMENT FOR THE LOCAL PLANNING AGENCY WHILE MAINTAINING AN ATTITUDE OF COURTESY TOWARD COLLEAGUES, CITIZENS AND STAFF DURING ALL DISCUSSIONS AND DELIBERATIONS. HE DISCHARGED HIS DUTIES WITHOUT FAVOR OR PREJUDICE WHILE RESPECTING ALL LAWS, RULES AND REGULATIONS. HIS CONTRIBUTIONS INSURE THAT THE UNIQUE AND NATURAL CHARACTERISTICS OF THE TOWN OF FORT MYERS BEACH WILL BE PRESERVED.

The foregoing Resolution was adopted upon a motion by LPA Member Simon and seconded by LPA Member Mandel. Upon being put to a vote, the result was as follows:

Tom Babcock aye	Alan Mandel aye	Dennis Weimer aye
Evie Barnes aye	Bob Raymond aye	
Rochelle Kay aye	Bob Simon aye	
Bob Simon aye		

DULY ADOPTED THIS 10TH day of APRIL 2007.
LPA of the Town of Fort Myers Beach

BY: _____
Tom Babcock, LPA Chair

Approved as to legal sufficiency:

By: _____
Anne Dalton, Esquire
LPA Attorney

ATTEST:

By: _____
Michelle D. Mayher, Town Clerk

Appendix D - Historic Sign Criteria and Integrity Evaluation

The following is the a form for use by the LPA to evaluate the criteria and integrity of historic sign applications. Staff has documents that were approved by the LPA to be made available to applicants for historic signs that will explain the intent of the Comprehensive Plan and clarify for documentation that would be useful when filing an application.

Historic Sign Criteria and Integrity Evaluation
Town of Fort Myers Beach

Eligibility Criteria (select one): ___Building ___District ___Site ___Structure ___Object

INTEGRITY CONSIDERATIONS (Review all)	Quality of Significance Criteria (Select one)				
	Events	Persons	Distinctive Characterisitics	Historical Information	Overall District Significance
Location					
Design					
Setting					
Materials					
Workmanship					
Feeling					
Association					

Eligibility Criteria

Building. A building is a structure created to shelter any form of human activity, such as a house, barn, church, hotel, or similar structure. Building may refer to a historically related complex such as a courthouse and jail or a house and barn.
Structure. A structure is a work made up of interdependent and interrelated parts in a definite pattern of organization. Constructed by man, it is often an engineering project large in scale.
Object. An object is a material thing of functional, aesthetic, cultural, historical or scientific value that may be, by nature or design, movable yet related to a specific setting or environment.
District. A district is a geographically definable area, urban or rural, possessing a significant concentration, linkage, or continuity of sites, buildings, structures, or objects united by past events or aesthetically by plan or physical development. A district may also comprise individual elements separated geographically but linked by association or history.
Site. A site is the location of a significant event, a prehistoric or historic occupation or activity, or a building or structure, whether standing, ruined, or vanished, where the location itself maintains historical or archeological value regardless of the value of any existing structure.

Quality of Significance Criteria

Events. It was associated with events that significantly contributed to broad patterns of our history.
Persons. It was associated with the lives of persons significant in our past.
Distinctive Characteristics. It embodies the distinctive characteristics of a type period, or method of construction, or possesses high artistic values, or represents a significant distinguishable entity whose components may lack individual distinction.
Historical Information. It has yielded (or may yield) information important to prehistory or history.

Integrity Considerations

Location is the place where significant activities took place. This quality requires that to a large extent the boundaries remain intact.

Design is the composition of elements comprising the form, plan, and spatial organization. Design may have resulted from conscious planning decisions set forth in the historic plat, project specifications, building contracts or deed restrictions, or it may be the result of the personal tastes and individual efforts of homeowners to shape their domestic environment. Integrity of design can be affected by changes. Small-scale additions may not detract in a major way from the historic character. Large-scale additions, however, alter the spatial relationship and generally threaten integrity of design.

Setting is the physical environment within and surrounding the resource. Integrity of setting requires that a strong sense of historical setting be maintained within the boundaries. This relies to a large extent on the retention of built resources, street plantings, parks and open space. Elements of design greatly affect integrity of setting, and those consistent with the historic character or dating from the period of significance add to integrity. Small-scale elements such as plantings, gateposts, fences, swimming pools, playground equipment, and parking lots detract from the integrity of setting unless they date to the period of significance.

Materials include the construction materials of dwellings, garages, roadways, walkways, fences, curbing, and other structures, as well as vegetation planted as lawns, shrubs, trees, and gardens. The presence of particular building materials (e.g., stone, stucco, brick, or horizontal siding) may be important indicators of architectural style and methods of construction that give some neighborhoods a cohesive historic character. Integrity of materials requires that the resource retains the key exterior materials that marked its identity during the historic period. The retention of original materials in individual dwellings may be less important in assessing the integrity of a neighborhood significant for its plan or landscape design. Original plant materials may enhance the integrity, but their loss does not necessarily destroy it. Vegetation similar in historic species, scale, type and visual effect will generally convey integrity of setting although integrity of materials may be lost.

Workmanship is evident in the ways materials have been fashioned for functional and decorative purposes to create houses, other buildings and structures, and a landscaped setting. This includes the treatment of materials in design, the planting and maintenance of vegetation, as well as the construction methods of small-scale features such as curbs and walls. Integrity of workmanship requires that architectural features exhibit the artistry or craftsmanship of their builders and that the vegetation historically planted for decorative and aesthetic purposes be maintained in an appropriate fashion and replaced in kind when damaged or destroyed.

Feeling, although intangible, is evoked by the presence of physical characteristics that convey the sense of past time and place. Integrity of feeling results from the cumulative effect of setting, design, materials, and workmanship.

Association is the direct link between a historic resource and the important events that shaped it. Continued residential use and community traditions, as well as the renewal of design covenants and deed restrictions, help maintain a neighborhood's integrity of association. Additions and alterations that introduce new land uses and erase historic elements of design threaten integrity. Integrity of association requires that a historic resource convey the period when it achieved importance and that, despite changing patterns of ownership, it continues to reflect the design principles and historic associations that shaped it during the historic period.

Appendix E - Legislative Change Process

The LPA evaluated the process of making legislative changes to the Land Development Code (LDC). The results of the study have been depicted as a flow chart as well as a written description of each sub-process. The arrows in the flow chart represent the direction that work "flows" through the process. Circles are inputs, such as a change request, or outputs, such as a resolution to be sent to Town Council. Rectangle boxes are places where action or work is taking place. A diamond is a decision point that may send the workflow in different directions dependent on the decision made. A "bullet" symbol is where the workflow is on "hold" until the next action can be scheduled. Holds are not necessarily a bad thing, but they can be areas of opportunity for moving change requests through the system faster. Finding ways to reduce the number of steps in a process flow is another way to reduce the time required to make changes to our LDC.

The flow chart also indicates who is "accountable" for each process operation. "Accountability" does not mean that person is "responsible" for doing all the work. It is their job to see that the work gets done.

Future LPAs and Town Councils may want to consider ways that the legislative change process can be altered to improve process time. Until then, performance can start to be measured in order to establish a baseline. One action that has been initiated is to generate a Legislative Change Action List (LCAL). The LCAL will provide clarification of the change requests, the priority and current status. Legislative requests will be categorized into LDC change that:

1. Require policy recommendations from the LPA through workshops or ad hoc committee activities. These changes would be substantive and likely time consuming for staff, consultants and LPA, but not necessarily the highest priority.
2. Are state mandated changes and recommendations of the Evaluation and Analysis Report (EAR) that are time sensitive. These may or may not be complex, but are high priority.
3. May need to be clarified for legal reasons. Complexity and priority must be determined on an individual case.
4. Need staff time. Most of these changes are clerical in nature, but can be time consuming. Priority is often low, but need to be made visible.

The LPA will prioritize, schedule and determine a path forward for legislative change requests that fall into LCAL category 1. Accountability for categories 2 through 4 belongs to the Town Manager, with likely input from the Director of Community Development, the LPA Attorney and the Town's Planning Consultant.

A regular approach to legislative changes allows interested parties a predictable methodology to participate in the legislative process. For example, the Florida Legislature meets on an annual basis—unless a special session is called—at the same time each year to consider changes to the laws of the State. The effective date of these laws may vary to allow for a phased approach to changes in the law that might best occur if affected parties are afforded a reasonable period of time for adjustment to the change. From time to time, the LPA may wish to establish and refine the timing aspects of its legislative process to improve manageability and predictability.

Town of Fort Myers Beach Legislative Change Process

Overarching Principles:

- Trust is placed in the hands of those accountable for each step in the process to do their job to their best of their ability.
- Open, honest and timely communication will be maintained at all times.
- All parties in this process will be treated with respect.

Sub-Processes

A. Request Initiation

Requests to change the Land Development Code (LDC) can be initiated by: the Town Manager, the Town Council, the Local Planning Agency, a group/committee or an individual.

Process:

- Requests from the Town Manager and Town Council proceed directly to the "assign action" sub-process.
- LPA change requests are forwarded to Town Council for approval to proceed.
- All individual or group initiated LDC change requests come to the LPA for review and action. Consistency with the Comprehensive Plan will be the criteria for approving or denying requests.
- The Town Clerk handles scheduling functions with direction from the Town Manager or designee (likely the Community Development Director).

B. Assign Action

Process:

- The Town Manager or designee is accountable for the Legislative Change Action List (LCAL) with input from Planning Consultant, Staff and LPA Attorney.
- Each legislative change request will be put into a category for the purpose of prioritizing and scheduling.
- The LCAL will be reviewed at every LPA meeting.

C. Assessment

Assessment of an LDC change request can follow several paths depending on the complexity of the request and the expertise required for making recommendations. The Town Manager or designee, the Planning Consultant and the LPA Attorney, choose the process path.

Process:

- Determine whether recommendations are needed from an ad hoc or standing committee.
- Determine whether a workshop is needed.

- Workshops will include: Planning Consultant, appropriate staff, LPA Attorney, LPA members, ad hoc or advisory committees (as needed) and the public.
- Recommendations from committees and/or workshops will be documented by resolution.
- Once all recommendations have been received, drafting of the LDC change can commence and an LPA hearing scheduled.

D. LPA Hearing
Process:

- The LPA must approve or reject LDC changes or possibly suggest multiple wording options for consideration by Town Council.
- Recommendations must be consistent with the Comprehensive Land Use Plan.
- Explanation of recommendations are forwarded to Town Council by resolution.

E. Town Council Hearings
Process:

- Introduction of Ordinance
- First Hearing
- Second Hearing. Approved or denied based on consistency with the Comprehensive Land Use Plan.
- At each hearing, Council may choose to deny the change request, return it to the LPA and/or committees and/or workshop participants for rework, or table it.

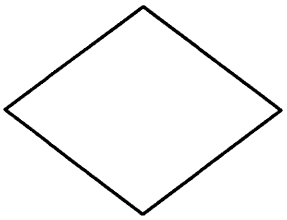
F. Documentation
Process:

- If the ordinance is approved by Town Council, the Town Manager is accountable for seeing that appropriate steps are taken to codify and distribute changes in the Town of Fort Myers Beach Land Development Code.

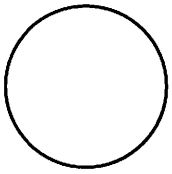
Legislative Change Process for the Town of Fort Myers Beach

Flow Chart Symbols Used:

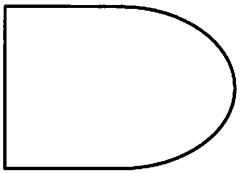
Process Operation



Decision (A Decision will have two or more directions of flow)



Input/Output

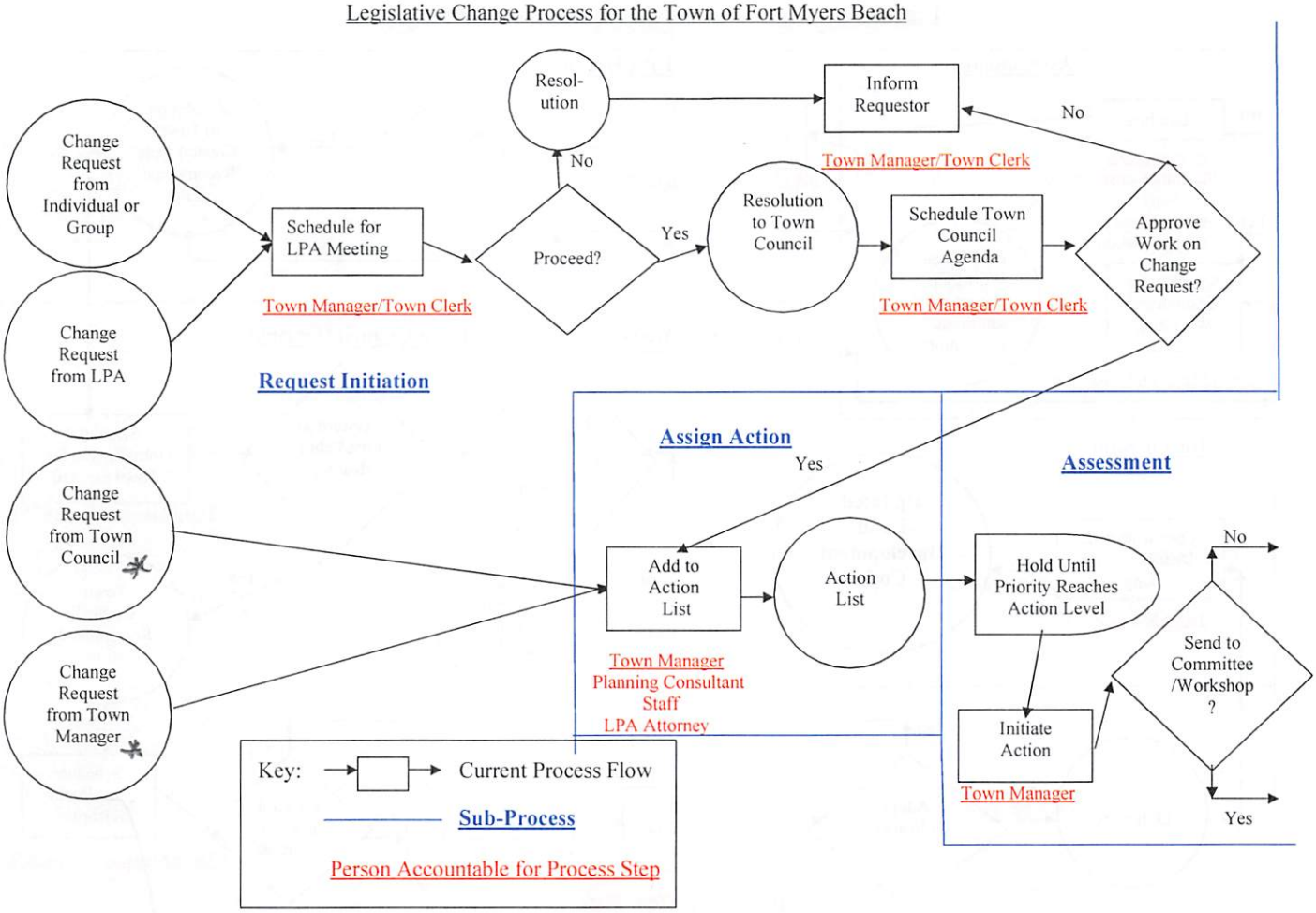


Delay/Wait/Hold

Direction of Flow

The flow chart is a graphic method for displaying a work process and sequence of activities. It graphically shows the process and potential opportunities for improvement within the process. It also identifies starting inputs and ending outputs that establish boundaries of ownership. This sequence of activities is represented by various flow chart symbols, which are connected by a direction of flow arrow.

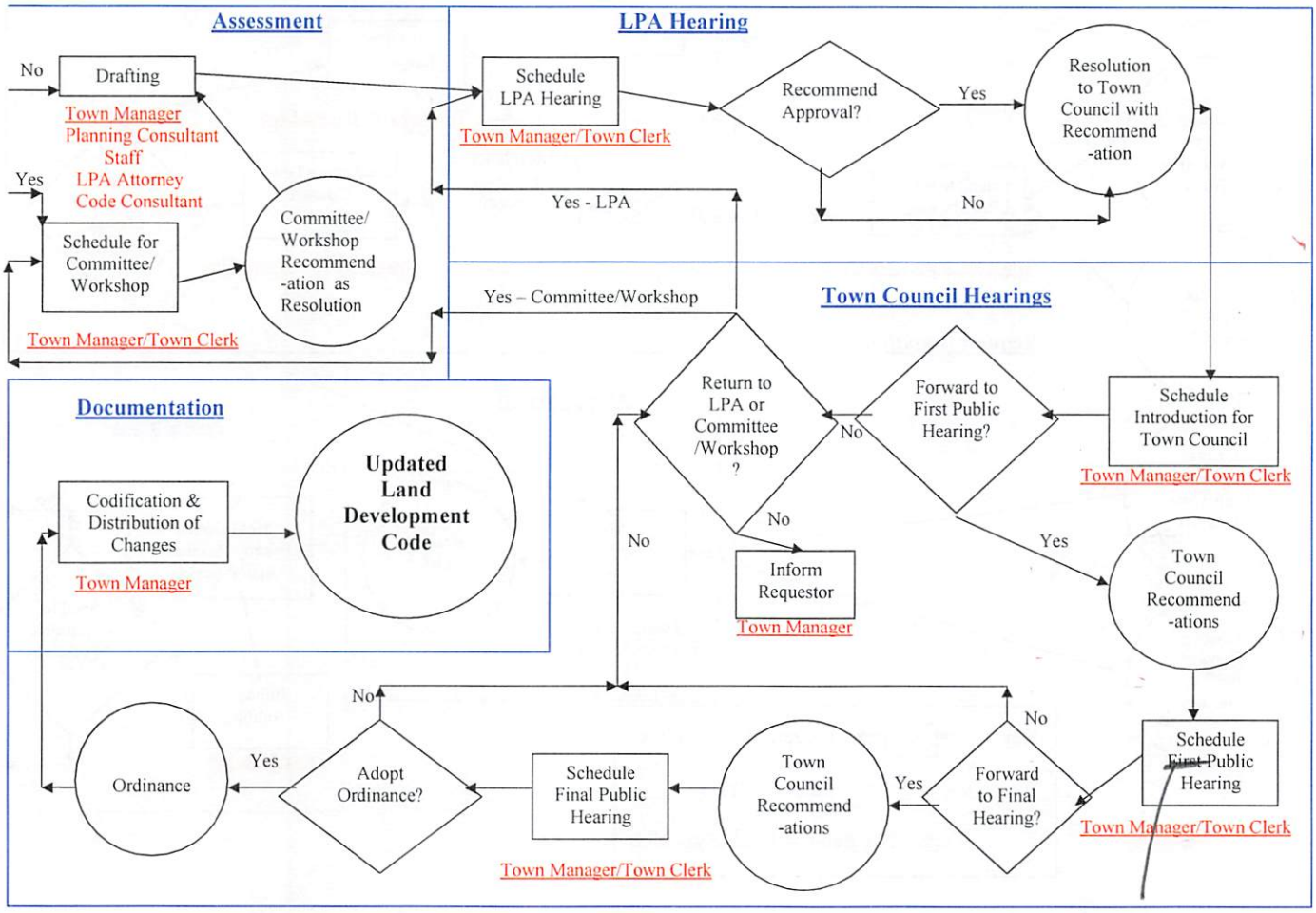
Legislative Change Process for the Town of Fort Myers Beach



* ~~Should all Land use Ordinances also go to LPA first?~~

Never Mind - I see they do on next page.

Legislative Change Process for the Town of Fort Myers Beach



Final

F. Historic Plaque Resolution and Agreement

RESOLUTION OF THE HISTORIC PRESERVATION BOARD OF
THE TOWN OF FORT MYERS BEACH, FLORIDA
RESOLUTION NUMBER HPB 2008-01

A RESOLUTION OF THE HISTORIC PRESERVATION BOARD OF FORT MYERS BEACH, FLORIDA:

WHEREAS, the Local Planning Agency of the Town of Fort Myers Beach, Florida, serves as the historic preservation board for the Town of Fort Myers Beach ("HPB") pursuant to Chapter 22, Article II, Division 2, Section 22-71 and Chapter 30, Section 30-56(b) of the Land Development Code ("LDC") of the Town of Fort Myers Beach; and

WHEREAS, the HPB is vested with the power, authority and jurisdiction to designate, regulate and administer historical, cultural, archaeological, and architectural resources in the Town, pursuant to LDC Section 22-71; and

WHEREAS, the HPB has the power and duty to designate eligible historic resources, evaluate the significance and eligibility of historic resources for designation pursuant to Chapter 22 of the LDC, increase awareness of historic preservation and its community benefits by promoting public education programs, and administer programs aimed at the proper recognition of designated historic resources pursuant to LDC Section 22-74.

NOW THEREFORE, THE HISTORIC PRESERVATION BOARD RESOLVES AS FOLLOWS:

1. The HPB hereby approves the Town of Fort Myers Beach Historic Preservation Board Historic Plaque Agreement for use by the Town in the Historic Plaque Program. A copy of this Agreement is attached to this Resolution as Exhibit "A" and is hereby incorporated by reference.

The foregoing Resolution was adopted by the HPB upon a motion by _____ and second by _____. Upon being put to a vote, the result was as follows:

Thomas Babcock	____	Bob Raymond	____	Alan Mandel	_____
Evie Barnes	___	Bob Simon	____		
Rochelle Kay	____	Dennis Weimer	___		
Alan Mandel	____				

DULY PASSED AND ADOPTED THIS 19th day of February, 2008, by the Historic Preservation Board of the Town of Fort Myers Beach

By: _____
Bob Raymond, HPB Chair

Approved as to Legal Sufficiency

ATTEST:_____ By: _____
Michelle D. Mayher, Town Clerk Anne Dalton, LPA/HPB Attorney

TOWN OF FORT MYERS BEACH: HISTORIC PLAQUE AGREEMENT

The undersigned person represents that he/she is the owner of the property with the following street address: _____, Fort Myers Beach, Florida 33931, with a strap number of _____ (hereafter "Owner").

By signing below, Owner agrees to affix an historic plaque provided by the Town of Fort Myers Beach, a municipal corporation, on the structure located on the subject property, as follows: _____ *(location and method of affixing)*. The Owner shall own the plaque. In the event of damage, loss or other casualty involving the sign, the Town may replace it, but shall not be obligated to do so.

The plaque shall contain the following language: _____
_____

This permission is non-transferable to another structure or property. The owner, or any subsequent owner shall have the ability to terminate this Agreement without cause. In the event of such termination, the owner will remove the plaque and return it to the Town.

The undersigned waives any claim against the Town of Fort Myers Beach, its officers, agents representatives and employees arising from loss, injury or damage resulting from the subject matter of this Release and covenants not to bring any claim against the Town of Fort Myers Beach and its officers, agents representatives and/or employees related to the subject matter of this Release.

The undersigned has fully read, understood and agrees to every term in this Agreement.

_____	_____	_____
DATE	OWNER	PRINT NAME

_____	_____
ADDRESS	CITY,STATE,ZIP

( ) _____
TELEPHONE

_____	_____
WITNESS PRINT NAME	

_____	_____
WITNESS PRINT NAME	

Appendix G – Conflict of Interest Advice

Below are several points which may be of interest to the LPA Members:

1. I have an ongoing attorney-client relationship in which the attorney gives legal advice but isn't otherwise involved in my business enterprises. That firm may represent others coming before the LPA in quasi-judicial hearings which are not related to his/her representation of me.

   (a) Can I participate in LPA discussions and decision-making processes where my attorney is representing a different client?

   ANSWER: yes. Assuming that this is a traditional attorney-client relationship, there would be no "special private gain or loss" to the LPA member under F.S. 112.3143(4) for his/her attorney to represent someone else before the LPA. An attorney relationship, by itself, does not create a "business associate" relationship under F.S. 112.312(4). If there are other relationships between the firm and the LPA member (joint ventures, employment of a relative, etc.), that would be covered by the conflict statute.

   If the attorney provided information which is covered by the ex parte disclosure sections of the Land Development Code, the LPA member would make the same ex parte disclosure as he/she would for anyone else.

   Even if this were a conflict of interest, the statute requires written, advance disclosure. It does not prohibit discussion or voting at the advisory committee level.

   (b) Should I disclose the existence of this attorney-client relationship at the time the hearing starts?

   ANSWER: It's a good idea. It's not legally required to disclose it since it's not a conflict of interest. However, in ethical matters, it's a good idea to go the extra mile. My suggestion would be to say something like "this law firm has represented me on matters which are not related to this hearing. The LPA attorney has advised me that there's no conflict of interest here but I wanted to disclose this for the record."

2. I have an ongoing relationship with local architects, engineers and other professionals. None of these persons are involved in my business enterprises in any other capacity. Those professionals may represent other persons coming before the LPA in quasi-judicial hearings which are not related to their representation of me. Is there a conflict of interest here?

   ANSWER: See #1 above.

Excerpted from LPA Attorney Anne Dalton memo dated April 28, 2008.

Town of Fort Myers Beach
COMMUNITY DEVELOPMENT DEPARTMENT

To: **Local Planning Agency**

From: **Judith Frankel, Community Development**

Date: **November 7, 2024**

Re: **Development Public Benefit**

BACKGROUND

On October 29th, 2024 the LPA held a public meeting to discuss creating a definition and/or process for determining the "public benefit" of a proposed development, which often comes up in discussions of Commercial Planned Development (CPD) applications. The LPA also discussed examples of special benefits, which is part of the Development Agreement process.

The following are brief summaries of where the LPA found agreement:

View Corridors – A view corridor is an unimpeded scenic view, from street-level/eye-level, of the Gulf or Bay that is open to the sky and is outside of any LDC required setback or landscaping. It is a clear line-of-sight, vertically and horizontally, to be enjoyed by the general public. It does not necessarily include any physical access to or through the corridor but could include beach access areas.

Public Benefit-A public benefit must be fully open to the general public in perpetuity. This is relative to CPD applications. Per LDC section 34-631(b)(5), *Particular attention would be paid to any permanent view corridors to gulf or bay waters that could be provided in exchange for allowing a building to be taller than the height limits in this chapter. In each case, the town shall balance the public benefits of the standard height limit against other public benefits that would result from the specific proposal.*

Examples identified by the LPA include:

- Undergrounding of utilities
- Sidewalk, bike path or other ROW infrastructure
- Visible landscape
- Public unrestricted beach access

- Public space though which to access private/commercial spaces
- Public parks
- Reduction in density
- View corridors
- Town Deeded parking
- ROW dedication
- Elimination of curb cuts on Estero Blvd.

Special benefit – The LPA defined special benefit as a benefit limited by fees/cost, neighborhood /HOA category and particular to a subset of the community. This is relative to Development Agreements. Resolution 24-71 in paragraph 2.26 of the Procedures for Development Agreements with Deviations requires "A description of any special benefit to the Town as a result of the development such as, the promotion of economic development, affordable housing, hurricane recovery, provision of needed public facilities, provision of public land or recreation, and/or elimination of blight." The LPA suggested the following items also fall into this category:

- Workforce housing
- Paid Parking garage
- Private transportation system (ex. Water taxi)
- Defined public space for certain residents

Amenities – the LPA considers amenities to be items that contribute to the community but are essentially private in nature. Examples include a membership club, restaurant, or commercial enterprise.

The LPA did not discuss how the public benefits, special benefits or amenities could be quantified to determine the "balance" between height and benefit. The LPA would like the Town Council to provide input on that process if appropriate.

RECOMMENDATIONS

The LPA recommended that the next step be a joint meeting between the LPA and Town Council to develop a clear definition and use of public/special benefits in new developments. Additionally, public meetings and opportunities for public input for the Town's Comprehensive Plan and Land Development Codes should be scheduled for the next few months as aspects of the results of a joint meeting could be included in those updates.

Staff asks that the Town Council provide input on the discussion of public benefits and advise staff of how or if you would like to proceed.

EXHIBITS

Exhibit A – Public benefit proposal from LPA member Jim Dunlap
Exhibit B – Public benefit proposal from LPA member James Boan